

**Authorised Version No. 119**  
**Victorian Civil and Administrative Tribunal**  
**Act 1998**

**No. 53 of 1998**

Authorised Version incorporating amendments as at  
29 March 2019

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**Authorised Version No. 119**  
**Victorian Civil and Administrative Tribunal**  
**Act 1998**

**No. 53 of 1998**

Authorised Version incorporating amendments as at  
29 March 2019

**The Parliament of Victoria enacts as follows:**

**Part 1—Preliminary**

**1 Purpose**

The purpose of this Act is to establish a Victorian Civil and Administrative Tribunal.

**2 Commencement**

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 31 December 1999, it comes into operation on that day.

**3 Definitions**

In this Act—

\* \* \* \* \*

**S. 3 def. of  
*acting judge*  
inserted by  
No. 14/2006  
s. 21,  
repealed by  
No. 5/2013  
s. 69(a).**

*application* means application to the Tribunal;

*applicant* means—

- (a) a person who makes an application; or
- (b) a person who requests or requires a matter to be referred to the Tribunal;

*Business Licensing Authority* means Business Licensing Authority established under Part 2 of the **Business Licensing Authority Act 1998**;

*Chief Judge* means Chief Judge of the County Court;

*Chief Justice* means Chief Justice of the Supreme Court;

*child* means a person under 18 years of age;

*decision-maker* means a person who makes, or is deemed to have made, a decision under an enabling enactment;

*Deputy President* means Deputy President of the Tribunal;

*Director* means the Director within the meaning of the **Australian Consumer Law and Fair Trading Act 2012**;

S. 3 def. of *Director* substituted by No. 17/1999 s. 49(1), amended by No. 21/2012 s. 239(Sch. 6 item 46.1).

*enabling enactment* means an enactment by or under which jurisdiction is conferred on the Tribunal;

*enactment* means—

- (a) an Act; or
- (b) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**;

*expert witness* means a person who has specialised knowledge based on the person's training, study or experience;

S. 3 def. of *expert witness* inserted by No. 23/2014 s. 4.

*full-time member* means—

S. 3 def. of *full-time member* inserted by No. 62/2014 s. 46(b).

- (a) the President or a Vice President, other than a Vice President who is undertaking the duties of a Vice President on a part-time or sessional basis under section 11A(2A); or
- (b) a Deputy President, senior member or ordinary member who is appointed on a non-sessional basis and who is not undertaking the duties of office on a part-time basis;

*function* includes jurisdiction, power, duty and authority;

*inquiry* means an inquiry conducted by the Tribunal under an enabling enactment, other than an inquiry under section 141 of the **Equal Opportunity Act 2010**;

S. 3 def. of *inquiry* amended by No. 16/2010 s. 205(a) (as amended by No. 26/2011 s. 30(1)).

\* \* \* \* \*

S. 3 def. of *insolvent under administration* repealed by No. 4/2008 s. 32(Sch. item 35).

*interim order* means an order of an interim or interlocutory nature;

S. 3 def. of *interim order* inserted by No. 62/2014 s. 25.

*judicial member* means the President or a Vice President;

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Part 1—Preliminary

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S. 3 def. of  
*legal  
practitioner*  
substituted by  
No. 18/2005  
s. 18(Sch. 1  
item 115.1),  
repealed by  
No. 17/2014  
s. 160(Sch. 2  
item 105.1).

\* \* \* \* \*

*member*, in relation to the Tribunal, means the President, a Vice President, a Deputy President, a senior member or an ordinary member;

S. 3 def. of  
*member of  
Victoria Police  
personnel*  
inserted by  
No. 37/2014  
s. 10(Sch.  
item 177.1).

*member of Victoria Police personnel* has the same meaning as in the **Victoria Police Act 2013**;

*monetary order* means an order of the Tribunal requiring the payment of money, including a fine or penalty;

*non-judicial member* means a member other than the President or a Vice President;

*non-monetary order* means an order of the Tribunal other than a monetary order;

*order* of the Tribunal includes interim order of the Tribunal;

*ordinary member* means a person appointed as a member of the Tribunal under section 14;

S. 3 def. of  
*part-time  
member*  
repealed by  
No. 62/2014  
s. 46(c).

\* \* \* \* \*

*part-time service arrangement* means an arrangement entered into under section 18A;

S. 3 def. of *part-time service arrangement* inserted by No. 62/2014 s. 46(a).

*police officer* has the same meaning as in the **Victoria Police Act 2013**;

S. 3 def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 177.1).

*President* means President of the Tribunal;

*presidential member* means the President, a Vice President or a Deputy President;

*presiding member*, in a proceeding, means—

- (a) if the Tribunal in that proceeding is constituted by a single member—that member; or
- (b) in any other case—the member who presides in that proceeding, as determined in accordance with section 65;

*proceeding* means a proceeding in the Tribunal, including—

- (a) an inquiry conducted by the Tribunal, including an inquiry under section 141 of the **Equal Opportunity Act 2010**; or
- (b) a compulsory conference under section 83; or
- (c) a mediation under section 88; or
- (d) a rehearing or reassessment under Part 6 of the **Guardianship and Administration Act 1986**;

S. 3 def. of *proceeding* amended by Nos 78/2000 s. 11(1)(a), 43/2006 s. 47(Sch. item 8.1), substituted by No. 16/2010 s. 205(b) (as amended by No. 26/2011 s. 30(2)).

S. 3 def. of  
*reserve judge*  
inserted by  
No. 51/2000  
s. 12(a),  
substituted by  
No. 5/2013  
s. 69(b).

*professional advocate* has the meaning given in section 62(8);

*reserve judge* means—

- (a) in relation to the Supreme Court, a reserve Judge within the meaning of the **Constitution Act 1975**;
- (b) in relation to the County Court, a reserve judge within the meaning of the **County Court Act 1958**;

*rules* mean rules made by the Rules Committee under section 157;

*senior member* means a person appointed as a member of the Tribunal under section 13;

*Tribunal* means Victorian Civil and Administrative Tribunal established by Part 2;

S. 3 def. of  
*Vice President*  
amended by  
No. 51/2000  
s. 12(b).

*Vice President* means Vice President of the Tribunal, including a Vice President appointed under section 11A.

#### 4 When does a person make a decision?

- (1) For the purposes of this Act or an enabling enactment, a person makes a decision if the person—
  - (a) makes, suspends, revokes or refuses to make a decision, order, determination or assessment (including a decision not to make a decision, order, determination or assessment);
  - (b) gives, suspends, revokes or refuses to give a certificate, direction, approval, consent or permission;

- (c) issues, suspends, revokes or refuses to issue a licence, authority or other instrument;
  - (d) imposes a condition or restriction;
  - (e) amends or varies any of the things referred to in paragraph (a), (b), (c) or (d);
  - (f) makes a declaration, demand, direction or requirement;
  - (g) retains or refuses to deliver up an article;
  - (h) does or refuses to do any other act or thing.
- (2) For the purposes of this Act or an enabling enactment—
- (a) a decision is made under an enactment if it is made in the exercise or purported exercise of a function conferred or imposed by or under that enactment;
  - (b) a decision that purports to be made under an enactment is deemed to be a decision made under that enactment even if the decision was beyond the power of the decision-maker;
  - (c) a refusal by a decision-maker to make a decision under an enactment because the decision-maker considers that the decision cannot lawfully be made is deemed to be a decision made under that enactment to refuse to make the decision;
  - (d) a failure by a decision-maker to make a decision under an enactment within the period specified by that enactment is deemed to be a decision by the decision-maker at the end of that period to refuse to make the decision.

- (3) If a person who made a decision by reason of holding or performing the duties of an office or appointment or a position in the public service ceases to hold or perform the duties of that office, appointment or position—
- (a) the person for the time being holding or performing the duties of that office, appointment or position is deemed to be the decision-maker in respect of that decision; or
  - (b) if there is no such person, or if the office or position no longer exists, a person specified by the President is deemed to be the decision-maker in respect of that decision.

**5 When are a person's interests affected by a decision?**

If an enabling enactment provides that a person whose interests are affected by a decision may apply to the Tribunal for review of the decision—

- (a) *interests* means interests of any kind and is not limited to proprietary, economic or financial interests;
- (b) the person may apply to the Tribunal whether the person's interests are directly or indirectly affected by the decision and whether or not any other person's interests are also affected by the decision.

**6 When is a document in a person's possession?**

For the purposes of this Act, a document is in a person's possession if it is within the possession, power or control of the person.



**7 Act binds the Crown**

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) However, nothing in this Act makes the Crown in any of its capacities liable for an offence.

## **Part 2—Victorian Civil and Administrative Tribunal**

### **Division 1—Establishment and membership**

#### **8 Establishment of Tribunal**

- (1) The Victorian Civil and Administrative Tribunal is established.
- (2) The Tribunal must have an official seal, which is to be kept in such custody as the Tribunal directs and is only to be used as authorised by the Tribunal.
- (3) The Tribunal consists of—
  - (a) a President; and
  - (b) the Vice Presidents, Deputy Presidents, senior members and ordinary members; and
  - (c) the principal registrar and registrars referred to in section 32.

S. 8(3)  
inserted by  
No. 23/2014  
s. 5.

S. 9  
repealed by  
No. 23/2014  
s. 6.

\* \* \* \* \*

#### **10 President**

- (1) The President must be a judge of the Supreme Court (other than a reserve Judge of the Supreme Court) who is recommended for appointment by the Minister after consultation with the Chief Justice.
- (2) Subject to this Act, the President holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.

S. 10(1)  
amended by  
No. 5/2013  
s. 70.

- (3) The appointment of a judge of the Supreme Court as President does not affect his or her tenure of office or status as a judge nor the payment of his or her salary or allowances as a judge nor any other rights or privileges that he or she has as a judge.
- (4) Service in the office of President must be taken for all purposes to be service in the office of judge of the Supreme Court.
- (5) Nothing in this Act prevents a judge of the Supreme Court appointed as President from constituting the Supreme Court for the purpose of the exercise by the Supreme Court of any of its functions.

## **11 Vice Presidents**

- (1) As many Vice Presidents as are required for the proper functioning of the Tribunal shall be appointed.
- (2) A Vice President must be a judge of the County Court (other than a reserve judge of the County Court) who is recommended for appointment by the Minister after consultation with the Chief Judge.
- (3) Subject to this Act, a Vice President holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (4) The appointment of a judge of the County Court as a Vice President does not affect his or her tenure of office or status as a judge nor the payment of his or her salary or allowances as a judge nor any other rights or privileges that he or she has as a judge.
- (5) Service in the office of Vice President must be taken for all purposes to be service in the office of judge of the County Court.

**S. 11(2)**  
amended by  
**No. 5/2013**  
s. 71.

- (6) Nothing in this Act prevents a judge of the County Court appointed as a Vice President from constituting the County Court for the purpose of the exercise by the County Court of any of its functions.

S. 11A  
inserted by  
No. 51/2000  
s. 13.

### 11A Short-term Vice Presidents

S. 11A(1)  
amended by  
Nos 14/2006  
s. 22(1),  
5/2013  
s. 72(1)(a).

- (1) If the President considers it necessary for the proper functioning of the Tribunal, he or she may request the Minister that one or more reserve judges be appointed as Vice Presidents.

S. 11A(2)  
amended by  
Nos 14/2006  
s. 22(2)(3),  
5/2013  
s. 72(1)(b).

- (2) The Minister may appoint a reserve judge as a Vice President for a term not exceeding 6 months.

S. 11A(2A)  
inserted by  
No. 14/2006  
s. 22(4),  
amended by  
No. 5/2013  
s. 72(1)(c).

- (2A) In appointing a reserve judge as a Vice President, the Minister may from time to time require that judge to undertake the duties of a Vice President on a full-time or part-time basis, including a sessional basis.

S. 11A(3)  
amended by  
Nos 14/2006  
s. 22(2)(5),  
5/2013  
s. 72(1)(c).

- (3) A reserve judge may only be appointed as a Vice President after the Minister has consulted the Chief Judge or the Chief Justice, as the case requires.

S. 11A(4)  
amended by  
Nos 14/2006  
s. 22(2),  
5/2013  
s. 72(1)(d).

- (4) The appointment of a reserve judge as a Vice President does not affect his or her tenure of office or status as a reserve judge nor any pension or other rights or privileges that he or she has as a reserve judge.

S. 11A(5)  
amended by  
Nos 14/2006  
s. 22(6),  
5/2013  
s. 72(1)(e).

- (5) Service in the office of Vice President must be taken for all purposes to be service in the office of reserve judge.

- (6) A reserve judge appointed under this section may only exercise powers of a Vice President when the reserve judge is engaged under section 81B of the **Constitution Act 1975**, or section 12B of the **County Court Act 1958**, to undertake the duties of a judge of the applicable court.

S. 11A(6)  
substituted by  
No. 5/2013  
s. 72(2).

## 12 Deputy Presidents

- (1) As many Deputy Presidents as are required for the proper functioning of the Tribunal shall be appointed.

