



New South Wales

Administrative Decisions Legislation Amendment Act 1997 No 77

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New South Wales

Administrative Decisions Legislation Amendment Act 1997 No 77

Act No 77, 1997

An Act to make amendments to various Acts consequent on the enactment of the *Administrative Decisions Tribunal Act 1997*; and for other purposes.
[Assented to 10 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Administrative Decisions Legislation Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Acts

Each Act specified in Schedules 1–6 is amended as set out in those Schedules.

4 Explanatory Notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

Schedule 1 Amendments concerning abolished Community Services Appeals Tribunal

(Section 3)

1.1 Adoption Information Act 1990 No 63

[1] Section 35A Internal review

Omit “an appeal to the Community Services Appeals Tribunal” from section 35A (6).

Insert instead “an application to the Administrative Decisions Tribunal for a review of the decision under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*”.

[2] Section 36

Omit the section. Insert instead:

36 Decisions that are reviewable by Administrative Decisions Tribunal

- (1) For the purposes of section 40 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, any of the following decisions made by the Director-General are reviewable by the Administrative Decisions Tribunal:
 - (a) a failure or refusal to supply any birth certificate or prescribed information to a person, or to authorise the Registrar or another information source to do so under this Act,
 - (b) a failure or refusal to enter the name of any person in a register under this Act,
 - (c) a failure or refusal to arrange a reunion or take action to locate a person under Part 4,

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- (d) a failure or refusal to approach a person who has lodged a contact veto in accordance with a request made under section 24,
 - (e) a decision made under or for the purposes of this Act by the Director-General that is a decision within a class of decisions prescribed by the regulations for the purposes of this section.
- (2) Despite section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, an application cannot be made to the Tribunal under that section until the decision concerned has been reviewed under section 35A of this Act.
- (3) Section 35A applies to the exclusion of section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997*. For the purposes of the application of that Act to the review of any decision made under this Act, any reference to an internal review of the decision under that Act is taken to be a reference to an internal review under section 35A of this Act.

[3] Schedule 2 Savings, transitional and other provisions

Omit clause 6.

Explanatory note

Item [2] amends the *Adoption Information Act 1990* to ensure that certain decisions made under the Act can be the subject of an application for review by the Administrative Decisions Tribunal under section 40 of the *Community Services (Complaints Reviews and Monitoring) Act 1993* (as renamed by this Schedule). It also ensures that the procedures for internal reviews under the *Adoption Information Act 1990* of decisions reviewable by the Tribunal displace the internal review procedures provided by the *Administrative Decisions Tribunal Act 1997*.

Items [1] and [3] make consequential amendments.

1.2 Adoption of Children Act 1965 No 23

Section 67A

Omit the section. Insert instead:

67A Decisions that are reviewable by Administrative Decisions Tribunal

For the purposes of section 40 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the following decisions made by the Director-General under or for the purposes of this Act are reviewable by the Administrative Decisions Tribunal:

- (a) a decision to refuse approval of an adoption agency,
- (b) a decision to revoke or suspend the approval of an adoption agency,
- (c) a decision within a class of decisions prescribed by the regulations for the purposes of this section.

Explanatory note

The amendment to the *Adoption of Children Act 1965* ensures that certain decisions made under the Act can be the subject of an application for review by the Administrative Decisions Tribunal under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (as renamed by this Schedule).

1.3 Children (Care and Protection) Act 1987 No 54

[1] Section 3 Definitions

Omit the definition of *Community Services Appeals Tribunal* from section 3 (1).

[2] Section 112

Omit the section. Insert instead:

112 Decisions that are reviewable by Administrative Decisions Tribunal

For the purposes of section 40 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, any of the following decisions are reviewable by the Administrative Decisions Tribunal:

- (a) a decision of the Minister or the Director-General, as the case may be:
 - (i) to grant a licence or authority,
 - (ii) to grant a consent,
 - (iii) to impose a condition on a licence or authority,
 - (iv) to revoke or vary any condition of, or to impose a further condition on, a licence or authority,
 - (v) to grant an application to vary a fostering authority, or
 - (vi) to suspend or revoke a licence or authority, as referred to in Schedule 1,
- (b) a decision of the Minister to grant an employer's authority or to impose a condition on, to revoke or vary any condition of, to impose a further condition on or to suspend or revoke any such authority,
- (c) a decision of the Minister to grant an exemption under section 48 (1) or 53, to limit the extent of any such exemption or to impose conditions on any such exemption,
- (d) a decision of the Minister or the Director-General to give an approval referred to in section 42 (2) or 44 (2),

- (e) a decision of the Minister or the Director-General, as the case may be, to fail or refuse to make a decision referred to in paragraph (a), (b), (c) or (d) that the Minister or Director-General, as the case may be, is empowered and has been requested to make,
- (f) a decision of the Minister to declare under section 50 (2) that a person is taken to be the employer of a child,
- (g) a decision of the Minister to refuse to terminate the Minister's guardianship of a ward under section 90 (2),
- (h) a decision of the Minister to terminate the custody of a ward or protected person under section 91 (1) (e),
- (i) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations.

Explanatory note

Item [2] amends the *Children (Care and Protection) Act 1987* to ensure that certain decisions made under the Act can be the subject of an application for review by the Administrative Decisions Tribunal under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (as renamed by this Schedule).

Item [1] removes an obsolete reference.

1.4 Commonwealth Powers (Family Law—Children) Act 1986 No 182

Schedule 1 Statutory provisions

Omit "*Community Services (Complaints, Appeals and Monitoring) Act 1993*".

Insert instead "*Community Services (Complaints, Reviews and Monitoring) Act 1993*".

Explanatory note

The amendment to the *Commonwealth Powers (Family Law—Children) Act 1986* replaces a reference to the *Community Services (Complaints, Appeals and Monitoring) Act 1993* in consequence of it being renamed by this Schedule.

**1.5 Commonwealth Powers (Family Law—Children)
Amendment Act 1996 No 60**

Schedule 1 Amendments

Omit “*Community Services (Complaints, Appeals and Monitoring) Act 1993*” from Schedule 1 [7].

Insert instead “*Community Services (Complaints, Reviews and Monitoring) Act 1993*”.

Explanatory note

The amendment to the *Commonwealth Powers (Family Law—Children) Amendment Act 1996* replaces a reference to the *Community Services (Complaints, Appeals and Monitoring) Act 1993* in consequence of it being renamed by this Schedule.

**1.6 Community Services (Complaints, Appeals and
Monitoring) Act 1993, No 2**

[1] Long title

Omit “appeals” and “and the Community Services Appeals Tribunal”.

Insert instead “reviews” and “, to confer and impose functions on the Administrative Decisions Tribunal” respectively.

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

[3] Section 4 Definitions

Omit the definition of *Deputy President*.

[4] Section 4, definition of “President”

Omit the definition of *President*. Insert in alphabetical order:

Divisional Head of the Tribunal means the Divisional Head of the Community Services Division of the Tribunal.

[5] Section 4, definition of “Registrar”

Insert in alphabetical order:

Registrar means the Registrar of the Tribunal.

[6] Section 4, definition of “Tribunal”

Omit the definition. Insert instead:

Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[7] Part 5

Omit the Part. Insert instead:

Part 5 Review by Tribunal of decisions

40 Applications to the Tribunal for reviews of decisions

- (1) A person may apply to the Tribunal for a review of any of the following decisions:
 - (a) a decision made by a person or body by or under the community welfare legislation where the legislation expressly provides that the decision is a reviewable decision for the purposes of this paragraph, and
 - (b) a decision of the Commission to investigate a complaint, being an investigation that is beyond its powers, and

Schedule 1 Amendments concerning abolished Community Services Appeals Tribunal

- (c) a decision of the Commission that was beyond its powers, and
 - (d) a decision that was made by a relevant decision maker and is of a class prescribed by the regulations for the purposes of this section, and
 - (e) a decision made by any State Minister (other than the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services), any Commonwealth Minister or any public authority, if it is within a class of decisions that, with the consent of that Minister or public authority, is prescribed by the regulations for the purposes of this section.
- (2) If there is a failure within a reasonable time to make a decision that, if made, could be the subject of an application to the Tribunal under subsection (1) (b) or (c), the Tribunal may:
- (a) treat the decision as having been made in a manner unfavourable to the applicant for the decision, and
 - (b) permit the applicant to apply to the Tribunal as if the unfavourable decision had in fact been made.
- (3) In this section:
- relevant decision maker*** means the following:
- (a) the Minister for Community Services,
 - (b) the Minister for Aged Services,
 - (c) the Minister for Disability Services,
 - (d) the Director-General of the Department of Community Services,
 - (e) the Director-General of the Ageing and Disability Department,
 - (f) the Commission,
 - (g) a service provider.

- (4) In this Part, a reference to a decision, in relation to the Commission, includes a reference to action taken by the Commission and to a recommendation made by the Commission.

41 Who may apply to the Tribunal?

- (1) An application may be made to the Tribunal by any person who demonstrates to the satisfaction of the Tribunal that he or she has a genuine concern in the subject-matter of the decision concerned.
- (2) Without limiting the generality of subsection (1), an application may be made by any person who is responsible for, is a next friend of or is appointed by the Tribunal to represent the person to whom the application relates.
- (3) The Tribunal may, on application, grant leave to apply for a review of a decision to any person who was entitled to, but did not, apply for a review of the decision within the time allowed for an application.
- (4) A person found by the Tribunal to be unjustifiably interfering in a matter is not entitled to apply to the Tribunal for a review in relation to the matter.
- (5) In determining whether a person is unjustifiably interfering in a matter, the Tribunal is to take into account, to the extent that it is practicable to do so, the wishes and interests of any other persons who have an interest in the matter.
- (6) This section applies despite any contrary provisions of the *Administrative Decisions Tribunal Act 1997*.

42 Representative applications

- (1) The Tribunal may, on application, give leave for an application for a review of a decision to be dealt with as a representative application if it is satisfied that:

- (a) 3 or more persons are entitled to apply to the Tribunal for a review of a decision arising from the same, similar or related circumstances as those to which the application relates but their joinder as appellants is impracticable, and
 - (b) the applicant is one of those persons and the others consent to a representative application, and
 - (c) the application is made in good faith, and
 - (d) the applicant is capable of adequately advocating the interests of the persons entitled to apply for a review, and
 - (e) a representative application would be to the advantage of the persons entitled to apply for a review, and
 - (f) a representative application would be an efficient and effective means of dealing with the claims of the persons entitled to apply for a review.
- (2) The Tribunal may make orders about the making, notification, conduct and determination of a representative application.
- (3) The decision of the Tribunal on a representative application is binding on the persons referred to in subsection (1) (a).

43 Alternatives to Tribunal determining the matter

- (1) The Tribunal must take such steps as to it seems reasonable to encourage the parties to an application for review to effect an amicable agreement.
- (2) The Tribunal may, before it hears an application, or before it determines a matter the subject of an application, refer the application or matter:
 - (a) to the service provider for resolution at a local level, or
 - (b) to the Commission for alternative dispute resolution or investigation under this Act, or
 - (c) for investigation by any other appropriate investigative authority.

- (3) The powers conferred on the Tribunal by this section are in addition to any other powers that the Tribunal has under the *Administrative Decisions Tribunal Act 1997*, including section 74 (Preliminary conferences) or Part 4 (Alternative dispute resolution) of Chapter 6.

44 Additional powers of Tribunal

- (1) The Tribunal may decline to hear or determine an application if, in the opinion of the Tribunal:
- (a) the applicant has available an alternative and satisfactory means of redress, or
 - (b) the applicant has not made appropriate attempts to have the matter to which the application relates resolved otherwise, or
 - (c) the ground for the application is unacceptable having regard to the frequency of applications previously made by or on behalf of the appellant in respect of the same subject-matter.
- (2) In giving its decision on an application, the Tribunal may make recommendations for consideration by the relevant Minister and, if any recommendations are made, the parties affected by the decision are entitled to be informed:
- (a) of any action taken in relation to the recommendations, or
 - (b) that it is not proposed to take any such action.
- (3) Nothing in this section limits the powers of the Tribunal under Division 3 (Powers on review) of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.
- (4) In this section:
- relevant Minister** means:
- (a) the Minister for Community Services, if the decision against which the appeal was made was made by the Minister for Community Services, the

- Director-General of the Department of Community Services or by a person or organisation authorised or funded by the Minister for Community Services to provide a service, or
- (b) the Minister for Aged Services, if the decision against which the appeal was made was made by the Minister for Aged Services, the Director-General of the Ageing and Disability Department (and the decision related to the provision of services to the aged) or by a person or organisation authorised or funded by the Minister for Aged Services to provide a service, or
 - (c) the Minister for Disability Services, if the decision against which the appeal was made was made by the Minister for Disability Services, the Director-General of the Ageing and Disability Department (and the decision related to the provision of services to people with disabilities) or by a person or organisation authorised or funded by the Minister for Disability Services to provide a service, or
 - (d) the Minister for Community Services, if the decision against which the appeal was made was made by the Home Care Service of New South Wales or by a person or organisation funded by the Home Care Service of New South Wales to provide a service.

45 Right of appearance

- (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or, by leave of the Tribunal, may be represented by a barrister or solicitor or by an agent.
- (2) The Commissioner has a right to appear in proceedings before the Tribunal in order to assist the Tribunal otherwise than as a party, unless the proceedings concern an application for the review of a decision of the Commission.

- (3) In proceedings before it directly or significantly affecting a prescribed person, the Tribunal may appoint a person to act as guardian ad litem for the person.
- (4) In proceedings before it directly or significantly affecting a prescribed person, the Tribunal may, if it considers that the person should be separately represented:
 - (a) order that the person be separately represented, and
 - (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the person.
- (5) A person is not entitled to legal aid under the *Legal Aid Commission Act 1979* merely because the Tribunal has made an order under subsection (4).
- (6) This section applies despite the provisions of section 71 (Representation of parties) of the *Administrative Decisions Tribunal Act 1997*.
- (7) In this section:
prescribed person means a child or a person of a class prescribed for the purposes of this section by the regulations.

