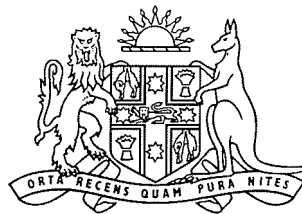


Passed by both Houses



New South Wales

# Civil and Administrative Tribunal Bill 2013

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2013*



New South Wales

## **Civil and Administrative Tribunal Bill 2013**

Act No , 2013

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An Act to establish the Civil and Administrative Tribunal of New South Wales and to provide for its membership and functions.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Civil and Administrative Tribunal Act 2013*.

### **2 Commencement**

This Act commences on the date of assent to this Act.

### **3 Object of Act** (cf ADT Act, s 3; CTTT Act, s 3)

The object of this Act is to establish an independent Civil and Administrative Tribunal of New South Wales to replace various existing tribunals.

### **4 Definitions** (cf ADT Act, s 4)

(1) In this Act:

*application* to the Tribunal—see section 6.

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

*Deputy Registrar* means a Deputy Registrar of the Tribunal.

*Division* of the Tribunal means a Division of the Tribunal specified in section 16 (1).

*Division Head* of a Division of the Tribunal means the member who is appointed by or under this Act as the Division Head of that Division.

*Division List* means a list established by or under this Act for the management of a class of proceedings allocated to a Division of the Tribunal.

*Division member*, in relation to a Division of the Tribunal, means a member who is assigned by or under this Act to that Division.

*Division Schedule* for a Division of the Tribunal—see section 17.

*enabling legislation* means legislation (other than this Act or any statutory rules made under this Act) that:

- (a) provides for applications or appeals to be made to the Tribunal with respect to a specified matter or class of matters, or
- (b) otherwise enables the Tribunal to exercise functions with respect to a specified matter or class of matters.

*establishment day*—see section 7.

*function* includes a power, authority or duty, and *exercise* a function includes perform a duty.

*general member* means a general member of the Tribunal.

**legislation** means an Act or a statutory rule.

**List Manager** for a Division of the Tribunal—see section 19.

**member** means a member of the Tribunal.

**non-presidential member**—see section 9 (3).

**NSW judicial officer** means any of the following:

- (a) a Magistrate,
- (b) a Judge of the District Court,
- (c) a judicial member of the Industrial Relations Commission,
- (d) a Judge of the Land and Environment Court,
- (e) a Judge of the Supreme Court.

**occasional member**—see section 9 (5).

**President** means the President of the Tribunal.

**presidential member**—see section 9 (2).

**principal member** means a principal member of the Tribunal.

**Registrar** means the Registrar of the Tribunal.

**Rule Committee** means the Rule Committee of the Tribunal.

**senior member** means a senior member of the Tribunal.

**term member**—see section 9 (4).

**the Tribunal** or **NCAAT** means the Civil and Administrative Tribunal of New South Wales established by this Act.

**Tribunal rules** means the rules of the Tribunal made by the Rule Committee.

- (2) A reference in this Act (however expressed) to the exercise by the Tribunal of its functions in relation to other legislation includes a reference both to its functions under the legislation and its functions under this Act in relation to the legislation.
- (3) A reference (however expressed) in this Act to a decision made under other legislation is taken to include a reference to any decision made in the exercise of functions identified by the legislation.

## 5 Notes

Notes included in this Act do not form part of this Act.

**Note.** For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of other Acts (as in force immediately before the enactment of this Act). Abbreviations in these notes include the following:

- (a) **ADT Act** is a reference to the *Administrative Decisions Tribunal Act 1997*,

- (b) **CTTT Act** is a reference to the *Consumer, Trader and Tenancy Tribunal Act 2001*.

**6 Meaning of “application” to the Tribunal** (cf ADT Act, s 142)

- (1) An **application** to the Tribunal includes a complaint, referral or other mechanism by means of which enabling legislation provides for a matter to be brought to the attention of the Tribunal for a decision.
- (2) If enabling legislation provides that an application may be made to the Tribunal, but does so by reference to some word or expression other than “application” or some other part of speech or grammatical forms of that word or expression:
- (a) the Tribunal rules may refer to such applications by reference to the word or expression used in the legislation (or some other part of speech or grammatical forms of that word or expression), and
  - (b) the regulations may refer to such applications by reference to the word or expression used in the legislation (or some other part of speech or grammatical forms of that word or expression), and
  - (c) any notice or other document issued, lodged, served or given under this Act in relation to such applications may refer to the applications by reference to the word or expression used in the legislation (or some other part of speech or grammatical forms of that word or expression).



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## Part 2 Establishment of Tribunal

### Division 1 Establishment and membership

#### 7 Establishment of Civil and Administrative Tribunal (cf ADT Act, s 11)

- (1) The Civil and Administrative Tribunal of New South Wales (which may also be called *NCAT*) is established by this Act on the establishment day.
- (2) The *establishment day* is:
  - (a) 1 January 2014, or
  - (b) such later day as may be fixed as the establishment day by a proclamation made under this section.
- (3) The Governor may, by proclamation published on the NSW legislation website, fix a day that is later than 1 January 2014 as the establishment day for the purposes of this section.
- (4) The Governor may, by further proclamation published on the NSW legislation website, revoke a previous proclamation fixing a day as the establishment day and fix a different day that is later than 1 January 2014 as the establishment day.
- (5) A proclamation under this section has effect only if published before the establishment day applying for the time being.

#### 8 Appointments and other matters to facilitate establishment of Tribunal

- (1) A person may be appointed to any office or other position under this Act before the establishment day.
- (2) Without limiting subsection (1), the following appointments may be made before the establishment day:
  - (a) appointment as the President or as any other kind of member,
  - (b) appointment as a Division Head of a Division of the Tribunal that will be created on the establishment of the Tribunal,
  - (c) appointment as a List Manager of a Division of the Tribunal that will be created on the establishment of the Tribunal,
  - (d) appointment as a member of the Rule Committee,
  - (e) appointment as the Registrar, a Deputy Registrar or other member of staff of the Tribunal.
- (3) A member appointed before the establishment day may also be assigned by or under this Act to a Division of the Tribunal that will be created on the establishment of the Tribunal.

- (4) Without limiting subsections (1) and (2), the Rule Committee may be constituted before the establishment day and may before that day:
  - (a) meet and transact business as if the Tribunal (and its Divisions) had been established, and
  - (b) without limiting paragraph (a), make Tribunal rules that will come into force on or after the establishment day.
- (5) Any appointment or assignment made before the establishment day has effect on and from the day specified in the instrument of appointment or assignment as the date of appointment or assignment as if the Tribunal (including its Divisions) had been established.
- (6) Despite clause 5 of Schedule 2, a member of an existing tribunal (within the meaning of Part 2 of Schedule 1) who is appointed as a member of the Tribunal before the establishment day is not entitled to be paid remuneration as a member of the Tribunal while he or she continues to receive remuneration as a member of the existing tribunal.

**9 Membership of Tribunal** (cf ADT Act, s 12)

- (1) The Tribunal is to consist of the following members:
  - (a) the President,
  - (b) Deputy Presidents,
  - (c) principal members,
  - (d) senior members,
  - (e) general members.
- (2) The President and the Deputy Presidents are referred to in this Act as ***presidential members***.
- (3) The principal members, senior members and general members are referred to in this Act as ***non-presidential members***.
- (4) A member appointed by or under this Act for a term is referred to in this Act as a ***term member***.
- (5) A member appointed by or under this Act to be a member for the purposes of specified proceedings is referred to in this Act as an ***occasional member***.
- (6) The President is to be appointed as a term member.
- (7) Schedule 2 sets out additional provisions with respect to members.

