

# Administrative Decisions Review Act 1997 No 76

[1997-76]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Administrative Decisions Tribunal Act 1997

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Administrative Decisions Review Act 1997 No 76



New South Wales

An Act to provide for the administrative review by the Civil and Administrative Tribunal of certain decisions of administrators; and for other purposes.

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Administrative Decisions Review Act 1997*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to provide a preliminary process for the internal review of administratively reviewable decisions before the administrative review of such decisions by the Tribunal under this Act,
- (b) to require administrators making administratively reviewable decisions to notify persons of decisions affecting them and of any review rights they might have and to provide reasons for decisions of administrators on request,
- (c) to foster an atmosphere in which administrative review by the Tribunal is viewed positively as a means of enhancing the delivery of services and programs,
- (d) to promote and effect compliance by administrators with legislation enacted by Parliament for the benefit of the citizens of New South Wales.

### 4 Definitions

(1) In this Act:

***administrative review jurisdiction*** of the Tribunal—see section 9.

***administratively reviewable decision***—see section 7.

**administrator**—see section 8.

**decision**—see section 6.

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

- (a) provides for applications 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.

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

**interested person** means a person who is entitled under enabling legislation to make an application to the Tribunal for an administrative review under this Act of an administratively reviewable decision.

**internal review** means an internal review conducted under section 53.

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

**lodge** a document includes file a document.

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

**procedural rules** has the same meaning as in the [Civil and Administrative Tribunal Act 2013](#).

**Tribunal** means the Civil and Administrative Tribunal.

- (2) A reference in this Act to the exercise by the Tribunal of its functions in relation to enabling legislation includes a reference both to its functions under the enabling legislation and its functions under this Act in relation to the enabling legislation.
- (3) A reference (however described) in this Act to a decision made under enabling legislation is taken, in relation to an administratively reviewable decision, to include a reference to any decision made in the exercise of functions identified by the enabling legislation.
- (4) Notes included in this Act do not form part of this Act.

## **5 (Repealed)**

## **6 Meaning of “decision”**

- (1) **General meaning** A **decision** includes any of the following:

- (a) making, suspending, revoking or refusing to make an order or determination,
  - (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission,
  - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument,
  - (d) imposing a condition or restriction,
  - (e) making a declaration, demand or requirement,
  - (f) retaining, or refusing to deliver up, an article,
  - (g) doing or refusing to do any other act or thing.
- (2) **Decision made under enabling legislation** For the purposes of this Act, a decision is made under enabling legislation if it is made in the exercise (or purported exercise) of a function conferred or imposed by or under the enabling legislation.
- (3) **Decisions made without power** For the purposes of this Act (and without limiting subsection (2)), a decision that purports to be made under enabling legislation is taken to be a decision made under the enabling legislation even if the decision was beyond the power of the decision-maker to make it.
- (4) **Failure to make decision on basis that beyond power** For the purposes of this Act (and without limiting subsection (2)), a refusal of a decision-maker to make a decision under enabling legislation because the decision-maker considers that the decision concerned cannot lawfully be made under the enabling legislation is taken to be a decision made under the enabling legislation to refuse to make the decision requested.
- (5) **Failure to make a timely decision taken to be failure to make a decision** For the purposes of this Act, a failure by a decision-maker to make a decision within the period specified by the enabling legislation concerned for making the decision is taken to be a decision by the decision-maker at the end of the period to refuse to make the decision.

## Chapter 2 Administrative review jurisdiction of Tribunal

### 7 Meaning of “administratively reviewable decision”

- (1) An **administratively reviewable decision** is a decision of an administrator over which the Tribunal has administrative review jurisdiction.
- (2) For the avoidance of doubt (and without limiting subsection (1) or section 6):
  - (a) the conduct of an administrator (or a refusal by an administrator to engage in conduct) is an administratively reviewable decision if enabling legislation identifies

that conduct or refusal as conduct or refusal over which the Tribunal has administrative review jurisdiction, and

- (b) in its application to any such conduct or refusal by an administrator, any reference in this Act (however expressed) to an administrator making an administratively reviewable decision includes a reference to an administrator engaging or refusing to engage in the conduct.

**Note—**

The jurisdiction conferred on the Tribunal by section 55 of the [Privacy and Personal Information Protection Act 1998](#) is an example of administrative review jurisdiction of the Tribunal over conduct.

## **8 Meaning of “administrator”**

- (1) An **administrator**, in relation to an administratively reviewable decision, is the person or body that makes (or is taken to have made) the decision under enabling legislation.

**Note—**

There are a number of circumstances in which a person or body is taken to have made a decision. See, for example, subsection (2) and sections 6 (2)–(5) and 9 (3) and (4).

- (2) The person or body specified by enabling legislation as a person or body whose decisions are administratively reviewable decisions is taken to be the only administrator in relation to the making of an administratively reviewable decision even if some other person or body also had a role in the making of the decision.

## **9 When administrative review jurisdiction is conferred**

- (1) The Tribunal has **administrative review jurisdiction** over a decision (or class of decisions) of an administrator if enabling legislation provides that applications may be made to the Tribunal for an administrative review under this Act of any such decision (or class of decisions) made by the administrator:
- (a) in the exercise of functions conferred or imposed by or under the legislation, or
  - (b) in the exercise of any other functions of the administrator identified by the legislation.
- (2) If enabling legislation makes provision for applications to be made to the Tribunal in respect of an administratively reviewable decision subject to certain conditions, the Tribunal has jurisdiction under the enabling legislation only if those conditions are satisfied.
- (3) A provision of enabling legislation that provides for a decision of an administrator to be administratively reviewable by the Tribunal under this Act extends to the following:
- (a) a decision made by a person to whom the function of making the decision has

been delegated,

- (b) if the provision specifies the administrator by reference to the holding of a particular office or appointment—a decision by any person for the time being acting in, or performing any of the duties of, the office or appointment,
  - (c) a decision made by any other person authorised to exercise the function of making the decision.
- (4) If an administrator makes an administratively reviewable decision by reason of holding or performing the duties of an office or appointment and then ceases to hold or perform the duties of the office or appointment, this Act has effect as if the decision had been made by:
- (a) the person for the time being holding or performing the duties of that office or appointment, or
  - (b) if there is no person for the time being holding or performing the duties of that office or appointment or the office no longer exists—such person as the President (or another person authorised by the President) specifies.
- (5) Nothing in this section permits administrative review jurisdiction to be conferred on the Tribunal by a statutory rule unless the conferral of jurisdiction by such means is expressly authorised by another Act.

#### **10-46 (Repealed)**

### **Chapter 3 Process for administrative reviews under this Act**

#### **Part 1**

#### **47 (Repealed)**

#### **Part 2 Role of administrators**

### **Division 1 Information concerning decision and review rights**

#### **48 Notice of decision and review rights to be given by administrators**

- (1) An administrator who makes an administratively reviewable decision must take such steps as are reasonable in the circumstances to give any interested person notice, in writing, of the following:
- (a) the decision, and
  - (b) the right of the person to have the decision reviewed.
- (2) However, an administrator does not have to give a notice under subsection (1) in relation to:

- (a) a decision that is taken by this or any other Act to be made because the administrator has failed to make a decision within the time limit for making the decision, or
- (b) any of the following decisions, but only if the decision concerned does not adversely affect the interests of any interested person:
  - (i) a decision not to impose a liability, penalty or any kind of limitation on a person,
  - (ii) a decision making an adjustment to the level of periodic payments to be made to a person as a member of a class of persons where a similar adjustment is being made to the level of such payments to the other members of the class,
  - (iii) if legislation establishes several categories of entitlement to a monetary or other benefit—a decision that determines a person to be in the most favourable of those categories, or
- (c) a decision made by an administrator following an internal review, or
- (d) any other decision or class of decisions prescribed by the regulations for the purposes of this paragraph.

(3) A contravention of this section does not affect the validity of any decision.