46 Costs

- (1) The Tribunal may, if in the particular circumstances of the case it is of the opinion that it is appropriate to do so, make orders with respect to the payment of costs of proceedings before it.
- (2) Any such costs may be recovered as a debt.
- (3) A certificate purporting to be signed by the Divisional Head or the Registrar and containing a statement as to any matters relating to the award of costs under this section is admissible as evidence of those matters.
- (4) This section applies despite the provisions of section 88 (Costs) of the *Administrative Decisions Tribunal Act 1997*.

[8] Part 7 The Community Services Appeals Tribunal

Omit the Part.

[9] Section 107 Constitution of the Community Services Review Council

Omit section 107 (1) (e). Insert instead:

(e) the Divisional Head of the Tribunal,

[10] Section 108 Functions of the Review Council

Omit “appeals” from section 108 (b). Insert instead “review”.

[11] Section 114

Omit the section. Insert instead:

114 Reasons to be given for certain decisions

- (1) If a decision of a class prescribed for the purposes of this subsection is made by a relevant decision maker, the person or body that made the decision must:
 - (a) record the reasons for the decision, and
 - (b) give a written copy of the reasons to each person considered by the decision-maker to have been directly affected by the decision.
- (2) In this section, a reference to a decision, in relation to the Commission, includes a reference to action taken by the Commission and a recommendation made by the Commission.
- (3) If a person or body makes a prescribed decision that is a reviewable decision under the *Administrative Decisions Tribunal Act 1997*, the requirements of subsection (1) are taken to be satisfied in relation to any person who is entitled to apply only if
 - (a) notice is given to the person in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997*, and

(b) a statement of reasons containing the matter specified by section 49 (3) of that Act is also given to the person.

(4) In this section:

relevant decision maker means the following:

- (a) the Minister for Community Services,
- (b) the Minister for Aged Services,
- (c) the Minister for Disability Services,
- (d) the Director-General of the Department of Community Services,
- (e) the Director-General of the Ageing and Disability Department,
- (f) the Commission,
- (g) a service provider.

[12] Section 115 Service of documents on the Commission

Omit section 115 (1).

[13] Section 116 Notices etc to be written in other languages

Omit “the Tribunal or” wherever occurring.

[14] Section 119

Omit the section. Insert instead:

119 Exclusion of personal liability

Anything done by:

- (a) a Community Visitor, or
- (b) the Commission, the Commissioner or a member of the staff of the Commission, or
- (c) any person acting for or under the direction of the Commission or the Commissioner,

does not, if it was done in good faith for the purpose of executing this or any other Act, subject the Community Visitor, the member of the staff of the Commission, the Commissioner or a person so acting, personally to any action, liability, claim or demand.

[15] Section 120 Section 3 does not give rise to or affect a cause of action

Omit “proceedings on an appeal to the Tribunal” from section 120 (2).
Insert instead “proceeding before the Tribunal for a review of a decision”.

[16] Section 121 Certain conduct excluded from Ombudsman Act 1974

Omit “or of an appeal to the Tribunal”.

[17] Schedule 1 Savings and transitional provisions

Omit clauses 2 and 3.

Explanatory note

Item [7] replaces Part 5 of the *Community Services (Complaints, Appeals and Monitoring) Act 1993* with a new Part that enables applications to be made to the Administrative Decisions Tribunal for the review of certain decisions under that Act and under the community welfare legislation within the meaning of the Act (proposed sections 40 and 41). The new Part also lays down certain procedural requirements to be followed by the Administrative Decisions Tribunal in determining such applications, some of which qualify the operation of the procedural provisions of the *Administrative Decisions Tribunal Act 1997* (proposed sections 42–46).

Item [2] renames the Act as the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

The other items make consequential amendments.

1.7 Community Welfare Act 1987 No 52

Section 3 Definitions

Omit the definition of *Tribunal* from section 3 (1).

Explanatory note

The amendment to the *Community Welfare Act 1987* removes an obsolete reference.

1.8 Defamation Act 1974 No 18

Section 17KA Matters arising under the Community Services (Complaints, Reviews and Monitoring) Act 1993

Omit section 17KA (c) and (d).

Explanatory note

The amendment removes provisions of the *Defamation Act 1974* that will become obsolete on the abolition of the Community Services Appeals Tribunal.

1.9 Disability Services Act 1993 No 3

[1] Part 2, Division 3

Omit the Division. Insert instead:

Division 3 Applications for review by Administrative Decisions Tribunal

20 Decisions that are reviewable by Administrative Decisions Tribunal

For the purposes of section 40 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, any of the following decisions are reviewable by the Administrative Decisions Tribunal:

- (a) a decision that an approval to the provision of financial assistance should not have been given under section 10 (2) because the provision of the financial assistance will not conform with the objects of this Act and the principles and applications of principles set out in Schedule 1,
- (b) a decision that the terms and conditions on which financial assistance is provided to an eligible organisation in relation to the provision of designated services do not comply with section 12,

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- (c) a decision that the terms and conditions on which financial assistance is provided to a person or eligible organisation in relation to the conduct of an approved research or development activity do not comply with section 13,
- (d) a decision that a review has not been conducted in accordance with section 15,
- (e) a decision that future instalments of approved financial assistance have been terminated otherwise than in accordance with section 16,
- (f) a decision belonging to such class of decisions as may be prescribed by the regulations.

[2] Section 25 Section 3 and Schedule 1 not to give rise to or affect cause of action

Omit “on an appeal to the Community Services Appeals Tribunal under this Act” from section 25 (2).

Insert instead “on an application to the Administrative Decisions Tribunal under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* in respect of a decision specified in section 20 of this Act”.

Explanatory note

Item [2] amends the *Disability Services Act 1993* to ensure that certain prescribed decisions made under the Act can be the subject of an application for review by the Administrative Decisions Tribunal under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (as renamed by this Schedule).

Item [1] makes a consequential amendment.

1.10 Guardianship Act 1987 No 257

[1] Section 3 Definitions

Omit the definition of *Community Services Appeals Tribunal* from section 3 (1).

[2] Section 97

Omit the section. Insert instead:

97 Decisions that are reviewable by Administrative Decisions Tribunal

For the purposes of section 40(1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, any of the following decisions are reviewable by the Administrative Decisions Tribunal:

- (a) a decision of the Minister or the Director-General:
 - (i) to grant a licence,
 - (ii) to grant a consent,
 - (iii) to impose a condition on a licence,
 - (iv) to revoke or vary any condition of, or to impose a further condition on, a licence, or
 - (v) to suspend or revoke a licence,as referred to in Schedule 2,
- (b) a decision of the Minister to grant an exemption under section 94 (1), to limit the extent of any such exemption or to impose conditions on any such exemption,
- (c) a decision of the Minister or the Director-General to refuse to make a decision referred to in paragraph (a) or (b) that the Minister or Director-General is empowered and has been requested to make,
- (d) a decision of the Minister or the Director-General belonging to such class of decisions as may be prescribed by the regulations.

Explanatory note

Item [2] amends the *Guardianship Act 1987* to ensure that certain decisions made under the Act can be the subject of an application for review by the Administrative Decisions Tribunal under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (as renamed by this Schedule).

Item [1] makes a consequential amendment.

1.11 Home Care Service Act 1988 No 6

Section 17A

Omit the section. Insert instead:

17A Decisions that are reviewable by Administrative Decisions Tribunal

For the purposes of section 40 (1) (a) of the *community Services (Complaints, Reviews and Monitoring) Act 1993*, a decision made under or for the purposes of this Act by:

- (a) the Minister, or
- (b) the Service, or
- (c) any other person or body at the request of the Minister or the Service,

is reviewable by the Administrative Decisions Tribunal if it is a decision within a class of decisions prescribed by the regulations for the purposes of this section.

Explanatory note

The amendment to the *Home Care Service Act 1988* ensures that certain prescribed decisions made under the Act can be the subject of an application for review by the Administrative Decisions Tribunal under section 40 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (as renamed by this Schedule).

1.12 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 2, Part 1

Omit “Full-time President of the Community Services Appeals Tribunal.”

Explanatory note

The amendment to the *Statutory and Other Offices Remuneration Act 1975* omits a reference to the President of the Community Services Appeals Tribunal that will become otiose on the abolition of the Tribunal.

Schedule 2 Amendments concerning abolished Equal Opportunity Tribunal

(Section 3)

2.1 Anti-Discrimination Act 1977 No 48

[1] Section 4 Definitions

Omit the definition of *Tribunal*. Insert instead:

Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[2] Part 7A The Equal Opportunity Tribunal

Omit the Part.

[3] Section 89A Application for interim orders under section 112

Omit the section.

[4] Section 95A Leave of Tribunal required for inquiry into certain matters

Omit section 95A (2). Insert instead:

- (2) This section does not affect the operation of section 73 (Procedure of the Tribunal generally) of the *Administrative Decisions Tribunal Act 1997* in relation to evidence given before, or findings made by, the Industrial Relations Commission.

[5] Sections 97–100, 101A, 101B, 107–110, 112, 115 and 117–117B

Omit the sections.

[6] Section 111 Tribunal may dismiss frivolous etc complaints

Insert after section 111 (2):

- (3) Nothing in this section limits the generality of the powers conferred on the Tribunal by Chapter 6 of the *Administrative Decisions Tribunal Act 1997*.

[7] Section 118

Omit the section. Insert instead:

118 Appeals to Appeal Panel against decisions and orders of Tribunal

An order or other decision made by the Tribunal under this Act may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* by a party to the proceedings in which the order or decision is made.

[8] Section 127 Regulations

Omit section 127 (4) (d).

Explanatory note

The amendments to the *Anti-Discrimination Act 1977* are consequential on the abolition of the Equal Opportunity Tribunal by the proposed *Administrative Decisions Tribunal Act 1997* and the transfer of its jurisdiction to the Administrative Decisions Tribunal.

2.2 Defamation Act 1974 No 18

[1] Section 17D Matters arising under Anti-Discrimination Act 1977

Omit “Equal Opportunity Tribunal constituted under the *Anti-Discrimination Act 1977*” from section 17D (1).

Insert instead “Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*”.

[2] Section 17D (1)

Omit “that Act” wherever occurring.
Insert instead “the *Anti-Discrimination Act 1977*”.

[3] Section 17D (2)

Omit “Equal Opportunity Tribunal constituted under that Act”.
Insert instead “Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*”.

Explanatory note

The amendments replace references in the *Defamation Act 1974* that will become otiose with the abolition of the Equal Opportunity Tribunal.

2.3 Industrial Relations Act 1996 No 17

Section 169 Anti-discrimination matters

Omit section 169 (2) and (3). Insert instead:

- (2) An issue that is the subject of proceedings before the Administrative Decisions Tribunal in relation to a matter arising under the *Anti-Discrimination Act 1977* may not be the subject of proceedings before the Commission without the leave of the Commission.
- (3) The Commission may admit in proceedings before it evidence given before, or findings made by, the Tribunal in relation to a matter arising under the *Anti-Discrimination Act 1977*. This subsection does not prevent the admission of any other evidence in the proceedings that contradicts any such evidence or finding.

Explanatory note

The amendment replaces provisions in the *Industrial Relations Act 1996* that presently refer to the Equal Opportunity Tribunal with provisions referring to the Administrative Decisions Tribunal.

Schedule 3 Amendments concerning abolished Legal Services Tribunal

(Section 3)

3.1 Conveyancers Licensing Act 1995 No 57

[1] Section 35 Secrecy

Omit “Legal Services Tribunal” from section 35 (5) (e).
Insert instead “Administrative Decisions Tribunal”.

[2] Section 83 Composition of Legal Services Tribunal

Omit the section.

Explanatory note

The amendments to the *Conveyancers Licensing Act 1995* are consequential on the abolition of the Legal Services Tribunal and the transfer of its jurisdiction to the Administrative Decisions Tribunal by the *Administrative Decisions Tribunal Act 1997*.

3.2 Defamation Act 1974 No 18

[1] Section 17J Matters arising under the Legal Profession Act 1987

Omit section 17J (1) (a) (x).

[2] Schedule 2 Proceedings of public concern and official and public documents and records

Omit clause 2 (16) (e).

[3] Schedule 2, clause 3 (5) (e)

Omit the paragraph.

Explanatory note

The amendments to the *Defamation Act 1974* remove otiose references to the Legal Services Tribunal.

3.3 Legal Profession Act 1987 No 109

[1] Section 3 Definitions

Omit the definition of *Tribunal* from section 3 (1).
Insert in alphabetical order:

Appeal Panel of the Tribunal means an Appeal Panel constituted under the *Administrative Decisions Tribunal Act 1997*.

Legal Services Division of the Tribunal means the Legal Services Division of the Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[2] Section 48I Prohibition on employment of certain non-legal clerks

Omit section 48I (4).

[3] Section 48J Prohibition on partnerships with certain non-legal partners

Omit section 48J (4).

[4] Section 48K Associates who are disqualified or convicted persons

Omit “the Supreme Court” from section 48K (2) (d).
Insert instead “an Appeal Panel of the Tribunal”.

[5] Section 48K (3)

Omit the subsection. Insert instead:

- (3) If a Council or the Tribunal decides to refuse an application by a person for approval under this section, the person may appeal against the decision to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*. On any such appeal, the Appeal Panel may:

- (a) confirm the decision appealed against, or
- (b) approve of the associate.

[6] Section 48L Miscellaneous provisions—ss 48I–48K

Omit section 48L (5).

[7] Section 126 Definitions

Omit the definitions of *barrister member* and *solicitor member*.

[8] Part 10, Division 7

Omit the Division.