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**10 Appointment of term members** (cf ADT Act, s 13)

- (1) A person may be appointed as a term member if the person is qualified to be appointed as a member of the kind concerned.  
**Note.** Section 13 makes general provision with respect to qualifications for appointment. A Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the assignment of members to that Division based on particular skills, expertise or qualifications.
- (2) A presidential member appointed as a term member is to be appointed by the Governor by commission under the public seal of the State.  
**Note.** The President must be appointed as a term member. See section 9 (6).
- (3) A non-presidential member appointed as a term member is to be appointed by the Minister by written instrument.
- (4) The instrument of appointment of a term member is to specify:
  - (a) whether the member has been appointed as the President, a Deputy President, principal member, senior member or general member, and
  - (b) the term for which the member has been appointed.
- (5) A term member may be appointed on a full-time basis or a part-time basis.
- (6) However, the President is taken to be appointed on a full-time basis.

**11 Appointment of occasional members**

- (1) The President may, by written instrument, appoint a person to be an occasional member in relation to particular proceedings before the Tribunal if:
  - (a) the person is qualified to be appointed as a member of the kind concerned, and
  - (b) the President is satisfied that the appointment of the person as a member is necessary to enable the Tribunal to be properly constituted to exercise its functions in the proceedings.  
**Note.** Section 13 makes general provision with respect to qualifications for appointment. A Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the assignment of members to that Division based on particular skills, expertise or qualifications.
- (2) Without limiting clause 12 of Schedule 2, the President may delegate the function of appointing occasional members to sit as Division members for a Division of the Tribunal to the Division Head of the Division or a List Manager of a Division of the Tribunal.

- (3) The instrument of appointment of an occasional member is to specify:
  - (a) whether the member has been appointed as a Deputy President, principal member, senior member or general member, and
  - (b) the proceedings in relation to which the member has been appointed as an occasional member.
- (4) An occasional member who is appointed to be a member in relation to proceedings that are allocated to a Division of the Tribunal is taken to be assigned as a Division member of that Division.
- (5) A person who is appointed as an occasional member holds office as such until the proceedings in relation to which the member has been appointed as an occasional member have been finally determined, unless the person sooner vacates office.
- (6) The proceedings in relation to which an occasional member has been appointed as an occasional member are not *finally determined* for the purposes of subsection (5) until:
  - (a) the proceedings are withdrawn by a party before the substantial merits of the proceedings are considered by the Tribunal, or
  - (b) the proceedings are dismissed by the Tribunal (as constituted by or with the member) before the substantial merits of the proceedings are considered by the Tribunal (including, where required, the giving of reasons for the dismissal), or
  - (c) the Tribunal (as constituted by or with the member) has completed all the processes necessary to decide the substantial merits of the proceedings (including, where required, the giving of reasons for the decision),whichever occurs first.

**12 Appointment of acting members for a period** (cf ADT Act, s 15)

- (1) The Governor may, by commission under the public seal of the State, appoint as an Acting Deputy President a person qualified for appointment as a Deputy President if satisfied that the appointment is necessary to enable the Tribunal to exercise its functions effectively during the period of the appointment.
- (2) The Minister may, by written instrument, appoint as an acting principal member, acting senior member or acting general member a person qualified for appointment as a principal member, senior member or general member (as the case requires) if satisfied that the appointment is necessary to enable the Tribunal to exercise its functions effectively during the period of the appointment.
- (3) The person's appointment is for the period (not exceeding 12 months) specified in the instrument of appointment.

- (4) An Acting Deputy President, acting principal member, acting senior member or acting general member has the functions of, and is taken to be, a Deputy President, principal member, senior member or general member (as the case requires) subject to any conditions or limitations specified in the instrument of appointment.

### **13 Qualifications of members**

(1) **The President**

A person is qualified to be appointed as the President only if the person is a Judge of the Supreme Court.

- (2) However, the Minister may not recommend the appointment of a person as the President unless the Minister has consulted with the Chief Justice of the Supreme Court about the appointment.

(3) **Deputy Presidents**

A person is qualified to be appointed as a Deputy President only if the person is:

- (a) an Australian lawyer of at least 7 years' standing, or
- (b) a person who holds, or has held, a judicial office of this State or of the Commonwealth, another State or Territory.

(4) **Principal members**

A person is qualified to be appointed as a principal member only if the person:

- (a) is an Australian lawyer of at least 7 years' standing, or
- (b) has, in the opinion of the person making the appointment, special knowledge, skill or expertise in relation to any one or more classes of matters in respect of which the Tribunal has jurisdiction.

(5) **Senior members**

A person is qualified to be appointed as a senior member only if the person:

- (a) is an Australian lawyer of at least 7 years' standing, or
- (b) has, in the opinion of the person making the appointment, special knowledge, skill or expertise in relation to any one or more classes of matters in respect of which the Tribunal has jurisdiction.

(6) **General members**

A person is qualified to be appointed as a general member only if, in the opinion of the person making the appointment, the person:

- (a) has special knowledge, skill or expertise in relation to any class of matters in respect of which the Tribunal has jurisdiction, or
- (b) is capable of representing the public (or a sector of the public), or a particular organisation, body or group of persons (or class of organisations, bodies or groups of persons), in relation to any one or more classes of matters in respect of which the Tribunal has jurisdiction.

**Note.** A Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the assignment of members to that Division based on particular skills, expertise or qualifications.

**14 Division Heads** (cf ADT Act, s 16)

- (1) The President or a Deputy President who is a term member may be appointed by the Governor as the Division Head of one or more Divisions of the Tribunal:

- (a) in the instrument of appointment of the President or Deputy President, or
- (b) by subsequent instrument.

**Note.** A Division Schedule for a Division of the Tribunal may, in some cases, make special provision for the qualifications and procedure for the appointment of the Division Head for that Division.

- (2) A Division Head ceases to hold office as a Division Head if he or she:
- (a) is removed from office as a Division Head by the Governor, or
  - (b) resigns the office by written instrument addressed to the Minister, or
  - (c) ceases to hold office as the President or a Deputy President.
- (3) However, a person does not cease to hold office as the President or a Deputy President simply because the person has been removed, or has resigned, from office as a Division Head under subsection (2).

**15 NSW judicial officers acting as members of Tribunal** (cf ADT Act, s 14)

- (1) **Classes of NSW judicial officers who may act as members may be prescribed**

Any NSW judicial officer who belongs to a class of NSW judicial officer prescribed by the regulations for the purposes of this section is taken to have been duly appointed to act as a member of the Tribunal in relation to such matters within the jurisdiction of the Tribunal as are prescribed by the regulations.

**(2) President may appoint NSW judicial officer to act as member**

Without limiting subsection (1), the President may appoint any NSW judicial officer to act as a member of the Tribunal in relation to particular proceedings before the Tribunal if:

- (a) the President is satisfied that the appointment of the judicial officer to act as a member is necessary to enable the Tribunal to exercise its functions effectively in the proceedings, and
- (b) the relevant chief judicial officer agrees to the NSW judicial officer's appointment.