- (2) A person is not eligible for appointment as a Deputy President unless he or she is a person who has been an Australian lawyer for not less than 5 years.

S. 12(2)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.2).

- (3) Subject to this Act, a Deputy President holds office for a term that expires on whichever of the following occurs first—

S. 12(3)  
substituted by  
No. 83/2012  
s. 41.

(a) the date that is 7 years after the date of appointment;

(b) the date that the Deputy President attains the age of 70 years.

- (4) A Deputy President may only be appointed on a non-sessional basis.

S. 12(4)  
inserted by  
No. 83/2012  
s. 41,  
substituted by  
No. 62/2014  
s. 47(1).

## 13 Senior members

- (1) As many senior members as are required for the proper functioning of the Tribunal shall be appointed.

S. 13(2)(a)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.2).

(2) A person is not eligible for appointment as a senior member unless he or she—

(a) has been an Australian lawyer for not less than 5 years; or

(b) has, in the opinion of the Minister, extensive knowledge or experience in relation to any class of matter in respect of which functions may be exercised by the Tribunal.

S. 13(3)  
substituted by  
No. 83/2012  
s. 42(1).

(3) Subject to this Act, a senior member holds office for a term that expires on whichever of the following occurs first—

(a) the date that is 7 years after the date of appointment;

(b) the date that the senior member attains the age of 70 years.

S. 13(4)  
substituted by  
No. 62/2014  
s. 47(2).

(4) A senior member may be appointed on a sessional or a non-sessional basis.

S. 13(5)  
inserted by  
No. 83/2012  
s. 42(2).

(5) Subsection (3)(b) does not apply in respect of a senior member who is appointed on a sessional basis.

## 14 Ordinary members

(1) As many ordinary members as are required for the proper functioning of the Tribunal shall be appointed.

(2) A person is not eligible for appointment as an ordinary member unless he or she—

S. 14(2)(a)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.3).

(a) is an Australian lawyer; or

- (b) has, in the opinion of the Minister, special knowledge or experience in relation to any class of matter in respect of which functions may be exercised by the Tribunal.
- (3) Subject to this Act, an ordinary member holds office for a term that expires on whichever of the following occurs first—
- (a) the date that is 7 years after the date of appointment;
- (b) the date that the ordinary member attains the age of 70 years.
- (4) An ordinary member may be appointed on a sessional or a non-sessional basis.
- (5) Subsection (3)(b) does not apply in respect of an ordinary member who is appointed on a sessional basis.
- S. 14(3) substituted by No. 83/2012 s. 43(1).
- S. 14(4) substituted by No. 62/2014 s. 47(3).
- S. 14(5) inserted by No. 83/2012 s. 43(2).

## **Division 2—General provisions relating to members**

### **15 Applications for appointment**

- (1) A person may apply to the Minister for appointment as a member of the Tribunal.
- (2) The Minister may refer an application to the Chief Commissioner of Police.
- (3) The Chief Commissioner of Police must inquire into and report, within 30 days, to the Minister on any matters concerned with the application that the Minister requests.
- (4) An applicant is required to consent to the referral of the application to the Chief Commissioner of Police and the making of inquiries and reports under subsection (3).

- (5) If the applicant does not consent under subsection (4), the Minister may refuse to consider the application.
- (6) Nothing in this section prevents a person who has not applied under this section being appointed as a member of the Tribunal.

## 16 Appointment of members

S. 16(1)  
amended by  
No. 51/2000  
s. 14(a).

- (1) Members (other than a Vice President appointed under section 11A) are appointed by the Governor in Council on the recommendation of the Minister.

S. 16(3)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 219.1).

- (2) A member is eligible for re-appointment.
- (3) The **Public Administration Act 2004** does not apply to a member in respect of the office of member.

S. 16(4)  
inserted by  
No. 83/2012  
s. 44.

- (4) A person who is appointed or reappointed as a non-judicial member must, before exercising any power or performing any function as a member, take an oath or affirmation of office in the prescribed form and manner.

S. 16(5)  
inserted by  
No. 83/2012  
s. 44.

- (5) Subsection (4) does not apply in the case of an appointment under section 16A.

S. 16(6)  
inserted by  
No. 83/2012  
s. 44.

- (6) Subsection (4) does not apply to a person who has previously taken an oath or affirmation of office under subsection (4).

S. 16(7)  
inserted by  
No. 83/2012  
s. 44.

- (7) A failure by a person to take an oath or affirmation of office in accordance with this section does not invalidate anything done by that person as a member of the Tribunal.



- (8) The instrument of appointment of a Deputy President, senior member or ordinary member may indicate that the member is to commence undertaking the duties of office on a part-time basis and, if so, may specify the proportion of full-time duties to be worked by the member. **S. 16(8) inserted by No. 62/2014 s. 48.**
- (9) If a member's instrument of appointment indicates that the member is to commence undertaking the duties of office on a part-time basis, the member is taken to have entered into a part-time service arrangement, which may be varied or terminated accordingly. **S. 16(9) inserted by No. 62/2014 s. 48.**

**16A Internal promotion of Tribunal members**

**S. 16A inserted by No. 1/2000 s. 10.**

- (1) The Governor in Council, on the recommendation of the Minister, may appoint—
- (a) a senior member of the Tribunal as a Deputy President;
  - (b) an ordinary member of the Tribunal as a senior member—
- for the remainder of the member's term of office.
- (2) The Minister may recommend the appointment of a member under subsection (1) only if—
- (a) the member is eligible for appointment as a Deputy President or senior member, as the case requires; and
  - (b) the President has recommended the appointment to the Minister.

**16B Amendment of appointment of sessional and non-sessional members**

**S. 16B inserted by No. 62/2014 s. 26.**

- (1) The Governor in Council may amend the appointment of a senior member or ordinary member who was appointed on a sessional basis so that the member's appointment continues on a non-sessional basis.

- (2) The Governor in Council may amend the appointment of a senior member or ordinary member who was appointed on a non-sessional basis so that the member's appointment continues on a sessional basis.
- (3) The Governor in Council may amend an appointment under this section only with the member's prior consent.
- (4) Subsection (1) does not apply to a sessional member who has attained the age of 70 years.
- (5) If a member's appointment is amended under subsection (1), the member's term of office expires on whichever of the following first occurs—
  - (a) the date that is 7 years after the original date of appointment;
  - (b) the date that the member attains the age of 70 years.
- (6) If a member's appointment is amended under subsection (2), the member's term of office expires on the date that is 7 years after the original date of appointment.

S. 17  
(Heading)  
inserted by  
No. 62/2014  
s. 49(1).

## **17 Terms and conditions of service**

S. 17(1)  
substituted by  
No. 62/2014  
s. 49(2).

- (1) A member is subject to the terms and conditions, including remuneration and allowances, that are determined from time to time by Order of the Governor in Council.

S. 17(2)  
substituted by  
No. 62/2014  
s. 49(2).

- (2) The Governor in Council may under subsection (1) determine different terms and conditions for different classes of members.

- (3) For the purposes of subsection (2), the Governor in Council may determine the classes of members in any manner the Governor in Council thinks fit.
- (3A) An Order of the Governor in Council under this section may apply, adopt or incorporate by reference any document formulated or published by a person or body, whether—
- (a) without modification or as modified by the Order; or
  - (b) as formulated or published on or before the date when the Order is made; or
  - (c) as formulated or published from time to time.
- (4) This section does not apply to a judicial member.

S. 17(3A)  
inserted by  
No. 62/2014  
s. 49(3).

**17AA Appropriation of certain amounts in relation to non-judicial members**

S. 17AA  
inserted by  
No. 63/2013  
s. 80.

The following are to be paid out of the Consolidated Fund, which is appropriated to the necessary extent—

- (a) the amounts (including the amount of any non-salary benefits) payable to or for any non-judicial member; and
- (b) premiums and other amounts payable under the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of any non-judicial member; and
- (c) payroll tax payable under the **Payroll Tax Act 2007** in respect of wages paid or payable to any non-judicial member; and
- (d) tax payable under the Fringe Benefits Tax Act 1986 of the Commonwealth in respect of fringe benefits provided to any non-judicial member; and

- (e) superannuation contributions within the meaning of the **Payroll Tax Act 2007** payable in respect of any non-judicial member.

S. 17A  
inserted by  
No. 83/2008  
s. 13.

### 17A Salary sacrifice

- (1) A member may by notice in writing to the Attorney-General enter into an arrangement under which the member agrees to receive the whole or part of his or her total amount of future remuneration as a member as non-salary benefits of an equivalent value.
- (2) The notice must specify a date from which the arrangement is to take effect which must be the date on which the notice is given or a later date.
- (3) A member may vary or revoke a notice he or she has given under subsection (1) by notice in writing to the Attorney-General.
- (4) The notice of variation or revocation must specify a date from which the variation or revocation is to take effect which must be the date on which the notice is given or a later date.
- (5) If, before the commencement of section 13 of the **Salaries Legislation Amendment (Salary Sacrifice) Act 2008** (the *2008 Act*), a member entered into an arrangement under which the member agreed to receive the whole or part of his or her total amount of salary as a member as non-salary benefits of an equivalent value, that arrangement, by virtue of this subsection, has and is deemed always to have had full effect according to its tenor as if it had been authorised under this section.
- (6) On and after the commencement of section 13 of the 2008 Act, an arrangement referred to in subsection (5) may only be varied or revoked in accordance with subsection (3).

- (7) In subsection (1), *non-salary benefits* has the same meaning as it has in clauses 3(5) and 3(6) of Schedule 1A to the **Public Administration Act 2004**.

## **18 Prohibition on outside employment**

A non-judicial member who is a full-time member must not, without the consent of the President and in accordance with any conditions attached to that consent, engage in the practice of any profession or in any paid employment (whether within or outside Victoria) outside the duties of his or her office.

S. 18  
amended by  
No. 62/2014  
s. 50.

## **18A Entry into part-time service arrangement**

- (1) A Deputy President, senior member or ordinary member may enter into an arrangement with the President to undertake the duties of office on a part-time basis.
- (2) A part-time service arrangement—
- (a) must be in writing; and
  - (b) must specify the proportion of full-time duties to be worked by the member, which must be a minimum of 0.4 of full-time duties; and
  - (c) may specify an expiry date, but is not required to do so.
- (3) The President may have regard to the following factors in considering whether to enter into a part-time service arrangement—
- (a) the operational needs of the Tribunal;
  - (b) the personal and professional circumstances of the member;
  - (c) parity and equity with other members;
  - (d) any other relevant consideration.

S. 18A  
inserted by  
No. 62/2014  
s. 51.

- (4) A part-time service arrangement takes effect from the date specified in the part-time service arrangement.
- (5) A Deputy President, senior member or ordinary member to whom a part-time service agreement applies is entitled to receive a pro-rata amount of the remuneration applicable to a Deputy President, senior member or ordinary member (as the case requires) appointed on a non-sessional basis who is undertaking the duties of office on a full-time basis.
- (6) This section does not apply to a senior member or ordinary member who is appointed on a sessional basis.

S. 18B  
inserted by  
No. 62/2014  
s. 51.

#### **18B Variation of part-time service arrangement**

- (1) A part-time service arrangement may be varied by agreement between the member to whom the arrangement applies and the President.
- (2) A variation of a part-time service arrangement—
  - (a) must be in writing; and
  - (b) must specify the proportion of full-time duties to be worked by the member, which must be a minimum of 0.4 of full-time duties.
- (3) The President may have regard to the factors referred to in section 18A(3) in considering whether to vary a part-time service arrangement.
- (4) A variation of a part-time service arrangement takes effect from the date specified in the written variation of the part-time service arrangement.

### **18C Termination of part-time service arrangement**

S. 18C  
inserted by  
No. 62/2014  
s. 51.

- (1) A part-time service arrangement is terminated if the appointment of the member to whom the arrangement applies is amended from a non-sessional basis to a sessional basis.

**Note**

See section 16B(2).

- (2) A part-time service arrangement may be terminated by agreement between the member to whom the arrangement applies and the President.

### **19 Disclosure of interests**

- (1) This section applies to a member who constitutes, or is to constitute, the Tribunal for the purposes of a particular proceeding, whether with or without others, and who has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of the functions of the member in relation to that proceeding.
- (2) The member—
- (a) must not take part in the proceeding or exercise any powers in relation to it, unless all parties to the proceeding agree otherwise; and
  - (b) if not the President, must disclose the nature of the interest to the President; and
  - (c) if the President, must disclose the nature of the interest to the Chief Justice.

### **20 Resignation**

A member may resign his or her office as member by delivering to the Governor a signed letter of resignation.

## 21 Vacation of office

S. 21(1)  
amended by  
Nos 51/2000  
s. 14(b),  
14/2006  
s. 23(1),  
5/2013 s. 73.

(1) The office of a judicial member becomes vacant if the member ceases to hold the office of judge or reserve judge, as the case requires.