## **Division 2 Duty to give reasons on request**

### **49 Duty of administrator to give reasons on request**

- (1) If an administrator makes an administratively reviewable decision, an interested person may make a written request to the administrator for the reasons for the decision.
- (2) As soon as practicable (and in any event within 28 days) after receiving such a request, the administrator is to prepare a written statement of reasons for the decision and provide it to the person who requested the reasons.
- (3) The statement of reasons is to set out the following:
  - (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
  - (b) the administrator's understanding of the applicable law,
  - (c) the reasoning processes that led the administrator to the conclusions the administrator made.
- (4) The regulations may:

- (a) exclude any class of administratively reviewable decisions from the application of this section, or
- (b) alter the period within which a statement of reasons under this section must be given.

**50 Administrator may refuse reasons in certain cases**

- (1) An administrator may refuse to prepare and provide a statement of reasons requested by a person under this Division if:
  - (a) the administrator is of the opinion that the person is not entitled to be given the statement, or
  - (b) in the case of a decision the terms of which were recorded in writing and set out in a document that was provided to the person—the request was not made within 28 days after the person was provided with the document, or
  - (c) in any other case—the request was not made within a reasonable time after the decision was made.
- (2) An administrator who refuses under subsection (1) to prepare and provide a statement of reasons must notify the person requesting the statement, in writing, of the administrator's refusal and the reasons for the refusal as soon as practicable (and in any event within 28 days) after the request.
- (3) The administrator is not to refuse to prepare and provide a statement of reasons if:
  - (a) in the case of a refusal based on subsection (1) (a)—the Tribunal declares, on an application made under section 51 (1), that the person who made the request was entitled to make the request, or
  - (b) in the case of a refusal based on subsection (1) (c)—the Tribunal declares, on an application made under section 51 (2), that the person who made the request did so within a reasonable time.
- (4) If an administrator cannot refuse to comply with a request for a statement of reasons because of a decision of the Tribunal referred to in subsection (3), the administrator must prepare the written statement of reasons that was originally requested and provide it to the person who requested it as soon as practicable (and in any event within 28 days) after the Tribunal's decision.

**51 Tribunal may determine whether person entitled to reasons or made request within reasonable time**

- (1) The Tribunal may, on the application of a person who has been refused a statement of reasons under section 50 (1) (a), make an order declaring that the person was, or was not, entitled to make the request to which the notice relates.

- (2) The Tribunal may, on the application of a person who has been refused a statement of reasons under section 50 (1) (c) on the basis that the person did not make the request within a reasonable time, make an order declaring that the person did make the request within a reasonable time.

## **52 Tribunal may order administrator to provide a statement of reasons or an adequate statement of reasons**

- (1) If an interested person has requested a statement of reasons under section 49 but has not received it within the period specified by or under that section, the Tribunal may (on the application of the person) order the administrator concerned to provide the statement of reasons within such time as may be specified in the order.
- (2) If an interested person who requested a statement of reasons under section 49 is given an inadequate statement of reasons, the Tribunal may (on the application of the person) order the administrator concerned to provide an adequate statement of reasons within such time as may be specified in the order.
- (3) For the purposes of this section, a statement of reasons is an adequate statement of reasons only if it sets out the matters referred to in section 49 (3).

## **Division 3 Internal reviews**

### **53 Internal reviews**

- (1) **Who may apply for an internal review** If an administrator makes an administratively reviewable decision, an interested person may apply for an internal review of that decision under this section.
- (2) **Requirements for an application** An application for an internal review is:
  - (a) to be in writing, and
  - (b) to be addressed to the administrator concerned, and
  - (c) to specify an address in Australia to which a notice under subsection (6) may be sent, and
  - (d) to be lodged at the office (or an office) of the administrator within 28 days (or such later date as the administrator may allow) after the person:
    - (i) if the person has requested reasons under section 49—was provided with a statement of reasons under section 49 or notified under section 50 of a refusal to provide reasons, or
    - (ii) if the person has not requested reasons under section 49—was notified of the making of the administratively reviewable decision, and
  - (e) to comply with such other requirements as may be prescribed by the regulations

in respect of the making of applications for internal reviews.

- (3) **Who is to deal with an application?** An application for an internal review of a decision is to be dealt with by an individual (other than the administrator) who is directed to do so by the administrator (the **internal reviewer**). The internal reviewer directed to deal with an application must be, as far as is practicable, an individual:
- (a) who was not substantially involved in the process of making the decision under review, and
  - (b) who is an employee of the administrator or is an employee of the same agency or organisation within which the administrator is employed, and
  - (c) who is otherwise suitably qualified to deal with the issues raised by the application.
- (4) **Material to be considered** In reviewing a decision, the internal reviewer is to consider any relevant material submitted by the applicant.
- (5) **Review of the application** Following the internal review of the decision, the internal reviewer may:
- (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision that is set aside.
- (5A) **Reviewer has functions of administrator** In exercising a function under subsection (5), an internal reviewer is taken for all purposes to have the right to exercise the same functions under any relevant legislation or other law that the administrator had in making the decision being reviewed.
- (5B) **Reviewer to notify administrator of decision** An internal reviewer must notify the administrator of the result of, and the reasons for, his or her decision under subsection (5) as soon as is practicable after making the decision.
- (6) **Notice of result of review and appeal rights** Within 21 days after the application for the internal review is lodged (or such other period as the administrator and person agree on), the administrator must notify the applicant in writing of:
- (a) the outcome of the internal review, and
  - (b) the reasons for the decision in the internal review, and
  - (c) the right of the person to have the decision reviewed by the Tribunal.
- (7) **Statement of reasons** For the purposes of subsection (6), an applicant is notified of the

reasons for a decision in an internal review only if the applicant is given a statement of reasons setting out the following:

- (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
- (b) the understanding of the internal reviewer of the applicable law,
- (c) the reasoning processes that led the internal reviewer to the conclusions the reviewer made.

(8) **Status of decisions made on internal review** For the purposes of this Act, an administratively reviewable decision that is affirmed, varied or set aside and substituted under subsection (5) is:

- (a) taken to have been made by the administrator (as affirmed, varied or substituted by the internal reviewer), and
- (b) taken to have been made on the date on which the applicant is given a notice under subsection (6).

(9) **When an internal review is finalised** An internal review is taken to be finalised if:

- (a) the applicant is notified of the outcome of the review under subsection (6), or
- (b) the applicant is not notified of the outcome of the review within 21 days after the application for the review is lodged (or such other period as the administrator and person agree on).

**Note—**

Section 55 provides that an interested person may apply for an administrative review under this Act of an administratively reviewable decision once an internal review of the decision is taken to be finalised under this subsection.

(10) **No internal reviews of decisions previously reviewed under this section** A person is not entitled to a review under this section of any decision previously reviewed under this section or a decision made under subsection (5).

(11) **Regulation-making powers** The regulations may:

- (a) prescribe requirements to be observed in relation to the conduct of an internal review under this section, or
- (b) exclude any class of administratively reviewable decisions from the application of this section, or
- (c) alter the period within which an internal review must be conducted or a notice given under this section.

## **Division 4 Guidelines**

### **54 Guidelines for notices, reasons and internal reviews**

- (1) The regulations may prescribe guidelines with respect to any of the following:
  - (a) the giving of notices for the purposes of Division 1,
  - (b) the giving of reasons under Division 2,
  - (c) the conduct of internal reviews under Division 3.
- (2) A person, in taking action under this Part, must have regard to any such guidelines as are then in force.

## **Part 3 Role of the Tribunal**

### **Division 1 Applications for administrative review**

#### **55 Making of applications**

- (1) An application for an administrative review under this Act of an administratively reviewable decision may only be made by an interested person.
- (2) Subject to enabling legislation, an application is to be made in the time and manner prescribed by the procedural rules.

**Note—**

The fees payable for applications are also prescribed by the regulations under the [Civil and Administrative Tribunal Act 2013](#).