**(3) Effect of appointment**

Any person who is appointed to act as a member by or under this section:

- (a) holds office as a Deputy President, principal member or senior member as specified in the regulations (in the case of an appointment under subsection (1)) or the instrument of appointment (in the case of an appointment under subsection (2)), and
- (b) has and may exercise all the functions of a member while acting as a member, and
- (c) may continue to exercise his or her functions as a holder of a judicial office.

**(4) Former acting member may complete determination of proceedings**

A NSW judicial officer who has acted as a member may attend the sittings of the Tribunal for the purpose of giving reasons for a decision in, or otherwise completing, any proceedings that have been heard by the Tribunal (or were otherwise the subject of deliberations by the Tribunal) while the officer acted as a member, even if the person has ceased to act as a member.

**(5) Definitions**

In this section:

*NSW judicial officer* includes a retired NSW judicial officer.

*relevant chief judicial officer* means:

- (a) in relation to the appointment of a Magistrate to act as a member—the Chief Magistrate of the Local Court, or
- (b) in relation to the appointment of a Judge of the District Court to act as a member—the Chief Judge of the Court, or
- (c) in relation to the appointment of a judicial member of the Industrial Relations Commission to act as a member—the President of the Commission, or

- (d) in relation to the appointment of a Judge of the Land and Environment Court to act as a member—the Chief Judge of the Court, or
- (e) in relation to the appointment of a Judge of the Supreme Court to act as a member—the Chief Justice of the Court.

## **Division 2 Divisions of Tribunal**

### **16 Divisions of Tribunal** (cf ADT Act, ss 19 and 20)

- (1) On the establishment of the Tribunal, there are to be the following Divisions of the Tribunal:
  - (a) the Administrative and Equal Opportunity Division,
  - (b) the Consumer and Commercial Division,
  - (c) the Occupational and Regulatory Division,
  - (d) the Guardianship Division,
  - (e) the Victims Support Division.
- (2) The functions of the Tribunal in relation to enabling legislation that are allocated to a Division of the Tribunal are to be exercised in that Division.

**Note.** Section 4 (2) provides that a reference in this Act (however expressed) to the exercise by the Tribunal of its functions in relation to other legislation includes a reference both to its functions under the legislation and its functions under this Act in relation to the legislation.
- (3) The functions of the Tribunal in relation to enabling legislation that are allocated to a Division of the Tribunal are the functions in relation to such legislation that are allocated to the Division by the Division Schedule for the Division.
- (4) A Division of the Tribunal is composed of such members as are assigned to it by or under this Act.

### **17 Division Schedule for a Division of Tribunal**

- (1) The *Division Schedule* for a Division of the Tribunal is the Schedule to this Act that provides for the composition and functions of that Division.
- (2) Without limiting subsection (1), a Division Schedule for a Division of the Tribunal may include provisions about the following matters:
  - (a) the qualifications and procedure for the appointment of a Division Head of the Division,
  - (b) the qualifications and procedure for the assignment of other Division members,



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- (c) the allocation to the Division of functions of the Tribunal in relation to enabling legislation,
  - (d) the use of Division Lists in the Division and the qualifications and procedure for the appointment of, and the functions of, List Managers for the Division,
  - (e) special requirements for the constitution of the Tribunal when exercising functions of the Tribunal allocated to the Division,
  - (f) special requirements in relation to the powers of, and the practice and procedure to be followed by, the Tribunal in relation to proceedings in the Division,
  - (g) special requirements regarding appeals from decisions made by the Tribunal in the Division.
- (3) The provisions of a Division Schedule for a Division of the Tribunal prevail to the extent of any inconsistency between those provisions and any other provisions of this Act.

**18 Assignment of members to Divisions of Tribunal** (cf ADT Act, s 21)

- (1) The President is assigned to each Division of the Tribunal.
- (2) A Division Head is assigned to the Division of the Tribunal in respect of which he or she is appointed as the Division Head.
- (3) Subject to this Act, the President:
  - (a) is to assign each member (other than the President or a Division Head) to one or more Divisions of the Tribunal, and
  - (b) may assign a member who is a Division Head to one or more Divisions of the Tribunal in respect of which the member is not the Division Head,and may vary any such assignment at any time.
- (4) An assignment of a member to a Division of the Tribunal:
  - (a) is to be made in accordance with any applicable provisions of the Division Schedule for the Division or of this Act or any enabling legislation, and
  - (b) is subject to any limitations specified in the member's instrument of appointment or assignment.
- (5) An assignment of a member to a Division of the Tribunal may be limited to participating in proceedings that are entered in one or more Division Lists of the Division.

### **19 Division Lists and List Managers for Divisions of Tribunal**

(1) The President, or the Division Head of a Division of the Tribunal (subject to any direction of the President), may establish one or more Division Lists for a Division of the Tribunal in which proceedings allocated to the Division are to be entered for the purpose of managing those proceedings.

(2) The President, or the Division Head of a Division of the Tribunal (subject to any direction of the President), may, by written instrument, designate a Division member to be a List Manager for a Division List of the Division.

**Note.** A Division Schedule for a Division of the Tribunal may, in some cases, provide for the use of Division Lists in the Division and for the qualifications and procedure for the designation of, and the functions of, List Managers for the Division.

(3) A List Manager for a Division of the Tribunal has (subject to any direction from the President or the Division Head of the Division) the function of managing such Division Lists of the Division as may be specified:

- (a) in the instrument designating the member to be a List Manager, or
- (b) by the Division Schedule for the Division or by the Tribunal rules.

**Note.** Clause 12 of Schedule 2 also enables the Division Head of a Division of the Tribunal to delegate functions of the Division Head to a List Manager of the Division.

(4) An instrument designating a member to be a List Manager for a Division of the Tribunal may specify a title for the member to use while exercising the functions of a List Manager.

(5) The President, or the Division Head of a Division of the Tribunal (subject to any direction of the President), may at any time, by written instrument, revoke a member's designation as a List Manager for a Division of the Tribunal.

## **Division 3 Functions of members**

### **20 Functions of President** (cf ADT Act, s 25)

- (1) The functions of the President are:
- (a) to direct the business of the Tribunal (including determining the places and times for sittings of the Tribunal), and
  - (b) to facilitate the adoption of good administrative practices for the conduct of the business of the Tribunal, and

- 
- (c) to give directions about, and participate in the development of, the practice and procedure to be followed by the Tribunal, and
  - (d) to manage members, including by:
    - (i) developing codes of conduct for members, and
    - (ii) ensuring that members are adequately and appropriately trained to enable them to exercise their functions effectively and efficiently, and
    - (iii) undertaking performance management for members (whether by means of agreements with members, reviews or otherwise), and
    - (iv) developing selection criteria for the appointment of members and, if required by the Minister, overseeing the selection process for members, and
  - (e) to advise the Minister about the appointment, re-appointment and removal of members, and
  - (f) to exercise such other functions as may be conferred or imposed on the President by or under this Act or any other legislation.
- (2) The President may also enter into agreements with Ministers, public officials and other persons or bodies with regulatory functions in relation to any class of matters over which the Tribunal has jurisdiction about the provision, allocation or use of funding in connection with the exercise of the jurisdiction concerned.
- (3) Without limiting subsections (1) and (2), the President has the following functions if appointed before the establishment day:
- (a) to assist in the development of the Tribunal rules for the Tribunal to use on its establishment,
  - (b) to issue practice notes for the Tribunal to use on its establishment,
  - (c) to assign functions to other members appointed before the establishment day with respect to the establishment of the Tribunal,
  - (d) to assign functions to any Registrar, Deputy Registrar or other member of staff appointed before the establishment day,
  - (e) to exercise such other functions as are necessary or convenient to facilitate the establishment of the Tribunal.