[9] Part 10, Division 8, heading

Omit the heading. Insert instead:

Division 7 Applications to the Tribunal

[10] Section 168

Omit the section. Insert instead:

168 Rules of evidence

- (1) For the purpose of conducting a hearing into a question of professional misconduct, the Tribunal is to observe the rules of law governing the admission of evidence despite any contrary provisions of section 73 (Procedure of the Tribunal generally) of the *Administrative Decisions Tribunal Act 1997*.
- (2) In relation to the conduct of any other hearing of a matter allocated to the Legal Services Division of the Tribunal by the *Administrative Decisions Tribunal Act 1997*, section 73 of that Act applies to the determination of that matter.

[11] Section 169 Parties

Omit “Any” from section 169 (4).
Insert instead “Despite section 71 of the *Administrative Decisions Tribunal Act 1997*, any”.

[12] Sections 170–171B

Omit the sections. Insert instead:

170 Certain hearings to be held in private

- (1) The Tribunal is to direct that a hearing (or part of a hearing) relating only to a question of unsatisfactory professional conduct be held in the absence of the public unless it is of the opinion that the presence of the public is in the public interest or the interests of justice.
- (2) Nothing in this section affects the generality of section 75 (Proceedings on hearing to be conducted in public) of the *Administrative Decisions Tribunal Act 1997* in relation to hearings other than those referred to in subsection (1).

[13] Sections 171F–171H

Omit the sections. Insert instead:

171F Appeals to Appeal Panel against decisions and orders of Tribunal

An order or other decision made by the Tribunal under this Act may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* by a party to the proceedings in which the order or decision is made.

[14] Section 171T Costs of administering Part

Omit “Tribunal”.
Insert instead “Legal Services Division of the Tribunal”.

[15] Schedule 6 The Legal Services Tribunal

Omit the Schedule.

Explanatory note

The amendments to the *Legal Profession Act 1987* are consequential on the abolition of the Legal Services Tribunal by the *Administrative Decisions Tribunal Act 1997* and the transfer of its jurisdiction to the Administrative Decisions Tribunal.

Schedule 4 Amendments concerning other abolished Tribunals

(Section 3)

4.1 Boxing and Wrestling Control Act 1986 No 11

[1] Section 3 Definitions

Omit the definition of *Tribunal*.

[2] Part 5

Omit the Part. Insert instead:

Part 5 Review by Administrative Decisions Tribunal

28 Applications may be made to Administrative Decisions Tribunal for review of decisions

A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a determination under section 9 (1) (a) (ii) or 13 (1) (a) (ii) that the person be registered as a boxer for a period of less than 12 months,
- (b) a decision under section 11 (2) to impose conditions in respect of the person,
- (c) a decision under section 11 (2) or (4) or section 23 (2) to cancel or suspend the registration of the person,
- (d) a decision under section 11 (2) to reduce the period of the person's registration,
- (e) a decision to refuse the person's application for registration or renewal of registration as a boxer or an industry participant where the refusal is on the ground that the person is not a fit and proper person to be so registered.

Explanatory note

The amendments to the *Boxing and Wrestling Control Act 1986* are consequential on the abolition of the Boxing Appeals Tribunal by the proposed *Administrative Decisions Tribunal Act 1997* and the transfer of its jurisdiction to the Administrative Decisions Tribunal.

4.2 Education Reform Act 1990 No 8

[1] Section 3 Definitions

Omit the definition of *Tribunal* from section 3 (1). Insert instead:

Tribunal means the Administrative Appeals Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[2] Section 51 Determination by Minister of applications for initial registration of new non-government schools etc

Omit “Schools Appeals Tribunal” from section 51 (2).
Insert instead “Tribunal”.

[3] Section 51 (3) (a)

Omit “no appeal has been made to the Schools Appeals Tribunal against the recommendation”.
Insert instead “no application has been made to the Tribunal for a review of the recommendation”.

[4] Section 51 (3) (b)

Omit “Schools Appeals Tribunal has decided an appeal (made within those 30 days) against the recommendation”.
Insert instead “Tribunal has determined an application for a review (made within those 30 days) of the recommendation”.

[5] Section 51 (3) (c)

Omit “appeal against”.
Insert instead “application for a review of”.

[6] Section 56 Renewal of registration by Minister

Omit “Schools Appeals Tribunal on appeal against” from section 56 (1).
Insert instead “Tribunal reviewing”.

[7] Section 56 (4) (a)

Omit “no appeal has been made to the Schools Appeals Tribunal against the recommendation”.

Insert instead “no application has been made to the Tribunal for a review of the recommendation”.

[8] Section 56 (4) (b)

Omit “Schools Appeals Tribunal has decided an appeal (made within those 30 days) against the recommendation”.

Insert instead “Tribunal has determined an application for a review (made within those 30 days) of the recommendation”.

[9] Section 56 (4) (c)

Omit “appeal against”.

Insert instead “application for a review of”.

[10] Section 59 Cancellation of registration

Omit “no appeal has been made to the Schools Appeals Tribunal against the Board’s recommendation” from section 59 (3) (a).

Insert instead “no application has been made to the Tribunal for a review of the Board’s recommendation”.

[11] Section 59 (3) (b)

Omit “Schools Appeals Tribunal has decided an appeal (made within those 30 days) against the recommendation”.

Insert instead “Tribunal has determined an application for a review (made within those 30 days) of the recommendation”.

[12] Section 59 (3) (c)

Omit “appeal against”.

Insert instead “application for a review of”.

[13] Section 61 Cancellation of registration of relocated schools

Omit “no appeal has been made to the Schools Appeals Tribunal against the Board’s recommendation” from section 61 (4) (a).
Insert instead “no application has been made to the Tribunal for a review of the Board’s recommendation”.

[14] Section 61 (4) (b)

Omit “decided an appeal (made within those 30 days) against the recommendation”.
Insert instead “determined an application for a review (made within those 30 days) of the recommendation”.

[15] Section 61 (4) (c)

Omit “appeal against”.
Insert instead “application for a review of”.

[16] Section 72 Registration for home schooling

Omit “Schools Appeals Tribunal on an appeal against” from section 72 (2) (b).
Insert instead “Tribunal on an application for a review of”.

[17] Section 72 (4) (a)

Omit “no appeal has been made to the Schools Appeals Tribunal against recommendation”.
Insert instead “no application has been made to the Tribunal for a review of the recommendation”.

[18] Section 72 (4) (b)

Omit “Schools Appeals Tribunal has decided an appeal (made within those 30 days) against the recommendation”.
Insert instead “Tribunal has determined an application for a review (made within those 30 days) of the recommendation”.

[19] Section 72 (4) (c)

Omit “appeal against”.
Insert instead “application for a review of”.

[20] Section 74 Cancellation of registration for home schooling

Omit “no appeal has been made to the Schools Appeals Tribunal against the recommendation” from section 74 (4) (a).
Insert instead “no application has been made to the Tribunal for a review of the recommendation”.

[21] Section 74 (3) (b)

Omit “Schools Appeals Tribunal has decided an appeal (made within those 30 days) against”.
Insert instead “Tribunal has determined an application for a review (made within those 30 days) of”.

[22] Section 74 (3) (c)

Omit “appeal against”.
Insert instead “application for a review of”.

[23] Section 76 Consideration by Board of notice of conscientious objection

Omit “(Schools Appeals Tribunal)” from section 76 (4).
Insert instead “(Review of decisions by Tribunal)”.

[24] Section 77 Acceptance or rejection of conscientious objection

Omit “Schools Appeals Tribunal” from section 77 (1).
Insert instead “Tribunal”.

[25] Section 77 (2) (a)

Omit “no appeal has been made to the Schools Appeals Tribunal against the recommendation”.
Insert instead “no application has been made to the Tribunal for a review of the recommendation”.

[26] Section 77 (2) (b)

Omit “Schools Appeals Tribunal has decided an appeal (made within those 30 days) against”.

Insert instead “Tribunal has determined an application for a review (made within those 30 days) of”.

[27] Section 77 (2) (c)

Omit “appeal against”.

Insert instead “application for a review of”.

[28] Section 82 Cancellation of exemption

Omit “(Schools Appeals Tribunal)” from section 82 (2).

Insert instead “(Review of decisions by Tribunal)”.

[29] Section 82 (3) (a)

Omit “no appeal has been made to the Schools Appeals Tribunal against”.

Insert instead “no application has been made to the Tribunal for a review of”.

[30] Section 82 (3) (b)

Omit “Schools Appeals Tribunal has decided an appeal (made within those 30 days) against”.

Insert instead “Tribunal has determined an application for a review (made within those 30 days) of”.

[31] Section 82 (3) (c)

Omit “appeal”. Insert instead “application to the Tribunal”.

[32] Section 88 Decision of Board not to accredit school

Omit section 88 (2) (b). Insert instead:

- (b) if an application for a review of the decision has been made to the Tribunal within those 30 days, unless (and until such time as) the Tribunal has confirmed the decision or the application has been withdrawn.

[33] Section 89 Minister may accredit school

Omit “Schools Appeals Tribunal, in deciding an appeal against” from section 89 (1).

Insert instead “Tribunal, in determining an application to review”.

[34] Section 91 Cancellation of accreditation

Omit section 91 (2) (b). Insert instead:

- (b) if an application for a review of the decision has been made to the Tribunal within those 30 days, unless (and until such time as) the Tribunal has confirmed the decision or the application has been withdrawn.

[35] Section 91 (3)

Omit “Schools Appeals Tribunal, in deciding an appeal against”.

Insert instead “Tribunal, in determining an application to review”.

[36] Part 10

Omit the Part. Insert instead:

Part 10 Review of decisions by Tribunal

107 Applications for reviews of certain decisions

- (1) An application may be made to the Tribunal for a review of any of the following decisions:
 - (a) a recommendation of the Board that registration of a non-government school be refused,
 - (b) a recommendation of the Board that registration of a non-government school not be renewed,
 - (c) a recommendation of the Board that registration of a non-government school be cancelled,
 - (d) a recommendation of an authorised person that the Minister refuse to register a child for home schooling,
 - (e) a recommendation of an authorised person that the registration of a child for home schooling be cancelled,

- (f) a decision of the Board not to accredit a school,
 - (g) a decision of the Board not to renew the accreditation of a school,
 - (h) a decision of the Board to cancel a school's accreditation.
- (2) A person is entitled to make any such application only if the person is or is required to be given notice of the recommendation or decision under this Act.

108 Determination of application by the Tribunal

- (1) On application for the review of a recommendation or decision, the Tribunal may:
- (a) confirm the recommendation or decision, or
 - (b) in the case of an application for the review of a recommendation of the Board or an authorised person—make a different recommendation to the Minister concerning the subject-matter of the application, or
 - (c) in the case of an application for the review of a decision of the Board not to accredit a school—recommend to the Minister that the Minister accredit the school as requested or grant such other accreditation as the Tribunal considers appropriate, or
 - (d) in the case of an application for the review of a decision of the Board to cancel a school's accreditation—recommend to the Minister that the Minister not cancel the accreditation or cancel it only in so far as it relates to one of the recognised certificates.
- (2) This section applies to the exclusion of the provisions of sections 63 (Determination of review by Tribunal) and 65 (Power to remit matters to administrator for further consideration) of the *Administrative Decisions Tribunal Act 1997*.

109 Failure of Board to make a recommendation or decision

- (1) This section applies to the following applications:
- (a) an application to the Board for registration of a non-government school,
 - (b) an application to the Board for accreditation of a non-government school,
 - (c) an application to the Minister for registration of a child for home schooling.
- (2) For the purposes of section 6 (4) of the *Administrative Decisions Tribunal Act 1997*, the Board or Minister (as the case may be) is taken to be required to make a decision in relation to an application to which this section applies within 5 months of the lodgment of such an application.

[37] Section 120 Liability of members of Board etc

Omit “, a committee of the Board or the Schools Appeals Tribunal” from section 120 (2).

Insert “or a committee of the Board”.

[38] Schedule 2 Provisions relating to members and procedure of the Schools Appeals Tribunal

Omit the Schedule.

Explanatory note

The amendments to the *Education Reform Act 1990* are consequential on the abolition of the Schools Appeals Tribunal by the *Administrative Decisions Tribunal Act 1997* and the transfer of its jurisdiction to the Administrative Decisions Tribunal.

4.3 Veterinary Surgeons Act 1986 No 55

[1] Section 3 Definitions

Omit the definition of *Disciplinary Tribunal* from section 3 (1).

[2] Section 3 (1) , definition of “Tribunal”

Insert in alphabetical order:

Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[3] Part 4, Division 2, heading

Omit “and Disciplinary Tribunal”.

[4] Section 25 Constitution of the Veterinary Surgeons Disciplinary Tribunal

Omit the section.

[5] Section 28 Decision of Investigating Committee on complaint

Omit “Disciplinary” wherever occurring from section 28 (1) and (6).

[6] Part 4, Divisions 4 and 5

Omit the Divisions. Insert instead:

Division 4 Proceedings before the Tribunal

30 Inquiries by Tribunal

(1) If in the course of an inquiry into a complaint against a registered veterinary surgeon:

- (a) it appears to the Tribunal that, having regard to the matters arising during the inquiry, another complaint could have been made against the veterinary surgeon, whether instead of the complaint then being inquired into or in addition to it, and

(b) the Tribunal is satisfied that the Investigating Committee has not, under section 28 (1)(a) or (b), dealt with that other complaint or a complaint that was substantially the same as that other complaint, and

(c) the Tribunal is of the opinion that the other complaint is one that could have been made to the Investigating Committee in accordance with section 26,

the Tribunal may itself make that other complaint and it is to be taken to have been referred to the Tribunal in accordance with section 28 (1) (c).

(2) If in the course of any inquiry into a complaint against a registered veterinary surgeon the Tribunal makes another complaint against the veterinary surgeon under subsection (1), the other complaint may be dealt with at that inquiry after such adjournment (if any) as is just and equitable in the circumstances.