(2) The office of a non-judicial member becomes vacant if the member becomes an insolvent under administration.

S. 21(3)  
inserted by  
No. 14/2006  
s. 23(2).

(3) Without limiting subsection (2), the office of an ordinary member or a senior member, if that member is a magistrate, becomes vacant if the member ceases to hold the office of magistrate.

S. 22  
amended by  
No. 51/2000  
s. 15(1)(a),  
repealed by  
No. 16/2016  
s. 212.

\* \* \* \* \*

S. 23  
amended by  
Nos 51/2000  
s. 15(1)(b)(2),  
16/2005 s. 9,  
repealed by  
No. 16/2016  
s. 212.

\* \* \* \* \*

S. 24  
repealed by  
No. 16/2016  
s. 212.

\* \* \* \* \*

## 25 Validity of proceedings

A decision of the Tribunal is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in, or in connection with, the appointment of a member or acting member; or



- (c) in the case of a person appointed to act as President, a Vice President or a Deputy President, the occasion for so acting had not arisen or had ceased; or **S. 25(c) amended by No. 51/2000 s. 16.**
- (d) a member or former member represents a party in a proceeding in contravention of section 25A. **S. 25(d) inserted by No. 51/2000 s. 16.**

**25A Member or former member may not represent a party**

**S. 25A inserted by No. 51/2000 s. 17.**

If the rules provide for proceedings to be entered in or transferred to lists of the Tribunal and for members to be assigned to those lists—

- (a) a member must not represent a party in any proceeding that has been entered in or transferred to a list to which the member has been assigned;
- (b) for a period of 2 years after a member ceases to be a member, he or she must not represent a party in any proceeding that has been entered in or transferred to a list to which the former member was assigned, except with the approval of the President. **S. 25A(b) amended by No. 14/2006 s. 24.**

**25B Member or former member may not appear as expert witness**

**S. 25B inserted by No. 62/2014 s. 27.**

- (1) If the rules provide for proceedings to be entered in or transferred to lists of the Tribunal and for members to be assigned to those lists—
- (a) a member must not appear as an expert witness in any proceeding that has been entered into or transferred to a list to which the member has been assigned, except with the approval of the President; and

- (b) for a period of 2 years after a member ceases to be a member, the former member must not appear as an expert witness in any proceeding that has been entered into or transferred to a list to which the former member was assigned, except with the approval of the President.
- (2) This section is subject to any other provision of this Act or an enabling enactment that allows a member or former member to appear as a witness.

**Note**

See, for example, section 30 of the **Valuation of Land Act 1960**.

### **Division 3—Acting appointments**

#### **26 Acting President**

- (1) If there is a vacancy in the office of President or the President is absent or, for any other reason, is unable to perform the duties of office, an acting President may be appointed in accordance with this section.
- (2) The appointment of an acting President may be made by the Minister, for a term not exceeding 3 months, or by the Governor in Council, for a term not exceeding 6 months.
- (3) Only a Vice President or a judge of the Supreme Court (other than a reserve judge) may be appointed to act as President.
- (3A) A Vice President appointed under section 11A must not be appointed as acting President.
- (4) A judge of the Supreme Court may only be appointed to act as President after the Minister has consulted the Chief Justice.

S. 26(3)  
amended by  
No. 5/2013  
s. 74(1).

S. 26(3A)  
inserted by  
No. 5/2013  
s. 74(2).

- (5) A person appointed as acting President in accordance with this section—
- (a) has all the powers and must perform all the duties of the President; and
  - (b) if not a judge of the Supreme Court, is entitled to be paid the salary and allowances for the time being payable to a judge of the Supreme Court (other than the Chief Justice, the President of the Court of Appeal or a Judge of Appeal); and
  - (c) may resign the acting appointment by delivering to the Minister or the Governor, as the case requires, a signed letter of resignation; and
  - (d) is eligible for re-appointment (however, a person appointed as acting President by the Minister may only be re-appointed by the Governor in Council).
- (6) The Minister or the Governor in Council, as the case requires, may at any time terminate an acting appointment.
- (7) The appointment of a judge of the Supreme Court or a Vice President as acting President does not affect his or her tenure of office or status as a judge nor any other rights or privileges that he or she has as a judge nor, in the case of a judge of the Supreme Court, the payment of his or her salary or allowances as a judge.
- (8) Service in the office of acting President must be taken for all purposes to be service in the office of judge of the Supreme Court or County Court, as the case requires.
- (9) Nothing in this Act prevents a judge of the Supreme Court or a Vice President appointed as acting President from constituting the Supreme Court or County Court, as the case requires, for

the purpose of the exercise by that Court of any of its functions.

## **27 Acting Vice President**

- (1) If there is a vacancy in the office of a Vice President or a Vice President is absent or, for any other reason, is unable to perform the duties of office, an acting Vice President may be appointed in accordance with this section.
- (2) The appointment of an acting Vice President may be made by the Minister, for a term not exceeding 3 months, or by the Governor in Council, for a term not exceeding 6 months.
- (3) Only a judge of the County Court (other than a reserve judge) may be appointed to act as a Vice President.
- (4) A judge of the County Court may only be appointed to act as a Vice President after the Minister has consulted the Chief Judge.
- (5) A person appointed as an acting Vice President in accordance with this section—
  - (a) has all the powers and must perform all the duties of the Vice President for whom he or she is acting; and
  - (b) may resign the acting appointment by delivering to the Minister or the Governor, as the case requires, a signed letter of resignation; and
  - (c) is eligible for re-appointment (however, a person appointed as an acting Vice President by the Minister may only be re-appointed by the Governor in Council).
- (6) The Minister or the Governor in Council, as the case requires, may at any time terminate an acting appointment.

S. 27(3)  
amended by  
No. 5/2013  
s. 75.

- (7) The appointment of a judge of the County Court as an acting Vice President does not affect his or her tenure of office or status as a judge nor the payment of his or her salary or allowances as a judge nor any other rights or privileges that he or she has as a judge.
- (8) Service in the office of an acting Vice President must be taken for all purposes to be service in the office of judge of the County Court.
- (9) Nothing in this Act prevents a judge of the County Court appointed as an acting Vice President from constituting the County Court for the purpose of the exercise by the County Court of any of its functions.

## **28 Acting Deputy President**

- (1) If there is a vacancy in the office of a Deputy President or a Deputy President is absent or, for any other reason, is unable to perform the duties of office, the President may appoint a senior member of the Tribunal as an acting Deputy President.
- (2) The appointment of an acting Deputy President cannot exceed 6 months. S. 28(2)  
amended by  
No. 15/2018  
s. 59(1).
- (3) A person appointed as an acting Deputy President—
  - (a) has all the powers and may perform all the duties of the Deputy President for whom he or she is acting; and S. 28(3)(a)  
amended by  
No. 15/2018  
s. 59(2).
  - (b) may resign the acting appointment by delivering to the President a signed letter of resignation; and
  - (c) subject to subsection (3A), is eligible for re-appointment. S. 28(3)(c)  
substituted by  
No. 15/2018  
s. 59(3).

S. 28(3A)  
inserted by  
No. 15/2018  
s. 59(4).

- (3A) A person appointed as an acting Deputy President must not act as a Deputy President for a continuous period of more than 12 months, unless the Minister, in writing, approves a proposed re-appointment which would result in a person acting as a Deputy President for a continuous period of more than 12 months.
- (4) The President may at any time terminate an acting appointment.

S. 28A  
inserted by  
No. 15/2018  
s. 60.

## **28A Acting senior member**

- (1) If there is a vacancy in the office of a senior member or a senior member is absent or, for any other reason, is unable to perform the duties of office, the President may appoint an ordinary member of the Tribunal as an acting senior member.
- (2) The appointment of an acting senior member must not exceed 6 months.
- (3) A person appointed as an acting senior member—
- (a) has all the powers and may perform all the duties of the senior member for whom the acting senior member is acting; and
  - (b) may resign the acting appointment by delivering to the President a signed letter of resignation; and
  - (c) subject to subsection (4), is eligible for re-appointment.
- (4) A person appointed as an acting senior member must not act as a senior member for a continuous period of more than 12 months, unless the Minister, in writing, approves a proposed re-appointment which would result in a person acting as a senior member for a continuous period of more than 12 months.

- (5) The President may at any time terminate an acting appointment.

## **29 Additional acting judicial appointments**

- (1) The Chief Justice may appoint judges of the Supreme Court (other than a reserve Judge) to be members of a panel of judges available for acting appointments under this section. **S. 29(1) amended by No. 5/2013 s. 76(1).**
- (2) The Chief Judge may appoint judges of the County Court (other than a reserve judge) to be members of a panel of judges available for acting appointments under this section. **S. 29(2) amended by No. 5/2013 s. 76(2).**
- (3) If the President considers it desirable for an acting judicial member to be appointed temporarily to hear and determine any one or more proceedings, he or she may, with the approval of the Chief Justice or the Chief Judge, as the case requires, appoint a judge who is a member of a panel of judges to be an acting member for the purposes of those proceedings.
- (4) An appointment under this section must be in writing.
- (5) A judge appointed as an acting member in accordance with this section—
- (a) has all the powers and must perform all the duties of a member; and
  - (b) for the purposes of constituting the Tribunal for a proceeding—
    - (i) in the case of a judge of the Supreme Court—must be treated as if he or she were the President;
    - (ii) in the case of a judge of the County Court—must be treated as if he or she were a Vice President.

- (6) The appointment of a judge of the Supreme Court or County Court as an acting member in accordance with this section does not affect his or her tenure of office or status as a judge nor the payment of his or her salary or allowances as a judge nor any other rights or privileges that he or she has as a judge.
- (7) Service in the office of an acting member in accordance with this section must be taken for all purposes to be service in the office of judge of the Supreme Court or County Court, as the case requires.
- (8) Nothing in this Act prevents a judge of the Supreme Court or County Court appointed as an acting member in accordance with this section from constituting the Supreme Court or County Court, as the case requires, for the purpose of the exercise by that Court of any of its functions.

#### **Division 4—Administration**

### **30 Administrative functions of President and Vice Presidents**

- (1) Subject to this Act and the rules, the President and the Vice Presidents are to direct the business of the Tribunal.
- (2) The President and the Vice Presidents are responsible for the management of the administrative affairs of the Tribunal.
- (3) The President and the Vice Presidents may determine the places and times for sittings of the Tribunal.
- (4) In carrying out functions under this section, a Vice President is subject to the direction of the President.

S. 30(2)  
amended by  
No. 24/2007  
s. 7.



### 31 President to advise Minister

It is a function of the President to advise the Minister with respect to any action that the President considers would lead to—

- (a) the more convenient, economic and efficient disposal of the business of the Tribunal;
- (b) the avoidance of delay in the hearing of proceedings;
- (c) this Act or any enabling enactment being rendered more effective.

### 32 Employment of registrars and other staff

(1) To assist in the administration of the Tribunal there are to be employed under the **Public Administration Act 2004**—

- (a) a principal registrar; and

\* \* \* \* \*

- (c) as many registrars and other staff as are necessary.

(2) The principal registrar—

- (a) has the functions conferred by or under this or any other Act and the rules; and
- (b) in carrying out those functions, is subject to the direction of the President.

(3) A registrar other than the principal registrar has, subject to the direction of the principal registrar, all the functions of the principal registrar.

S. 32(1)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 219.1).

S. 32(1)(b)  
repealed by  
No. 1/2014  
s. 76.

S. 32AA  
inserted by  
No. 15/2018  
s. 61.

### 32AA Principal registrar to give assistance

- (1) The principal registrar is to give assistance as the principal registrar considers appropriate to—
  - (a) participants in a proceeding; and
  - (b) potential participants in a proceeding, including a person who is considering making an application but who has not yet made an application.
- (2) Assistance given under subsection (1) may be in relation to all stages or any stage of a proceeding.
- (3) To avoid doubt, assistance given under subsection (1) does not extend to providing legal advice.

S. 32A  
inserted by  
No. 23/2014  
s. 7.

### 32A Delegation by principal registrar

- (1) Subject to subsection (2), the principal registrar, with the prior written approval of the President, may delegate to a member of staff referred to in section 32(1)(c) any function of the principal registrar under the rules that the rules specify may be delegated under this section.
- (2) The principal registrar may delegate a function under the rules only to a person the principal registrar is satisfied is appropriately qualified to perform the function.

#### Note

The rules may specify the person or class of person to whom a function may be delegated—see section 157A(5)(b).

- (3) A delegation under this section must be in writing.
- (4) In this section—

*appropriately qualified*, for a function, includes having the qualifications, experience or standing appropriate to perform the function.

### **33 Delegation by President and Vice Presidents**

- (1) The President may delegate to any member or class of members or to the principal registrar any function of the President under this Act, the rules or an enabling enactment, other than this power of delegation.
- (2) A Vice President may delegate to any member or class of members or to the principal registrar any function of the Vice President under this Act, the rules or an enabling enactment, other than this power of delegation.
- (3) A delegation under this section must be in writing.

