

Administrative Decisions Tribunal Amendment Act 2008 No 77

[2008-77]



New South Wales

Status Information

Currency of version

Repealed version for 10 December 2008 to 1 January 2009 (accessed 1 November 2024 at 12:24)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Repeal**

The Act was repealed by sec 6 (1) of this Act with effect from 2.1.2009.

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 Tribunal Amendment Act 2008 No 77



New South Wales

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Administrative Decisions Tribunal Amendment Act 2008 No 77



New South Wales

An Act to amend the *Administrative Decisions Tribunal Act 1997* and certain other legislation in connection with the constitution, functions and procedure of the Administrative Decisions Tribunal; and for other purposes.

1 Name of Act

This Act is the *Administrative Decisions Tribunal Amendment Act 2008*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (2) and (3).
- (2) Sections 1-3, 5 (1) and 6 and Schedule 1 [57] and [58] commence on the date of assent to this Act.
- (3) Schedule 2.2 commences immediately before the repeal of the *Administrative Decisions Tribunal Rules (Transitional) Regulation 1998* by section 5 (2).

3 Amendment of *Administrative Decisions Tribunal Act 1997 No 76*

The *Administrative Decisions Tribunal Act 1997* is amended as set out in Schedule 1.

4 Amendment of other Acts and Regulations

The Acts and Regulations specified in Schedule 2 are amended as set out in that Schedule.

5 Repeal of certain legislation relating to the Administrative Decisions Tribunal

- (1) The *Administrative Decisions Tribunal Legislation Further Amendment Act 1998* is repealed.
- (2) The *Administrative Decisions Tribunal Rules (Transitional) Regulation 1998* is repealed.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of **Administrative Decisions Tribunal Act 1997**

(Section 3)

[1] Section 8 What is a reviewable decision?

Omit the note to the section. Insert at the end of the section:

- (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 a reviewable decision if the Tribunal has jurisdiction under an enactment to review the conduct or refusal, 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 a reviewable decision includes a reference to an administrator engaging or refusing to engage in the conduct.

Note—

Section 38 provides for the circumstances in which the Tribunal has jurisdiction to review a decision of an administrator.

The jurisdiction conferred on the Tribunal by section 55 of the *Privacy and Personal Information Protection Act 1998* is an example of jurisdiction to review conduct.

[2] Section 10 Notes

Omit “Charts and other notes”. Insert instead “Notes”.

[3] Section 24A Constitution of Tribunal for exercise of interlocutory functions

Omit “who is assigned by the President for the purpose of exercising the function” from section 24A (2) (a).

[4] Section 24A (2) (b)

Omit “who is assigned by the President or (subject to any direction of the President) the Divisional Head for the purpose of exercising the function”.

[5] Section 24A (2A)

Insert after section 24A (2):

(2A) The President, or relevant Divisional Head (subject to any direction of the President), may give directions as to the members who are to constitute the Tribunal for the purposes of exercising any of its interlocutory functions.

[6] Section 26 Annual report

Insert after section 26 (2):

(3) If a House of Parliament is not sitting when the Minister seeks to lay the report before it, the Minister is to cause a copy of the report to be presented to the Clerk of that House of Parliament.

(4) The report:

(a) is, on presentation and for all purposes, taken to have been laid before the House, and

(b) may be printed by authority of the Clerk of the House, and

(c) if so printed, is taken to be a document published by or under the authority of the House, and

(d) is to be recorded:

(i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and

(ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the copy of the report by the Clerk.

[7] Section 27 Appointment of Registrar and staff

Omit “Part 2 of the *Public Sector Management Act 1988*”.

Insert instead “Chapter 1A of the *Public Sector Employment and Management Act 2002*”.

[8] Section 41 Summary of the original decision-making process

Omit the chart at the end of the section.

[9] Section 44 Late applications to Tribunal

Omit “in writing” from section 44 (1).

[10] Section 44 (1A)

Insert after section 44 (1):

(1A) An application by an interested person under subsection (1) must be in writing unless the Tribunal dispenses with the requirement.

[11] Section 47 Summary of the review process for reviewable decision

Omit the chart at the end of the section.