31 Right to apply to Tribunal for review of orders of the Investigating Committee

A veterinary surgeon against whom the Investigating Committee has made an order under section 28 (1) (b) may apply to the Tribunal for a review of the order.

32 Tribunal's powers when complaint proved

(1) If the matter of a complaint against a registered veterinary surgeon has been proved to the satisfaction of the Tribunal, the Tribunal may make any one or more of the following orders:

(a) an order reprimanding or cautioning the veterinary surgeon,

(b) an order suspending the veterinary surgeon from practice for a period not exceeding 12 months,

(c) an order directing that the name of the veterinary surgeon be removed from the register of veterinary surgeons or the register of specialists,

- (d) an order imposing a fine on the veterinary surgeon of an amount not exceeding \$10,000,
 - (e) an order imposing conditions on the registration of the veterinary surgeon with respect to the practice of veterinary science,
 - (f) an order requiring the veterinary surgeon to pay specified costs relating to the hearing.
- (2) Even though the matter of a complaint against a registered veterinary surgeon may have been proved to the satisfaction of the Tribunal, the Tribunal must not make an order of the kind referred to in subsection (1) (b) or (c) if the Tribunal is of the opinion that:
- (a) because the matter of the complaint is of a trivial nature, or
 - (b) because of the circumstances in which that matter occurred, or
 - (c) for any other reason, it is in the public interest that the veterinary surgeon should be allowed to continue to practise veterinary science.
- (3) If the Tribunal considers that the matter of a complaint against a registered veterinary surgeon has not been proved to the satisfaction of the Tribunal, but the Tribunal nevertheless considers that the conduct of the veterinary surgeon was sufficiently unacceptable to warrant the making of the complaint, the Tribunal may make an order against the veterinary surgeon under subsection (1) (a) or (f), or both.
- (4) On directing the name of a person to be removed from a register, the Tribunal may fix a time after which the person may apply for restoration of the person's name to the register.
- (5) While an order under this section suspending a person from practice remains in force, the person is taken not to be a registered veterinary surgeon.
- (6) An order under this section does not take effect until 21 days after notice of the order is given to the veterinary surgeon by the Registrar, subject to any decision of an Appeal Panel of the Tribunal on appeal under section 34.

Division 5 General provisions relating to disciplinary proceedings

33 Disciplinary proceedings against veterinary surgeon who ceases to be registered

- (1) The Investigating Committee and the Tribunal may continue to deal with a complaint against a registered veterinary surgeon even though the veterinary surgeon ceases to be registered.
- (2) If the Tribunal so directs, the name of the former veterinary surgeon is taken to have been removed from the register of veterinary surgeons under the order of the Tribunal under section 32.

34 Appeal against orders of the Tribunal in its original jurisdiction

- (1) Any of the following persons may appeal against an order made under section 32 to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*
 - (a) the registered veterinary surgeon or former registered veterinary surgeon against whom the order was made,
 - (b) the person who made the original complaint, but only:
 - (i) on a point of law, or
 - (ii) with respect to any penalty imposed.
- (2) Despite any contrary provision of Part 2 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*, the following persons may appeal to the Supreme Court under that Part against an order of an Appeal Panel made in an appeal under subsection (1):
 - (a) the registered veterinary surgeon or former registered veterinary surgeon against whom the order was made,

- (b) the person who made the original complaint, but only:
 - (i) on a point of law, or
 - (ii) with respect to any penalty imposed.
- (3) The provisions of section 75 of the *Administrative Decisions Tribunal Act 1997* apply (subject to the rules of the Supreme Court) in respect of the hearing of an appeal under subsection (2) in the same way as those provisions apply in respect of the hearing of a complaint by the Tribunal.
- (4) Without limiting section 120 of the *Administrative Decisions Tribunal Act 1997*, the Supreme Court may, in respect of the veterinary surgeon concerned:
 - (a) make any decision that could have been made under section 32, or
 - (b) vary any decision made by the Appeal Panel.

35 Restoration of name to register etc

- (1) Subject to section 32 (4), any person whose name has been removed from a register by the Tribunal under section 32 may apply to have the person's name restored to that register.
- (2) The provisions of this Act relating to applications for registration are, so far as applicable, to apply to any such application for restoration.
- (3) The Tribunal may, if it thinks fit, terminate any period of suspension imposed by the Tribunal under section 32 before the expiration of the period specified in the order of suspension.
- (4) Subject to any order referred to in section 32 (4) that is made by the Supreme Court on an appeal, the Tribunal may direct that any name removed from a register at the direction of the Tribunal under section 32 be restored to that register.

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- (5) The name of any person which has been removed from a register under section 32 is not be restored to the register until the prescribed restoration fee is paid.

36 Recording of proceedings and decision of Investigating Committee and orders of Tribunal

- (1) The Registrar of the Tribunal is to notify the Board of any orders the Tribunal makes under section 32.
- (2) The Registrar of the Board, or a person appointed by the Registrar, is to keep a record of
- (a) all proceedings and decisions of the Investigating Committee, and
 - (b) all orders of the Tribunal made under section 32.
- (3) The Registrar of the Board is to make a notation in the register of veterinary surgeons or, if applicable, the register of specialists of the terms of
- (a) an order of the Tribunal under section 32 or the Appeal Panel of the Tribunal in an appeal under section 34, and
 - (b) an order of the Investigating Committee under section 28 (1) (b).

[7] Section 54B Payments into Fund

Omit “or the chairperson of the Disciplinary Tribunal” from section 54B (a).

Insert instead “or the Tribunal”.

[8] Section 54C Payments from Fund

Omit “Disciplinary” wherever occurring.

[9] Section 62 Proof of certain matters not required

Omit “, the Investigating Committee or the Disciplinary Tribunal” from section 62 (a), (c) or (d) wherever occurring.

Insert instead “or the Investigating Committee”.

[10] Section 62 (b)

Omit “, the Investigating Committee or the Disciplinary Tribunal, or any order of the chairperson of the Tribunal”.

Insert instead “or the Investigating Committee”.

[11] Section 64 Service of documents on Board or Committee

Omit “, the Investigating Committee or the Disciplinary Tribunal” and “, that Committee or that Tribunal” wherever occurring.

Insert instead “or the Investigating Committee” and “or that Committee” respectively.

[12] Section 65 Authentication of certain documents

Omit section 65 (c).

[13] Section 66 Recovery of charges, fines etc

Omit “or the Chairperson of the Disciplinary Tribunal” from section 66 (2).

[14] Section 68 Liabilities of members etc

Omit “, the Investigating Committee or the Disciplinary Tribunal”.

Insert instead “or the Investigating Committee”.

[15] Section 68

Omit “, of that Committee or that Tribunal”.

Insert instead “or of that Committee”.

[16] Section 68

Omit “Board, that Committee or that Tribunal”.

Insert instead “Board or that Committee”.

[17] Section 68

Omit “a member of that Tribunal” where lastly occurring.

[18] Schedule 3 Provisions relating to the members of the Disciplinary Tribunal

Omit the Schedule.

Explanatory note

The amendments to the *Veterinary Surgeons Act 1986* are consequential on the abolition of the Veterinary Surgeons Disciplinary Tribunal by the *Administrative Decisions Tribunal Act 1997* and the transfer of its jurisdiction to the Administrative Decisions Tribunal.

Schedule 5 Amendments transferring the jurisdiction of courts

(Section 3)

5.1 Adoption of Children Act 1965 No 23

[1] Section 13 Revocation or suspension of approval

Omit “or subsection (3) of section 14” from section 13 (1) (c).

[2] Section 14

Omit the section. Insert instead:

14 Review by Administrative Decisions Tribunal of refusal, revocation or suspension

An organisation may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Director-General:

- (a) a decision to refuse an application of the organisation under section 10, or
- (b) a decision to approve of such an application subject to additional conditions or requirements referred to in section 11 (3), or
- (c) a decision to revoke or suspend the approval of the organisation as a private adoption agency in accordance with the provisions of section 13.

Explanatory note

Item [2] amends the *Adoption of Children Act 1965* to confer on the Administrative Decisions Tribunal jurisdiction to review certain decisions of the Director-General of the Department of Community Services concerning the approval of charitable organisations as private adoption agencies that are presently appealable to the Supreme Court.

Item [1] makes a consequential amendment.

5.2 Animal Research Act 1985 No 123

[1] Section 17 Definitions

Omit the definition of *appeal* from section 17 (1).

[2] Section 20 Determination of applications

Omit section 20 (4). Insert instead:

- (4) If, at the expiration of 90 days after an application has been made, the Director-General has failed to determine the application, the Director-General is, for the purposes only of any appeal or any application for review by the Administrative Decisions Tribunal, taken to have refused to accredit the applicant as a research establishment.

[3] Section 24 Determination of complaints

Omit section 24 (4). Insert instead:

- (4) The cancellation or suspension of accreditation of a research establishment takes effect at the expiration of 14 days after written notice of the cancellation or suspension is served on the establishment, subject to any order made by the Administrative Decisions Tribunal under Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

[4] Section 31 Determination of applications

Omit section 31 (4). Insert instead:

- (4) If, at the expiration of 90 days after an application has been made, the Director-General has failed to determine the application, the Director-General is, for the purposes only of any application for a review by the Administrative Decisions Tribunal, taken to have refused to grant a licence to the applicant.

[5] Section 36 Determination of complaints

Omit section 36 (4). Insert instead:

- (4) The cancellation or suspension of a licence takes effect at the expiration of 14 days after written notice of the cancellation or suspension is served on the holder of the licence, subject to any order made by the Administrative Decisions Tribunal under Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

[6] Section 39 Determination of applications

Omit section 39 (4). Insert instead:

- (4) If, at the expiration of 90 days after an application has been made, the Director-General has failed to determine the application, the Director-General is, for the purposes only of any application for review to the Administrative Decisions Tribunal, taken to have refused to grant a licence to the applicant.

[7] Part 4, Division 6

Omit the Division. Insert instead:

Division 6 Reviews by the Administrative Decisions Tribunal

45 Applications to Administrative Decisions Tribunal for review of determination

Any person who is dissatisfied with a determination of the Director-General under this Part may apply to the Administrative Decisions Tribunal for a review of the determination.

Explanatory note

Item [7] amends the *Animal Research Act 1985* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Agriculture concerning accreditation and licensing that are presently appealable to the District Court.

The other items make consequential amendments.

5.3 Apiaries Act 1985 No 16

[1] Section 8 Grant or refusal of application for registration

Omit section 8 (8). Insert instead:

- (8) If an application made under section 7 is refused, the registrar must:
 - (a) give the applicant a notice in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997*, and
 - (b) immediately refund to the applicant the registration fee that accompanied the application.

[2] Section 11 Renewal of registration

Omit section 11 (1) . Insert instead:

- (1) If an application for the renewal of the registration of a beekeeper is refused, the registrar must:
 - (a) give the applicant a notice in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997*, and
 - (b) immediately refund to the applicant the registration fee that accompanied the application.

[3] Section 12 Cancellation of registration

Omit section 12 (1) . Insert instead:

- (11) A decision of the registrar under subsection (3) or (5) does not take effect:
 - (a) until the period prescribed by or under the *Administrative Decisions Tribunal Act 1997* within which an application to the Administrative Decisions Tribunal may be made has expired, or
 - (b) if any such application is made within that period, until the application is determined or is withdrawn.

[4] Section 18 Power of Director-General to restrict beekeeping on certain premises

Omit section 18 (9).

[5] Part 6

Omit the Part. Insert instead:

Part 6 Reviews by the Administrative Decisions Tribunal

35 Applications for review

- (1) A person aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:
 - (a) a decision of the registrar in refusing an application by that person for registration as a beekeeper,
 - (b) a decision of the registrar in refusing an application for the renewal of that person's registration as a beekeeper,
 - (c) a decision of the registrar under section 12 (3) or (4) to cancel that person's registration,
 - (d) a decision of the registrar under section 12 (3) or (5) declaring that person to be disqualified from being a director of a corporation that is a registered beekeeper,
 - (e) any direction given or action taken by an inspector under section 17 or 24 (5) or (6),
 - (f) the action of an inspector in seizing and detaining bees, beehives, apiary products or appliances under a provision of Division 2 of Part 4 and seeks the return of those bees, beehives, apiary products or appliances,
 - (g) the action of an inspector under section 25 refusing to allow bees, beehives, apiary products or appliances to be brought into New South Wales,

- (h) in relation to Part 5:
 - (i) a decision of the Director-General to refuse a claim for compensation under Part 5,
 - (ii) a decision of the Director-General to award compensation under that Part on the ground that the amount of compensation awarded is inadequate,
 - (iii) a determination of the market value of any queen bees made for the purpose of section 31 (1) on the ground that that value is less than the true market value of the bees.
- (2) A person who is the occupier of, or otherwise has an interest in, premises in respect of which the Director-General has made an order under section 18 who is aggrieved by that order may apply to the Administrative Decisions Tribunal for a review of that order.

[6] Section 38 General powers of inspection

Omit section 38 (9). Insert instead:

- (9) If
 - (a) no application for the review of a seizure of bees, beehives, apiary products or appliances carried out in accordance with a provision of this Act is made under section 35 within the period prescribed by or under the *Administrative Decisions Tribunal Act 1997* for making applications under that section, or
 - (b) such an application is made within that period but is subsequently withdrawn, or
 - (c) such an application is made within that period but, on the hearing of the application, the action of the inspector in seizing those bees, beehives, apiary products or appliances is affirmed,

the bees, beehives, apiary products or appliances must:

- (a) at the expiry of that period, or
- (b) on the withdrawal of the application, or
- (c) on the decision of the Administrative Decisions Tribunal in respect of the application being notified to the applicant,

be forfeited to the Crown and is to be disposed of in such manner as the Director-General thinks fit.

Explanatory note

Item [5] amends the *Apiaries Act 1985* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the registrar of beekeepers, inspectors and the Director-General of the Department of Agriculture that are presently appealable to a Local Court.