### **34 Secrecy**

- (1) This section applies to any person who is or has been—
  - (a) a member of the Tribunal;
  - (b) a registrar or other member of staff of the Tribunal;
  - (c) a person acting under the authority of the Tribunal.
- (2) Except as permitted by this section, a person to whom this section applies must not directly or indirectly make a record of, or disclose to any person, any information about the affairs of a person acquired in the performance of functions under or in connection with this Act or an enabling enactment.

Penalty: 60 penalty units.

- (3) A person to whom this section applies may record or disclose information referred to in subsection (2)—
  - (a) with the written consent of the person to whom the information relates; or

S. 34(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 177.2).

- (b) in connection with the performance of functions under this Act or an enabling enactment.
- (4) A person to whom this section applies may disclose any information referred to in subsection (2) to a police officer for the purposes of reporting a suspected offence or assisting in the investigation of a suspected offence.
- (5) A person to whom this section applies may disclose any information referred to in subsection (2) for statistical purposes to a person approved by the Minister provided that the information does not identify any person to whom it relates.
- (6) Nothing in this section<sup>1</sup> applies to the recording or disclosure of—

S. 34(6)(a)  
amended by  
No. 58/2013  
s. 58.

- (a) anything said or done at a hearing of the Tribunal (other than at a hearing that the Tribunal has directed to be held in private or that is the subject of a closed court order under Part 5 of the **Open Courts Act 2013**);  
or
- (b) any decision or order of the Tribunal or the reasons for any such decision or order.

### 35 Prohibition on secondary disclosures

- (1) A person to whom information referred to in section 34(2) is disclosed, and any employee of that person, is subject to the same obligations and liabilities with respect to the recording or disclosure of the information as they would be if they were a person referred to in section 34(1) who had acquired the information in the performance of functions under this Act or an enabling enactment.

- (2) Subsection (1) does not apply to a police officer to whom information is disclosed under section 34(4).

S. 35(2)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 177.2).

### **36 Further restriction on disclosure**

- (1) Subject to this section—

- (a) a person referred to in section 34(1) is not, except for the purposes of this Act or an enabling enactment, required—
- (i) to produce in a court any document that has come into his or her possession; or
  - (ii) to disclose to a court any information that has come to his or her notice—
- in the performance of functions under or in connection with this Act or an enabling enactment; and
- (b) a person referred to in section 35 is not, except for the purposes of this Act or an enabling enactment, required—
- (i) to produce in a court any document that has come into his or her possession; or
  - (ii) to disclose to a court any information that has come to his or her notice—
- as a result of a disclosure to that person under section 34.

- (2) If—

- (a) the Minister certifies that it is necessary in the public interest that specified information should be disclosed to a court; or

(b) the person to whom information relates has given written consent for it to be disclosed to a court—

a person referred to in subsection (1) may be required to disclose the relevant information or produce the relevant document to the court.

(3) A person referred to in subsection (1) may be required—

(a) to produce in a court a document that has come into his or her possession; or

(b) to disclose to a court any information that has come to his or her notice—

in any proceeding for an indictable offence, including a committal proceeding and a summary hearing of an indictable offence.

(4) In this section—

*court* includes a tribunal and any person who has power to require the production of documents or the answering of questions.

### **37 Annual report**

(1) As soon as practicable in each year but not later than 30 September, the Tribunal must submit to the Minister a report containing—

(a) a review of the operation of the Tribunal and of the Rules Committee during the 12 months ending on the preceding 30 June; and

(b) proposals for improving the operation of, and forecasts of the workload of, the Tribunal in the following 12 month period.

(2) The Minister must cause each report under subsection (1) to be laid before each House of the Parliament within 14 sitting days of that House after it is received by the Minister.

### **38 Where may the Tribunal sit?**

The Tribunal may sit at any place in Victoria.

## **Division 5—Professional development and training**

Pt 2 Div. 5  
(Heading and  
s. 38A)  
inserted by  
No. 24/2007  
s. 6.

### **38A Professional development and training**

S. 38A  
inserted by  
No. 24/2007  
s. 6.

- (1) The President is responsible for directing the professional development and continuing education and training of members.
- (2) In discharging his or her responsibility under subsection (1) the President may direct—
  - (a) all members; or
  - (b) a specified class of member; or
  - (c) a specified member—  
to participate in a specified professional development or continuing education and training activity.
- (3) A direction under subsection (2) may be given orally or in writing.

## **Part 3—The Tribunal—jurisdiction and functions**

### **Division 1—Introductory**

#### **39 Structure of Part**

- (1) This Part sets out the general jurisdiction and functions of the Tribunal.
- (2) Schedule 1 sets out variations from this Part for certain types of proceedings<sup>2</sup>.

#### **40 Jurisdiction of the Tribunal**

The Tribunal has 2 types of jurisdiction—

- (a) original jurisdiction; and
- (b) review jurisdiction.

#### **41 What is original jurisdiction?**

Original jurisdiction is the jurisdiction of the Tribunal other than its review jurisdiction<sup>3</sup>.

#### **42 What is review jurisdiction?**

- (1) Review jurisdiction is jurisdiction conferred on the Tribunal by or under an enabling enactment to review a decision made by a decision-maker.
- (2) For the avoidance of doubt, the Tribunal's jurisdiction under Part 6 of the **Guardianship and Administration Act 1986** is original jurisdiction, not review jurisdiction.

S. 42(2)  
amended by  
No. 78/2000  
s. 11(1)(b).

### **Division 2—Original jurisdiction**

#### **43 How is original jurisdiction invoked?**

The original jurisdiction of the Tribunal is invoked—

- (a) by a person who is entitled by or under an enabling enactment to do so applying to the Tribunal in accordance with section 67; or



- (b) by a matter being referred to the Tribunal under an enabling enactment in accordance with section 69; or
- (c) in any other way permitted or provided for by the enabling enactment.

#### **44 Functions of the Tribunal**

In exercising its original jurisdiction, the Tribunal has the functions conferred on it by or under the enabling enactment, as well as any functions conferred on it by or under this Act, the regulations and the rules.

### **Division 3—Review jurisdiction**

#### **Subdivision 1—Obtaining reasons for decisions**

##### **45 Request for statement of reasons for decision**

- (1) A person who is entitled to apply to the Tribunal for review of a decision, or to have a decision referred to the Tribunal for review, may request the decision-maker to give the person a written statement of reasons for the decision.
- (2) A request under subsection (1) must be made in writing within 28 days after the day on which the decision was made.

##### **46 Decision-maker to give statement of reasons on request**

- (1) A decision-maker must give a written statement of reasons for a decision to a person as soon as practical, and in any event within 28 days or such other period as is specified in the enabling enactment, after receiving a request under section 45.

- (2) Subject to this Act, the statement must set out—
  - (a) the reasons for the decision; and
  - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.
- (3) A statement of reasons need not be given under this section if the decision-maker has already given a written statement containing the matters referred to in subsection (2) to the person (whether as part of the decision or separately).
- (4) A statement of reasons—
  - (a) must not include any information or matter to which a certificate under section 53 (Premier's certificate) applies; and
  - (b) subject to section 47, must not include any information or matter to which a certificate under section 54 (Attorney-General's certificate) applies.
- (5) If a statement of reasons would be false or misleading if it did not include information or matter referred to in subsection (4), the decision-maker must inform the person who requested the statement of that fact and must not give the statement to the person.
- (6) Subsection (2)(b) does not apply to a decision made by the Business Licensing Authority.
- (7) A written statement of reasons for a decision by the Business Licensing Authority complies with subsection (2)(a) if it sets out the statutory ground on which the decision is based.

**47 The Tribunal may order statement of reasons to be given**

- (1) If a statement of reasons is not given to a person in accordance with section 46, the person who requested the statement may apply to the Tribunal, in accordance with the rules, for an order that a statement of reasons be given to the person.
- (2) The applicant must give notice of an application under subsection (1) to the decision-maker to whom the request for a statement of reasons was made.
- (3) On an application under subsection (1), if the Tribunal is satisfied that the applicant is entitled to receive a statement of reasons, the Tribunal may order that the decision-maker give a statement of reasons to the applicant within the time specified in the order.
- (4) The Tribunal must not order—
  - (a) that a statement of reasons include any information or matter to which a certificate under section 53 (Premier's certificate) applies; or
  - (b) that a statement of reasons be given to the applicant that is false or misleading because it does not contain information or matter referred to in section 46(4).
- (5) The Tribunal may order that a statement of reasons include information or matter to which a certificate under section 54 (Attorney-General's certificate) applies if the Tribunal considers it would not be contrary to the public interest to do so.

- (6) The Tribunal's power to make an order under subsection (5) is exercisable only by the President.
- (7) For the purposes of this Act, the question whether or not the inclusion of information or matter in a statement of reasons would be contrary to the public interest is a question of law.

## **Subdivision 2—Jurisdiction of the Tribunal**

### **48 How is review jurisdiction invoked?**

The review jurisdiction of the Tribunal is invoked—

- (a) by a person who is entitled to do so by or under an enabling enactment applying to the Tribunal in accordance with section 67 for review of a decision under that enactment; or
- (b) by a decision-maker referring a decision to the Tribunal under an enabling enactment in accordance with section 69 for review of the decision; or
- (c) in any other way permitted or provided for by the enabling enactment.

### **49 Decision-maker must lodge material**

- (1) If a proceeding is commenced for review of a decision, the decision-maker must lodge with the Tribunal as many copies as the rules require of—
  - (a) the statement of reasons given by the decision-maker under section 46(1) or, if no such statement has been given, a statement containing the matters set out in section 46(2) or, in the case of the Business Licensing Authority, section 46(2)(a); and
  - (b) every other document in the decision-maker's possession that the decision-maker considers is relevant to the review of the decision.

- (2) Copies must be lodged under subsection (1) within 28 days after—
- (a) the day on which the decision-maker received notice of the application to the Tribunal; or
  - (b) the day on which the decision-maker referred the decision to the Tribunal—
- as the case requires.
- (3) If the Tribunal considers that there are further documents in the possession of the decision-maker that may be relevant to the review, the Tribunal may give written notice to the decision-maker requiring the decision-maker to lodge the number of copies of those documents required by the rules with the Tribunal within the time specified in the notice.
- (4) If the Tribunal considers that a statement lodged under subsection (1)(a) is not adequate, the Tribunal may order the decision-maker to lodge the number of copies required by the rules of an additional statement containing the further particulars specified in the order within the time specified in the order.
- (5) This section applies despite any rule of law relating to privilege or the public interest in relation to the production of documents<sup>4</sup>.

## **50 Effect of original decision pending review**

- (1) Subject to subsection (2), the commencement of a proceeding for review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

- (2) Subsection (1) does not apply—
  - (a) if the enabling enactment provides otherwise; or
  - (b) if the Tribunal makes an order under subsection (3).
- (3) The Tribunal may make an order staying the operation of a decision that is the subject of a proceeding for review.
- (4) The Tribunal may make an order under subsection (3)—
  - (a) on application by any party or on its own initiative;
  - (b) whether or not it has given any person whose interests may be affected by the order an opportunity to be heard.
- (5) In making an order under subsection (3), the Tribunal—
  - (a) may require any undertaking as to costs or damages that it considers appropriate; and
  - (b) may make provision for the lifting of the order if specified conditions are met.
- (6) The Tribunal may assess any costs or damages referred to in subsection (5)(a).
- (7) The Tribunal's power to make an order under subsection (3) is exercisable by the presiding member.

## **51 Functions of Tribunal on review**

- (1) In exercising its review jurisdiction in respect of a decision, the Tribunal—
  - (a) has all the functions of the decision-maker; and

- (b) has any other functions conferred on the Tribunal by or under the enabling enactment; and
  - (c) has any functions conferred on the Tribunal by or under this Act, the regulations and the rules.
- (2) In determining a proceeding for review of a decision the Tribunal may, by order—
- (a) affirm the decision under review; or
  - (b) vary the decision under review; or
  - (c) set aside the decision under review and make another decision in substitution for it; or
  - (d) set aside the decision under review and remit the matter for re-consideration by the decision-maker in accordance with any directions or recommendations of the Tribunal.
- (3) Subject to subsection (4), a decision of a decision-maker as affirmed or varied by the Tribunal, or a decision made by the Tribunal in substitution for the decision of a decision-maker—
- (a) is deemed to be a decision of that decision-maker; and
  - (b) subject to any contrary order by the Tribunal, has, or is deemed to have had, effect from the time at which the decision under review has or had effect.
- (4) Subsection (3)(a) does not apply for the purposes of—
- (a) an application to the Tribunal for review of the decision; or
  - (b) an appeal under Part 5.

- (5) If an applicant does not appear (personally or by representative) at the hearing of a proceeding for review of a decision, the Tribunal must confirm the decision.