- (3) If the interested person was entitled to seek an internal review of the administratively reviewable decision, an application may not be made unless the person has duly applied for such an internal review and the review is taken to have been finalised under section 53 (9).
- (4) However, the Tribunal may deal with an application for the administrative review of an administratively reviewable decision even though the applicant has not duly applied for an internal review to which the applicant was entitled if the Tribunal is satisfied that:
  - (a) the applicant made a late application for the internal review in circumstances where the person dealing with the application unreasonably refused to consider the application and the application to the Tribunal was made within a reasonable time following the administratively reviewable decision of the administrator concerned, or
  - (b) it is necessary for the Tribunal to deal with the application in order to protect the applicant's interests and the application to the Tribunal was made within a

reasonable time following the administratively reviewable decision of the administrator concerned.

- (5) In determining whether a late application for internal review was unreasonably refused or whether an application to the Tribunal was made within a reasonable time for the purposes of subsection (4), the Tribunal is to have regard to:
  - (a) the time when the applicant became aware of the making of the decision, and
  - (b) in a case to which subsection (4) (a) applies—the period prescribed by or under section 53 for the lodging of an application for an internal review, and
  - (c) such other matters as it considers relevant.
- (6) The Tribunal may also deal with an application even though the applicant has duly applied for an internal review of the decision to which the application relates, and the review is not finalised, if the Tribunal is satisfied that it is necessary for the Tribunal to deal with the application in order to protect the applicant's interests.

**56, 57 (Repealed)**

**58 Duty of administrator to lodge material documents with Tribunal where decision reviewed**

- (1) An administrator whose administratively reviewable decision is the subject of an application for review to the Tribunal must, within 28 days after receiving notice of the application, lodge with the Tribunal:
  - (a) a copy of any statement of reasons given to the applicant under section 49 (or, if no such statement was given to the applicant, a statement of reasons setting out the matters referred to in section 49 (3)), and
  - (a1) a copy of any statement of reasons for a decision in an internal review conducted in respect of the administratively reviewable decision, and
  - (b) a copy of every document or part of a document that is in the possession, or under the control, of the administrator that the administrator considers to be relevant to the determination of the application by the Tribunal.
- (2) If the applicant has not been given a statement of reasons under section 49, the Tribunal may direct that a copy of the statement of reasons lodged with the Tribunal under subsection (1) (a) be given to the applicant within such period or periods as the Tribunal directs.
- (3) If the Tribunal or President considers that a party to the proceedings would or might suffer hardship if the period of 28 days provided by subsection (1) is not shortened or extended, the Tribunal or President may, at the request of the party, make an order directing that the copies referred to in that subsection be lodged with the Tribunal

within such shorter or extended period as is specified in the order.

- (4) If the Tribunal or President considers that other particular documents (or that other documents included in a particular class of documents) may be relevant to the determination of the application, it may cause a notice in writing to be served on the administrator:
  - (a) stating that the Tribunal or President is of that opinion, and
  - (b) directing the administrator concerned to lodge with the Tribunal, before a date specified in the notice, a copy of each of those other documents that is in the possession, or under the control, of the administrator.
- (5) The principal registrar of the Tribunal is to grant reasonable access to the applicant in the proceedings to any copy of a document lodged under this section by an administrator. Reasonable access includes, but is not limited to, enabling the applicant to make a photocopy of a document during ordinary business hours.
- (6) If a party to proceedings before the Tribunal seeks a summons under the [Civil and Administrative Tribunal Act 2013](#) against an administrator for the production of any document and a copy of that document has been lodged with the Tribunal under subsection (1) or (4), the Tribunal may (on such conditions as it considers appropriate) direct the principal registrar of the Tribunal to grant the party access to its copy of the document instead of issuing a summons if access to the document could lawfully be required by the issue of a summons.
- (7) Nothing in this section requires the disclosure of, or the granting of access to, any document (or a copy of a document) in contravention of any of the following:
  - (a) an order made under section 59 (Objections to lodgment),
  - (b) an order made under section 64 (Tribunal may restrict disclosures concerning procedures) of the [Civil and Administrative Tribunal Act 2013](#),
  - (c) section 66 (Effect of [Government Information \(Public Access\) Act 2009](#)) or section 67 (Privileged documents) of the [Civil and Administrative Tribunal Act 2013](#) (as applied by section 67 of this Act).
- (8) For the purposes of this section, a reference to a document in the possession of an administrator includes a reference to a document to which the administrator has an immediate right of access.

## **59 Objections to lodgment**

- (1) An administrator may apply to the Tribunal before the expiry of the period referred to in section 58 (1) for an order that the administrator not be required to lodge a copy of a document under section 58.

- (2) On any such application, the Tribunal may make an order that a copy of a document not be lodged with the Tribunal if:
  - (a) it is satisfied that section 67 (Privileged documents) of the *Civil and Administrative Tribunal Act 2013* (as applied by section 67 of this Act) operates so as not to require the disclosure of the document, or
  - (b) it considers that, if an application were made under section 64 (Tribunal may restrict disclosures concerning procedures) of the *Civil and Administrative Tribunal Act 2013*, it would be appropriate to make an order under that section prohibiting or restricting the publication or disclosure of evidence of the document.

## **Division 2 Effect of pending applications on administratively reviewable decisions**

### **60 Operation and implementation of decisions pending applications for administrative review**

- (1) Subject to this section, an application to the Tribunal for an administrative review under this Act of an administratively reviewable decision does not affect the operation of the decision under review or prevent the taking of action to implement that decision.
- (2) On the application of any party to proceedings for an application for an administrative review under this Act of an administratively reviewable decision, the Tribunal may make such orders staying or otherwise affecting the operation of the decision under review as it considers appropriate to secure the effectiveness of the determination of the application.
- (3) The Tribunal may make an order under this section only if it considers that it is desirable to do so after taking into account:
  - (a) the interests of any persons who may be affected by the determination of the application, and
  - (b) any submission made by or on behalf of the administrator who made the decision to which the application relates, and
  - (c) the public interest.
- (4) While an order is in force under this section (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal may, on application by a party to the proceedings, vary or revoke the order by another order.

### **61 Restrictions on ordering stay of proceedings**

- (1) The Tribunal may not:

- (a) make an order under section 60 unless the administrator who made the decision to which such an order would relate has been given a reasonable opportunity to make submissions in relation to the matter, or
- (b) make an order varying or revoking an order in force under section 60 (including an order as varied) unless the following persons have been given a reasonable opportunity to make submissions in relation to the matter:
  - (i) the administrator who made the decision to which such an order would relate,
  - (ii) the person who requested the making of the order,
  - (iii) if the order has previously been varied by an order or orders under section 60—the person or persons who requested the making of the only, or the later or latest, such order.
- (2) This section does not prevent the Tribunal from making an order under section 60 without giving to any person referred to in that section a reasonable opportunity to make submissions in relation to a matter if the Tribunal is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give the person such an opportunity.
- (3) If an order under this section is made without giving such an opportunity to the administrator who made the decision to which the application relates, the order does not take effect until a notice setting out the terms of the order is served on the administrator.

## **62 Conditions of stay order**

- (1) An order in force under section 60 (including an order that has previously been varied on one or more occasions) is subject to such conditions as are specified in the order.
- (2) Any such order has effect:
  - (a) if a period for the operation of the order is specified in the order—until the expiration of that period or, if the application is decided by the Tribunal before the expiration of that period, until the decision of the Tribunal on the application takes effect, or
  - (b) if no period is so specified—until the decision of the Tribunal on the application takes effect.

## **Division 3 Powers on administrative review**

### **63 Determination of administrative review by Tribunal**

- (1) In determining an application for an administrative review under this Act of an administratively reviewable decision, the Tribunal is to decide what the correct and

preferable decision is having regard to the material then before it, including the following:

- (a) any relevant factual material,
  - (b) any applicable written or unwritten law.
- (2) For this purpose, the Tribunal may exercise all of the functions that are conferred or imposed by any relevant legislation on the administrator who made the decision.
- (3) In determining an application for the administrative review of an administratively reviewable decision, the Tribunal may decide:
- (a) to affirm the administratively reviewable decision, or
  - (b) to vary the administratively reviewable decision, or
  - (c) to set aside the administratively reviewable decision and make a decision in substitution for the administratively reviewable decision it set aside, or
  - (d) to set aside the administratively reviewable decision and remit the matter for reconsideration by the administrator in accordance with any directions or recommendations of the Tribunal.