The other items make consequential amendments.

**5.4 Births, Deaths and Marriages Registration Act 1995
No 62**

Section 56

Omit the section. Insert instead:

56 Review by the Administrative Decisions Tribunal

A person who is dissatisfied with a decision of the Registrar made in the exercise or purported exercise of functions under this Act may apply to the Administrative Decisions Tribunal for a review of the decision.

Explanatory note

The amendment to the *Births, Deaths and Marriages Registration Act 1995* confers jurisdiction on the Administrative Decisions Tribunal to review decisions of the Registrar of Births, Deaths and Marriages under the Act that are presently appealable to the District Court.

5.5 Charitable Fundraising Act 1991 No 69

Part 4

Omit the Part. Insert instead:

Part 4 Reviews by Administrative Decisions Tribunal

42 Review of refusal to grant authority or against conditions imposed on authority

An applicant for an authority who is dissatisfied with any decision of the Minister with respect to the application may apply to the Administrative Decisions Tribunal for a review of the decision.

43 Review of revocation of authority

A person or organisation whose authority is revoked may apply to the Administrative Decisions Tribunal for a review of the revocation.

44 Review of variation of authority

A person or organisation that holds an authority may apply to the Administrative Decisions Tribunal for a review of any variation of the conditions attached to the authority.

45 Determination of applications

The Administrative Decisions Tribunal, in determining a review under this Act, is to inquire into and decide the application having regard to the provisions of this Act and the public interest.

Explanatory note

The amendment to the *Charitable Fundraising Act 1991* confers jurisdiction on the Administrative Decisions Tribunal to review decisions made by the Minister under the Act concerning authorities that are presently appealable to the District court.

5.6 City of Sydney Act 1988 No 48

Section 18 List of electors for compulsory enrolment on non-residential roll

Omit section 18 (7). Insert instead:

- (7) If any claimant, objector or person in respect of whom an objection was made is dissatisfied with the determination made by the general manager, the person may apply to the Administrative Decisions Tribunal for a review of the determination. The general manager must make the appropriate entry in, or alteration of, the list to give effect to the decision of the Tribunal in the proceedings determining the application.

Explanatory note

The amendment to the *City of Sydney Act 1988* confers jurisdiction on the Administrative Decisions Tribunal to review decisions made by the general manager of the City of Sydney concerning the non-residential roll of electors that are presently appealable to a Local Court.

5.7 Dairy Industry Act 1979 No 208

[1] Section 33 Corporation may refuse to issue certificate etc

Omit section 33 (3)–(6). Insert instead:

- (3) Before cancelling a certificate of registration on the grounds specified in subsection (1) (a), (b) or (d), the Corporation must, in the prescribed manner, forward a notice in writing to the holder of the certificate of the grounds on which the Corporation proposes to cancel the certificate. This subsection applies to the exclusion of section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997*.
- (4) A person to whom any such notice has been forwarded or a person whose application for a certificate of registration has been cancelled or refused on either of the grounds specified in subsection (1) (a) or (b) may apply to the Administrative Decisions Tribunal for a review of the cancellation or refusal.

[2] Section 35 Registration in respect of certain interstate activities

Omit section 35 (3) (c). Insert instead:

(c) subsection (4) was omitted and the following subsections were inserted instead:

(4) A person dissatisfied with any of following decisions of the Corporation may apply to the Administrative Decisions Tribunal for a review of the decision:

(a) a decision to issue the person with a certificate of registration as a dairy produce merchant that authorises the person to carry on only such activities as a dairy produce merchant as are specified in the certificate,

(b) a decision to issue the person with a certificate of registration as a dairy produce merchant subject to conditions,

(c) a decision to vary the conditions to which his or her certificate of registration as a dairy produce merchant is subject for the time being or to impose conditions or additional conditions to which that certificate is to be subject.

(5) A person notified under subsection (3) or whose application for a certificate of registration as a dairy produce merchant has been refused upon any of the grounds specified in subsection (1) may apply to the Administrative Decisions Tribunal for a review of the decision concerned.

(6) The Administrative Decisions Tribunal cannot set aside, vary or make a decision in substitution of a decision, cancellation or refusal if:

(a) in the case of an application for a review of a decision referred to in subsection (4) (a), (b) or (c)—it was reasonably necessary in the interest of public health for that decision to be made, or

- (b) in the case of an application for a review of the cancellation or refusal of a certificate of registration—the cancellation or refusal was reasonably necessary in the interest of public health.
- (7) In determining an appeal under Part 2 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* in relation to a decision under subsection (4) (a), (b) or (c), the Supreme Court is bound by subsection (6) in the same way as the Administrative Decisions Tribunal.

[3] Section 37 Directions prohibiting sale of milk by retail shop

Omit section 37 (3)–(5). Insert instead:

- (3) Before giving such a direction to a person on grounds specified in subsection (1) (a) or (b), the Corporation is to give the person the prescribed notice in writing of the grounds for the proposed direction. This subsection applies to the exclusion of section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997*.
- (4) A person to whom a notice is given may apply to the Administrative Decisions Tribunal for a review of the proposed direction.

Explanatory note

Items [1] and [2] amend the *Dairy Industry Act 1979* to confer jurisdiction on the Administrative Decisions Tribunal to review decisions of the Dairy Corporation concerning the issuing of certificates of registration of dairy farmers and dairy produce merchants that are presently appealable to a Local Court.

Item [3] confers jurisdiction on the Administrative Decisions Tribunal to review proposed directions by the Corporation prohibiting the sale of milk by retail shops that are presently appealable to a Local Court.

5.8 Dog Act 1966 No 2

[1] Section 9H Council to notify dog owner of making of declaration and consequences

Omit section 9H (2) (b). Insert instead:

- (b) set out, in accordance with the requirements of section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997*, the owner's right to have the declaration reviewed by the Administrative Decisions Tribunal.

[2] Sections 9J and 9K

Omit the sections. Insert instead:

9J What applications can be made for reviews of the decisions of a council concerning a declaration?

The owner of a dog may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) the declaration by the council that the dog is dangerous,
- (b) the refusal by the council to revoke its declaration that the dog is dangerous.

[3] Section 9M Local Court may declare a dog to be dangerous

Omit "(other than an appeal against a declaration by a council that a dog is dangerous or against a refusal by a council to revoke such a declaration)".

Explanatory note

Item [2] amends the *Dog Act 1966* to confer jurisdiction on the Administrative Decisions Tribunal to review decisions of councils declaring dogs to be dangerous that are presently appealable to a Local Court.

Items [1] and [3] make consequential amendments.

5.9 Employment Agents Act 1996 No 18

[1] Section 6 Persons to be in charge at each place of business

Omit “unless the refusal or cancellation has been overturned by a Local Court on an appeal under this Act” from section 6 (5).
Insert instead “unless the refusal or cancellation has been overturned by the Administrative Decisions Tribunal in an application made under this Act”.

[2] Section 14 Procedure for cancellation

Omit section 14 (5).

[3] Sections 16 and 17

Omit the sections. Insert instead:

16 Applications to Administrative Decisions Tribunal for review of refusal of application or cancellation of licence

- (1) An applicant for a licence may apply to the Administrative Decisions Tribunal for a review of the refusal of the Director-General to grant the licence.
- (2) A licensee may apply to the Administrative Decisions Tribunal for a review of the cancellation by the Director-General of the licence.

[4] Section 18 Register to be kept by Director-General

Omit section 18 (1) (g). Insert instead:

- (g) particulars of any cancellation of the licence and any application to the Administrative Decisions Tribunal for a review of the cancellation, and

Explanatory note

Item [3] amends the *Employment Agents Act 1996* to confer jurisdiction on the Administrative Decisions Tribunal to review decisions of the Director-General of the Department of Industrial Relations concerning the licences to carry on the business of a private employment agent that are presently appealable to a Local court.

Items [1], [2] and [4] make consequential amendments.

5.10 Entertainment Industry Act 1989 No 230

[1] Section 23 Notice of refusal

Omit “for the purposes of any appeal under this Act” from section 23 (3).

Insert instead “for the purposes of any application to the Administrative Decisions Tribunal for a review under this Act”.

[2] Section 36 Directions by Council to employers and operators of premises

Omit “subject to Part 5 (Appeals)” from section 36 (5).

Insert instead “subject to Part 5 (Reviews by Administrative Decisions Tribunal)”.

[3] Section 37 Directions by Council to owners of premises

Omit “subject to Part 5 (Appeals)” from section 37 (4).

Insert instead “subject to Part 5 (Reviews by Administrative Decisions Tribunal)”.

[4] Part 5

Omit the Part. Insert instead:

Part 5 Reviews by Administrative Decisions Tribunal

42 Right to apply to Tribunal

A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) the refusal of the Council to issue a licence to the person,
- (b) the cancellation or suspension by the Council of a licence issued to the person,
- (c) a condition subject to which a licence is issued to the person or the amendment of such a licence,

- (d) a determination or order by the Complaints Committee in respect of the person,
- (e) a decision of the Council under section 41 in respect of the application of money secured by a bond lodged with the Council,
- (f) a direction to the person issued by the Council under section 36 or 37.

43 Effect of decisions subject to appeal

A decision of the Council to cancel, suspend or amend a licence, or a decision of the Complaints Committee (other than a recommendation), takes effect on the date specified in the notice served on the person in respect of whom the decision is made (being a date not earlier than 21 days after the notice is served on the person), subject to any order made by the Administrative Decisions Tribunal under Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

Item [4] amends the *Entertainment Industry Act 1989* to confer jurisdiction on the Administrative Decisions Tribunal to review decisions of the Council concerning various types of licences that are presently appealable to industrial magistrates. It also removes the present right to appeal from decisions of such magistrates to the Industrial Relations Commission on points of law.

The other items make consequential amendments.

5.11 Factories, Shops and Industries Act 1962 No 43

[1] Section 78A Exemption from provisions of this Division

Omit section 78A (9)–(12).

[2] Section 78AA

Insert after section 78A:

78AA Reviews by the Administrative Decisions Tribunal

Any shopkeeper or occupier of a shop who is aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:

- (a) a determination of the Director-General to refuse to grant an exemption, or
- (b) a determination of the Director-General as to the conditions subject to which, or the period for which, an exemption is granted, or
- (c) a determination of the Director-General to withdraw an exemption.

[3] Section 109 Grant, refusal, cancellation or suspension of licence

Omit section 109 (3). Insert instead:

- (3) Any applicant for, or holder of, a licence who is dissatisfied with any decision of the Director-General referred to in subsection (2) may apply to the Administrative Decisions Tribunal for the review of the decision.

[4] Section 110 Qualifications for licences

Omit section 110 (2). Insert instead:

- (2) Any person whose application for a licence under this Division is refused by the Director-General may apply to the Administrative Decisions Tribunal for a review of the refusal.

Explanatory note

Item [2] amends the *Factories, Shops and Industries Act 1962* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Industrial Relations concerning exemptions from opening and closing hours of shops and warehouses that are presently appealable to the Industrial Relations Commission.

Items [3] and [4] amend the Act to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General concerning the licensing of hairdressers that are presently appealable to the Industrial Relations Commission.

Item [1] makes a consequential amendment.

5.12 Fertilizers Act 1985 No 5

[1] Section 7 Registration

Omit section 7 (5). Insert instead:

- (5) If, at the expiration of 60 days after an application has been made under section 6, the Director-General has failed to determine the application under this section, the Director-General is, for the purposes only of any application under section 12, taken to have refused to register the brand name the subject of the application.

[2] Section 10 Variation of registered particulars

Omit section 10 (4). Insert instead:

- (4) If, at the expiration of 60 days after an application has been made under section 9, the Director-General has failed to determine the application under this section, the Director-General is, for the purposes only of any application under section 12, taken to have refused to vary the registered particulars the subject of the application.

[3] Section 12

Omit the section. Insert instead:

12 Reviews by the Administrative Decisions Tribunal

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:
 - (a) the refusal by the Director-General:
 - (i) to register a brand name the subject of an application under section 6 by that person, or
 - (ii) to vary the registered particulars the subject of an application under section 9 by that person,

- (b) the cancellation by the Director-General of the registration of a brand name of which that person was the registered proprietor immediately before that registration was cancelled.
- (2) A decision of the Tribunal made in proceedings determining an application made under subsection (1) is not an appealable decision for the purposes of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

Item [3] amends the *Fertilizers Act 1985* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Agriculture concerning the registration of brand names that are presently appealable to a Local Court.

The other items make consequential amendments.

5.13 Firearms Act 1996 No 46

[1] Section 24 Revocation of licence

Omit “, whether or not an appeal is lodged against the revocation” from section 24 (4).

[2] Part 8

Omit the Part. Insert instead:

Part 8 Applications to Administrative Decisions Tribunal

75 Right to seek review from Administrative Decisions Tribunal

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:
 - (a) the refusal of or failure by the Commissioner to issue a licence or permit (other than a permit in respect of a prohibited firearm) to the person,
 - (b) a condition imposed by the Commissioner on a licence or permit issued to the person,

- (c) the revocation of a licence or permit issued to the person (other than a revocation on the basis that the holder of the licence or permit is subject to a firearms prohibition order or an apprehended violence order),
- (d) the refusal of or failure by the Commissioner to register a firearm,
- (e) the cancellation of the registration of a firearm by the Commissioner,
- (f) a firearms prohibition order made against the person.

Explanatory note

Item [2] amends the *Firearms Act 1996* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Commissioner of Police concerning firearm licences and permits that are presently appealable to a Local court.

Item [1] makes a consequential amendment.

5.14 Fisheries Management Act 1994 No 38

[1] Part 4, Division 6, heading

Omit the heading.

Insert instead “**Division 6 Reviews by Administrative Decisions Tribunal**”.