S. 51A  
inserted by  
No. 23/2014  
s. 8.

**51A Tribunal may invite decision-maker to reconsider decision**

- (1) At any time in a proceeding for review of a decision, the Tribunal may invite the decision-maker to reconsider the decision.
- (2) On being invited by the Tribunal to reconsider a decision, the decision-maker may—
- (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision and substitute a new decision for it.
- (3) If the decision-maker varies the decision or sets it aside and substitutes a new decision and the proceeding continues, it is taken to be a proceeding for review of the decision as varied or the new decision.
- (4) As far as possible the Tribunal must ensure that a proceeding's priority is not affected by the making of an invitation under this section, unless the parties consent.
- (5) The Tribunal cannot make an order for costs under section 74(2)(b) only because an applicant withdraws a proceeding following reconsideration by the decision-maker under this section.



**52 Limitation of courts' jurisdiction in planning matters**

- (1) The Supreme Court, the County Court or the Magistrates' Court does not have jurisdiction to hear, or continue to hear, or determine any proceeding in which a person bringing the proceeding brings in issue the matter of the exercise of, or the failure to exercise, a power under a planning enactment if—
  - (a) the Tribunal has jurisdiction to review the matter of the exercise of, or the failure to exercise, that power; and
  - (b) the matter—
    - (i) has not been the subject of a proceeding in the Tribunal; or
    - (ii) if it has been the subject of a proceeding in the Tribunal, has not been determined by the Tribunal; or
    - (iii) if it has been determined by the Tribunal, the time for appeal against an order of the Tribunal in the proceeding has not expired; or
    - (iv) if an appeal has been brought against an order in the proceeding, the appeal has not been determined.
- (2) If the Supreme Court, the County Court or the Magistrates' Court is of the opinion that there are special circumstances that justify the hearing by the Court of a proceeding to which subsection (1) applies, the court may direct that subsection (1) does not apply to that proceeding.
- (3) If a court determines a proceeding to which subsection (1) applies but does not give a direction under subsection (2), nothing in this section invalidates the decision of the court.

(4) In this section—

S. 52(4) def. of *planning enactment* amended by Nos 12/2004 s. 167(1) (as amended by No. 39/2004 s. 276(1)), 69/2006 s. 224(Sch. 3 item 11.1), 6/2009 s. 57(1), 6/2010 s. 203(1) (Sch. 6 item 49.1) (as amended by No 45/2010 s. 22).

*planning enactment* means—

- (a) **Catchment and Land Protection Act 1994;**
- (b) **Environment Protection Act 1970;**
- (c) the provisions of the **Mineral Resources (Sustainable Development) Act 1990** relating to extractive industries;
- (d) section 41 of the **Flora and Fauna Guarantee Act 1988;**
- (e) section 185 of the **Local Government Act 1989;**
- (f) **Planning and Environment Act 1987** (except sections 94(5) and 105);
- (fa) section 57 of the **Road Management Act 2004;**
- (fb) section 126 and Schedule 2 of the **Road Management Act 2004;**
- (fc) section 132 of the **Road Management Act 2004** and regulations made under that section;
- (g) **Subdivision Act 1988** (except Division 5 of Part 5 and section 39);
- (h) section 56 of the **Transport (Compliance and Miscellaneous) Act 1983** and regulations made under that section;
- (i) **Water Act 1989** (except section 19).

### **Subdivision 3—Matters of privilege and policy**

#### **53 Cabinet documents**

- (1) The Premier may certify in writing that the disclosure of information about a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest because it would involve the disclosure of deliberations of the Cabinet or a committee of the Cabinet.
- (2) The Tribunal must ensure that—
  - (a) information or a document to which a certificate under subsection (1) applies that is lodged with or produced or given to the Tribunal in a proceeding for review of a decision is not disclosed to any person other than a member of the Tribunal as constituted for the purposes of the proceeding in which it was lodged, produced or given; and
  - (b) a document to which a certificate under subsection (1) applies that is lodged with or produced or given to the Tribunal in a proceeding for review of a decision is returned to the person by whom it was lodged, produced or given when no longer required by the Tribunal.

#### **54 Crown privilege**

- (1) The Attorney-General may certify in writing that the disclosure of information about a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest for a reason specified in the certificate that could form the basis for a claim by the State in a proceeding in the Supreme Court that the information or matter should not be disclosed.

- (2) The Tribunal must ensure that—
- (a) subject to subsection (3), information or a document to which a certificate under subsection (1) applies that is lodged with or produced or given to the Tribunal in a proceeding for review of a decision is not disclosed to any person other than a member of the Tribunal as constituted for the purposes of the proceeding in which it was lodged, produced or given; and
  - (b) a document to which a certificate under subsection (1) applies that is lodged with or produced or given to the Tribunal in a proceeding for review of a decision is returned to the person by whom it was lodged, produced or given when no longer required by the Tribunal.
- (3) The Tribunal, with the consent of the President, may allow a party, or a representative of a party, to have access to, or inspect, information or a document to which a certificate under subsection (1) applies, on any conditions the Tribunal thinks fit.

## **55 Certain questions not required to be answered**

- (1) Subject to this section, a person is not required to answer a question put to him or her in the course of giving evidence before the Tribunal in a proceeding for review of a decision if to do so would involve the disclosure of any information or matter to which a certificate under section 53 (Premier's certificate) or 54 (Attorney-General's certificate) applies.

- (2) The Tribunal may order that a person answer a question that would involve the disclosure of any information or matter to which a certificate under section 54 (Attorney-General's certificate) applies if the Tribunal considers it would not be contrary to the public interest for the person to answer the question.
- (3) The Tribunal's power to make an order under subsection (2) is exercisable only by the President.
- (4) For the purposes of this Act, the question whether or not the answering of a question would be contrary to the public interest is a question of law.

#### **56 Exclusion of general rules of public interest**

Except to the extent set out in this Act, the rules of law relating to the public interest in relation to the disclosure of information or of matter contained in a document in legal proceedings are excluded in any proceeding for review.

#### **57 Application of statements of policy**

- (1) The relevant Minister may certify in writing that there was, at the time a decision the subject of a proceeding for review was made, a statement of policy applying to decisions of that kind.
- (2) If a certificate is given under subsection (1), the Tribunal in conducting the proceeding must apply the statement of policy if—
  - (a) the Tribunal is satisfied that, at the time the decision was made—
    - (i) the applicant was aware of the statement of policy; or
    - (ii) persons entitled to apply for review of a decision under the enabling enactment could reasonably have been expected to be aware of the statement of policy; or

- (iii) the statement of policy had been published in the Government Gazette; and
- (b) the decision-maker states in the material lodged with the Tribunal under section 49 that the decision-maker relied on the statement of policy in making the decision.
- (3) Subsection (2) does not apply to the extent that the statement of policy is outside power.
- (4) In this section—  
*relevant Minister* means the Minister administering the enactment under which the decision the subject of the proceeding for review was made.

## **Part 4—The Tribunal—general procedure**

### **Division 1—Introduction**

#### **58 Structure of Part**

- (1) This Part sets out the general procedure of the Tribunal.
- (2) Schedule 1 sets out variations from the general procedure for certain types of proceedings.

### **Division 2—Parties**

#### **59 Who are the parties to a proceeding?**

- (1) The parties to a proceeding are—
  - (a) in a proceeding in the Tribunal's original jurisdiction—
    - (i) the person who applies to the Tribunal, or who requests or requires a matter to be referred to the Tribunal; and
    - (ii) in the case of an inquiry by the Tribunal, the person who is the subject of the inquiry; and
    - (iii) any person joined as a party to the proceeding by the Tribunal; and
    - (iv) any other person specified by or under this Act or the enabling enactment as a party;
  - (b) in a proceeding in the Tribunal's review jurisdiction—
    - (i) the person who applies to the Tribunal for review of a decision, or who requests or requires a decision to be referred to the Tribunal for review; and
    - (ii) the decision-maker who made the decision; and

- (iii) any person joined as a party to the proceeding by the Tribunal; and
  - (iv) any other person specified by or under this Act or the enabling enactment as a party.
- (2) A decision-maker who made a decision by reason of holding or performing the duties of an office or appointment or a position in the public service is to be described in any proceeding in respect of the decision by the decision-maker's official name.

### **60 Joinder of parties**

- (1) The Tribunal may order that a person be joined as a party to a proceeding if the Tribunal considers that—
- (a) the person ought to be bound by, or have the benefit of, an order of the Tribunal in the proceeding; or
  - (b) the person's interests are affected by the proceeding; or
  - (c) for any other reason it is desirable that the person be joined as a party.
- (2) The Tribunal may make an order under subsection (1) on its own initiative or on the application of any person.
- (3) On the application of a person who is entitled under section 73(4) to be joined as a party the Tribunal must order that the person be joined as a party.

S. 60(3)  
inserted by  
No. 62/2014  
s. 28.

S. 60A  
inserted by  
No. 23/2014  
s. 9.

### **60A Removal of parties**

- (1) The Tribunal may order that a person cease to be a party to a proceeding if the Tribunal considers that—
- (a) the person's interests are not, or are no longer, affected by the proceeding; or



- (b) the person is not a proper or necessary party to the proceeding, whether or not the person was one originally.
- (2) An order under subsection (1) may include any other matters of a consequential or ancillary nature that the Tribunal considers appropriate.
- (3) The Tribunal may make an order under subsection (1) on its own initiative or on the application of a party.

### **61 Unincorporated associations**

- (1) An unincorporated association cannot be a party to a proceeding.
- (2) If the Tribunal permits, a submission may be made on behalf of an unincorporated association on any relevant matter in a proceeding by—
  - (a) a member of the association; or
  - (b) a person authorised by the association who is not a member.
- (3) The Tribunal may require a person referred to in subsection (2)(b) who seeks to make a submission to produce a certificate of authorisation from the unincorporated association signed by the president, secretary or other similar officer of the association.

### **62 Representation of parties**

- (1) In any proceeding a party—
  - (a) may appear personally; or
  - (b) may be represented by a professional advocate if—
    - (i) the party is a person referred to in subsection (2); or
    - (ii) another party to the proceeding is a professional advocate; or

- (iii) another party to the proceeding who is permitted under this section to be represented by a professional advocate is so represented; or
  - (iv) all the parties to the proceeding agree; or
  - (c) may be represented by any person (including a professional advocate) permitted or specified by the Tribunal.
- (2) The following persons may be represented by a professional advocate in a proceeding—
- (a) a child;
  - (b) a municipal council;
  - (c) the State or a Minister or other person who represents the State;
  - (d) a public entity within the meaning of the **Public Administration Act 2004**;
  - (e) the holder of a statutory office within the meaning of the **Public Administration Act 2004**;
  - (f) a credit provider within the meaning of the **Credit Act 1984**;
  - (g) an insurer within the meaning of the **Domestic Building Contracts Act 1995**.

S. 62(2)(d)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
substituted by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 219.2).

S. 62(2)(e)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 219.3).

S. 62(2)(f)  
amended by  
No. 11/2010  
s. 59(1).

- (3) A party that is a body corporate may be represented in a proceeding by a director, secretary or other officer except, in the case of a body corporate that is not referred to in subsection (2), a director, secretary or officer who is a professional advocate.
- (4) Despite subsection (3), if all officers of a body corporate are professional advocates, one of those officers may represent the body corporate in a proceeding.
- (5) If a party is a child, the Tribunal may appoint a litigation guardian, in accordance with the rules, to conduct the proceeding on behalf of the child.
- (6) If a party is unrepresented in a proceeding, the Tribunal may appoint a person (whether or not a professional advocate) to represent that party.
- (7) If a person who is not a professional advocate seeks to represent a party in a proceeding—
  - (a) if the party is a body corporate, the person must give the Tribunal a certificate of authority for the representation from the body corporate; or
  - (b) in any other case, the Tribunal may require the person to produce a certificate of authority for the representation from the party.
- (8) In this section—

*professional advocate* means—

- (a) a person who is or has been an Australian lawyer; or

S. 62(8) def. of  
*professional  
advocate*  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.4).

- (b) a person who is or has been an articulated clerk or law clerk in Australia; or
  - (c) a person who holds a degree, diploma or other qualification in law granted or conferred in Australia; or
  - (d) a person who, in the opinion of the Tribunal, has had substantial experience as an advocate in proceedings of a similar nature to the proceeding before the Tribunal—  
  
other than a person who is in a class of persons disqualified by the rules from being a professional advocate.
- (9) Rules for the purposes of subsection (8) may only disqualify a class of persons from being professional advocates on the basis that persons in that class—
- (a) have been the subject of disciplinary proceedings under the law of Victoria, another State, a Territory or the Commonwealth or under the rules of a professional or occupational association or other body; and
  - (b) have been found guilty in those proceedings of professional misconduct (by whatever name called) or of another breach of professional or occupational standards.

### **63 Interpreters**

Unless the Tribunal directs otherwise, a party may be assisted in a proceeding by an interpreter or another person necessary or desirable to make the proceeding intelligible to that party.