[12] Section 53 Internal reviews

Omit “As soon as practicable (or in any event within 21 days) after the completion of an internal review of a decision” from section 53 (6).

Insert instead “Within 21 days after the application for the internal review is lodged (or such other period as the administrator and person agree on)”.

[13] Section 55

Omit the section. Insert instead:

55 When can an application for a review be made?

- (1) A person may apply to the Tribunal for a review of a reviewable decision only if:
- (a) the application is made by an interested person, and
 - (b) where the person was entitled to seek an internal review of the decision—the person has duly applied for such a review and the review is taken to have been finalised under section 53 (9), and
 - (c) the application is made in the manner prescribed by the rules of the Tribunal, and
 - (d) the application is made within the period or by the time prescribed by or under the enactment under which the application is made or, if no such period or time is prescribed, the default application period for the decision.

Note—

1 Section 4 defines *interested person* to mean a person who is entitled under an enactment to make an application to the Tribunal for an original decision or a review of a reviewable decision (as the case may be).

2 Section 53 (9) provides that an internal review is taken to be finalised if:

- (a) the applicant for the review is notified of the outcome of the review, 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).

3 A person may not have an entitlement to seek an internal review because such an entitlement has been excluded by regulations made for the purposes of section 53 (11) or by an enactment.

(2) The **default application period** for a reviewable decision is:

(a) in the case where the applicant has duly applied for an internal review of the reviewable decision—the period of 28 days after the day on which the internal review is taken to have been finalised under section 53 (9), or

(b) in any other case—the period of 28 days after:

- (i) if the applicant has requested reasons under section 49 for the reviewable decision—the day on which the applicant 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 applicant has not requested reasons under section 49—the day on which the applicant was notified of the making of the reviewable decision.

(3) Despite subsections (1) (b) and (d) and (2), the Tribunal may deal with an application for the review of a 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 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 reviewable decision of the administrator concerned.

(4) 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 (3), 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 (3) (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.

[14] Section 57 Late applications to Tribunal

Omit “in writing” from section 57 (1).

[15] Section 57 (1A)

Insert after section 57 (1):

- (1A) An application by an interested person under subsection (1) must be in writing unless the Tribunal dispenses with the requirement.

[16] Section 57 (3)

Omit the subsection. Insert instead:

- (3) In this section, **late application** means an application not made within the period or time referred to in section 55 (1) (d).

[17] Section 58 Duty of administrator to lodge material documents with Tribunal where decision reviewed

Insert after section 58 (1) (a):

- (a1) a copy of any statement of reasons for a decision in an internal review conducted in respect of the reviewable decision, and

[18] Section 67 Parties to proceedings before Tribunal

Omit section 67 (4). Insert instead:

- (4) The Tribunal may, by order, make a person who is not a party to proceedings (other than proceedings on an internal appeal) a party to the proceedings if the Tribunal considers that the person ought to have been joined as a party or is a person whose joinder is necessary to the determination of all matters in dispute in the proceedings.

[19] Section 71 Representation of parties

Omit section 71 (1) (b). Insert instead:

- (b) be represented by an Australian legal practitioner, or

- (b1) with the leave of the Tribunal given under subsection (2), be represented by an agent who is not an Australian legal practitioner, or

[20] Section 71 (2)-(3A)

Omit section 71 (2) and (3). Insert instead:

- (2) A person who is not an Australian legal practitioner may, with the consent of a party to proceedings, apply to the Tribunal for leave to represent the party as the party's agent in the proceedings or in part of the proceedings.
- (3) The Tribunal may:
- (a) grant or refuse leave on an application made under subsection (2), and
 - (b) revoke any leave that has been granted.
- (3A) The rules of the Tribunal may make provision for or with respect to the following matters:
- (a) the circumstances in which it is, or is not, appropriate for the Tribunal to grant leave for an agent to represent a party,
 - (b) the circumstances in which it is, or is not, appropriate for the Tribunal to revoke any such leave.

Note—

Section 91A provides that the President may issue practice notes for the Tribunal in relation to any matter with respect to which rules may be made.

[21] Section 71 (5)

Omit the subsection.