[2] Sections 126 and 127

Omit the sections. Insert instead:

126 Applications to Administrative Decisions Tribunal for reviews of certain decisions

- (1) A person who is dissatisfied with any of the following decisions under this Part may apply to the Administrative Decisions Tribunal for a review of the decision concerned:
 - (a) the refusal to issue a relevant authority to the person or to renew the person’s relevant authority,

- (b) the imposition of conditions on the person's relevant authority (otherwise than by regulation),
 - (c) the suspension or cancellation of the person's relevant authority.
- (2) For the purposes of this section, an application for the issue or renewal of a relevant authority is taken to have been refused if the authority is not issued or renewed within 60 days after the application was duly made.

[3] Section 146 Issue or refusal of permit

Omit section 146 (4). Insert instead:

- (4) An applicant may apply to the Administrative Decisions Tribunal for a review of a refusal of the Minister to issue a permit under this section.

[4] Section 160 Power to cancel or suspend a permit after a hearing

Omit section 160 (5). Insert instead:

- (5) A permit holder may apply to the Administrative Decisions Tribunal for a review of the cancellation or suspension of the holder's permit under this section.

[5] Section 161 Power to declare person to be a disqualified person for the purposes of this Part

Omit section 161 (7). Insert instead:

- (7) The person concerned may apply to the Administrative Decisions Tribunal for a review of a declaration under this section.

[6] Section 177 Power of Minister to cancel leases in certain cases

Omit section 177 (4). Insert instead:

- (4) A lessee may apply to the Administrative Decisions Tribunal for a review of the cancellation of the lease.

Explanatory note

Items [2]–[6] amend the *Fisheries Management Act 1994* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions concerning authorities, permits and leases under the Act that are presently appealable to the District Court.

Item [1] makes a consequential amendment.

5.15 Food Act 1989 No 231

[1] Section 41 Production of spare portion of sample

Insert after section 41 (7):

- (8) In this section:
- (a) a reference to a court includes a reference to the Administrative Decisions Tribunal, and
 - (b) a reference to an appeal from a lower court includes a reference to an appeal from the Tribunal to an Appeal Panel of the Tribunal under the *Administrative Decisions Tribunal Act 1997*.

[2] Sections 47 and 48

Omit the sections. Insert instead:

47 Reviews by Administrative Decisions Tribunal of Director-General's order

A person aggrieved by any prohibition or direction imposed or given by an order under this Division may apply to the Administrative Decisions Tribunal for a review of the order.

[3] Section 56

Omit the section. Insert instead:

56 Review by Administrative Decisions Tribunal of order

If a request is made under section 53 and:

- (a) the food store, food vehicle or appliance concerned is inspected by an inspector within a period of 24 hours after the receipt of the request by the Director-General, and

- (b) the inspector making the inspection refuses to give to the proprietor a certificate of clearance in respect of the food store, food vehicle or appliance,

the proprietor may apply to the Administrative Decisions Tribunal for a review of the refusal.

Explanatory note

Items [2] and [3] amend the *Food Act 1989* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Health and inspectors concerning food production and certificates of clearance that are presently appealable to the District Court.

Item [1] makes a consequential amendment.

5.16 Freedom of Information Act 1989 No 5

[1] Section 6 Definitions

Insert in section 6 (1) in alphabetical order:

Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[2] Section 52 Review by the Ombudsman

Omit section 52 (2) (c). Insert instead:

- (c) while any relevant proceedings are before the Tribunal under Division 2.

[3] Section 52 (7)

Omit the subsection. Insert instead:

- (7) Any part of a report under section 26 of the *Ombudsman Act 1974* of an investigation of a determination made by an agency under this Act (except any part of such a report on a question of law or containing a recommendation referred to in subsection (6)) is admissible in evidence in any proceedings before the Tribunal under this Act if that part of the report is relevant to the proceedings.

[4] Part 5, Division 2

Omit the Division. Insert instead:

Division 2 Reviews by the Tribunal

52B Definitions

In this Division:

access applicant means a person who has made an access application.

access application means an application for:

- (a) access to a document of an agency or Minister, or
- (b) an amendment to an agency's or Minister's records.

review applicant means a person who has applied to the Tribunal under section 53 for a review of a determination.

review application means an application made to the Tribunal under section 53.

53 Right to make a review application

- (1) A person who is aggrieved by a determination made by an agency or Minister under section 24 or 43 may apply to the Tribunal for a review of the determination.
- (2) A review application may not be made:
 - (a) while the determination is subject to a right of review under section 34 or 47, or
 - (b) if the determination has been subject to a right of review under section 34 or 47 but no application for such a review of the determination was made while it was subject to that right, or
 - (c) while any relevant complaint is being investigated by the Ombudsman.
- (3) For the purposes of this section, a person is aggrieved by a determination:

- (a) in the case of a determination that relates to an access application made by the person under section 17, 34 or 36—if the determination is to the effect that:
 - (i) an agency or Minister refuses to give the person access to a document, or
 - (ii) access to a document is to be given to the person subject to deferral, or
 - (iii) access to a copy of a document from which exempt matter has been deleted is to be given to the person, or
 - (iv) access to a document is to be given to the person subject to a charge for dealing with the access application, or for giving access to a document, that the person considers to be unreasonable, or
 - (v) a charge for dealing with the access application is payable by the person being a charge that the person considers to have been unreasonably incurred, or
- (b) in the case of a determination that relates to an application made by some other person under section 17, 34 or 36, in respect of a document to which one or more of the provisions of Division 2 of Part 3 applies—if
 - (i) an agency or Minister should have, but has not, taken such steps as are reasonably practicable to obtain the views of the person as to whether or not the document is an exempt document by virtue of any one or more of the provisions of Part 2 of Schedule 1, or
 - (ii) an agency or Minister should have, and has, taken such steps but the determination is not in accordance with the views of the person, or

- (c) in the case of a determination that relates to an access application made by the person under section 40, 47 or 49—the determination is to the effect that an agency or Minister refuses to amend the agency’s records or that Minister’s records, as the case may be, in accordance with the application,

and the determination has been made as a consequence of a review under section 34 or 47 or has not been subject to a right of review under either of those sections.

- (4) In relation to decisions under this Act that are reviewable decisions under the *Administrative Decisions Tribunal Act 1997*:

- (a) the procedures for internal reviews provided by this Act apply to the exclusion of section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997*, and

- (b) any reference in the *Administrative Decisions Tribunal Act 1997* to an internal review of a reviewable decision under that Act is taken, in its application to a decision made under this Act, to be a reference to an internal review under this Act.

- (5) The provisions of this Division apply to a review application to the exclusion of section 55 (1)(d), section 58 and Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

54 Time within which review applications to be made

A review application is to be made:

- (a) except as provided by paragraph (b)—within 60 days after notice of the determination to which it relates is given to the access applicant, or
- (b) if a complaint is made to the Ombudsman in relation to the determination—within that period of 60 days and:

- (i) the Ombudsman refuses to investigate the conduct complained of or discontinues an investigation of that conduct within 60 days after the complainant is informed of that fact, or
- (ii) the Ombudsman completes an investigation of the conduct complained of within 60 days after the results of the investigation are reported to the complainant.

55 Procedure for dealing with exempt matter

In determining a review application, the Tribunal:

- (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose any exempt matter, and
- (b) is to, where in the opinion of the Tribunal it is necessary to do so in order to prevent the disclosure of any exempt matter, receive evidence and hear argument in the absence of the public, the review applicant and the applicant's representative.

56 Delayed determinations

- (1) This section applies to a determination that, by virtue of section 24 (2), 34 (6), 43 (2) or 47 (6), is to be taken to have been made by an agency or Minister.
- (2) If a review application is made in relation to a determination to which this section applies, the Tribunal may, on the application of the agency or Minister concerned, make an order allowing further time to the agency or Minister to deal with the access application to which the determination relates.
- (3) Such an order may be made subject to such conditions as the Tribunal thinks fit, including a condition that:
 - (a) if a determination to give access to the document concerned is made during the further time allowed by the order:

- (i) any charge that would otherwise be payable in relation to the giving of access to the document is to be reduced or waived, and
 - (ii) the review applicant may apply to the Tribunal for an order that the applicant's costs in the proceedings for review are to be paid by the agency or Minister concerned, or
 - (b) if a determination to amend the records concerned is made during the further time allowed by the order the review applicant may apply to the Tribunal for an order that the applicant's costs in the proceedings for review are to be paid by the agency or Minister concerned.
- (4) If
- (a) a review application is made to the Tribunal in relation to a determination to which this section applies (being a determination referred to in section 24 (2) or 34 (6)), and
 - (b) the agency or Minister makes a decision, before the Tribunal has disposed of the review application, that:
 - (i) access to the document concerned is to be given to the review applicant, but subject to deferral, or
 - (ii) the document concerned is an exempt document and access to a copy of the document from which exempt matter has been deleted is to be given to the review applicant, or
 - (iii) access to the document concerned is to be given, but subject to a charge for dealing with the application, or for giving access to the document, that the review applicant considers to be unreasonable, or

- (iv) a charge for dealing with the application is payable by the review applicant, being a charge that the applicant considers to have been unreasonably incurred,

the Tribunal may, on the application of the review applicant, deal with the review application as if the decision were a determination under section 24 (1) and as if the review application were a review application against such a determination.

57 Consideration of restricted documents

- (1) The Tribunal may, on the application of the review applicant, consider the grounds on which it is claimed that a document is a restricted document, but only if the document is not subject to a Ministerial certificate.
- (2) In any proceedings under this section, the Tribunal is, on the application of the Minister administering this Act, or the agency or Minister concerned, to receive evidence and hear argument in the absence of:
 - (a) the public, and
 - (b) the review applicant, and
 - (c) if in the opinion of the Tribunal it is necessary to do so to prevent the disclosure of any exempt matter the review applicant's representative.
- (3) If the Tribunal is not satisfied, by evidence on affidavit or otherwise, that there are reasonable grounds for the claim, it may require the document to be produced in evidence before it.
- (4) If, after considering any document produced before it, the Tribunal is still not satisfied that there are reasonable grounds for the claim, the Tribunal is to reject the claim when determining the review application.
- (5) The Tribunal is not to reject the claim unless it has given the Minister administering this Act a reasonable opportunity to appear and be heard in relation to the matter.

- (6) For the purposes of any proceedings under this section, the Minister administering this Act is a party to the proceedings.

58 Tribunal may report improper conduct

If, as a result of a review application, the Tribunal is of the opinion that an officer of an agency has failed to exercise in good faith a function conferred or imposed on the officer by or under this Act, the Tribunal may take such measures as it considers appropriate to bring the matter to the attention of the responsible Minister for the agency.

[5] Section 58A Review by the Supreme Court

Omit “on the application of the appellant in proceedings before the District Court under Division 2” from section 58A (1).

Insert instead “on the application of the review applicant in proceedings before the Tribunal under Division 2”.

[6] Section 58A (2) (b)

Omit the paragraph. Insert instead:

- (b) the review applicant, and

[7] Section 58A (2) (c)

Omit “appellant’s”. Insert instead “review applicant’s”.

[8] Section 588 Consideration of documents the subject of a Ministerial certificate

Omit “District Court” from section 58B (2).

Insert instead “Tribunal”.

[9] Section 58B (5)

Omit “appellant”. Insert “review applicant”.

[10] Section 58C Confirmation of a Ministerial certificate for Cabinet and Executive Council documents

Omit “appellant” from section 58C (6).
Insert instead “review applicant”.

[11] Section 67 Fees and charges

Omit section 67 (3A) (a). Insert instead:

- (a) by the Tribunal when reviewing a determination described in section 53 (3) (a) (iv) or (v), and

Explanatory note

Item [4] replaces Division 2 of Part 5 of the *Freedom of Information Act 1989* with a new Division that ensures that the review functions in relation to access to government information previously exercised by the District Court are exercised by the Administrative Decisions Tribunal.

The other items make consequential amendments.

5.17 Horticultural Stock and Nurseries Act 1969 No 3

[1] Section 9 Certificate of registration

Omit section 9 (2D). Insert instead:

- (2D) If
 - (a) an application for renewal of registration has been duly made,
 - (b) the Director-General has, in relation to the application, made any of the decisions referred to in section 10 (1) (a), (b), (c) or (d),
 - (c) the applicant has applied to the Administrative Decisions Tribunal for a review of such a decision under section 10, and

- (d) the application to the Tribunal has not been determined by the Tribunal before the day on which the certificate of registration held by the applicant at the time of making his or her application for renewal of registration would, but for this subsection, expire,

the certificate of registration held by the applicant at the time of making his or her application for renewal of registration continues in force until the day on which the Tribunal determines its review of the Director-General's decision.

[2] Section 10

Omit the section. Insert instead:

10 Reviews by Administrative Decisions Tribunal

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:
- (a) a decision of the Director-General imposing, under section 8 (4), any condition on the grant of an application for registration or for renewal of registration made by the person,
 - (b) a decision of the Director-General refusing, under section 8 (4), to grant an application for registration or for renewal of registration made by the person,
 - (c) a decision of the Director-General granting, in accordance with section 8 (5), an application for registration or renewal of registration made by the person,
 - (d) a decision of the Director-General suspending or cancelling, under section 8 (7), the registration of the person.

- (2) A decision of the Tribunal made in proceedings determining an application made under subsection (1) is not an appealable decision for the purposes of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

[3] Section 13 Destruction of certain stock

Omit section 13 (3)–(5). Insert instead:

- (3) Any person aggrieved by an order referred to in subsection (1) may apply to the Administrative Decisions Tribunal for a review of the order.
- (4) The Director-General may cause any or all of the proclaimed horticultural stock to which an order relates to be destroyed, and any cost thereby incurred may be recovered in any court of competent jurisdiction from the person to whom the order was addressed, but only if:
- (a) an application to the Tribunal has not been lodged within the time prescribed by or under the *Administrative Decisions Tribunal Act 1997*, or
 - (b) an application has been so lodged and the Tribunal has confirmed or varied the order.
- (5) A decision of the Tribunal made in proceedings determining an application made under subsection (3) is not an appealable decision for the purposes of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

Item [2] amends the *Horticultural Stock and Nurseries Act 1969* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Agriculture concerning the registration of nurserymen and resellers that are presently appealable to the District Court.