### **63A Support persons**

**S. 63A  
inserted by  
No. 15/2018  
s. 63.**

- (1) Unless the Tribunal directs otherwise, a party may be assisted in a proceeding by a support person for the purposes of providing emotional or other support to that party.

#### **Example**

A support person may include, but is not limited to, a family member or friend, or a person with appropriate cultural or social knowledge who provides emotional or other support to a party.

- (2) A support person referred to in subsection (1) must not—
- (a) be a party to the proceeding; or
  - (b) represent a party to the proceeding.

## **Division 3—Constitution of Tribunal**

### **64 Constitution of Tribunal in proceedings**

- (1) Subject to the rules, the Tribunal is to be constituted for the purposes of any particular proceeding by 1, 2, 3, 4 or 5 members.

#### **Note**

The rules may provide for the Tribunal to be constituted by the principal registrar for performing certain functions—see section 157A. If so, a registrar may also perform those functions—see section 32(3).

**Note to  
s. 64(1)  
inserted by  
No. 23/2014  
s. 10.**

- (2) If the Tribunal is to be constituted at a proceeding—
- (a) by one member only, that member must be an Australian lawyer; and
  - (b) by more than one member, at least one must be an Australian lawyer.

**S. 64(2)(a)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.5).**

**S. 64(2)(b)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.5).**

S. 64(4)  
inserted by  
No. 62/2014  
s. 29.

- (3) The President determines how the Tribunal is to be constituted for the purposes of each proceeding.
- (4) If a provision of this Act, the rules or an enabling enactment provides that a power of the Tribunal is exercisable by any member, then any member of the Tribunal may exercise that power in a proceeding despite any provision of this Act or an enabling enactment that requires the Tribunal to be constituted in a particular way for the purposes of the proceeding.

**Example**

As section 80(2) provides that the Tribunal's power to give directions is exercisable by any member, any member may give directions in a proceeding under Division 5 of Part 3 of the **Pharmacy Regulation Act 2010** even though clause 51AE of Schedule 1 requires the Tribunal to be constituted by at least 3 members for the purposes of proceedings under that Division.

S. 64(5)  
inserted by  
No. 62/2014  
s. 29.

- (5) If a provision of this Act, the rules or an enabling enactment provides that a power of the Tribunal is exercisable by the principal registrar, then the principal registrar may exercise that power in a proceeding despite any provision of this Act or an enabling enactment that requires the Tribunal to be constituted in a particular way for the purposes of the proceeding.

**65 Who presides in a proceeding?**

At a proceeding at which the Tribunal is constituted by more than one member—

- (a) if the President is a member, the President presides;
- (b) if the President is not a member but a Vice President is, the Vice President presides or, if there is more than one, then the Vice President nominated by the President for this purpose presides;

- (c) if neither the President nor a Vice President is a member but a Deputy President is, the Deputy President presides or, if there is more than one, then the Deputy President nominated by the President for this purpose presides;
- (d) if neither the President nor a Vice President nor a Deputy President is a member but a senior member is, the senior member presides or, if there is more than one, then the senior member nominated by the President for this purpose presides;
- (e) if the members are all ordinary members, then the member nominated by the President for this purpose presides.

#### **66 Opinions equally divided**

If for the purposes of any particular proceeding the Tribunal is constituted by 2 or 4 members and the opinions of those members on a question before them are equally divided, the question must be decided according to the opinion of the presiding member.

### **Division 4—Preliminary procedure**

#### **67 How to make an application to the Tribunal**

- (1) An application to the Tribunal—
  - (a) must be in the form, and contain the particulars, required by the rules; and
  - (b) must be accompanied by any documents or further information required by the rules; and
  - (c) must be lodged in the manner specified in the rules.
- (2) The rules may require an application to be verified by statutory declaration or in any other manner.

- (3) Two or more persons entitled to make an application to the Tribunal may make a joint application.

S. 67(4)  
repealed by  
No. 15/2018  
s. 62.

\* \* \* \* \*

## 68 Application fee

- (1) An applicant must pay the prescribed fee (if any) for the application.
- (2) The principal registrar may determine the fee payable for a joint application as if a separate application had been made by each person who makes the joint application.
- (3) If the fee is not paid at the time the application is lodged, the Tribunal is to take no further action in respect of the application (other than action referred to in subsection (4)) until—
- (a) the fee is paid; or
  - (b) the fee is waived under section 132; or
  - (c) if the fee is reduced under section 132, the reduced fee is paid.

S. 68(3)  
amended by  
No. 51/2000  
s. 18(1).

- (3A) Subsection (3) does not apply in respect of an application for which payment of the fee is postponed.

S. 68(3A)  
inserted by  
No. 20/2015  
s. 17(1).

- (4) If the fee is not paid within 30 days after the day on which the application is lodged, the Tribunal may make an order striking out the proceeding, unless—
- (a) the fee has been waived under section 132 in that period; or
  - (b) the fee has been reduced under section 132 and the reduced fee has been paid in that period; or

S. 68(4)  
substituted by  
No. 51/2000  
s. 18(2).



(c) an applicant has requested the reduction, waiver or postponement of the fee and the request has not been determined by the end of that period.

S. 68(4)(c)  
amended by  
No. 20/2015  
s. 17(2).

(5) Despite subsections (3) and (4), in the case of a fee which has been postponed, the Tribunal may make an order striking out the proceeding if the postponed fee is not paid by the date specified for payment when it was postponed.

S. 68(5)  
inserted by  
No. 20/2015  
s. 17(3).

## **69 Procedure where a matter is referred to the Tribunal**

If an enabling enactment provides for a matter to be referred to the Tribunal, the referral is to be made in accordance with the enabling enactment and the rules.

## **70 Referral fee**

- (1) If a matter is referred to the Tribunal, the applicant must pay the prescribed fee (if any) for the referral.
- (2) The Tribunal may refuse to continue with a proceeding on a referral if a fee payable for the referral has not been paid.

## **71 Principal registrar or the Tribunal may reject certain applications**

- (1) Unless otherwise provided for in the rules, the principal registrar may reject an application that—
  - (a) is made by a person not entitled to make it; or
  - (b) is lodged after the expiry of the period specified in the enabling enactment; or
  - (c) does not otherwise comply with this Act, the regulations or the rules.

- (2) If the principal registrar rejects an application, the applicant may require the principal registrar to refer the application to the Tribunal for review of the rejection.
- (3) If the principal registrar rejects an application, he or she must inform the applicant of the right of referral under subsection (2).
- (4) No fee is payable for a referral under subsection (2).
- (5) On a referral under subsection (2), the Tribunal must review the rejection and may—
  - (a) confirm the rejection; or
  - (b) order the principal registrar to accept the application.
- (6) Instead of rejecting an application under subsection (1), the principal registrar may refer it to the Tribunal.
- (7) On a referral under subsection (6), the Tribunal may order that the application be rejected if it is an application referred to in subsection (1)(a), (b) or (c).
- (8) Nothing in Division 3 of Part 3 applies to a review under subsection (2).

## **72 Notification of commencement**

- (1) An applicant must serve a copy of an application or referral, within the time specified by the rules—
  - (a) on each other party; and
  - (b) on any other person entitled to notice of the application under this Act, the enabling enactment or the rules; and
  - (c) on any person that the Tribunal directs be given notice of the proceeding.

- (2) Subsection (1) does not apply if—
- (a) the principal registrar undertakes service on behalf of the applicant; or
  - (b) a member makes an order under subsection (3).
- (3) A member who is an Australian lawyer may make an order that service under subsection (1) be dispensed with if he or she is satisfied—
- (a) that the applicant has made all reasonable attempts to serve a person, but has been unsuccessful; or
  - (b) that the making and hearing of an application or referral without notice to a person would not cause injustice.
- (4) An order under subsection (3) may be made on the application of the applicant or at the member's own initiative.

S. 72(2)(b)  
amended by  
No. 101/1998  
s. 23(a)(i).

S. 72(3)  
amended by  
Nos 101/1998  
s. 23(a)(ii),  
17/2014  
s. 160(Sch. 2  
item 105.5).

S. 72(4)  
amended by  
No. 101/1998  
s. 23(a)(iii).

### 73 Intervention

- (1) The Attorney-General may intervene on behalf of the State in a proceeding at any time.
- (2) The Director may intervene at any time in a proceeding under an enabling enactment that is administered by the Minister administering the **Australian Consumer Law and Fair Trading Act 2012**.
- (2A) The Small Business Commission established under the **Small Business Commission Act 2017** may intervene at any stage in proceedings brought before the Tribunal—
- (a) concerning a retail tenancy dispute within the meaning of Part 10 of the **Retail Leases Act 2003**; or

S. 73(2)  
amended by  
Nos 17/1999  
s. 49(2),  
21/2012  
s. 239(Sch. 6  
item 46.2).

S. 73(2A)  
inserted by  
No. 6/2003  
s. 16,  
amended by  
No. 16/2017  
s. 29(1).

S. 73(2A)(b)  
amended by  
No. 49/2005  
s. 67(1)(a),  
substituted by  
No. 72/2010  
s. 48(Sch.  
item 24).

(b) under section 22 of the Australian Consumer Law (Victoria); or

S. 73(2A)(c)  
inserted by  
No. 49/2005  
s. 67(1)(b).

(c) under the **Owner Drivers and Forestry Contractors Act 2005**.

S. 73(2B)  
inserted by  
No. 6/2003  
s. 16,  
amended by  
No. 16/2017  
s. 29(2).

(2B) If the Small Business Commission intervenes in proceedings referred to in subsection (2A), it becomes a party to the proceedings and has all the rights (including rights of appeal) of such a party.

S. 73(2C)  
inserted by  
No. 100/2005  
s. 15,  
repealed by  
No. 21/2009  
s. 6.

\* \* \* \* \*

(3) The Tribunal may give leave at any time for a person to intervene in a proceeding subject to any conditions the Tribunal thinks fit.

S. 73(4)  
inserted by  
No. 62/2014  
s. 30,  
amended by  
No. 16/2017  
s. 29(3).

(4) A person (other than the Small Business Commission) who is entitled under this Act or an enabling enactment to intervene in a proceeding and who does intervene is entitled to be joined as a party to the proceeding.

## 74 Withdrawal of proceedings

(1) If the Tribunal gives leave, an applicant may withdraw an application or referral before it is determined by the Tribunal.

- (2) If an applicant withdraws an application or referral—
  - (a) the applicant must notify all other parties in writing of the withdrawal; and
  - (b) the Tribunal may make an order that the applicant pay all, or any part of, the costs of the other parties to the proceeding; and
  - (c) the principal registrar may refund any application fee paid by the applicant; and
  - (d) the applicant cannot make a further application or request or require a further referral in relation to the same facts and circumstances without the leave of the Tribunal.
- (3) Subsection (2)(a) does not apply if the principal registrar notifies the other parties in writing on behalf of the applicant.

## **75 Summary dismissal of unjustified proceedings**

- (1) At any time, the Tribunal may make an order summarily dismissing or striking out all, or any part, of a proceeding that, in its opinion—
  - (a) is frivolous, vexatious, misconceived or lacking in substance; or
  - (b) is otherwise an abuse of process.
- (2) If the Tribunal makes an order under subsection (1), it may order the applicant to pay any other party an amount to compensate that party for any costs, expenses, loss, inconvenience and embarrassment resulting from the proceeding.
- (3) The Tribunal's power to make an order under subsection (1) or (2) is exercisable by—
  - (a) the Tribunal as constituted for the proceeding; or

S. 75(3)(b)  
amended by  
No. 51/2000  
s. 19.

(b) a presidential member; or

S. 75(3)(c)  
inserted by  
No. 51/2000  
s. 19,  
amended by  
Nos 79/2006  
s. 56, 17/2014  
s. 160(Sch. 2  
item 105.5).

(c) a member who is an Australian lawyer.

- (4) An order under subsection (1) or (2) may be made on the application of a party or on the Tribunal's own initiative.
- (5) For the purposes of this Act, the question whether or not an application is frivolous, vexatious, misconceived or lacking in substance or is otherwise an abuse of process is a question of law.

## **76 Summary dismissal for want of prosecution**

- (1) At any time, the Tribunal may make an order summarily dismissing or striking out all, or any part, of a proceeding for want of prosecution.
- (2) The Tribunal's power to dismiss or strike out a proceeding under this section is exercisable by—
- (a) the Tribunal as constituted for the proceeding; or
  - (b) a presidential member.
- (3) An order under subsection (1) may be made on the application of a party or on the Tribunal's own initiative.

## **77 More appropriate forum**

- (1) At any time, the Tribunal may make an order striking out all, or any part, of a proceeding (other than a proceeding for review of a decision) if it considers that the subject-matter of the

proceeding would be more appropriately dealt with by a tribunal (other than the Tribunal), a court or any other person or body.