**21 Functions of other members and Division Heads** (cf CTTT Act, s 14)

- (1) A member has such functions as may be conferred or imposed on the member by or under this Act or any other legislation.

- (2) Each member must comply with any procedural directions given by the President and the Division Head of the Division of the Tribunal to which the member is assigned.
- (3) The functions of a Division Head of a Division of the Tribunal are:
  - (a) to direct (subject to this Act, the regulations, the Tribunal rules and any direction of the President) the business of the Tribunal in that Division, and
  - (b) to exercise such other functions as may be conferred or imposed on the Division Head by or under this Act or any other legislation.
- (4) Without limiting subsections (1)–(3), a member (other than the President) or Division Head for a Division of the Tribunal appointed before the establishment day has and may exercise such functions with respect to the establishment of the Tribunal as may be assigned to the member under section 20 (3).

#### **Division 4 Registrar, Deputy Registrars and staff**

**22 Appointment of Registrar, Deputy Registrars and other staff** (cf ADT Act, s 27; CTTT Act, s 19)

- (1) A Registrar, Deputy Registrars and such other staff as may be necessary for the purposes of this Act are to be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*.
- (2) The President may enter into arrangements with any government agency or other body or person (whether in the public or private sector) for the provision of assistance to the Tribunal in connection with the exercise of its functions.

**23 Functions of Registrars and Deputy Registrars** (cf ADT Act, s 28; CTTT Act, s 20)

- (1) The Registrar has the following functions:
  - (a) to assist the President in managing the business and the affairs of the Tribunal,
  - (b) such administrative and other functions as may be conferred or imposed on the Registrar by or under this Act or any other legislation or law.
- (2) A Deputy Registrar may exercise the functions of the Registrar:
  - (a) as directed by the Registrar or the President, and
  - (b) during the absence of, or a vacancy in the office of, the Registrar.

- 
- (3) Anything done or omitted to be done by a Deputy Registrar in exercising a function of the Registrar has effect as if it had been done or omitted to be done by the Registrar.
  - (4) The regulations and Tribunal rules may make provision for or with respect to the functions of the Registrar or a Deputy Registrar.
  - (5) Without limiting subsections (1)–(4), a Registrar or Deputy Registrar appointed before the establishment day has and may exercise such functions with respect to the establishment of the Tribunal as may be assigned to the Registrar or Deputy Registrar under section 20 (3).

## **Division 5 Rule Committee, Tribunal rules and practice notes**

### **24 Rule Committee of Tribunal** (cf ADT Act, ss 92–95)

- (1) There is to be a Rule Committee of the Tribunal.
- (2) The functions of the Rule Committee are:
  - (a) to make the Tribunal rules, and
  - (b) to ensure that the Tribunal rules it makes are as flexible and informal as possible.
- (3) The Rule Committee is to be composed of the following:
  - (a) the President,
  - (b) each Division Head,
  - (c) such other members of the Tribunal as may be appointed by the Minister on the nomination of the President,
  - (d) such other persons as may be appointed by the Minister.
- (4) An appointed member of the Rule Committee is to hold office for the period specified in the member's instrument of appointment and is eligible (if otherwise qualified) for re-appointment.
- (5) An appointed member of the Rule Committee ceases to hold office if:
  - (a) the member is removed from office by the Minister, or
  - (b) the member resigns the office by written instrument addressed to the Minister, or
  - (c) the member completes a term of office and is not re-appointed.
- (6) If the office of an appointed member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.
- (7) The President is to be the Chairperson of the Rule Committee.

- (8) The President is to appoint, by written instrument, one of the other members of the Rule Committee who is a Deputy President as Deputy Chairperson of the Rule Committee.

**25 Meetings of Rule Committee** (cf ADT Act, s 96)

- (1) Subject to this Division, the Rule Committee is to regulate its own procedure.
- (2) The Chairperson of the Rule Committee or, in the absence of the Chairperson, the Deputy Chairperson of the Committee is to preside at a meeting of the Committee.
- (3) In the absence from a meeting of the Rule Committee of both the Chairperson and Deputy Chairperson, another member of the Committee who is a Deputy President is to be chosen by the members present to preside at the meeting.
- (4) The quorum for a meeting of the Rule Committee is a majority of the number of the members for the time being. Any duly convened meeting of the Rule Committee at which a quorum is present is competent to transact any business of the Rule Committee and has and may exercise all the functions of the Rule Committee.
- (5) A decision supported by a majority of the votes cast at a meeting of the Rule Committee at which a quorum is present is the decision of the Committee.
- (6) The person presiding at a meeting of the Rule Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) The President is to call the first meeting of the Rule Committee in such manner as the President thinks fit and (subject to any decision of the Committee under subsection (1)) may call such other meetings of the Committee as the President thinks necessary.
- (8) The Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.

**26 Tribunal rules may provide for practice and procedure** (cf ADT Act, ss 90 and 91)

- (1) The Rule Committee may make rules of the Tribunal (referred to in this Act as the *Tribunal rules*), not inconsistent with this Act, for or with respect to any matter that by this or any other Act is required or permitted to be prescribed by the Tribunal rules or that is necessary or convenient to be prescribed in relation to the practice and procedure of the Tribunal under this Act or any other legislation.

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- (2) Without affecting the generality of subsection (1), Tribunal rules may be made for or with respect to any of the following:
- (a) the commencement of proceedings in the Tribunal,
  - (b) the practice and procedure to be followed in, or for the purposes of, proceedings before the Tribunal (including proceedings in relation to appeals),
  - (c) the means for, and the practice and procedure to be followed in, the enforcement and execution of decisions of the Tribunal,
  - (d) the practice and procedure to be followed in the mediation or neutral evaluation of any matter,
  - (e) the functions of the Registrar or other officers under this Act, including functions in relation to proceedings instituted before the Tribunal,
  - (f) the determination of the seniority of members in connection with the exercise of the functions of the Tribunal in proceedings.
- (3) Without limiting the generality of section 42 of the *Interpretation Act 1987*, the Tribunal rules may also prescribe different rules for:
- (a) each of the Divisions of the Tribunal, and
  - (b) different classes of matters.

**Note.** Section 42 of the *Interpretation Act 1987* provides for the matters for which statutory rules may generally make provision.

**27 Practice notes** (cf ADT Act, s 91A)

- (1) The President may issue practice notes for the Tribunal, not inconsistent with this Act or the Tribunal rules, in relation to any matter with respect to which Tribunal rules may be made.
- (2) A practice note must be published in the Gazette.
- (3) Sections 40 and 41 of the *Interpretation Act 1987* apply to a practice note in the same way as they apply to a statutory rule.

**Division 6 Jurisdiction and functions of Tribunal**

**28 General statement of jurisdiction and functions** (cf ADT Act, s 36; CTTT Act, s 21)

The Tribunal has such jurisdiction and functions as may be conferred or imposed on it by or under this Act or any other legislation.

## **Part 3 Miscellaneous**

### **29 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **30 Seal of Tribunal** (cf ADT Act, s 133; CTTT Act, s 75)

The Tribunal is to have a seal and that seal is to be judicially noticed.