Item [3] amends the Act to confer jurisdiction on the Administrative Decisions Tribunal to review orders of the Minister to destroy stock that are presently appealable to a Local Court.

Item [1] makes a consequential amendment.

5.18 Impounding Act 1993 No 31

Part 6

Omit the Part. Insert instead:

Part 6 Applications to Administrative Decisions Tribunal

38 Owner of impounded item can apply to Administrative Decisions Tribunal for review

- (1) The owner of an impounded item may apply to the Administrative Decisions Tribunal for a review of the decision to impound the item, but only on the ground that the impounding of the item was unlawful.
- (2) The owner of an impounded item may apply to the Administrative Decisions Tribunal for a review of any fee or charge required to be paid for the release of the item (whether to an impounding authority or an occupier of private land), but only on the ground that the fee or charge has been improperly charged or incorrectly calculated or is excessive.
- (3) An application cannot be made under this section until the owner of the impounded item has given the impounding authority or occupier concerned notice in writing of intention to apply to the Administrative Decisions Tribunal.
- (4) If notice of intention to apply to the Administrative Decisions Tribunal is given, the authority must not sell or otherwise dispose of the impounded item until the time limit for an application has expired or until it has been notified that any application made has been refused or withdrawn.
- (5) This section does not affect section 22 (Injured, diseased or distressed animals can be destroyed).

- (6) An impounding authority may release an impounded item pending the determination of an application. The release of an impounded item does not affect any right of recovery that the impounding authority may have under this Act.

39 Time limit for applications

Despite the provisions of the *Administrative Decisions Tribunal Act 1997*, the time limit for an application is:

- (a) 28 days from the date of impounding, in the case of an application for a review of the impounding decision, or
- (b) 28 days from the date on which application was made for the release of the impounded item, in the case of an application for a review of an impounding fee.

40 Result of application to Administrative Decisions Tribunal

- (1) If an application for a review of an impounding decision is dismissed, the applicant is liable for any additional impounding fees incurred up to the time the impounding authority is notified of the decision on the application.
- (2) If an application for a review of an impounding results in the impounding decision being set aside, the impounding authority must release the impounded item free of all impounding fees and convey it to the applicant at the expense of the authority.

Explanatory note

The amendment to the *Impounding Act 1993* confers jurisdiction on the Administrative Decisions Tribunal to review certain decisions to impound or impose fees for the release of impounded items that are presently appealable to a Local Court.

5.19 Local Government Act 1993 No 30

[1] Section 303 Making of claims for inclusion in the roll

Omit section 303 (3). Insert instead:

- (3) A person dissatisfied with the decision of the Electoral Commissioner or general manager may apply to the Administrative Decisions Tribunal for a review of the decision.

[2] Section 303 (4)

Omit “on an appeal”.

Insert instead “on an application to the Administrative Decisions Tribunal”.

[3] Section 437

Omit the section. Insert instead:

437 Applications for review by Administrative Decisions Tribunal

- (1) A person who is surcharged under this Division may apply to the Administrative Decisions Tribunal for a review of the decision to surcharge.
- (2) The council must give effect to any decision of the Tribunal on a review of the decision to surcharge.

Explanatory note

Item [1] amends the *Local Government Act 1993* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Electoral Commissioner or a general manager of a council concerning various electoral rolls that are presently appealable to a Local Court. Item [2] makes an amendment that is consequential to the amendment made by item [1].

Item [3] amends the Act to confer jurisdiction on the Administrative Decisions Tribunal to review decisions to surcharge by Departmental representatives that are presently appealable to the District Court.

5.20 Non-Indigenous Animals Act 1987 No 166

Section 20

Omit the section. Insert instead:

20 Applications for review by Administrative Decisions Tribunal

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:
 - (a) a decision refusing the person's application for a licence or renewal of a licence, or for a permit,
 - (b) a decision imposing any condition on the person's licence or permit that the person considers unreasonable,
 - (c) a decision cancelling the person's licence or permit.
- (2) Despite the provisions of Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*, if an application for a review of a decision referred to in subsection (1) is made to the Tribunal, the cancellation or expiry of the licence or the imposition of the condition (as the case may be) is stayed by lodgment of the application, pending its outcome.

Explanatory note

The amendment to the *Non-Indigenous Animals Act 1987* confers jurisdiction on the Administrative Decisions Tribunal to review certain decisions concerning licences and permits under the Act that are presently appealable to a Local Court.

5.21 Nursing Homes Act 1988 No 124

[1] Section 31 Cancellation of licence with notice

Omit section 31 (4). Insert instead:

- (4) The cancellation of a licence under this section does not take effect until the expiration of 14 days after notice of the Secretary's decision is given to the licensee, subject

to any order made by the Administrative Decisions Tribunal under Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

[2] Section 32

Omit the section. Insert instead:

32 Applications for review by the Administrative Decisions Tribunal

The licensee of a nursing home may apply to the Administrative Decisions Tribunal for a review of a decision of the Secretary to cancel the licence for the nursing home (except under section 30).

Explanatory note

Item [2] amends the *Nursing Homes Act 1988* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Health (formerly the Secretary) concerning the licensing of nursing homes that are presently appealable to the District Court.

Item [1] makes a consequential amendment.

5.22 Passenger Transport Act 1990 No 39

[1] Section 47

Omit the section. Insert instead:

47 Effect of notification of decisions of the Director-General

- (1) If the Director-General makes a decision that is able to be reviewed under this Part, it is the duty of the Director-General to cause any person entitled to request the review, or to lodge the application with the Administrative Decisions Tribunal for a review:

-
- (a) in the case of a person entitled to lodge an application with the Tribunal — to be given notice that is in accordance with section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997* and a statement of reasons setting out the matters specified by section 49 (3) of that Act, or
 - (b) in other cases—to be notified in writing of the fact of the decision and of the reasons for it.
- (2) If the Director-General makes a decision that is able to be reviewed under this Part, any such decision has effect from the time the notice is given and continues in effect unless rescinded by the Director-General or by the Administrative Decisions Tribunal determining an application under Division 3.
 - (3) A notice given under this section is a sufficient notice for the purposes of section 48 of the *Administrative Decisions Tribunal Act 1997*.

[2] Part 5, Division 3

Omit the Division. Insert instead:

Division 3 Reviews by Administrative Decisions Tribunal

52 Applications to Administrative Decisions Tribunal

- (1) Any person whose application under Part 2 has been refused, or whose accreditation or authority has been varied, suspended or cancelled may apply to the Administrative Decisions Tribunal for a review of the refusal, variation, suspension or cancellation.
- (2) If, on an application to the Administrative Decisions Tribunal by a driver employed by the State Transit Authority whose authority has been varied, suspended or cancelled, the Administrative Decisions Tribunal is

satisfied that another dispute pending before the Transport Appeals Board involves substantially the same issues, it may remit the application for hearing by that Board. In that event, the Transport Appeals Board has jurisdiction to hear and determine the application as if it were the Administrative Decisions Tribunal.

- (3) A person aggrieved by a decision of the Director-General:
- (a) to refuse to issue or transfer a licence to the person, or
 - (b) to suspend or cancel the person's licence, or
 - (c) with respect to the conditions imposed on the person's licence, or any variation or proposed variation of them,

may apply to the Administrative Decisions Tribunal for a review of the decision.

- (4) A person aggrieved by a decision of the Director-General with respect to a network referred to in section 41, or by the refusal of an application under that section, may apply to the Administrative Decisions Tribunal for a review of the decision.

Explanatory note

Item [2] amends the *Passenger Transport Act 1990* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Transport concerning accreditation of drivers and operators and the issuing of authorities to drivers that are presently appealable to a Local Court.

Item [1] makes a consequential amendment.

5.23 Plant Diseases Act 1924 No 38

[1] Section 21 Power to destroy plants in an abandoned orchard or nursery

Omit section 21 (2) and (3). Insert instead:

- (2) Any person aggrieved by a decision of the Minister under subsection (1) may apply to the Administrative Decisions Tribunal for a review of the decision.

- (3) A decision of the Tribunal made in proceedings determining an application made under subsection (2) is not an appealable decision for the purposes of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.
- (4) After the end of the period prescribed by or under the *Administrative Decisions Tribunal Act 1997* within which an application may be made under subsection (2) for a review of a decision in relation to an orchard or nursery, the Minister may cause an inspector to destroy all plants within the orchard or nursery that in the inspector's opinion are likely to harbour or spread diseases or pests, but only if:
 - (a) such an application has not been made within that period, or
 - (b) if such an application has been made within that period—the application has been dismissed or withdrawn or the decision otherwise affirmed.
- (5) Costs incurred in exercising the power conferred by subsection (4) are recoverable in a court of competent jurisdiction as a debt due to the Crown from the owner of the orchard or nursery concerned, or, if the orchard or nursery is not occupied by its owner, from the occupier of the orchard or nursery.

[2] Section 28 Regulations

Omit section 28 (1) (g). Insert instead:

- (g) the conferring on a person liable to pay fees under this Act of a right to apply to the Administrative Decisions Tribunal for a review of a decision in respect of the withdrawal of credit facilities from, or the refusal to extend such facilities to, that person in relation to the payment of those fees.

Explanatory note

Item [1] amends the *Plant Diseases Act 1924* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Agriculture concerning the destruction of plants in an abandoned orchard or nursery that are presently appealable to a Local Court.

Item [2] makes a consequential amendment.

5.24 Private Hospitals and Day Procedure Centres Act 1988 No 123

[1] Section 34 Cancellation of licence with notice

Omit section 34 (4). Insert instead:

- (4) The cancellation of a licence under this section does not take effect until the expiration of 14 days after notice of the Secretary's decision is given to the licensee, subject to any order made by the Administrative Decisions Tribunal under Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

[2] Section 35

Omit the section. Insert instead:

35 Right to apply to Administrative Decisions Tribunal for review

The licensee of an establishment may apply to the Administrative Decisions Tribunal for a review of a decision of the Secretary to cancel the licence for the establishment (except under section 33).

Explanatory note

Item [2] amends the *Private Hospitals and Day Procedure Centres Act 1988* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Health (formerly the Secretary) concerning the cancellation of licences for establishments that are presently appealable to the District Court.

Item [1] makes a consequential amendment.

5.25 Public Health Act 1991 No 10

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[2] Section 21 Definitions

Omit the definition of *appropriate court*. Insert instead:

appropriate reviewer, in relation to a public health order, means:

- (a) if the order relates to a Category 5 medical condition and there has been no application to the Tribunal for its continuation—the Tribunal (as constituted for the purposes of section 25), or
- (b) in any other case—the Tribunal (as constituted for the purposes of section 26).

[3] Section 21, definition of “proceeding”

Omit “appeal”. Insert instead “application to the Tribunal”.

[4] Part 3, Division 6 Public health orders—Categories 4 and 5

Omit “appropriate court” wherever occurring (except in section 21).
Insert instead “appropriate reviewer”.

[5] Section 24 Duration of public health order

Omit section 24 (1). Insert instead:

- (1) A public health order that relates to a Category 5 medical condition ceases to have any effect if:
 - (a) the person subject to the order is not, within 3 business days after service on the person of the order, also served with a copy of an application made to the Tribunal for confirmation of the order under section 25, or

- (b) such an application is made and the Tribunal revokes the order under section 25, or
- (c) the order expires before it is confirmed or revoked by the Tribunal under section 25, or
- (d) the order expires before or after an application to continue the order is made to the Tribunal under section 26.

[6] Sections 25 and 26

Omit the sections. Insert instead:

25 Tribunal to review certain public health orders

- (1) An application may be made to the Tribunal for confirmation of a public health order based on a Category 5 medical condition.
- (2) The Tribunal is, as soon as practicable, to inquire into the circumstances surrounding the making of the order and:
 - (a) if satisfied that the making of the order was justified—is to confirm the order or vary the order and confirm it as varied, or
 - (b) if not so satisfied—is to revoke the order.
- (3) The Tribunal may vary the order only by:
 - (a) adding a requirement that could have been included in the order when made, or
 - (b) substituting any such requirement for any one or more of them already included in the order.
- (4) The Tribunal may, from time to time, adjourn an inquiry under this section for not more than 7 days.
- (5) For the purposes of an inquiry under this section, the Tribunal may:
 - (a) obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry, and
 - (b) take into account a certificate given by such a person.

- (6) A decision of the Tribunal made in proceedings determining an application under this section is an appealable decision for the purposes of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

26 Tribunal may continue public health order

- (1) An authorised medical practitioner may, before the expiration of a public health order, apply to the Tribunal for continuation of an order if:
- (a) the order is based on a Category 4 medical condition, or
 - (b) the order is based on a Category 5 medical condition and has been confirmed by the Tribunal under section 25.
- (2) An application for continuation of a public health order may be made under this section only if the applicant is satisfied, on reasonable grounds, that the person to whom the order relates would, if not subject to such an order, continue to endanger the health of the public as a consequence of suffering from a Category 4 or Category 5 medical condition.
- (3) If continuation of a public health order is applied for under this section and the person subject to the order notifies the Tribunal that continuation of the order is not opposed, the Tribunal may, without inquiry, continue the order for a period not exceeding 6 months.
- (4) Unless the order is continued under subsection (3), the Tribunal is to make such inquiries as it thinks fit in relation to the application and may:
- (a) continue the order, with or without variation, for a period not exceeding 6 months, or
 - (b) refuse to continue the order, or
 - (c) revoke the order.