- (2) The Tribunal's power to make an order under subsection (1) is exercisable only by a judicial member.
- (3) If the Tribunal makes an order under subsection (1), it may refer the matter to the relevant tribunal, court, person or body if it considers it appropriate to do so.
- (4) An order under subsection (1) may be made on the application of a party or on the Tribunal's own initiative.

#### **78 Conduct of proceeding causing disadvantage**

- (1) This section applies if the Tribunal believes that a party to a proceeding is conducting the proceeding in a way that unnecessarily disadvantages another party to the proceeding by conduct such as—
  - (a) failing to comply with an order or direction of the Tribunal without reasonable excuse; or
  - (b) failing to comply with this Act, the regulations, the rules or an enabling enactment; or
  - (c) asking for an adjournment as a result of (a) or (b); or
  - (d) causing an adjournment; or
  - (e) attempting to deceive another party or the Tribunal; or
  - (f) vexatiously conducting the proceeding; or

**S. 78(1)(f)  
amended by  
No. 51/2000  
s. 20.**

S. 78(1)(g)  
inserted by  
No. 51/2000  
s. 20.

(g) failing to attend mediation or the hearing of the proceeding.

(2) If this section applies, the Tribunal may—

- (a) order that the proceeding be dismissed or struck out, if the party causing the disadvantage is the applicant; or
- (b) if the party causing the disadvantage is not the applicant—
  - (i) determine the proceeding in favour of the applicant and make any appropriate orders; or
  - (ii) order that the party causing the disadvantage be struck out of the proceeding;

(c) make an order for costs under section 109.

(3) The Tribunal's powers under this section are exercisable by the presiding member.

S. 78A  
(Heading)  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 57.1).

S. 78A  
inserted by  
No. 53/2006  
s. 6,  
amended by  
No. 69/2009  
s. 54(Sch. Pt 2  
item 57.2).

#### **78A Application of Division 9 of Part III of Evidence (Miscellaneous Provisions) Act 1958—Document unavailability**

Despite section 98(1)(b), Division 9 of Part III of the **Evidence (Miscellaneous Provisions) Act 1958** applies to a proceeding commenced on or after the commencement of the **Evidence (Document Unavailability) Act 2006**, regardless of when the document was destroyed, disposed of, lost, concealed or rendered illegible, undecipherable or incapable of identification.



## **79 Security for costs**

- (1) On the application of a party to a proceeding, the Tribunal may order at any time—
  - (a) that another party give security for that party's costs within the time specified in the order; and
  - (b) that the proceeding as against that party be stayed until the security is given.
- (2) If security for costs is not given within the time specified in the order, the Tribunal may make an order dismissing the proceeding as against the party that applied for the security.
- (3) The Tribunal's power to make an order under this section in a proceeding is exercisable by—
  - (a) the presiding member; or
  - (b) a presidential member.

## **80 Directions**

- (1) The Tribunal may give directions at any time in a proceeding and do whatever is necessary for the expeditious or fair hearing and determination of a proceeding.
- (2) The Tribunal's power to give directions is exercisable by any member.
- (3) The Tribunal may give directions under this section requiring a party to produce a document or provide information in a proceeding for review of a decision despite anything to the contrary in section 106(1) or any rule of law relating to privilege or the public interest in relation to the production of documents.

### **81 Obtaining information from third parties**

- (1) On the application of a party to a proceeding, the Tribunal may order that a person—
  - (a) who is not a party to the proceeding; and
  - (b) who has, or is likely to have, in the person's possession a document that is relevant to the proceeding—produce the document to the Tribunal or the party within the time specified in the order.
- (2) The Tribunal's power to make an order under subsection (1) is exercisable by any member.

### **82 Consolidation of proceedings**

- (1) The Tribunal may direct that 2 or more applications or referrals that concern the same or related facts and circumstances—
  - (a) be consolidated into the one proceeding; or
  - (b) remain as separate proceedings but be heard and determined together.
- (2) The Tribunal's power to give a direction under subsection (1)(a) is exercisable by a presidential member.
- (3) The Tribunal's power to give a direction under subsection (1)(b) is exercisable by any member.
- (4) If applications or referrals are consolidated, evidence given in the proceeding is admissible in relation to all applications or referrals consolidated into that proceeding.

## **Division 5—Compulsory conferences, mediation and settlement**

### **83 Compulsory conferences**

- (1) The Tribunal or the principal registrar may require the parties to a proceeding to attend one or more compulsory conferences before a member of the Tribunal or the principal registrar before the proceeding is heard by the Tribunal.
- (2) The functions of a compulsory conference are—
  - (a) to identify and clarify the nature of the issues in dispute in the proceeding;
  - (b) to promote a settlement of the proceeding;
  - (c) to identify the questions of fact and law to be decided by the Tribunal;
  - (d) to allow directions to be given concerning the conduct of the proceeding.
- (3) Notice of a compulsory conference must be given to each party in accordance with the rules.
- (4) Unless the person presiding otherwise directs, a compulsory conference must be held in private.
- (5) Subject to this Act and the rules, the procedure for a compulsory conference is at the discretion of the person presiding.

### **84 Tribunal may require personal attendance at compulsory conference**

The Tribunal or the principal registrar may require a party to attend a compulsory conference personally or by a representative who has authority to settle the proceeding on behalf of the party.

### **85 Evidence inadmissible**

Evidence of anything said or done in the course of a compulsory conference is not admissible in any hearing before the Tribunal in the proceeding, except—

- (a) where all parties agree to the giving of the evidence; or
- (b) evidence of directions given at a compulsory conference or the reasons for those directions; or
- (c) evidence of anything said or done that is relevant to—
  - (i) a proceeding for an offence in relation to the giving of false or misleading information; or
  - (ii) a proceeding under section 137 (contempt); or
  - (iii) a proceeding in relation to an order made under section 87(b)(i).

### **86 Party may object to member hearing the proceeding**

- (1) A party to a proceeding who attended or was represented at a compulsory conference may object to the member who presided constituting the Tribunal (whether with or without others) for the purpose of hearing the proceeding.
- (2) The objection must be made to the Tribunal before or at the commencement of the hearing.
- (3) If an objection is made, the member must take no further part in the hearing and, if necessary, the Tribunal must be reconstituted.

**87 What happens if a party fails to attend a compulsory conference?**

If a party does not attend a properly convened compulsory conference—

- (a) the conference may proceed at the appointed time in the party's absence; and
- (b) if a member of the Tribunal is presiding and all the parties present agree, the Tribunal, constituted by that member, may—
  - (i) determine the proceeding adversely to the absent party and make any appropriate orders; or
  - (ii) direct that the absent party be struck out of the proceeding.

**88 Mediation**

- (1) The Tribunal or the principal registrar may refer a proceeding or any part of it for mediation by a person nominated by the Tribunal or principal registrar (as the case requires).
- (2) A referral may be made under subsection (1) with or without the consent of the parties.
- (3) The principal registrar must give notice of the mediation to each party in accordance with the rules.
- (4) A party must pay the prescribed fee (if any) for mediation, whether or not the party consented to the referral for mediation.
- (5) The Tribunal may refuse to continue with a proceeding if a fee payable for mediation has not been paid.

\* \* \* \* \*

**S. 88(6)  
repealed by  
No. 62/2014  
s. 31.**

(7) Subject to this Act and the rules, the procedure for mediation is at the discretion of the mediator.

S. 89  
amended by  
Nos 51/2000  
s. 21, 23/2014  
s. 11(1).

**89 Tribunal or mediator may require personal attendance at mediation**

The member or principal registrar who refers a proceeding or any part of it for mediation or the mediator may require a party to attend the mediation, either personally or by a representative who has authority to settle the proceeding or part on behalf of the party.

S. 90  
amended by  
Nos 51/2000  
s. 22, 23/2014  
s. 11(2).

**90 What happens if mediation is successful?**

If the parties agree to settle a proceeding or any part of it as a result of mediation, the mediator must notify the principal registrar that the parties have agreed to settle.

S. 91  
amended by  
No. 23/2014  
s. 11(2).

**91 What happens if mediation is unsuccessful?**

If the mediator has attempted unsuccessfully to settle the proceeding or any part of it by mediation, the mediator must notify the principal registrar that mediation has been unsuccessful.

**92 Evidence inadmissible**

Evidence of anything said or done in the course of mediation is not admissible in any hearing before the Tribunal in the proceeding, unless all parties agree to the giving of the evidence.

**93 Settlement of proceeding**

S. 93(1)  
amended by  
No. 23/2014  
s. 11(2).

- (1) If the parties agree to settle a proceeding or any part of it at any time, the Tribunal may make any orders necessary to give effect to the settlement.
- (2) The Tribunal's power to make an order under subsection (1) is exercisable by any member including, if the settlement is achieved through mediation conducted by a member, that member.

- (3) If the parties agree to settle a proceeding or any part of it at a compulsory conference at which the principal registrar is presiding, the principal registrar may exercise the Tribunal's power to make orders under subsection (1).

S. 93(3)  
amended by  
No. 23/2014  
s. 11(2).

**93A Party may object to mediator hearing the proceeding**

S. 93A  
inserted by  
No. 62/2014  
s. 32.

- (1) This section applies in a proceeding that has been the subject of unsuccessful mediation by a mediator who is a member of the Tribunal.
- (2) If it is proposed that the mediator constitute the Tribunal (whether with or without others) for the purpose of hearing the proceeding, the Tribunal must notify each party to the proceeding of the party's right to object.
- (3) A party to the proceeding may object to the mediator constituting the Tribunal (whether with or without others) for the purpose of hearing the proceeding.
- (4) The objection must be made to the Tribunal before or at the commencement of the hearing.
- (5) If an objection is made, the mediator must take no part, or no further part, in the proceeding and, if necessary, the Tribunal must be reconstituted.

**Division 6—Referral to experts**

**94 Expert witnesses and expert evidence**

Schedule 3, which deals with expert witnesses and expert evidence, has effect.

S. 94  
substituted by  
No. 23/2014  
s. 12.

**95 Special referees**

- (1) The Tribunal may refer any question arising in a proceeding to a special referee for the special referee—

- (a) to decide the question; or
  - (b) to give his or her opinion with respect to it.
- (2) The parties are responsible for any costs of a special referee, and are to pay those costs in the proportions determined by the Tribunal.

#### **96 Referral of questions of law to Court**

- (1) The Tribunal, with the consent of the President, may refer any question of law arising in a proceeding to the Trial Division of the Supreme Court or the Court of Appeal for decision.
- (2) A referral may be made under subsection (1) on the application of a party or on the Tribunal's own initiative.
- (3) If a question of law has been referred to the Trial Division or the Court of Appeal, the Tribunal must not—
  - (a) make a determination to which the question is relevant while the referral is pending; or
  - (b) proceed in a manner or make a determination that is inconsistent with the opinion of the Trial Division or Court of Appeal on the question.

### **Division 7—Hearings**

#### **97 Tribunal must act fairly**

The Tribunal must act fairly and according to the substantial merits of the case in all proceedings.

#### **98 General procedure**

- (1) The Tribunal—
  - (a) is bound by the rules of natural justice;



- (b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that it adopts those rules, practices or procedures;
  - (c) may inform itself on any matter as it sees fit;
  - (d) must conduct each proceeding with as little formality and technicality, and determine each proceeding with as much speed, as the requirements of this Act and the enabling enactment and a proper consideration of the matters before it permit.
- (2) Without limiting subsection (1)(b), the Tribunal may admit into evidence the contents of any document despite the non-compliance with any time limit or other requirement specified in the rules in relation to that document or service of it.
- (2A) Without limiting subsection (1), at the hearing of a proceeding the Tribunal may admit into evidence any material put before the Tribunal at an earlier stage of the proceeding, or any material put before the Tribunal in another proceeding, if the Tribunal considers it desirable to do so. **S. 98(2A) inserted by No. 62/2014 s. 33.**
- (2B) Subsection (2A) is subject to any other provision of this Act, an enabling enactment or any other law that provides that evidence or material is not admissible in a proceeding. **S. 98(2B) inserted by No. 62/2014 s. 33.**
- Example**
- Section 85 provides that evidence of anything said or done in the course of a compulsory conference is not admissible except in certain circumstances.
- (3) Subject to this Act, the regulations and the rules, the Tribunal may regulate its own procedure.
  - (4) Subsection (1)(a) does not apply to the extent that this Act or an enabling enactment authorises, whether expressly or by implication, a departure from the rules of natural justice.

## 99 Notice of hearings

- (1) The principal registrar must give notice, in accordance with the rules, of the time and place for the hearing of a proceeding to—
  - (a) each party to the proceeding; and
  - (b) each other person entitled to notice of the proceeding or hearing under this Act, the enabling enactment or the rules; and
  - (c) any other person that the Tribunal directs be given notice of the hearing.
- (2) If a person, including a party, to whom notice has been given in accordance with the rules fails to attend, the hearing may be held in the absence of that person.