### **31 Authentication of documents** (cf ADT Act, ss 134 and 135; CTTT Act, s 76)

- (1) Every document requiring authentication by the Tribunal is sufficiently authenticated without the seal of the Tribunal if it is:
  - (a) signed by any member or the Registrar, or
  - (b) authenticated in a manner prescribed by the regulations.
- (2) Judicial notice is to be taken of the signature of the member concerned or the Registrar when appearing on a document issued by the Tribunal.

### **32 Proof of certain matters not required** (cf ADT Act, s 136; CTTT Act, s 77)

In any legal proceedings, no proof is required (unless evidence to the contrary is given) of:

- (a) the constitution of the Tribunal, or
- (b) any decision of the Tribunal, or
- (c) the appointment of, or the holding of office by, a member.

### **33 Notices, service and lodgment of documents** (cf ADT Act, s 138; CTTT Act, s 78)

- (1) For the purposes of this Act, a notice or document may be given to a person (and a document may be served on a person):
  - (a) in the case of a natural person—by:
    - (i) delivering it to the person personally, or
    - (ii) leaving it at, or by sending it by post to, the residential or business address, or other address for service, of the person that was last known to the person giving or serving the document, or
  - (b) in the case of a body corporate—by leaving it at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate, or



- (c) in the case of a Government Department—by leaving it at, or by sending it by post to, any office of that Department addressed to the head of the Government Department.
- (2) A notice or other document may be served on the Tribunal by leaving it at, or by sending it by post to (or a document that is required or permitted to be lodged with the Tribunal may be lodged at):
  - (a) the office of the Registrar, or
  - (b) if the Registrar has more than one office, any one of those offices.
- (3) Nothing in this section affects the operation of any provision of any law or the rules of a court authorising a document to be served in a manner not provided for by this section.
- (4) The regulations may:
  - (a) provide for additional means of serving, giving or lodging any notice or document, and
  - (b) provide that a notice or document of a class specified by the regulations be served, given or lodged only in the prescribed manner.

**34 Proceedings for offences** (cf ADT Act, s 143; CTTT Act, s 82)

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) Proceedings for an offence against this Act or the regulations may be brought within the period of 12 months of the date on which the offence is alleged to have been committed.

**35 Regulations** (cf ADT Act, s 145; CTTT Act, s 86)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to any of the following matters:
  - (a) the fees payable in respect of proceedings in the Tribunal, including fees for the following:
    - (i) applications or appeals made to the Tribunal,
    - (ii) the filing or lodgment of any document in the Tribunal,
    - (iii) the provision of transcripts of proceedings,
    - (iv) the issue of summonses or any other document out of the Tribunal,

- (b) the fees payable in relation to proceedings in the Tribunal referred to mediation or neutral evaluation,
  - (c) the fees payable for administrative services provided by the Registrar, a Deputy Registrar or any other officer of the Tribunal, whether in connection with the administration of this Act or otherwise,
  - (d) the waiver, postponement and refund of fees and exemptions from fees,
  - (e) costs in proceedings before the Tribunal.
- (3) The Minister may not, without the concurrence of the Minister for Health, recommend the making of a regulation that prescribes fees of the kind referred to in subsection (2) (a) for the exercise of the Tribunal's functions in proceedings that are entered in the Health Practitioner Division List of the Occupational and Regulatory Division of the Tribunal.
- (4) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

**36 Amendment of Judicial Officers Act 1986 No 100**

(1) **Section 3 Definitions**

Insert at the end of paragraph (g) of the definition of *judicial officer* in section 3 (1):

, or

- (h) the President of the Civil and Administrative Tribunal.

(2) **Section 43 Appropriate authorities to suspend etc**

Omit "or the President of the Administrative Decisions Tribunal".

Insert instead " , the President of the Administrative Decisions Tribunal or the President of the Civil and Administrative Tribunal".

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## **Schedule 1      Savings, transitional and other provisions**

### **Part 1      General**

#### **1      Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:  
this Act or any other Act that amends this Act  
any other Act to the extent that it confers or imposes (or amends an Act or a statutory rule so as to confer or impose) jurisdiction or functions on the Tribunal or to alter or remove any of the jurisdiction or functions of the Tribunal
- (2) If the regulations so provide, any such provision may:
  - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## Part 2 Provisions consequent on enactment of this Act

### Division 1 Interpretation

#### 2 Definitions

(1) In this Part:

**current tribunal member** of an existing tribunal means a person who, immediately before the establishment day, held office as:

- (a) the head of the tribunal or a division of the tribunal (however described), or
- (b) a deputy head of the tribunal (however described), or
- (c) any other kind of member of the tribunal.

**existing health practitioner tribunal** means each of the following Tribunals established under section 165 of the *Health Practitioner Regulation National Law (NSW)*:

- (a) the Aboriginal and Torres Strait Islander Health Practice Tribunal of New South Wales,
- (b) the Chinese Medicine Tribunal of New South Wales,
- (c) the Chiropractic Tribunal of New South Wales,
- (d) the Dental Tribunal of New South Wales,
- (e) the Medical Radiation Practice Tribunal of New South Wales,
- (f) the Medical Tribunal of New South Wales,
- (g) the Nursing and Midwifery Tribunal of New South Wales,
- (h) the Occupational Therapy Tribunal of New South Wales,
- (i) the Optometry Tribunal of New South Wales,
- (j) the Osteopathy Tribunal of New South Wales,
- (k) the Pharmacy Tribunal of New South Wales,
- (l) the Physiotherapy Tribunal of New South Wales,
- (m) the Podiatry Tribunal of New South Wales,
- (n) the Psychology Tribunal of New South Wales.

**existing tribunal** means any of the following tribunals:

- (a) the Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal established under the *Aboriginal Land Rights Act 1983*,

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- (b) the Administrative Decisions Tribunal of New South Wales established under the *Administrative Decisions Tribunal Act 1997*,
  - (c) the Charity Referees constituted as provided by section 5 of the *Dormant Funds Act 1942*,
  - (d) the Consumer, Trader and Tenancy Tribunal of New South Wales established under the *Consumer, Trader and Tenancy Tribunal Act 2001*,
  - (e) the Guardianship Tribunal constituted under the *Guardianship Act 1987*,
  - (f) each existing health practitioner tribunal,
  - (g) the Local Government Pecuniary Interest and Disciplinary Tribunal established under the *Local Government Act 1993*,
  - (h) each local land board constituted under the *Crown Lands Act 1989*,
  - (i) the Victims Compensation Tribunal constituted under the *Victims Support and Rehabilitation Act 1996*.

**relevant amending Act**, in relation to an existing tribunal that is to be abolished, means another Act that provides for the repeal or amendment (or both) of legislation relating to the tribunal consequent on the abolition of the tribunal and the transfer of its functions to NCAT.

**Note.** A Bill for an Act to provide for the consequential repeal and amendment of legislation that establishes or constitutes (or that confers functions on) existing tribunals will be introduced in 2013.

- (2) If a provision of this Part provides for a matter or other thing to occur on a specified day, the matter or thing is taken to have occurred at the beginning of the specified day.
- (3) For the purposes of this Part (except clause 5), proceedings are not finally determined if:
  - (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
  - (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

## **Division 2      Abolition of existing tribunals and transfer of members**

### **3      Abolition of existing tribunals**

Each existing tribunal is abolished on the establishment day.