[22] Section 73 Procedure of the Tribunal generally

Omit section 73 (5) (g) and (h). Insert instead:

- (g) may dismiss at any stage any proceedings before it in any of the following circumstances:
- (i) if the applicant (or, if there is more than one applicant, each applicant) withdraws the application to which the proceedings relate,
 - (ii) if the Tribunal considers that the proceedings are frivolous or vexatious or otherwise misconceived or lacking in substance,
 - (iii) if the applicant (or, if there is more than one applicant, each applicant) has

failed to appear in the proceedings,

(iv) if the Tribunal considers that there has been a want of prosecution of the proceedings, and

(h) may reinstate proceedings that have been dismissed because of an applicant's failure to appear if the Tribunal considers that there is a reasonable explanation for that failure.

[23] Section 74 Preliminary conferences

Omit section 74 (3).

[24] Section 74 (4) (b)

Omit the paragraph. Insert instead:

(b) any member or assessor who presided over a preliminary conference in respect of the proceedings may participate as a member of the Tribunal determining the proceedings, or as an assessor in those proceedings, unless:

(i) a party to the preliminary conference objects to the member or assessor further participating in the proceedings, and

(ii) the party demonstrates in that objection that the further participation of the member or assessor is likely to prejudice the party's case.

[25] Section 79A

Insert after section 79:

79A References of questions of law to Supreme Court

(1) The Tribunal in proceedings at first instance may, of its own motion or at the request of a party, refer a question of law arising in the proceedings to the Supreme Court for the opinion of the Court if the President has consented in writing to the question being referred.

(2) For the purposes of this section, ***proceedings at first instance*** are proceedings in the Tribunal for an original decision or the review of a reviewable decision.

(3) The Supreme Court has jurisdiction to hear and determine any question of law referred to it under this section.

(4) If a question of law arising in proceedings has been referred to the Supreme Court under this section, the Tribunal is not:

(a) to give a decision in the proceedings to which the question is relevant while the reference is pending, or

(b) to proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.

(5) Subsection (4) extends to an Appeal Panel of the Tribunal determining an appeal from a decision of the Tribunal in proceedings in which a question of law has been referred to the Supreme Court under this section.

[26] Section 84 Issue of summons

Insert “if the Registrar considers it appropriate to do so in the circumstances,” before “on the application” in section 84 (1) (a).

[27] Section 84 (1)

Insert at the end of the subsection:

Note—

The Registrar may refuse to issue a summons on the application of a party if the Registrar considers that it is not appropriate for a summons to be issued.

[28] Section 84 (6)

Insert after section 84 (5):

(6) The Registrar may give directions with respect to access to documents or other things produced pursuant to a summons if no objection has been made to the summons.

[29] Section 86 Powers when proceedings settled

Omit “settlement, and” from section 86 (1) (b). Insert instead “settlement.”

[30] Section 86 (1) (c)

Omit the paragraph.

[31] Section 86 (2)

Omit the subsection. Insert instead:

(2) The Tribunal may dismiss the application that is the subject of the proceedings if it is not satisfied that it would have the power to make a decision in the terms of the agreed settlement or in terms consistent with the terms of the agreed settlement.

[32] Section 86A

Insert after section 86:

86A Matters that may be taken into account when exercising settlement powers

- (1) This section applies to the exercise by the Tribunal, a member or an assessor of any of the following powers (a **settlement power**) conferred on the Tribunal or person:
 - (a) the power of the Tribunal, a member or an assessor to make a determination under section 74 to which the parties to the proceedings agree,
 - (b) the power of the Tribunal to make an order under section 86 giving effect to any agreed settlement by the parties to the proceedings,
 - (c) the power of the Tribunal to make an order under section 105 giving effect to any agreement or arrangement arising out of a mediation session under Part 4.
- (2) When deciding whether to exercise a settlement power, the Tribunal, member or assessor (as the case requires) may take into account the interests of any vulnerable person (whether or not a party to the proceedings) if the Tribunal, member or assessor considers that:
 - (a) the person may be directly affected by the exercise of the power because the person is a party to, or the subject of, the proceedings concerned, and
 - (b) it is appropriate to do so in the circumstances.
- (3) A **vulnerable person** is:
 - (a) a minor, or
 - (b) a person who is totally or partially incapable of representing his or her interests in proceedings before the Tribunal because the person is intellectually, physically, psychologically or sensorily disabled, of advanced age, a mentally incapacitated person or otherwise disabled.
- (4) Nothing in this section limits the matters to which the Tribunal, a member or an assessor may have regard when deciding whether to exercise a settlement power.