#### **64 Application of Government policy**

- (1) In determining an application for an administrative review under this Act of an administratively reviewable decision, the Tribunal must give effect to any relevant Government policy in force at the time the administratively reviewable decision was made except to the extent that the policy is contrary to law or the policy produces an unjust decision in the circumstances of the case.
- (2) The Premier or any other Minister may certify, in writing, that a particular policy was Government policy in relation to a particular matter.
- (3) The certificate is evidence of the Government policy concerned and the Tribunal is to take judicial notice of the contents of that certificate.
- (4) In determining an application for an administrative review under this Act of an administratively reviewable decision, the Tribunal may have regard to any other policy applied by the administrator in relation to the matter concerned except to the extent that the policy is contrary to Government policy or to law or the policy produces an unjust decision in the circumstances of the case.
- (5) In this section:

**Government policy** means a policy adopted by:

- (a) the Cabinet, or

(b) the Premier or any other Minister,

that is to be applied in the exercise of discretionary powers by administrators.

## **65 Power to remit matters to administrator for further consideration**

- (1) At any stage of proceedings to determine an application for an administrative review under this Act of an administratively reviewable decision, the Tribunal may remit the decision to the administrator who made it for reconsideration of the decision by the administrator.
- (2) If a decision is so remitted to an administrator, the administrator may reconsider the decision and may:
  - (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a new decision in substitution for the decision set aside.
- (3) If the administrator varies the decision:
  - (a) the application is taken to be an application for review of the decision as varied, and
  - (b) the person who made the application may either:
    - (i) proceed with the application for review of the decision as varied, or
    - (ii) withdraw the application.
- (4) If the administrator sets the decision aside and makes a new decision in substitution for the decision set aside:
  - (a) the application is taken to be an application for review of the new decision, and
  - (b) the person who made the application may either:
    - (i) proceed with the application for review of the new decision, or
    - (ii) withdraw the application.

## **66 Effect of administrative review decision**

- (1) A decision determining an application for an administrative review under this Act of an administratively reviewable decision takes effect on the date on which it is given or such later date as may be specified in the decision.
- (2) If any such decision varies, or is made in substitution for, an administrator's decision, the decision of the Tribunal is taken:

- (a) to be the decision of the administrator (other than for the purposes of an administrative review under this Act), and
- (b) to have had effect as the decision of the administrator on and from the date of the administrator's actual decision, unless the Tribunal orders otherwise.

## Chapter 4 Miscellaneous

### 67 Application of certain provisions of [Civil and Administrative Tribunal Act 2013](#)

The following provisions of the [Civil and Administrative Tribunal Act 2013](#) are taken to apply for the purposes of this Act in the same way as they apply for the purposes of the [Civil and Administrative Tribunal Act 2013](#):

- (a) section 66 (Effect of [Government Information \(Public Access\) Act 2009](#)),
- (b) section 67 (Privileged documents).

### 68 Notices, service and lodgment of documents

The procedural rules may make provision for or with respect to the service, giving or lodgment of notices or documents for the purposes of this Act.

### 69 Offence: improper disclosure of information

A person must not disclose information obtained in exercising a function under this Act unless the disclosure is made:

- (a) with the consent of the person to whom the information relates, or
- (b) in connection with the execution or administration of this Act, the [Civil and Administrative Tribunal Act 2013](#) or enabling legislation, or
- (c) for the purpose of any legal proceedings arising out of this Act, the [Civil and Administrative Tribunal Act 2013](#) or enabling legislation or any report of such proceedings, or
- (d) with other legal excuse.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—50 penalty units or imprisonment for 12 months, or both.

### 70 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

## **71 Regulations**

- (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) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

## **Chapter 5**

(Renumbered as Chapter 3)

## **Chapters 6-8**

**72-147 (Repealed)**

## **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 the following Acts:

this Act

*Administrative Decisions Legislation Amendment Act 1997*

*Courts Legislation Further Amendment Act 1997*

*Administrative Decisions Tribunal Legislation Amendment Act 1998*

*Administrative Decisions Tribunal Legislation Further Amendment Act 1998*

*Administrative Decisions Tribunal Legislation Amendment Act 2000*

*Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000*

*Guardianship and Protected Estates Legislation Amendment Act 2002*, to the extent that it amends this Act

*Administrative Decisions Tribunal Amendment Act 2004*

*Legal Profession Act 2004*

*Courts Legislation Amendment Act 2005*, to the extent that it amends this Act

*Legal Profession Amendment Act 2005*

*Administrative Decisions Tribunal Amendment Act 2008*

*Courts Legislation Amendment Act 2010*, to the extent that it amends this Act

*Courts and Crimes Legislation Further Amendment Act 2010*

*Victims Rights and Support Act 2013*

any other Act that amends this Act

- (2) Any such provision may, if the regulations so provide, 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.

## **1A References to ADT**

A reference to the Administrative Decisions Tribunal or the Tribunal established by this Act (however expressed) in a provision of this Schedule that was inserted before the establishment day (within the meaning of the *Civil and Administrative Tribunal Act 2013*) is a reference to the Administrative Decisions Tribunal that was formerly established under this Act when this Act was named the *Administrative Decisions Tribunal Act 1997*.

## **Part 2 Provisions consequent on enactment of *Administrative Decisions Legislation Amendment Act 1997***

### **Division 1 Interpretation**

#### **2 Definitions**

In this Part:

***abolished body*** means each of the following:

- (a) the Boxing Appeals Tribunal,
- (b) the Community Services Appeals Tribunal,
- (c) the Equal Opportunity Tribunal,

- (d) the Legal Services Tribunal,
- (e) the Schools Appeals Tribunal,
- (f) the Veterinary Surgeons Disciplinary Tribunal.

**ADT** means the Administrative Decisions Tribunal established by this Act.

**amending Act** means the [Administrative Decisions Legislation Amendment Act 1997](#).

**Boxing Appeals Tribunal** means the Boxing Appeals Tribunal as continued by section 28 of the [Boxing and Wrestling Control Act 1986](#) immediately before the commencement of Schedule 4.1 to the amending Act.

**Community Services Appeals Tribunal** means the Community Services Appeals Tribunal as constituted by section 92 of the [Community Services \(Complaints, Appeals and Monitoring\) Act 1993](#) immediately before the commencement of Schedule 1.6 [6] to the amending Act.

**Equal Opportunity Tribunal** means the Equal Opportunity Tribunal as constituted by section 69B of the [Anti-Discrimination Act 1977](#) immediately before the commencement of Schedule 2.1 to the amending Act.

**Legal Services Tribunal** means the Legal Services Tribunal constituted by section 162 of the [Legal Profession Act 1987](#) as constituted immediately before the commencement of Schedule 3.3 to the amending Act.

**relevant amending Schedule**, in relation to an abolished body, means the Schedule (or part of the Schedule) to the amending Act on the commencement of which the abolished body is abolished under Division 2.

**Schools Appeals Tribunal** means the Schools Appeals Tribunal as constituted by section 107 of the [Education Reform Act 1990](#) immediately before the commencement of Schedule 4.2 to the amending Act.

**Veterinary Surgeons Disciplinary Tribunal** means the Veterinary Surgeons Disciplinary Tribunal as constituted by section 25 of the [Veterinary Surgeons Act 1986](#) immediately before the commencement of Schedule 4.3 to the amending Act.