**4 Current tribunal members cease to hold office on establishment day**

- (1) Each current tribunal member of an existing tribunal ceases to hold office as such on the establishment day.
- (2) If a person ceases to hold an office by operation of this clause:
  - (a) the person is not entitled to any remuneration or compensation because of the loss of that office, and
  - (b) the person is appointed to the new office or position in NCAT (if any) specified in clause 5 for the kind of current tribunal member concerned or, if clause 5 does not operate to make an appointment, is eligible (if otherwise qualified) to be appointed as a member of NCAT.
- (3) This clause has effect despite anything to the contrary in any other legislation concerning the circumstances or processes for the removal of (or the vacation of office by) a current tribunal member of an existing tribunal.

**5 Transfer of current tribunal members to NCAT**

- (1) A person who is a current tribunal member of an existing tribunal of a kind specified in Column 1 of the Table to this clause is taken, on and from the establishment day, to have been appointed under this Act to the kind of office or position in NCAT specified in Column 2 next to the kind of current tribunal member specified in Column 1.
- (2) A current tribunal member of an existing tribunal who is appointed as a member of NCAT by operation of this clause is taken:
  - (a) if the current tribunal member's current office was for a term or the member was entitled to hold his or her current office until a specified age—to have been appointed as a term member, or
  - (b) if the current tribunal member's held his or her current office only in relation to specified proceedings before the existing tribunal and those proceedings have been transferred to NCAT by clause 6—to have been appointed as an occasional member for the proceedings until the proceedings are finally determined (within the meaning of section 11).
- (3) Despite clause 2 of Schedule 2, a current tribunal member of an existing tribunal who is appointed as a term member of NCAT by operation of this clause is taken to hold his or her new office in NCAT for:
  - (a) if the current tribunal member's current office was for a term—the balance of that term, or
  - (b) if the current tribunal member was entitled to hold his or her current office until a specified age—the period expiring on the day the person attains that age.

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- (4) A part-time current tribunal member who is appointed as a term member of NCAT by operation of this clause is taken to have been appointed as a part-time term member of NCAT.
- (5) Clause 5 of Schedule 2 is taken to apply to a current tribunal member of an existing tribunal who is appointed as a term member of NCAT by operation of this clause as if the Minister had made a determination under that clause (on the establishment day) for the member's remuneration to be the same as the remuneration to which the current tribunal member was entitled immediately before the establishment day.
- Note.** Clause 5 of Schedule 2 provides that the remuneration of a term member cannot be reduced during the member's term of office. However, the clause also provides that a member who is a Judge of a New South Wales Court is not entitled to remuneration under this Act while receiving remuneration as a Judge.
- (6) If a person is appointed as a member of NCAT by operation of this clause:
- (a) in the case of appointment as a presidential member—the Governor may issue an appropriate commission under the public seal of the State to the person, and
  - (b) in the case of appointment as a non-presidential member—the Minister may issue an appropriate instrument of appointment to the person.
- (7) A person's appointment as a member of NCAT is effective whether or not a commission or instrument of appointment is issued under subclause (6).
- (8) This clause operates to appoint a person who holds office as a current tribunal member of more than one existing tribunal to only one office or position in NCAT. If there is a difference in seniority in the offices or positions in NCAT concerned, the person is taken to have been appointed to the most senior of the offices or positions in NCAT.
- Note.** Section 9 (1) lists the classes of members of NCAT in order of seniority.
- (9) This clause does not:
- (a) apply to a current tribunal member of an existing tribunal who is appointed under this Act to be a member of NCAT before the establishment day, or
  - (b) prevent a current tribunal member who becomes a member of NCAT by operation of this clause from:
    - (i) being appointed, with the consent of the person, to a different or additional office in NCAT under this Act, or
    - (ii) vacating office, subject to subclauses (2) and (3), in accordance with the provisions of this Act.

- (10) A reference in the Table to this clause to a **professional non-judicial member** of the Administrative Decisions Tribunal is a reference to a non-judicial member of that Tribunal who:
- (a) is an architect within the meaning of the *Architects Act 2003*, or
  - (b) is a registered surveyor within the meaning of the *Surveying and Spatial Information Act 2002*, or
  - (c) is a registered health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*, or
  - (d) is a veterinary practitioner within the meaning of the *Veterinary Practice Act 2003*, or
  - (e) has been appointed as a non-judicial member because he or she is a member of another particular profession or occupation.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Current tribunal member</b>	<b>New NCAT office or position</b>
<b>Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal</b>	
Member	Senior member
<b>Administrative Decisions Tribunal</b>	
President	Deputy President
Deputy President	Principal member
Non-presidential judicial member	Senior member
Professional non-judicial member	Senior member
Non-judicial member (other than a professional non-judicial member)	General member
<b>Charity Referees under the Dormant Funds Act 1942</b>	
Chairperson of the Charity Referees	Principal member
Person appointed under section 5 (1)–(3) of the <i>Dormant Funds Act 1942</i>	General member
<b>Consumer, Trader and Tenancy Tribunal</b>	
Chairperson	Deputy President
Deputy Chairperson (Determinations)	Principal member



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<b>Column 1</b>	<b>Column 2</b>
<b>Current tribunal member</b>	<b>New NCAT office or position</b>
Deputy Chairperson (Registry and Administration)	Deputy Registrar
Senior member	Senior member
Other member	General member
<b>Existing health practitioner tribunal</b>	
Chairperson	Principal member
Deputy Chairperson	Principal member
Other member who is a health practitioner	Senior member
Other member who is a lay person	General member
<b>Guardianship Tribunal</b>	
President	Deputy President
Deputy President	Principal member
Legal member (other than the President or a Deputy President)	Senior member
Professional member	Senior member
Community member	General member
<b>Local Government Pecuniary Interest and Disciplinary Tribunal</b>	
Member	Senior member
<b>Local land boards under the Crown Lands Act 1989</b>	
Chairperson	Principal member
Member (other than the Chairperson)	General member
<b>Victims Compensation Tribunal</b>	
Chairperson	Deputy President
Member (other than the Chairperson)	Senior member

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### **Division 3 Proceedings concerning abolished existing tribunals**

#### **6 Pending proceedings before existing tribunal**

- (1) If proceedings were initiated or commenced but not heard by an existing tribunal before the establishment day, the proceedings are taken on and from that day to have been duly initiated or commenced in NCAT.
- (2) If an existing tribunal had started to hear (but had not determined) a matter before the establishment day, the person or persons hearing the matter:
  - (a) are to continue on and from that day to hear the matter, and to determine the matter, sitting as NCAT, and
  - (b) have and may exercise, while sitting as NCAT under this clause, all the functions that the existing tribunal had immediately before the establishment day, and
  - (c) are taken to have been duly appointed as members of NCAT for the purposes of determining the matter even if the person or persons have not been appointed as members of NCAT by or under another provision of this Act.

#### **7 Pending court proceedings**

- (1) This clause applies to proceedings before a court on an appeal against, or for the judicial review of, a decision of an existing tribunal that:
  - (a) were instituted or commenced before the establishment day, and
  - (b) have not been finally determined by the court before that day.
- (2) Proceedings to which this clause applies are to be determined as if this Act and the relevant amending Act in relation to the existing tribunal had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had this Act and the relevant amending Act not been enacted continue to apply to the proceedings as if neither Act had been enacted.

#### **8 Orders of existing tribunals**

- (1) An existing order of an existing tribunal made under other legislation is taken on and from the establishment day to be an order made by NCAT under the corresponding provision of that legislation (as amended by a relevant amending Act) or this Act (as the case may be).