[33] Section 88 Costs

Omit section 88 (1). Insert instead:

- (1) Each party to proceedings before the Tribunal is to bear the party's own costs in the proceedings, except as provided by this section.
- (1A) Subject to the rules of the Tribunal and any other Act or law, the Tribunal may award costs in relation to proceedings before it, but only if it is satisfied that it is fair to do so having regard to the following:
 - (a) whether a party has conducted the proceedings in a way that unnecessarily disadvantaged another party to the proceedings by conduct such as:
 - (i) failing to comply with an order or direction of the Tribunal without reasonable excuse, or
 - (ii) failing to comply with this Act, the regulations, the rules of the Tribunal or any relevant provision of the enactment under which the Tribunal has jurisdiction in relation to the proceedings, or
 - (iii) asking for an adjournment as a result of a failure referred to in subparagraph (i) or (ii), or
 - (iv) causing an adjournment, or
 - (v) attempting to deceive another party or the Tribunal, or
 - (vi) vexatiously conducting the proceedings,
 - (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the proceedings,
 - (c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law,
 - (d) the nature and complexity of the proceedings,
 - (e) any other matter that the Tribunal considers relevant.

[34] Section 93 Functions of Rule Committee

Omit section 93 (2).

[35] Section 97 Subcommittees of Rule Committee

Omit the section.

[36] Section 98 Public consultation and rule review

Omit the section.

[37] Section 102 Referral by Tribunal

Omit “referral, and” from section 102 (1) (b). Insert instead “referral.”.

[38] Section 102 (1) (c)

Omit the paragraph.

[39] Section 104 Costs of mediation and neutral evaluation

Insert “unless the Tribunal decides to bear the costs itself” after “Tribunal”.

[40] Section 105 Agreements and arrangements arising from mediation sessions

Omit section 105 (2).

[41] Section 113 Right to appeal against appealable decisions of the Tribunal

Omit section 113 (3) (a). Insert instead:

- (a) within 28 days after the Tribunal gives the party oral reasons or written reasons for the appealable decision (whichever is the later), or

[42] Section 114 Appeals on questions of law

Insert “the whole or any part of” after “remitting” in section 114 (2) (b).

[43] Section 118C Appeal Panel to determine external appeals

Insert “the whole or any part of” after “remitting” in section 118C (2) (b).

[44] Section 145 Regulations

Omit section 145 (2). Insert instead:

- (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) an application for an original decision or a review of a reviewable decision or for an internal or external appeal,
 - (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 referred to mediation or neutral evaluation under this Act,
 - (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.
- (2A) Fees of the kind referred to in subsection (2) (a) are not payable by the Crown, or by any person acting on behalf of the Crown, with respect to any civil proceedings to which any of the following persons or bodies is a party:
- (a) the Crown,
 - (b) any Minister of the Crown,
 - (c) any statutory body whose expenditure is paid out of the Consolidated Fund,
 - (d) any person or body prescribed by the regulations or belonging to a class of persons or bodies so prescribed.
- (2B) Subsection (2A) does not prevent the recovery by the Crown or any such person or body of any fees that would, had they been paid by the Crown or any such person or body, have been so recoverable.

[45] Schedule 2 Composition and functions of Divisions

Omit "*Adoption of Children Act 1965*" from clause 2 of Part 1.

Insert instead "*Adoption Act 2000*".

[46] Schedule 2, Part 1

Omit "section 40" from clause 3 (1). Insert instead "section 28".

[47] Schedule 2, Part 3

Insert at the end of clause 1 (2) (c):

, and

- (d) at least one Deputy President (other than the Divisional Head), but only after the Minister has consulted with the Bar Council and the Law Society Council concerning the assignment, and
- (e) at least one non-presidential judicial member who is a current, retired or acting eligible judicial officer.