## **Division 2 Provisions relating to particular abolished bodies and positions**

### **3 Boxing Appeals Tribunal**

- (1) The Boxing Appeals Tribunal is abolished on the commencement of Schedule 4.1 to the amending Act.
- (2) On the abolition of the Boxing Appeals Tribunal, any person holding office as a

member of the Tribunal immediately before its abolition by this Act:

- (a) ceases to hold office as a member of that Tribunal, and
- (b) is eligible (if otherwise qualified) to be appointed as a member of the ADT, and
- (c) is not entitled to any compensation by reason of ceasing to hold office as a member of the Tribunal.

- (3) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Boxing Appeals Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the *Boxing and Wrestling Control Act 1986*.

#### **4 Community Services Appeals Tribunal**

- (1) The Community Services Appeals Tribunal is abolished on the commencement of Schedule 1.6 [6] to the amending Act.
- (2) On the abolition of the Community Services Appeals Tribunal:
  - (a) the person holding office as President of the Tribunal immediately before its abolition is by this Act:
    - (i) appointed as a part-time Deputy President of the ADT, and
    - (ii) appointed as the Divisional Head of the Community Services Division of the ADT, and
  - (b) the person holding office as Deputy President of the Tribunal immediately before its abolition is by this Act:
    - (i) appointed as a part-time non-presidential judicial member of the ADT, and
    - (ii) assigned to the Community Services Division of the ADT, and
  - (c) any other person who was holding office as a member of the Tribunal immediately before its abolition is by this Act:
    - (i) appointed as a part-time non-judicial member of the ADT, and
    - (ii) assigned to the Community Services Division of the ADT.
- (3) Any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Community Services Appeals Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the *Community Services (Complaints,*

*Appeals and Monitoring) Act 1993.*

## **5 Equal Opportunity Tribunal**

- (1) The Equal Opportunity Tribunal is abolished on the commencement of Schedule 2.1 to the amending Act.
- (2) On the abolition of the Equal Opportunity Tribunal:
  - (a) the person holding office as the senior judicial member of the Tribunal immediately before its abolition is by this Act:
    - (i) appointed as a part-time Deputy President of the ADT, and
    - (ii) appointed as the Divisional Head of the Equal Opportunity Division of the ADT, and
  - (b) any other person holding office as a judicial member of the Tribunal immediately before its abolition is by this Act:
    - (i) appointed as a part-time non-presidential judicial member of the ADT, and
    - (ii) assigned to the Equal Opportunity Division of the ADT, and
  - (c) any person who was holding office as a non-judicial member of the Tribunal immediately before its abolition is by this Act:
    - (i) appointed as a part-time non-judicial member of the ADT, and
    - (ii) assigned to the Equal Opportunity Division of the ADT.
- (3) Any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Equal Opportunity Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the *Anti-Discrimination Act 1977*.

## **6 Legal Services Tribunal**

- (1) The Legal Services Tribunal is abolished on the commencement of Schedule 3.3 to the amending Act.
- (2) On the abolition of the Legal Services Tribunal:
  - (a) the person holding office as President of the Tribunal immediately before its abolition is by this Act:
    - (i) appointed as a part-time Deputy President of the ADT, and

- (ii) appointed as the Divisional Head of the Legal Services Division of the ADT, and
- (b) any existing barrister member of the Tribunal is by this Act:
  - (i) appointed as a part-time non-presidential judicial member of the ADT, and
  - (ii) assigned to the Legal Services Division of the ADT, and
  - (iii) taken to be a barrister member of the Legal Services Division, and
- (c) any existing solicitor member of the Tribunal is by this Act:
  - (i) appointed as a part-time non-presidential judicial member of the ADT, and
  - (ii) assigned to the Legal Services Division of the ADT, and
  - (iii) taken to be a solicitor member of the Legal Services Division, and
- (d) any existing licensee member of the Tribunal is by this Act:
  - (i) appointed as a part-time non-judicial member of the ADT, and
  - (ii) assigned to the Legal Services Division of the ADT, and
  - (iii) taken to be a licensee member of the Legal Services Division, and
- (e) any existing lay member of the Tribunal is by this Act:
  - (i) appointed as a part-time non-judicial member of the ADT, and
  - (ii) assigned to the Legal Services Division of the ADT, and
  - (iii) taken to be a lay member of the Legal Services Division.
- (3) Any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Legal Services Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the [Conveyancers Licensing Act 1995](#) or the [Legal Profession Act 1987](#).
- (5) In this clause:  
  
**barrister member** of the Legal Services Division has the same meaning as it has in Part 3 of Schedule 2.  
  
**existing barrister member** means a person holding office as a barrister member of the Legal Services Tribunal immediately before its abolition by this Act.

**existing lay member** means any person holding office as lay member of the Legal Services Tribunal immediately before its abolition by this Act.

**existing licensee member** means any person holding office as licensee member (within the meaning of the [Conveyancers Licensing Act 1995](#) immediately before it was amended by the amending Act) of the Legal Services Tribunal immediately before its abolition by this Act.

**existing solicitor member** means any person holding office as a solicitor member of the Legal Services Tribunal immediately before its abolition by this Act.

**lay member** of the Legal Services Division has the same meaning as it has in Part 3 of Schedule 2.

**licensee member** of the Legal Services Division has the same meaning as it has in Part 3 of Schedule 2.

**solicitor member** of the Legal Services Division has the same meaning as it has in Part 3 of Schedule 2.

## **7 Schools Appeals Tribunal**

- (1) The Schools Appeals Tribunal is abolished on the commencement of Schedule 4.2 to the amending Act.
- (2) On the abolition of the Schools Appeals Tribunal, any person holding office as a member of the Tribunal immediately before its abolition is by this Act appointed as a part-time non-judicial member of the ADT.
- (3) Any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Schools Appeals Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 relating to the [Education Reform Act 1990](#).

## **8 Veterinary Surgeons Disciplinary Tribunal**

- (1) The Veterinary Surgeons Disciplinary Tribunal is abolished on the commencement of Schedule 4.3 to the amending Act.
- (2) On the abolition of the Veterinary Surgeons Disciplinary Tribunal:
  - (a) any person holding office as a chairperson:
    - (i) ceases to hold office as a member of that Tribunal, and
    - (ii) is eligible (if otherwise qualified) to be appointed as a member of the ADT, and

- (iii) is not entitled to any compensation by reason of ceasing to hold office as a member of the Tribunal, and
- (b) any other person holding office as a member of the Tribunal is appointed as a part-time non-judicial member of the ADT and is assigned to the General Division of the ADT.
- (3) Any person referred to in subclause (2) (b) who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
- (4) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any document to the Veterinary Surgeons Disciplinary Tribunal is to be read as a reference to the ADT constituted in accordance with any applicable provisions of Schedule 2 to this Act relating to the [Veterinary Surgeons Act 1986](#).

#### **8A Commencement of abolition provisions of amending Act for the purposes of this Schedule**

For the avoidance of doubt, Schedules 2.1, 3.3, 4.1, 4.2 and 4.3 to the amending Act are taken, for the purposes of this Schedule only, to have commenced on 6 October 1998.

### **Division 3 Provisions relating to the jurisdiction transferred from courts to the ADT**

#### **9 Pending court proceedings**

- (1) This clause applies to proceedings before a court that:
  - (a) were instituted before the commencement of any relevant amendment, and
  - (b) have not been finally determined by the court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if this Act and the amending Act 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 amending Act not been enacted continue to apply to the proceedings as if neither Act had been enacted.
- (4) In this clause:

**relevant amendment** means an amendment made to another Act by the amending Act the effect of which is to confer jurisdiction on the ADT to determine any matter that, immediately before the commencement of that amendment, could have been determined by the court concerned.

## Division 4 General provisions

### 10 Issue of replacement commission or other instrument of appointment

- (1) The Governor may issue an appropriate commission under the public seal of the State to a person who is appointed to a new office under this Part as a Deputy President or Divisional Head of the ADT. The appointment is effective whether or not such a commission is issued.
- (2) The Minister may issue an appropriate instrument of appointment to a person who is appointed to a new office under this Part as a non-presidential judicial member or non-judicial member of the ADT. The appointment is effective whether or not such an instrument is issued.