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- (2) Any application for an order made to an existing tribunal under another Act and not determined immediately before the establishment day is to continue to be dealt with as if made under this Act (but only if there is a corresponding provision of this Act under which the order could be made).
  - (3) This clause is subject to the other provisions of this Schedule.
  - (4) In this clause:  
*existing order* of an existing tribunal is an order made by the tribunal before the establishment day, and includes an order that would have come into effect on or after the establishment day.

## **Division 4      Miscellaneous**

### **9      Expiration of current period**

If, for any purpose, time had commenced to run under a provision of other legislation in relation to an existing tribunal (but had not expired) before the establishment day, it expires for the corresponding purpose under that legislation (as amended by a relevant amending Act) or this Act, as the case may be, at the time at which it would have expired if the tribunal had not been abolished.

### **10     References to abolished existing tribunals**

- (1) On and from the establishment day:
  - (a) a reference in any other Act or in any instrument made under another Act to an existing tribunal is to be read as a reference to NCAT (as appropriately constituted to deal with the matter concerned), and
  - (b) a reference in any other Act or in any instrument made under another Act to a particular member of an existing tribunal is to be read as a reference to the corresponding member of NCAT (as set out in the Table to clause 5).
- (2) The regulations may make provision for or with respect to the updating of references in other Acts and instruments made under other Acts to an existing tribunal, or in provisions conferring or imposing functions on an existing tribunal, with effect on and from the establishment day.
- (3) Subclause (1) does not apply to the following:
  - (a) a reference in a relevant amending Act,

- (b) a reference in a provision of another Act or instrument made under another Act (as amended, substituted or inserted by a relevant amending Act),
- (c) such references in another Act or an instrument made under another Act as may be prescribed by the regulations.

**11 General savings**

- (1) If anything done, initiated or commenced under other legislation in relation to an existing tribunal before the establishment day and still having effect or not completed immediately before that day could have been done, initiated or commenced under that legislation (as amended by a relevant amending Act) or this Act if the relevant amending Act or this Act had been in force when the thing was done, initiated or commenced:
  - (a) the thing done continues to have effect, or
  - (b) the thing initiated or commenced may be completed as if it had been done, initiated or commenced under the other legislation (as amended) or this Act.
- (2) This clause is subject to any express provision of this Act on the matter.

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## **Schedule 2 Provisions relating to members**

### **1 Acting President**

- (1) If the President is absent from duty, the most senior Deputy President is to be Acting President unless the Minister makes an appointment under subclause (2).
- (2) The Minister may appoint a Deputy President to be Acting President during the absence of the President from duty.
- (3) The Minister may make any appointment for a particular absence or for any absence that occurs from time to time.
- (4) An Acting President has the functions of the President and anything done by an Acting President in the exercise of those functions has effect as if it had been done by the President.
- (5) In this clause, *absence from duty* includes a vacancy in the office of President.

### **2 Terms of appointment for term members**

Subject to this Act, a term member holds office for a period (not exceeding 5 years) specified in the member's instrument of appointment, but is eligible for re-appointment.

### **3 Oaths**

The Governor may require an oath to be taken by a presidential member.

### **4 Protection and immunities of member**

A member has, in the exercise of functions performed as a member, the same protection and immunities as a Judge of the Supreme Court.

### **5 Remuneration of members**

- (1) A member is entitled to be paid:
  - (a) such remuneration as is determined by the Minister, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (2) Without limiting subclause (1), the Minister may make different determinations for the purposes of this clause for different classes of members or members exercising different classes of functions.
- (3) However, the Minister may not make a determination in relation to a term member that operates to reduce the remuneration of the member during his or her term of office.

- (4) A member is not, if a Judge of a New South Wales Court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.
- (5) In this clause, *Judge of a New South Wales Court* includes a NSW judicial officer.

**6 Vacancy in office of President**

- (1) The President cannot be removed from office except by the Governor on an address from both Houses of Parliament in the same session seeking removal on the ground of proved misbehaviour or incapacity and in accordance with the applicable provisions of Parts 7 and 8 of the *Judicial Officers Act 1986*. However, simply because the President is removed from office under this subclause does not affect the person's tenure as a judicial officer.
- (2) The President may be suspended or retired from office in accordance with the applicable provisions of Parts 7 and 8 of the *Judicial Officers Act 1986*.
- (3) If the President is suspended from office and is remunerated as President at the time of the suspension, he or she is entitled to be paid remuneration as President during the period of suspension at the current rate applicable to the office.
- (4) The office of President becomes vacant if the President:
  - (a) dies, or
  - (b) is removed from office or retires in accordance with this clause, or
  - (c) completes a term of office and is not re-appointed, or
  - (d) resigns the office by written instrument addressed to the Governor, or
  - (e) ceases to hold office as a Judge of the Supreme Court.

**7 Vacancy in office of member (other than President)**

- (1) The office of a member (other than the President) becomes vacant if the member:
  - (a) dies, or
  - (b) in the case of a term member—completes a term of office and is not re-appointed, or
  - (c) in the case of an occasional member—when the proceedings in relation to which the member has been appointed as an occasional member have been finally determined for the purposes of section 11, or

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- (d) resigns the office by written instrument addressed to the Minister, or
  - (e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) is removed from office under subclause (2).
- (2) The Governor may remove a member (other than the President) from office for incapacity, incompetence or misbehaviour.

### **8 Members and former members may complete unfinished matters**

- (1) This clause applies to a member (an *affected member*) dealing with any matters relating to proceedings before the Tribunal that have been heard or partly heard (or were otherwise the subject of deliberations) by the member if, during the proceedings, the member:
- (a) ceases to have a qualification specified by a Division Schedule for a Division of the Tribunal or enabling legislation for participation in the proceedings other than because of any of the following reasons:
    - (i) misconduct or unsatisfactory conduct of the member,
    - (ii) the mental incapacity of the member,
    - (iii) the member becoming bankrupt or insolvent, or
  - (b) ceases to be a member because of the expiration of the period of the member's appointment,
- or both.
- (2) An affected member may, despite becoming an affected member, complete or otherwise continue to deal with any matters in the proceedings concerned.

- (3) While completing or otherwise dealing with matters referred to in subclause (2), the affected member is taken to have and may exercise all the rights and functions of a member that the affected member had immediately before becoming an affected member.

**9 Leave for term members**

- (1) The entitlement of a term member to annual and other leave is to be as stated in the instrument of appointment as a member.
- (2) A member may be granted leave:
  - (a) in the case of the President—by the Minister, and
  - (b) in any other case—by the President.
- (3) This clause is subject to clause 5.

**10 Superannuation and leave—preservation of rights for term members**

- (1) In this clause:

*eligible member* means a term member who, immediately before becoming such a member, was a public servant or an officer or employee of a public authority declared by an Act or proclamation to be an authority to which this clause applies.

*superannuation scheme* means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.
- (2) An eligible member:
  - (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming an eligible member, and
  - (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme,as if he or she had continued to be such a contributor during service as a member.
- (3) Service by the eligible member as a member is taken to be service as an officer in his or her previous employment for the purposes of any law under which the member continues to contribute to the scheme or by which an entitlement under the scheme is conferred.
- (4) The eligible member is to be regarded as an officer or employee, and the State is to be regarded as the employer, for the purposes of the scheme.
- (5) This clause ceases to apply to the eligible member if he or she becomes a contributor to another superannuation scheme, but the eligible member is not prevented from receiving a resignation benefit from the first superannuation scheme.



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- (6) An eligible member retains any rights to annual leave, extended or long service leave and sick leave accrued or accruing in his or her previous employment.
  - (7) An eligible member is not entitled to claim, under both this Act and any other Act, dual benefits of the same kind for the same period of service.