[48] Schedule 2, Part 3

Omit clause 1 (4).

[49] Schedule 2, Part 3

Omit “1 judicial member who is a judge of the District Court or Supreme Court” wherever occurring in clause 4 (1) (a) and (b).

Insert instead “1 senior judicial member”.

[50] Schedule 2, Part 3

Insert in alphabetical order in clause 5:

eligible judicial officer means any of the following:

- (a) a Judge of the Supreme Court,
- (b) a Judge of the District Court,
- (c) a judicial officer of any other court or tribunal having an equivalent status (for the purposes of Part 9 of the *Constitution Act 1902*) to the Supreme Court or District Court.

senior judicial member means any of the following members assigned to the Legal Services Division:

- (a) the Divisional Head,
- (b) a Deputy President assigned to the Division in accordance with clause 1 (2) (d) of this Part,
- (c) a non-presidential judicial member who is a current, retired or acting eligible judicial officer.

[51] Schedule 2, Part 3

Omit the definition of ***licensee member*** from clause 5.

[52] Schedule 2, Part 4

Omit “*Reform*” from “*Education Reform Act 1990*” in clause 2 (1).

[53] Schedule 2, Part 4, clause 4 Education Act 1990 (Reviewable decisions)

Omit “*Reform*” from “*Education Reform Act 1990*”.

[54] Schedule 3 Provisions relating to members of Tribunal

Omit clause 8A. Insert instead:

8A 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 Schedule 2 for participation in the proceedings (a ***participation qualification***) 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 of the Tribunal 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.

[55] Schedule 3, clause 15 (1)

Omit "*Public Sector Management Act 1988*".

Insert instead "*Public Sector Employment and Management Act 2002*".

[56] Schedule 4 Provisions relating to assessors of Tribunal

Omit "*Public Sector Management Act 1988*" from clause 4 (1).

Insert instead "*Public Sector Employment and Management Act 2002*".

[57] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Administrative Decisions Tribunal Amendment Act 2008

[58] Schedule 5, Part 11

Insert after Part 10:

**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.

Schedule 2 Amendment of other Acts and Regulations

(Section 4)

2.1 Administrative Decisions Tribunal (General) Regulation 2004

[1] Clause 8 Fees not payable by Crown

Omit the clause.

[2] Part 4 Rules of the Tribunal

Omit the Part.

[3] Clause 13 Amendment of Act

Omit the clause.

[4] Clause 14 Transitional provision: references to senior judicial members of former Equal Opportunity Tribunal

Omit the clause.

2.2 Administrative Decisions Tribunal Rules (Transitional) Regulation

1998

[1] Schedule 1 Administrative Decisions Tribunal (Interim) Rules 1998

Omit “(Interim)” from rule 1.

[2] Schedule 1, rule 15 (3)

Omit the subrule.

[3] Schedule 1, rule 20

Omit the second sentence of the note at the end of the rule.

2.3 Anti-Discrimination Act 1977 No 48

[1] Section 98 Fees or rewards for representing parties

Omit section 98 (1), (2) and (4).

[2] Section 107 Dismissal of proceedings

Omit the section.

[3] Section 108 Order or other decision of Tribunal

Omit “\$40,000” wherever occurring in section 108 (2) (a), (6) and (7). Insert instead “\$100,000”.

[4] Section 110

Omit the section. Insert instead:

110 Tribunal may award costs

The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings before the Tribunal in relation to a complaint.

[5] Section 126

Omit the section. Insert instead:

126 Granting of exemptions by President

(1) **Granting of exemptions** The President may, by order published in the Gazette, grant an exemption from this Act or the regulations or such parts of this Act or the regulations as are specified in the order in respect of:

- (a) a person or class of persons, or
 - (b) an activity or class of activity, or
 - (c) any other matter or circumstance specified in the order.
- (2) An exemption is subject to such conditions, if any, as may be specified in the order.
- (3) **Duration of exemptions** An exemption remains in force for the period specified in the order, which cannot be more than 10 years.
- (4) **Renewal of exemptions** The President may renew any exemption, for no more than 10 years at a time, by making a new order in accordance with subsection (1).
- (5) **Variation and revocation of exemptions** The power to make an order conferred by this section includes power, exercisable in the same manner and subject to the same conditions, to vary or revoke any order so made.
- (6) **Applications in relation to exemptions** The President may grant, renew, vary or revoke an exemption only on the written application of a person. The regulations may make provision for or with respect to the making of such applications.
- (7) In deciding whether to grant or refuse an application, the President may consult with such persons or bodies as the President considers appropriate in the circumstances.
- (8) The President must make a decision on any such application within the period of 60 days after the application is made.
- (9) **Reviews of exemption decisions by Tribunal** An affected person may apply to the Tribunal for a review of any of the following decisions (**exemption decisions**):
- (a) a decision to refuse to grant an exemption,
 - (b) a decision to refuse to renew an exemption,
 - (c) a decision to grant an exemption (whether or not subject to conditions),
 - (d) a decision to vary or revoke an order granting an exemption.
- (10) For the purposes of subsection (9), a person is an **affected person** in relation to an exemption decision if:
- (a) the person applied for the decision or for the grant or renewal of the exemption to which the decision relates, or
 - (b) the person is otherwise directly affected by the decision.

(11) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to any exemption decision.

[6] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Administrative Decisions Tribunal Amendment Act 2008 (to the extent that it amends this Act)

[7] Schedule 1

Insert at the end of the Schedule (with appropriate Part and clause numbers):

Part Administrative Decisions Tribunal Amendment Act 2008

Definition

In this Part:

amending Act means the *Administrative Decisions Tribunal Amendment Act 2008*.

Legal representation

Section 98, as in force immediately before its amendment by the amending Act, continues to apply to any proceedings in the Tribunal that were commenced before the commencement of that amendment.

Dismissal of proceedings

Section 107, as in force immediately before its repeal by the amending Act, continues to apply in relation to any proceedings in the Tribunal that were commenced before the repeal of that section.

Increase in maximum damages amount for section 108

- (1) The amendment made to section 108 by the amending Act does not apply to or in respect of anything done or omitted to be done before the commencement of the amendment.
- (2) Accordingly, section 108 as in force immediately before its amendment by the amending Act continues to apply to or in respect of anything done or omitted to be done before the commencement of the amendment.

Costs

Section 110, as substituted by the amending Act, extends to proceedings in the Tribunal that were commenced, but not finally determined, before that substitution.

Existing exemptions under section 126

- (1) An exemption that is in force under section 126 immediately before the substitution of that section by the amending Act (a ***continued exemption***) is taken to be an exemption granted under section 126 as substituted.
- (2) A continued exemption ceases to be in force when the period for its duration specified in the order granting the exemption expires, unless it is sooner revoked.
- (3) A continued exemption may be renewed, varied or revoked by the President under section 126 (as substituted by the amending Act).
- (4) Nothing in this clause authorises or permits any person to apply to the Tribunal for the review of any decision of the Minister or the Board made in relation to a continued exemption before the substitution of section 126.

2.4 Anti-Discrimination Regulation 2004

[1] Clause 5 Matters to be considered in relation to exemption orders

Omit “Minister and the Board” from clause 5 (1).

Insert instead “President”.

[2] Clause 5 (3)

Omit “Minister or the Board” and “their”.

Insert instead “President” and “the President’s”, respectively.

2.5 Building Professionals Act 2005 No 115

[1] Section 36 Appeals to Appeal Panel against action taken by Tribunal

Omit the section.

[2] Part 3A

Insert after Part 3:

Part 3A Appeals against decisions of Tribunal

44A Definition

In this Part:

accreditation decision means any decision or finding made, or action taken, by the Tribunal in proceedings commenced by an application made under this Act (whether made in exercise of its review jurisdiction or original jurisdiction under the *Administrative Decisions Tribunal Act 1997*).

44B Application of *Administrative Decisions Tribunal Act 1997*

The provisions of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* do not apply to any accreditation decision.

Note—

Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* provides that certain decisions of the Tribunal may be appealed to an Appeal Panel of the Tribunal.