### 11 Transitional arrangements pending making of rules of Commission

Until rules of the ADT are in force with respect to any matter for which rules may be made, the regulations may make provision with respect to that matter.

### 12 Legal Services Tribunal Rules 1995

- (1) Until the Rules of the ADT provide otherwise and subject to this Act, the [Legal Services Tribunal Rules 1995](#) as in force immediately before the abolition of the Legal Services Tribunal continue in force as the rules of the ADT in respect of matters before the Legal Services Division of the Tribunal.
- (2) References in the [Legal Services Tribunal Rules 1995](#) to the Legal Services Tribunal are to be read as references to the ADT.
- (3) Nothing in this clause prevents the future amendment or repeal of the rules.

### 13 Regulations made under substantially re-enacted provisions continue in force

- (1) Subject to this clause, a regulation in force immediately before the commencement of a relevant amendment to the provision under which the regulation was made continues to have effect as a regulation made under the provision (as amended).
- (2) Any reference in a regulation continued in force under subclause (1):
  - (a) to a court or tribunal from which jurisdiction is to be transferred to the ADT is to be read as a reference to the ADT, and
  - (b) to an appeal, complaint or other application to the court or tribunal is to be read as a reference to an application to the ADT.
- (3) Nothing in this clause prevents the future amendment or repeal of any such regulation.
- (4) In this clause, **relevant amendment** means an amendment made to any provision of

another Act by the amending Act the effect of which is:

- (a) to substantially re-enact the provision of the other Act, or
- (b) to otherwise amend the provision by removing references to any court or tribunal and replacing them with references to the ADT.

#### **14 Pending proceedings before an abolished body**

- (1) If proceedings were commenced but not heard by an abolished body before its abolition, the proceedings are taken to have been duly commenced in the ADT.
- (2) If an abolished body had commenced to hear (but had not determined) a matter before its abolition, the person or persons hearing the matter:
  - (a) are to continue to hear the matter, and to determine the matter, sitting as the ADT, and
  - (b) have and may exercise, while sitting as the ADT under this clause, all the functions that the abolished body had immediately before its abolition.
- (2A) A decision made under this clause is taken to be an appealable decision for the purposes of Part 1 of Chapter 7.
- (3) This clause applies despite any contrary provision of this Act.

#### **14A Appeals to courts from decision of abolished bodies**

- (1) This clause applies to a decision of an abolished body in respect of which:
  - (a) an appeal to a court under a provision of another Act could have been lodged immediately before the commencement of the amendment of the provision by an appeal amendment, and
  - (b) no such appeal was pending before the court immediately before the commencement of the appeal amendment.
- (2) Despite anything in section 30 of the [Interpretation Act 1987](#) or any other law, no appeal lies from a decision to which this clause applies to the court that, immediately before the commencement of the appeal amendment, had jurisdiction to hear and determine an appeal from such a decision.
- (3) However:
  - (a) a decision to which this clause applies is taken to be an appealable decision of the ADT for the purposes of Part 1 of Chapter 7, and
  - (b) a party to the proceedings before the abolished body concerned is taken to have been a party to proceedings in which an appealable decision of the ADT was made.

- (4) In this clause, **appeal amendment** means an amendment to a provision of another Act by the amending Act the effect of which is to remove a right to appeal to a court from a decision of an abolished body.

## **15 Orders**

- (1) An order made under another Act by an abolished body, being an order having effect immediately before the abolition of the abolished body, is taken to be an order made by the ADT under the corresponding provision of that Act (as amended by the relevant amending Schedule) or this Act (as the case may be).
- (2) Any application for an order made to an abolished body under another Act and not determined immediately before the commencement of the relevant amending schedule 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.

## **16 Expiration of current period**

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

## **17 General savings**

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

## **Part 3 Provisions consequent on enactment of **Administrative Decisions Tribunal Legislation Amendment Act 1998****

## **18 Definitions**

In this Part:

**ADT** means the Administrative Decisions Tribunal established by this Act.

**amending Act** means the [Administrative Decisions Tribunal Legislation Amendment Act 1998](#).

## **19 Pending court proceedings**

- (1) This clause applies to proceedings before a court that:
  - (a) were instituted before the commencement of any relevant amendment, and
  - (b) have not been finally determined by the court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if this Act and the amending Act 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 amending Act not been enacted continue to apply to the proceedings as if neither Act had been enacted.

- (4) In this clause:

**court** includes any tribunal, person or body authorised to determine any appeal.

**relevant amendment** means an amendment made to another Act by the amending Act the effect of which is to confer jurisdiction on the ADT to determine any matter that, immediately before the commencement of that amendment, could have been determined by the court concerned.

## **20 Regulations made under substantially re-enacted provisions continue in force**

- (1) Subject to this clause, a regulation in force immediately before the commencement of a relevant amendment to the provision under which the regulation was made continues to have effect as a regulation made under the provision (as amended).
- (2) Any reference in a regulation continued in force under subclause (1):
  - (a) to a court or tribunal from which jurisdiction is to be transferred to the ADT is to be read as a reference to the ADT, and
  - (b) to an appeal, complaint or other application to the court or tribunal is to be read as a reference to an application to the ADT.
- (3) Nothing in this clause prevents the future amendment or repeal of any such regulation.
- (4) In this clause, **relevant amendment** means an amendment made to any provision of another Act by the amending Act the effect of which is:
  - (a) to substantially re-enact the provision of the other Act, or

- (b) to otherwise amend the provision by removing references to any court or tribunal and replacing them with references to the ADT.

## **Part 4 Provisions consequent on enactment of *Administrative Decisions Tribunal Legislation Further Amendment Act 1998***

### **21 Definitions**

In this Part:

**amending Act** means the *Administrative Decisions Tribunal Legislation Further Amendment Act 1998*.

**ADT** means the Administrative Decisions Tribunal established by this Act.

### **22 Pending court proceedings**

- (1) This clause applies to proceedings before a court that:
  - (a) were instituted before the commencement of any relevant amendment, and
  - (b) have not been finally determined by the court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if this Act and the amending Act 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 amending Act not been enacted continue to apply to the proceedings as if neither Act had been enacted.

- (4) In this clause:

**court** includes any tribunal, person or body authorised to determine any appeal.

**relevant amendment** means an amendment made to another Act by the amending Act the effect of which is to confer jurisdiction on the ADT to determine any matter that, immediately before the commencement of that amendment, could have been determined by the court concerned.

### **23 Regulations made under substantially re-enacted provisions continue in force**

- (1) Subject to this clause, a regulation in force immediately before the commencement of a relevant amendment to the provision under which the regulation was made continues to have effect as a regulation made under the provision (as amended).
- (2) Any reference in a regulation continued in force under subclause (1):
  - (a) to a person, court or tribunal from which jurisdiction is to be transferred to the ADT is to be read as a reference to the ADT, and

(b) to an appeal, complaint or other application to the person, court or tribunal is to be read as a reference to an application to the ADT.

(3) Nothing in this clause prevents the future amendment or repeal of any such regulation.

(4) In this clause, **relevant amendment** means an amendment made to any provision of another Act by the amending Act the effect of which is:

(a) to substantially re-enact the provision of the other Act, or

(b) to otherwise amend the provision by removing references to any person, court or tribunal and replacing them with references to the ADT.

## **24 Pending proceedings in a Division of ADT on re-allocation of function**

(1) This clause applies to proceedings:

(a) that are pending in the General Division of the ADT immediately before the commencement of Schedule 1 [22] to the amending Act, and

(b) that relate to applications made to the ADT under the *Environmental Planning and Assessment Act 1979*, *Security Industry Act 1997* or *Veterinary Surgeons Act 1986*.

(2) Proceedings to which this clause apply are to be determined in the General Division in accordance with the provisions of Part 4 of Schedule 2 to this Act as in force immediately before the commencement of Schedule 1 [22] to the amending Act.