#### **11 Provisions where Judge is holding office as member**

- (1) The appointment of a person who is the holder of a judicial office as a member, or service as a member by a person who is the holder of a judicial office, does not affect:
  - (a) the person's tenure of that judicial office, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as a member is, for all purposes, taken to be service as the holder of that judicial office.
- (3) In this clause:  
**judicial office** means an office of a Judge of a court of New South Wales (including a NSW judicial officer).

#### **12 Delegations by the President and Division Heads**

- (1) The President may:
  - (a) delegate to a Division Head of a Division of the Tribunal or other member any of the functions of the President (other than this power of delegation), or
  - (b) delegate to the Registrar, a Deputy Registrar or any other member of staff of the Tribunal any of the functions of the President (other than this power of delegation) prescribed by the regulations or the Tribunal rules.

**Note.** Section 49 of the *Interpretation Act 1987* contains general provisions relating to the delegation of functions.

- (2) The Division Head of a Division of the Tribunal may:
  - (a) delegate to a List Manager of the Division any of the functions of the Division Head (other than this power of delegation), or
  - (b) delegate to the Registrar, a Deputy Registrar or any other member of staff of the Tribunal any of the functions of the Division Head (other than this power of delegation) prescribed by the regulations or the Tribunal rules.

**13 Disclosure of pecuniary and other interests**

The regulations may make provision for or with respect to:

- (a) the disclosure by members of interests (whether pecuniary or otherwise) that could conflict with the proper performance of the functions of a member in proceedings, and
- (b) the participation of members in proceedings in which there may be a conflict of interest (including the effect of participation on the validity of decisions made in the proceedings).

**14 Effect of other Acts**

- (1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of a member, and the holder of the office is not, as holder, subject to that Act.
- (2) If, by or under any Act, provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

**15 Application of Schedule to acting members**

- (1) Subject to subclause (2), all of the provisions of this Schedule apply to acting members.
- (2) Clause 2 does not apply to an appointment by or under section 15.
- (3) In this clause, *acting member* means a person appointed by or under this Act to act as a member.

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## **Schedule 3     Administrative and Equal Opportunity Division**

### **Part 1     Interpretation**

#### **1     Definitions**

In this Schedule:

*Division Head* means the Division Head of the Division.

*the Division* means the Administrative and Equal Opportunity Division of the Tribunal.

### **Part 2     Composition of Division**

#### **2     Division members**

The Division is to be composed of the following members:

- (a) the Division Head,
- (b) such other members as may be assigned to the Division by or under this Act.

## **Schedule 4 Consumer and Commercial Division**

### **Part 1 Interpretation**

#### **1 Definitions**

In this Schedule:

*Division Head* means the Division Head of the Division.

*the Division* means the Consumer and Commercial Division of the Tribunal.

### **Part 2 Composition of Division**

#### **2 Division members**

The Division is to be composed of the following members:

- (a) the Division Head,
- (b) such other members as may be assigned to the Division by or under this Act.

#### **3 Appointment of Division Head**

The Minister may not recommend the appointment of a person as the Division Head unless the Minister has consulted with the Minister for Fair Trading about the appointment.

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## **Schedule 5 Occupational and Regulatory Division**

### **Part 1 Interpretation**

#### **1 Definitions**

In this Schedule:

*Division function* means a function of the Tribunal allocated to the Division by this Schedule.

*Division Head* means the Division Head of the Division.

*the Division* means the Occupational and Regulatory Division of the Tribunal.

### **Part 2 Composition of Division**

#### **2 Division members**

The Division is to be composed of the following members:

- (a) the Division Head,
- (b) such other members as may be assigned to the Division by or under this Act.

#### **3 Appointment of Division Head**

The Minister may not recommend the appointment of a person as the Division Head unless the Minister has consulted with the Minister for Health about the appointment.

### **Part 3 Functions of Division**

#### **4 Functions allocated to Division**

- (1) The functions of the Tribunal in relation to the following legislation (or specified provisions of legislation) are allocated to the Division:  
*Health Practitioner Regulation National Law (NSW)*
- (2) Subclause (1) extends to functions conferred or imposed on the Tribunal by statutory rules made under legislation (or a provision of legislation) listed in the subclause.

## Part 4 Health Practitioner Division List

### 5 Definitions

In this Part:

*health practitioner* has the same meaning as in the National Law, and includes a student within the meaning of that Law.

*Health Practitioner Division List*—see clause 6.

*National Law* means the *Health Practitioner Regulation National Law (NSW)*.

### 6 Establishment of Health Practitioner Division List

- (1) A Health Practitioner Division List is established on the establishment day as a Division List of the Division.
- (2) All proceedings involving the exercise of a Division function in relation to the National Law are to be entered and managed in the Health Practitioner Division List.

### 7 List Manager of Health Practitioner Division List

- (1) A Division member is to be designated as the List Manager for the Health Practitioner Division List, but only on the recommendation of the Minister for Health.
- (2) The functions of the List Manager for the Health Practitioner Division List are:
  - (a) to manage the proceedings that are entered in the List, and
  - (b) to constitute the Tribunal for proceedings entered in the List (subject to any direction of the President or Division Head of the Division) as if the function of constituting the Tribunal for such proceedings had been delegated to the List Manager under clause 12 (2) (a) of Schedule 2, and
  - (c) to exercise such other functions as are conferred or imposed on the List Manager by or under this Act.
- (3) The List Manager for the Health Practitioner Division List may delegate to another Division member any of the List Manager's functions (other than this power of delegation), including functions relating to the management of proceedings involving any particular class of health practitioner.

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**8 Appointment and assignment of Division members where required under National Law**

The President must:

- (a) appoint a person as an occasional member for particular proceedings entered in the Health Practitioner Division List if that person has been selected for participation in the proceedings in accordance with any applicable procedures specified by or under the National Law, and
- (b) assign a term member to the Division to participate in a particular class of proceedings entered in the Health Practitioner Division List if the person has been selected for participation in that class of proceedings in accordance with any applicable procedures specified by or under the National Law.

**9 Constitution of Tribunal for proceedings entered in Health Practitioner Division List**

- (1) The Tribunal, when exercising a Division function in proceedings that are entered in the Health Practitioner Division List, is to be constituted in accordance with any applicable requirements specified by or under the National Law for the constitution of the Tribunal in proceedings of the kind concerned.
- (2) Nothing in subclause (1) limits the exercise by the List Manager for the Health Practitioner Division List (or a delegate of the List Manager) of any of the functions of the List Manager.

## **Schedule 6 Guardianship Division**

### **Part 1 Interpretation**

#### **1 Definitions**

In this Schedule:

*Division Head* means the Division Head of the Division.

*the Division* means the Guardianship Division of the Tribunal.

### **Part 2 Composition of Division**

#### **2 Division members**

The Division is to be composed of the following members:

- (a) the Division Head,
- (b) such other members as may be assigned to the Division by or under this Act.



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## **Schedule 7    Victims Support Division**

### **Part 1    Interpretation**

#### **1    Definitions**

In this Schedule:

*Division Head* means the Division Head of the Division.

*the Division* means the Victims Support Division of the Tribunal.

### **Part 2    Composition of Division**

#### **2    Division members**

The Division is to be composed of the following members:

- (a) the Division Head,
- (b) such other members as may be assigned to the Division by or under this Act.