44C Right to appeal to Supreme Court

- (1) A party to any proceedings in which the Tribunal has made an accreditation decision may appeal to the Supreme Court against the decision of the Tribunal.
- (2) An appeal under this Part to the Supreme Court:
 - (a) may be made on any question of law, and
 - (b) with the leave of the Supreme Court, may extend to a review of the merits of the decision concerned.
- (3) Despite subsections (1) and (2), an appeal does not lie to the Supreme Court under this Part against any of the following decisions of the Tribunal except by leave of the Supreme Court:
 - (a) an interlocutory decision,
 - (b) a decision made with the consent of the parties,
 - (c) a decision as to costs.
- (4) The Tribunal (or any of the members constituting the Tribunal) cannot be made a party to an appeal under this Part. Rules of court made under the *Supreme Court Act 1970* may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings from which the appeal is brought was the appellant).
- (5) An appeal to the Supreme Court under this Part must be made:

- (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
- (b) within such further time as the Supreme Court may allow.

44D Appeals on questions of law

- (1) If an appeal under this Part is restricted to questions of law, the Supreme Court is to determine the appeal and may make such orders as it thinks appropriate in light of its determination.
- (2) The orders that may be made by the Supreme Court on appeal include (but are not limited to):
 - (a) an order affirming or setting aside the decision of the Tribunal, and
 - (b) an order remitting the whole or any part of the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

44E Appeals on the merits

- (1) If an appeal under this Part extends to a review of the merits of an accreditation decision, the Supreme Court 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) The Supreme Court may exercise all the functions that are conferred or imposed by or under this Act or the *Administrative Decisions Tribunal Act 1997* on the Tribunal to make the decision concerned.
- (3) In determining any such appeal, the Supreme Court may decide:
 - (a) to affirm the decision, or
 - (b) to vary the decision, or
 - (c) to set aside the decision and make a decision in substitution for the decision it set aside.

44F Appeal does not stay decision appealed against

Subject to any interlocutory order made by the Supreme Court, an appeal under this Part does not affect the operation of the accreditation decision appealed against or prevent the taking of action to implement the decision.

[3] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Administrative Decisions Tribunal Amendment Act 2008 (to the extent that it amends this Act)

[4] Schedule 2, Part 4

Insert at the end of the Schedule:

**Part 4 Provisions consequent on enactment of
Administrative Decisions Tribunal Amendment Act 2008**

11 Definitions

In this Part:

amending Act means the *Administrative Decisions Tribunal Amendment Act 2008*.

appeal abolition date means the day on which Part 3A (as inserted by the amending Act) commences.

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

12 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 13, 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.

13 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 of the Tribunal 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 the provisions of Part 3A (as inserted by the amending Act).
- (4) Despite anything in the *Supreme Court Act 1970* or the *Civil Procedure Act 2005* or any rules of court made under either of those Acts, an appeal made to the Supreme Court pursuant to this clause must be made within the same period provided by or under this Act or the *Administrative Decisions Tribunal Act 1997* for an appeal to an Appeal Panel of the Tribunal immediately before the appeal abolition date.

2.6 Explosives Act 2003 No 39

Section 24 Review of decisions by Administrative Decisions Tribunal

Omit the second sentence of section 24 (5).

2.7 Supreme Court Act 1970 No 52

[1] Section 48 Assignment to the Court of Appeal

Insert “an Appeal Panel or” before “the Legal Services Division” in subparagraph (viii) of the definition of **specified tribunal** in section 48 (1) (a).

[2] Section 48 (2) (ha)

Insert after section 48 (2) (h):

(ha) for determining any question of law referred to the Court for its opinion under the *Administrative Decisions Tribunal Act 1997*,

[3] Fourth Schedule Savings and transitional provisions

Insert at the end of clause 1 (2):

Administrative Decisions Tribunal Amendment Act 2008, but only in relation to the amendments made to this Act

[4] Fourth Schedule

Insert at the end of the Schedule (with appropriate Part and clause numbers):

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

Application of amendments

Each amendment made to section 48 by the [Administrative Decisions Tribunal Amendment Act 2008](#) applies to proceedings commenced in the Court after the commencement of the amendment concerned.