## **25 Appointments of Divisional Heads not affected**

The amendments made to section 16 of this Act by the amending Act do not affect the validity of any appointment of a Divisional Head made under that section before its amendment.

## **26 Assignment of members to Divisions not affected**

The amendments made to section 21 of this Act by the amending Act do not affect the validity of any assignment of a member to a Division made under that section before its amendment.

# **Part 5 Provisions consequent on enactment of *Retail Leases Amendment Act 1998***

## **27 Definitions**

In this Part:

**amending Act** means the *Retail Leases Amendment Act 1998*.

**ADT** means the Administrative Decisions Tribunal established by this Act.

## **28 Pending court proceedings**

- (1) This clause applies to proceedings before a tribunal or court concerning a retail tenancy dispute that:
  - (a) were instituted before the commencement of any relevant amendment, and
  - (b) have not been finally determined by the tribunal or court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if this Act and the amending Act 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 amending Act not been enacted continue to apply to the proceedings as if neither Act had been enacted.
- (4) In this clause:

**relevant amendment** means an amendment made to another Act by the amending Act the effect of which is to confer jurisdiction on the ADT to determine any matter that, immediately before the commencement of that amendment, could have been determined by the court concerned.

## **Part 6 Provisions consequent on enactment of [Administrative Decisions Tribunal Legislation Amendment Act 2000](#)**

### **29 Definitions**

In this Part:

**amending Act** means the [Administrative Decisions Tribunal Legislation Amendment Act 2000](#).

### **30 Amending Act does not apply to or affect existing proceedings and other matters under this Act**

- (1) The amending Act does not apply to or affect:
  - (a) any internal review that has not been completed (or a right to seek an internal review arising) under section 53 of this Act immediately before the commencement of Schedule 1 [5] to the amending Act, and
  - (b) any appeal to an Appeal Panel that has not been heard or completed (or any right to so appeal arising) immediately before the commencement of Schedule 1 [1] to the amending Act, and

- (c) any order made under section 75 (2) (b) of this Act before the commencement of Schedule 1 [11] to the amending Act that is in force immediately before that commencement, and
  - (d) an offence under section 126 of this Act that was committed or is alleged to have been committed (or any proceedings for any such offence that were commenced but have not been finally determined) before the commencement of Schedule 1 [13] to the amending Act, and
  - (e) any application to the Tribunal for a review under the *Dangerous Goods Act 1975* that has not been heard or completed (or any right to so apply arising) immediately before the commencement of Schedule 2.2 to the amending Act.
- (2) Accordingly, any rules, regulations or other law that would have been applicable to a matter referred to in subclause (1) (a)–(e) had the amending Act not been enacted continue to apply to that matter as if the amending Act had not been enacted.

### **31 Pending proceedings in a Division of ADT on re-allocation of function**

- (1) This clause applies to proceedings:
- (a) that are pending in the General Division of the ADT immediately before the commencement of Schedule 1 [14] to the amending Act, and
  - (b) that relate to applications made to the ADT under the *Adoption of Children Act 1965* or the *Child Protection (Prohibited Employment) Act 1998*.
- (2) Proceedings to which this clause apply are to be determined in the General Division in accordance with the provisions of Part 4 of Schedule 2 to this Act as in force immediately before the commencement of Schedule 1 [14] to the amending Act.

## **Part 7 Provisions consequent on enactment of *Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000***

### **32 Definitions**

In this Part:

**amending Act** means the *Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000*.

**existing tax objection determination** means the determination of an objection by the Chief Commissioner of State Revenue under Division 1 of Part 10 of the *Taxation Administration Act 1996* before the repeal of the repealed appeal provisions by the amending Act.

**new review provisions** means Division 2 of Part 10 of the *Taxation Administration Act 1996* as inserted by the amending Act.

**repealed appeal provisions** means Division 2 of Part 10 of the [Taxation Administration Act 1996](#) as in force immediately before the commencement of the new review provisions.

**revenue amendments** means the amendments made to the [Taxation Administration Act 1996](#), the [Land and Environment Court Act 1979](#) and the [Land Tax Management Act 1956](#) by the amending Act.

### **33 Amending Act applies to certain existing tax objection determinations**

- (1) This clause applies to any existing tax objection determination in respect of which:
  - (a) an appeal to the Supreme Court could have been lodged under the repealed appeal provisions immediately before the repeal of those provisions by the amending Act, and
  - (b) no such appeal was lodged with the Supreme Court immediately before that repeal.
- (2) No appeal lies to the Supreme Court under the repealed appeal provisions in respect of an existing tax objection determination to which this clause applies.
- (3) However, the new review provisions apply to any such determination as if those provisions had been in force at the time the determination was made under the [Taxation Administration Act 1996](#).

### **34 Amending Act applies to certain appeal proceedings before Supreme Court**

- (1) This clause applies to an appeal in respect of an existing tax objection determination that was pending before (but not heard by) the Supreme Court under the repealed appeal provisions immediately before the repeal of those provisions by the amending Act.
- (2) The new review provisions apply to an appeal to which this clause applies instead of the repealed appeal provisions.
- (3) For the purposes of subclause (2), an appeal to which this clause applies is taken to be an application for review by the Supreme Court that was duly made under the new review provisions. Accordingly, the Supreme Court may determine or otherwise deal with the appeal as if it were an application for review made to it under the new review provisions.

### **35 Amending Act does not apply to or affect certain matters**

- (1) Subject to this Part, this Act and the revenue amendments do not apply to or affect:
  - (a) any determination of a taxpayer's objection made by the Chief Commissioner of State Revenue under the [Taxation Administration Act 1996](#) before the commencement of the revenue amendments, and

- (b) any right to appeal to the Land and Environment Court under section 38A of the *Land Tax Management Act 1956* that accrued before that commencement, and
- (c) any other proceedings that were instituted before the commencement of the revenue amendments and have not been finally determined by a court before that commencement.

- (2) Subject to this Part, any rules, regulations or other law that would have been applied to any determination, appeal right or proceedings referred to in subclause (1) had this Act and the amending Act not been enacted continue to apply to the objection, appeal right or proceedings as if this Act and the amending Act had not been enacted.

## Part 8 Provisions consequent on enactment of *Administrative Decisions Tribunal Amendment Act 2004*

### 36 Definitions

In this Part:

**amending Act** means the *Administrative Decisions Tribunal Amendment Act 2004*.

**appeal abolition date**, in relation to a right to appeal to an Appeal Panel, means:

- (a) in relation to appeals against decisions of the Tribunal under the *Architects Act 2003*—the day on which Part 4A of that Act (as inserted by the amending Act) commences, and
- (b) in relation to appeals against decisions of the Tribunal under the *Surveying Act 2002*—the day on which Part 6A of that Act (as inserted by the amending Act) commences, and
- (c) in relation to appeals against decisions of the Tribunal under the *Veterinary Practice Act 2003*—the day on which Part 9A of that Act (as inserted by the amending Act) commences, and
- (d) in relation to appeals against decisions of the Tribunal under the *Veterinary Surgeons Act 1986*—the day on which Part 6B of that Act (as inserted by the amending Act) commences.

**existing right to appeal** means a right to appeal to an Appeal Panel against a decision of the Tribunal that was in existence immediately before the appeal abolition date for that right (whether or not that right was exercised before that date).

### 37 Pending proceedings before an Appeal Panel

- (1) This clause applies to proceedings before an Appeal Panel of the Tribunal that:
  - (a) were instituted in exercise of an existing right to appeal, and

- (b) have not been finally determined by the Appeal Panel before the appeal abolition date for that appeal right.
- (2) Subject to clause 39, proceedings to which this clause applies are to be determined as if the amending Act had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had the amending Act not been enacted continue to apply to the proceedings as if the amending Act had not been enacted.