- (5) The Tribunal may vary the order only by:
 - (a) omitting a requirement included in the order, or
 - (b) adding a requirement that could have been included in the order when made, or
 - (c) substituting any such requirement for any one or more of them already included in the order.
- (6) For the purposes of an inquiry under this section, the Tribunal may:
 - (a) obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry, and
 - (b) take into account a certificate given by such a person.

[7] Section 30 Action following apprehension or surrender

Omit “court” from section 30 (1) where lastly occurring.
Insert instead “reviewer”.

[8] Section 32 Restriction on making of further public health order

Omit section 32 (1) (a) and (b). Insert instead:

- (a) the order was revoked by the Tribunal under section 25 or 26, by an authorised medical practitioner under section 31 or on an appeal against the order, or
- (b) the Tribunal has refused under section 26 to continue the order.

[9] Part 3, Division 8

Omit the Division. Insert instead:

Division 8 Other applications to Administrative Decisions Tribunal

40 Applications to Tribunal for review of action or direction of Minister

An application may be made to the Tribunal for a review of any of the following decisions:

- (a) any action taken by the Minister under section 5 other than the giving of a direction by an order published under that section, or
- (b) any direction given by an order so published.

41 Applications to Tribunal for review of public health order relating to Category 4 medical condition

An application may be made to the Tribunal for a review of a public health order that is based on a Category 4 medical condition.

[10] Section 82 Regulations

Omit section 82 (2) (b).

Explanatory note

Items [6] and [9] amend the *Public Health Act 1991* to transfer functions in relation to the making of public health orders presently exercised by the Local Court and District Court to the Tribunal.

The other items make consequential amendments.

5.26 Rail Safety Act 1993 No 50

Section 44

Omit the section. Insert instead:

44 Application to Administrative Decisions Tribunal for review of decision of Director-General or authorised agent

A person aggrieved by a decision of the Director-General or an authorised agent under Division 3 or 4 may apply to the Administrative Decisions Tribunal for a review of the decision.

Explanatory note

The amendment to the *Rail Safety Act 1993* confers jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Transport or an authorised agent concerning accreditation and certification that are presently appealable to the Supreme Court.

5.27 Stock (Artificial Breeding) Act 1985 No 196

Section 24

Omit the section. Insert instead:

24 Applications to Administrative Decisions Tribunal

A person aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:

- (a) the refusal of an application for the issue, renewal, variation or transfer of, or by the suspension or cancellation by the Director-General of, any authority, or
- (b) the terms or conditions specified in or imposed by the Director-General on any authority or by the variation by the Director-General of any such term or condition, otherwise than with the written consent of the licensee.

Explanatory note

The amendment to the *Stock (Artificial Breeding) Act 1985* confers jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Agriculture concerning authorities that are presently appealable to a Local Court.

5.28 Tow Truck Act 1989 No 158

[1] Section 24 Notice of refusal

Omit section 24 (3). Insert instead:

- (3) If, at the expiration of 90 days after an application for a licence or drivers certificate or for the amendment of a licence is made, the Council has failed to determine the application, the Council is to be taken, for the purposes of an application to the Administrative Decisions Tribunal under section 25, to have refused the application concerned.

[2] Section 25

Omit the section. Insert instead:

25 Applications to Administrative Decisions Tribunal

- (1) An applicant for a licence or drivers certificate, or an amendment of a licence, may apply to the Administrative Decisions Tribunal for a review of the refusal of the Council to grant the application.
- (2) The holder of a licence or drivers certificate amended by the Council (other than in accordance with the person's application) may apply to the Administrative Decisions Tribunal for a review of the amendment.

[3] Sections 53–55

Omit the sections. Insert instead:

53 Application to Administrative Decisions Tribunal for review of disciplinary action

A defendant aggrieved by a determination of the Council under section 50 may apply to the Administrative Decisions Tribunal for a review of the determination.

[4] Section 70 Procedures on appeal

Omit the section.

Explanatory note

Item [2] amends the *Tow Truck Act 1989* to confer jurisdiction on the Administrative Decisions Tribunal to review decisions of the Tow Truck Industry Council concerning the issue of, or amendment to, licences under that Act that are presently appealable to a Local Court.

Item [3] amends the Act to confer jurisdiction on the Administrative Decisions Tribunal to review decisions of the Tow Truck Industry Council concerning disciplinary determinations that are presently appealable to a Local Court.

The other items make consequential amendments.

5.29 Youth and Community Services Act 1973 No 90

[1] Section 3A Declaration of residential centres

Omit section 3A (2)–(7). Insert instead:

- (2) An owner, an occupier or a lessee of any premises in respect of which an order made under subsection (1) is in force may apply to the Administrative Decisions Tribunal for a review of the declaration of those premises as a residential centre for handicapped persons.
- (3) An application under subsection (2) may be made only on the grounds:
 - (a) that the premises to which the declaration relates are not being used as a place of residence for 2 or more handicapped persons, or
 - (b) that all of the handicapped persons residing at those premises reside there with a relative of them who is of or above the age of 18 years but is not a handicapped person.
- (4) Subsection (3) applies despite the provisions of section 63 (1) or (2) of the *Administrative Decisions Tribunal Act 1997*.

[2] Section 24

Omit the section. Insert instead:

24 Application to Administrative Decisions Tribunal for a review of a suspension or revocation of licence

If the Director-General has, under section 18 (3), suspended or revoked a licence, the licensee or former licensee (as the case may be) may apply to the Administrative Decisions Tribunal for a review of the suspension or revocation of his or her licence unless the licence was suspended or revoked at the request of the licensee or former licensee.

Explanatory note

Item [1] amends the *Youth and Community Services Act 1973* to confer jurisdiction on the Administrative Decisions Tribunal to review declarations that certain premises are residential centres for handicapped persons that are presently appealable to the District Court.

Item [2] amends the Act to confer jurisdiction on the Administrative Decisions Tribunal to review decisions of the Director-General of the Department of Community Services concerning licensing that are presently appealable to the District Court.

Schedule 6 Other amendments to Acts

(Section 3)

6.1 Defamation Act 1974 No 18

[1] Section 17T

Insert after section 17S:

17T Matters arising under the Administrative Decisions Tribunal Act 1997

There is a defence of absolute privilege for a publication to or by the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* (including a publication by that Tribunal of an official report of a decision of that Tribunal or of the reasons for that decision).

[2] Schedule 2 Proceedings of public concern and official and public documents and records

Insert after clause 2 (21):

- (22) proceedings held in public of the Administrative Decisions Tribunal.

[3] Schedule 2, clause 3 (7)

Insert after clause 3 (6):

- (7) a document that consists of a report made by Administrative Decisions Tribunal of the decision of that Tribunal in respect of any proceedings before it, and of the reasons for that decision, under the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

The amendments to the *Defamation Act 1974* create three defences against actions for defamation in relation to publications by or in relation to the Administrative Decisions Tribunal.

Item [1] creates a defence of absolute privilege in relation to publications in the course of the Tribunal's proceedings or the publication of an official report of its proceedings or reasons for a decision.

Item [2] ensures that the publication of a report of the proceedings of the Administrative Decisions Tribunal is a protected report for the purposes of the defence created by section 24 (Protected reports—Schedule 2) of the Act.

Item [3] ensures that a report of the proceedings or reasons of the Tribunal are official documents or records for the purposes of the defence created by section 25 (Copies etc of official and public documents and records) of the Act.

6.2 Interpretation Act 1987 No 15

Section 21 Meaning of commonly used words and expressions

Insert in alphabetical order in section 21 (1):

Administrative Decisions Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

The amendment to the *Interpretation Act 1987* ensures that a reference to the Administrative Decisions Tribunal in NSW legislation is read as a reference to the Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

6.3 Judicial Officers Act 1986 No 100

[1] Section 3 Definitions

Insert after paragraph (f) in the definition of *judicial officer* in section 3 (1):

, or

- (g) the President of the Administrative Decisions Tribunal.

[2] Section 43 Appropriate authorities to suspend etc

Insert “or the President of the Administrative Decisions Tribunal” after “member of the Commission”.

Explanatory note

The amendments to the *Judicial Officers Act 1986* ensures that the President of the Administrative Decisions Tribunal is a judicial officer for the purposes of the making of complaints about the President and other matters under that Act.

6.4 Ombudsman Act 1974 No 68

Section 35C

Insert after section 35B:

35C Referral of legal question to Administrative Decisions Tribunal for advisory opinion

- (1) The Ombudsman may refer to the Administrative Decisions Tribunal for the opinion of the Tribunal any legal question arising out of any decision made in the exercise of any of the functions of an agency that the Ombudsman is investigating, but only if the exercise of the function is a reviewable decision within the meaning of the *Administrative Decisions Tribunal Act 1997*.
- (2) On any such referral (and despite any contrary provisions of the *Administrative Decisions Tribunal Act 1993*, the Tribunal may hold such hearings (if any) and inform itself in such manner as it thinks appropriate for the purpose of determining the proceedings for an opinion.
- (3) The decision of the Tribunal on any such referral does not operate as a binding declaration of right.

Explanatory note

The amendment to the *Ombudsman Act 1974* ensures that the Ombudsman may seek advisory opinions on certain legal questions from the Administrative Decisions Tribunal in relation to decisions that the Ombudsman is investigating and that are also reviewable by the Tribunal.

6.5 Public Lotteries Act 1996 No 86

Section 79A

Insert after section 79:

79A Review by Administrative Decisions Tribunal of certain decisions under this Act

A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a decision of the Minister under section 17 (4) to take disciplinary action against the person,
- (b) a decision of the Minister under section 18 (1) directing the person to take action to rectify the matter that constitutes the basis for taking disciplinary action concerned.

Explanatory note

The amendment to the *Public Lotteries Act 1996* ensures that certain decisions of the Minister in relation to disciplinary action against a licensee under that Act are reviewable by the Administrative Decisions Tribunal. These decisions are presently not reviewable by any other Tribunal or appealable to a court.

6.6 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

[1] Schedule 1 Public offices

Insert at the end of the Schedule:

President of the Administrative Decisions Tribunal.

[2] Schedule 2, Part 1 Public offices

Insert at the end of the Part:

Full-time member of the Administrative Decisions Tribunal (other than the President of the Tribunal).

Full-time assessor of the Administrative Decisions Tribunal.

Explanatory note

The amendments to the *Statutory and Other Offices Remuneration Act 1975* ensure that full-time members of the Tribunal have their remuneration determined under that Act.

Notes

Acts amended by Schedules 1–6

- Adoption Information Act 1990 No 63—Sch 1.1
- Adoption of Children Act 1965 No 23—Sch 1.2, Sch 5.1
- Animal Research Act 1985 No 123—Sch 5.2
- Anti-Discrimination Act 1977 No 48—Sch 2.1
- Apiaries Act 1985 No 16—Sch 5.3
- Births, Deaths and Marriages Registration Act 1995 No 62—Sch 5.4
- Boxing and Wrestling Control Act 1986 No 11—Sch 4.1
- Charitable Fundraising Act 1991 No 69—Sch 5.5
- Children (Care and Protection) Act 1987 No 54—Sch 1.3
- City of Sydney Act 1988 No 48—Sch 5.6
- Commonwealth Powers (Family Law—Children) Act 1986 No 182—Sch 1.4
- Commonwealth Powers (Family Law—Children) Amendment Act 1996 No 60—Sch 1.5
- Community Services (Complaints, Appeals and Monitoring) Act 1993 No 2—Sch 1.6
- Community Welfare Act 1987 No 52—Sch 1.7
- Conveyancers Licensing Act 1995 No 57—Sch 3.1
- Dairy Industry Act 1979 No 208—Sch 5.7
- Defamation Act 1974 No 18—Sch 1.8, Sch 2.2, Sch 3.2, Sch 6.1
- Disability Services Act 1993 No 3—Sch 1.9
- Dog Act 1966 No 2—Sch 5.8
- Education Reform Act 1990 No 8—Sch 4.2
- Employment Agents Act 1996 No 18—Sch 5.9
- Entertainment Industry Act 1989 No 230—Sch 5.10
- Factories, Shops and Industries Act 1962 No 43—Sch 5.11
- Fertilizers Act 1985 No 5—Sch 5.12
- Firearms Act 1996 No 46—Sch 5.13

Fisheries Management Act 1994 No 38—Sch 5.14
Food Act 1989 No 231—Sch 5.15
Freedom of Information Act 1989 No 5—Sch 5.16
Guardianship Act 1987 No 257—Sch 1.10
Home Care Service Act 1988 No 6—Sch 1.11
Horticultural Stock and Nurseries Act 1969 No 3—Sch 5.17
Impounding Act 1993 No 31—Sch 5.18
Industrial Relations Act 1996 No 17—Sch 2.3
Interpretation Act 1987 No 15—Sch 6.2
Judicial Officers Act 1986 No 100—Sch 6.3
Legal Profession Act 1987 No 109—Sch 3.3
Local Government Act 1993 No 30—Sch 5.19
Non-Indigenous Animals Act 1987 No 166—Sch 5.20
Nursing Homes Act 1988 No 124—Sch 5.21
Ombudsman Act 1974 No 68—Sch 6.4
Passenger Transport Act 1990 No 39—Sch 5.22
Plant Diseases Act 1924 No 38—Sch 5.23
Private Hospitals and Day Procedure Centres Act 1988 No 123—Sch 5.24
Public Health Act 1991 No 10—Sch 5.25
Public Lotteries Act 1996 No 86—Sch 6.5
Rail Safety Act 1993 No 50—Sch 5.26
Statutory and Other Offices Remuneration Act 1975 (1976 No 4)—Sch 1.12,
Sch 6.6
Stock (Artificial Breeding) Act 1985 No 196—Sch 5.27
Tow Truck Act 1989 No 158—Sch 5.28
Veterinary Surgeons Act 1986 No 55—Sch 4.3
Youth and Community Services Act 1973 No 90—Sch 5.29

[Minister's second reading speech made in—
Legislative Assembly on 29 May 1997
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