### **38 Existing rights of appeal to Appeal Panel**

- (1) This clause applies to an existing right to appeal that had not been exercised before the appeal abolition date.
- (2) No appeal lies to an Appeal Panel under an existing right to appeal to which this clause applies on or after the appeal abolition date, but lies instead to the Supreme Court under the new appeal provisions as if those provisions had been in force at the time the right to appeal first accrued.
- (3) For the purposes of this clause, the **new appeal provisions** are:
  - (a) in relation to appeals against decisions of the Tribunal under the [Architects Act 2003](#)—Part 4A of that Act (as inserted by the amending Act), and
  - (b) in relation to appeals against decisions of the Tribunal under the [Surveying Act 2002](#)—Part 6A of that Act (as inserted by the amending Act), and
  - (c) in relation to appeals against decisions of the Tribunal under the [Veterinary Practice Act 2003](#)—Part 9A of that Act (as inserted by the amending Act), and
  - (d) in relation to appeals against decisions of the Tribunal under the [Veterinary Surgeons Act 1986](#)—Part 6B of that Act (as inserted by the amending Act).
- (4) Despite anything in the [Supreme Court Act 1970](#) or the rules of court made under that Act, an appeal made to the Supreme Court pursuant to this clause must be made within the same period provided by or under this Act for an appeal to an Appeal Panel immediately before the relevant appeal abolition date.

### **39 Interlocutory matters**

- (1) Section 24A (as inserted by the amending Act) extends to proceedings that were pending before (but not yet heard by) the Tribunal immediately before the commencement of that section.
- (2) Section 113 (2A)–(2C) (as inserted by the amending Act) do not apply to the following:
  - (a) any right to appeal to an Appeal Panel that had accrued (but not been exercised) before the date on which those subsections commenced,

- (b) any appeal to an Appeal Panel that was pending before the Panel immediately before the date on which those subsections commenced.

## **Part 9 Provisions consequent on enactment of [Courts Legislation Amendment Act 2005](#)**

### **40 Constitution of Retail Leases Division of Tribunal**

- (1) The constitution of the Tribunal before the relevant day, for the purposes of exercising its functions under the [Retail Leases Act 1994](#) in relation to unconscionable conduct claims, by any of the following members, and the assignment of any such member to the Retail Leases Division of the Tribunal, is validated:
  - (a) a member who would have satisfied the requirements of clause 1 (3) (a) of Part 3B of Schedule 2, if the amendments made by the amending Act had been in force at the time of the assignment,
  - (b) a member who, at the time of the assignment, had substantial experience or qualifications in commercial law.
- (2) Anything done or omitted to be done before the relevant day by the Tribunal as so constituted, that would have been validly done or omitted if the Tribunal had been properly constituted, is also validated.
- (3) In this clause:

**amending Act** means the [Courts Legislation Amendment Act 2005](#).

**relevant day** means the date of commencement of Schedule 1 to the amending Act.

## **Part 10 Provisions consequent on enactment of [Legal Profession Act 2004](#) and [Legal Profession Amendment Act 2005](#)**

### **41 Pending proceedings**

- (1) Any proceedings pending before the Tribunal before the commencement of any amendment made to this Act by the [Legal Profession Amendment Act 2005](#) are to continue to be dealt with as if the [Legal Profession Act 2004](#) and the [Legal Profession Amendment Act 2005](#) had not been enacted.
- (2) (Repealed)

## **Part 11 Provisions consequent on enactment of [Administrative Decisions Tribunal Amendment Act 2008](#)**

### **42 Definitions**

In this Part:

**amending Act** means the [\*Administrative Decisions Tribunal Amendment Act 2008\*](#).

**substantive amendment** means any amendment made to this Act by the amending Act other than:

- (a) the amendments made by Schedule 1 [57] and [58] to the amending Act, or
- (b) amendments updating references to repealed or renamed legislation and any other amendments in the nature of statute law revision.

#### **43 Application of amendments**

- (1) Except to the extent that a provision of this Part provides otherwise, a substantive amendment does not apply to or otherwise affect:
  - (a) any applications (including applications for internal reviews) that were made, but not finally determined, before the commencement of the amendment, or
  - (b) any proceedings that were commenced, but not finally determined, before the commencement of the amendment.
- (2) The following substantive amendments extend to applications and proceedings that were made or commenced, but not finally determined, before the commencement of the substantive amendment concerned:
  - (a) the amendments made to sections 74 (3), 86 and 105,
  - (b) the amendment made to section 8,
  - (c) the amendments made to section 24A,
  - (d) the amendments made to sections 44 (1), 57 (1) and 67,
  - (e) the amendment made to section 73,
  - (f) the amendment that inserts section 79A,
  - (g) the amendments made to section 84,
  - (h) the amendment that inserts section 86A,
  - (i) the amendment made to section 88,
  - (j) the amendments made to section 102,
  - (k) the amendment made to section 104,
  - (l) the amendments made to sections 114 and 118C.
- (3) The substantive amendments made to section 71:

- (a) extend to proceedings that were commenced, but not finally determined, before the amendments commenced (**existing proceedings**), but
  - (b) do not affect any right or entitlement that an agent representing a party in existing proceedings had to represent the party immediately before the commencement of the amendments.
- (4) The substantive amendment made to section 74 (4):
  - (a) extends to proceedings that were commenced, but not finally determined, before the commencement of the amendment, but
  - (b) does not extend to proceedings where an objection has been made under section 74 (4) as in force before the commencement of the amendment.
- (5) The substantive amendment made to section 113 applies to appeals from appealable decisions of the Tribunal made on or after the day on which the amendment commences, but not to appealable decisions made before that day.
- (6) The substantive amendments made to clauses 4 and 5 of Part 3 of Schedule 2 extend to proceedings that were pending (but not yet heard) before the commencement of the amendments.
- (7) If a substantive amendment does not apply or extend to, or otherwise affect, an application, objection or proceedings, the application, objection or proceedings are to be determined or dealt with under this Act as if the substantive amendment had not been enacted.

#### **44 Abolition of Subcommittees of Rule Committee**

- (1) Each Subcommittee for a Division established by the Rule Committee under section 97 is abolished on the day on which that section is repealed by the amending Act (the **abolition day**).
- (2) Any person holding office as a member of any such Subcommittee immediately before the abolition day:
  - (a) ceases to hold office as such on that day, and
  - (b) is not entitled to any remuneration or compensation because of the loss of that office.

#### **45 Interim rules of the Tribunal taken to be made by Rule Committee**

- (1) On and from the repeal of the *Administrative Decisions Tribunal Rules (Transitional) Regulation 1998* by the amending Act, the provisions set out in Schedule 1 to that Regulation as in force immediately before that repeal:
  - (a) are taken to be and have effect as if they were rules of the Tribunal that had been

made by the Rule Committee under this Act, and

(b) may be cited as the *Administrative Decisions Tribunal Rules 1998*,

and may be renamed, amended and repealed accordingly.

(2) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the rules taken to have been made by operation of this clause.

#### **46 Existing regulations not affected**

The amendment made to section 145 by the amending Act does not affect the continued validity of any regulations that are in force immediately before the commencement of the amendment.

### **Part 12 Provision consequent on enactment of *Courts and Other Legislation Amendment Act 2009***

#### **47 Appeals against interlocutory decisions**

Section 113 (2B) (as substituted by the *Courts and Other Legislation Amendment Act 2009*) does not apply to an application for leave to appeal against an interlocutory decision made before the substitution.

### **Part 13 Provision consequent on enactment of *Courts Legislation Amendment Act 2010***

#### **48 Constitution of Tribunal in Community Services Division**

The amendment made to clause 3 of Part 1 of Schedule 2 by the *Courts Legislation Amendment Act 2010* extends to proceedings that were pending (but not yet heard) before the commencement of the amendment.

### **Part 14 Provision consequent on enactment of *Courts and Crimes Legislation Further Amendment Act 2010***

#### **49 Applications to the Tribunal for review**

An amendment made to section 55 by the *Courts and Crimes Legislation Further Amendment Act 2010* applies only to applications made to the Tribunal for review of a reviewable decision after the commencement of the amendment.

### **Schedules 2-4 (Repealed)**

### **Schedule 5**

(Renumbered as Schedule 1)