## 100 Method of conducting hearings

- (1) If the Tribunal thinks it appropriate, it may conduct all or part of a proceeding by means of a conference conducted using telephones, video links or any other system of telecommunication.
- (2) If the parties to a proceeding agree, the Tribunal may conduct all or part of a proceeding entirely on the basis of documents, without any physical appearance by the parties or their representatives or witnesses.

Note to s. 100  
inserted by  
No. 58/2013  
s. 59.

S. 101  
amended by  
No. 51/2000  
s. 23,  
repealed by  
No. 58/2013  
s. 60.

### Note

The **Open Courts Act 2013** governs suppression orders and closed tribunal orders generally in relation to the Tribunal.

\* \* \* \* \*

## 102 Evidence

- (1) The Tribunal must allow a party a reasonable opportunity—
  - (a) to call or give evidence; and
  - (b) to examine, cross-examine or re-examine witnesses; and
  - (c) to make submissions to the Tribunal.
- (2) Despite subsection (1), the Tribunal may refuse to allow a party to call evidence on a matter if the Tribunal considers that there is already sufficient evidence of that matter before the Tribunal.
- (3) Evidence in a proceeding—
  - (a) may be given orally or in writing; and
  - (b) if the Tribunal requires, must be given on oath or by affirmation or by affidavit<sup>5</sup>.
- (4) A member of the Tribunal may administer or cause to be administered an oath or affirmation or take or cause to be taken an affirmation for the purpose of taking and receiving evidence at a hearing.

S. 102(3)(b)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 132.1).

S. 102(4)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 132.2).

## 103 Authorisation of person to take evidence

- (1) The Tribunal may authorise, in writing, a person (whether or not a member of the Tribunal) to take evidence on behalf of the Tribunal for the purposes of any proceeding.
- (2) The Tribunal's power under subsection (1) to authorise the taking of evidence is exercisable only by a presidential member.
- (3) A person may take evidence under this section outside Victoria if the Tribunal so authorises.

- (4) The Tribunal may give directions as to the taking of evidence under this section.
- (5) If a person other than a member of the Tribunal is authorised to take evidence—
  - (a) the person has all the powers of a member of the Tribunal in relation to the taking of evidence; and
  - (b) section 135 (failing to give evidence) applies as if the person were the presiding member of the Tribunal.
- (6) Evidence taken under this section—
  - (a) is deemed to be evidence given to the Tribunal; and
  - (b) in the case of evidence taken outside Victoria, is deemed to have been given in Victoria.

#### **104 Witness summons**

- (1) The principal registrar—
  - (a) may; and
  - (b) if directed by the Tribunal, must—

issue a summons to a person to attend the Tribunal to give evidence and produce any documents that are referred to in the summons<sup>6</sup>.
- (2) A summons may be issued, or a direction given, under subsection (1) at the request of a party or on the principal registrar's or Tribunal's own initiative.
- (3) The Tribunal's power to make a direction under subsection (1)(b) in a proceeding is exercisable by a presidential member or the presiding member.
- (4) A person who attends in answer to a summons is entitled to be paid the prescribed fees and allowances or, if no fees and allowances are

prescribed, the fees and allowances (if any) determined by the Tribunal.

- (5) The fees and allowances are to be paid—
- (a) if the person was summoned at the request of a party, by that party; or
  - (b) if the person was summoned on the initiative of the Tribunal, by the parties in the proportion determined by the Tribunal.

**105 Rule against self-incrimination does not apply**

- (1) A person is not excused from answering a question or producing a document in a proceeding on the ground that the answer or document might tend to incriminate the person.
- (2) If the person claims, before answering a question or producing a document, that the answer or document might tend to incriminate them, the answer or document is not admissible in evidence in any criminal proceedings, other than in proceedings in respect of the falsity of the answer.

**106 Other claims of privilege**

- (1) Except as provided by section 80(3) or 105, a person is excused from answering a question or producing a document in a proceeding if the person could not be compelled to answer the question or produce the document in proceedings in the Supreme Court.
- (2) The Tribunal may require a person to produce a document to it for the purpose of determining whether or not it is a document that the Tribunal has power to compel the person to produce.

**107 Dealing with questions of law**

- (1) A question of law arising in a proceeding must be decided by a judicial member or a member who is an Australian lawyer.

S. 107(1)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.6(a)).

S. 107(2)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.6(b)).

- (2) If the Tribunal is constituted in a proceeding by more than one judicial member or Australian lawyer (or both), a question of law arising in the proceeding must be decided by the presiding member.

S. 107(3)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item  
105.6(c)(i)).

- (3) If a question of law arises in a proceeding where the Tribunal is constituted by a member or members who are not judicial members or Australian lawyers—

S. 107(3)(a)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item  
105.6(c)(ii)).

- (a) the question must be decided by another member who is a judicial member or Australian lawyer; and

- (b) for that purpose only, the Tribunal in the proceeding is to be reconstituted to include that other member.

- (4) In this section, *question of law* includes a question of mixed law and fact.

S. 108  
amended by  
No. 14/2006  
s. 25,  
substituted by  
No. 23/2014  
s. 13.

## 108 Reconstitution of Tribunal

- (1) At any time before the conclusion of the hearing of a proceeding—
- (a) a party may apply to the Tribunal for the reconstitution of the Tribunal for the purposes of the proceeding; or
- (b) the President or a member of the Tribunal as presently constituted may give notice to the parties that the President or member seeks the reconstitution of the Tribunal for the purposes of the proceeding.
- (2) If an application is made under subsection (1)(a) or notice is given under subsection (1)(b)—
- (a) a presidential member, after allowing the parties to make submissions, may decide that the Tribunal should be reconstituted; and

- (b) if so, the President must reconstitute the Tribunal.
- (3) If the Tribunal is reconstituted for the purposes of a proceeding, the reconstituted Tribunal may have regard to any record of the proceeding in the Tribunal as previously constituted, including a record of any evidence taken in the proceeding.

### **Division 8—Costs**

#### **109 Power to award costs**

- (1) Subject to this Division, each party is to bear their own costs in the proceeding.
- (2) At any time, the Tribunal may order that a party pay all or a specified part of the costs of another party in a proceeding.
- (3) The Tribunal may make an order under subsection (2) only if satisfied that it is fair to do so, having regard to—
  - (a) whether a party has conducted the proceeding in a way that unnecessarily disadvantaged another party to the proceeding by conduct such as—
    - (i) failing to comply with an order or direction of the Tribunal without reasonable excuse;
    - (ii) failing to comply with this Act, the regulations, the rules or an enabling enactment;
    - (iii) asking for an adjournment as a result of (i) or (ii);
    - (iv) causing an adjournment;
    - (v) attempting to deceive another party or the Tribunal;
    - (vi) vexatiously conducting the proceeding;

- (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the proceeding;
  - (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 proceeding;
  - (e) any other matter the Tribunal considers relevant.
- (4) If the Tribunal considers that the representative of a party, rather than the party, is responsible for conduct described in subsection (3)(a) or (b), the Tribunal may order that the representative in his or her own capacity compensate another party for any costs incurred unnecessarily.
- (5) Before making an order under subsection (4), the Tribunal must give the representative a reasonable opportunity to be heard.
- (6) If the Tribunal makes an order for costs before the end of a proceeding, the Tribunal may require that the order be complied with before it continues with the proceeding.
- (7) A power of the Tribunal under this section is exercisable by any member.

S. 109(7)  
inserted by  
No. 62/2014  
s. 34.

Note to s. 109  
inserted by  
No. 78/2008  
s. 18.

**Note**

See section 17D(1)(b) to (d) of the **Supreme Court Act 1986**.

## **110 Costs of intervention**

- (1) The Tribunal may order that a person given leave to intervene in a proceeding pay an amount specified by the Tribunal to a party as compensation for all or part of the costs



reasonably incurred by the party as a result of the intervention.

- (2) If the Attorney-General or Director intervenes in a proceeding, the Tribunal may order that the State pay an amount specified by the Tribunal to a party as compensation for all or part of the costs reasonably incurred by the party as a result of the intervention.

### **111 Amount of costs**

If the Tribunal makes an order for costs, the Tribunal—

- (a) may fix the amount of costs itself; or
- (b) may order that costs be assessed, settled, taxed or reviewed by the Costs Court.

**S. 111**  
amended by  
**No. 51/2000**  
s. 24,  
substituted by  
**No. 78/2008**  
s. 19.

#### **Note**

See section 146 of the **Supreme Court Act 1986** which deals with transitional matters relating to the Costs Court.

### **112 Presumption of order for costs if settlement offer is rejected**

- (1) This section applies if—
- (a) a party to a proceeding (other than a proceeding for review of a decision) gives another party an offer in writing to settle the proceeding; and
  - (b) the other party does not accept the offer within the time the offer is open; and
  - (c) the offer complies with sections 113 and 114; and
  - (d) in the opinion of the Tribunal, the orders made by the Tribunal in the proceeding are not more favourable to the other party than the offer.

- (2) If this section applies and unless the Tribunal orders otherwise, a party who made an offer referred to in subsection (1)(a) is entitled to an order that the party who did not accept the offer pay all costs incurred by the offering party after the offer was made.
- (3) In determining whether its orders are or are not more favourable to a party than an offer, the Tribunal—
  - (a) must take into account any costs it would have ordered on the date the offer was made; and
  - (b) must disregard any interest or costs it ordered in respect of any period after the date the offer was received.

### **113 Provisions regarding settlement offers**

- (1) An offer may be made—
  - (a) with prejudice, meaning that any party may refer to the offer, or to any terms of the offer, at any time during the proceeding; or
  - (b) without prejudice, meaning that the Tribunal is not able to be told of the making of the offer until after it has made its orders in respect of the matters in dispute in the proceeding (other than orders in respect of costs).
- (2) If an offer does not specify whether it is made with or without prejudice, it is to be treated as if it had been made without prejudice.
- (3) A party may serve more than one offer.
- (4) If an offer provides for the payment of money, the offer must specify when that money is to be paid.

**114 Provisions concerning the acceptance of settlement offers**

- (1) An offer must be open for acceptance until immediately before the Tribunal makes its orders on the matters in dispute, or until the expiry of a specified period after the offer is made, whichever is the shorter period.
- (2) The minimum period that can be specified is 14 days.
- (3) An offer cannot be withdrawn while it is open for acceptance without the permission of the Tribunal.
- (4) In deciding whether to give permission, the Tribunal may examine the offer, even if it was made without prejudice.
- (5) If the offer was made without prejudice, a member of the tribunal who examines it for the purposes of subsection (4) can take no further part in the proceeding after determining whether or not to give permission.
- (6) A party can only accept an offer by giving the party who made it a signed notice of acceptance.
- (7) A party may accept an offer even though it has made a counter-offer.

**115 Consequences if accepted offer is not complied with**

If an offer is accepted, but the party who made the offer does not comply with its terms, the Tribunal, at the request of the party who accepted the offer, may—

- (a) make an order giving effect to the terms of the offer; or
- (b) if the party making the offer was the applicant—
  - (i) dismiss the proceeding; or

- (ii) if the party who accepted the offer made a counterclaim before the offer was made, make an order awarding the party any or all of the things asked for in the counterclaim; or
- (c) if the party who accepted the offer is the applicant, make an order awarding the applicant any or all of the things asked for in the application.

Pt 4 Div. 8A  
(Heading and  
ss 115A–  
115D)  
inserted by  
No. 23/2014  
s. 14.

## Division 8A—Reimbursement of fees

S. 115A  
inserted by  
No. 23/2014  
s. 14.

### 115A Definitions

In this Division—

*fee* means a fee payable in a proceeding under this Act, the rules, the regulations or an enabling enactment;

*party* does not include a person who is a party only because the person—

- (a) has intervened or is entitled to intervene in a proceeding; or
- (b) is a party because of section 83 of the **Planning and Environment Act 1987**.

S. 115B  
inserted by  
No. 23/2014  
s. 14.

### 115B Orders as to reimbursement or payment of fees

- (1) At any time, the Tribunal may make any of the following orders—
  - (a) an order that a party to a proceeding reimburse another party the whole or any part of any fee paid by that other party in the proceeding, within a specified time;

- (b) an order as to which party must pay the whole or any part of a fee in future in the proceeding;
  - (c) an order that a party to a proceeding pay, on behalf of another party, the whole or any part of any fee that may be required to be paid in the future by that other party in the proceeding;
  - (d) an order that a party to a proceeding reimburse another party the whole or any part of any fee that may be paid in the future by that other party in the proceeding, within a specified time after the fee is paid.
- (2) Subsection (1)(b) does not apply if this Act, the rules, the regulations or an enabling enactment requires the fee to be paid by a particular party.
- (3) In making an order under this section, other than in a proceeding to which section 115C or 115CA applies, the Tribunal must have regard to—
- (a) the nature of, and issues involved in, the proceeding; and
  - (b) the conduct of the parties (whether occurring before or during the proceeding), including whether a party has caused unreasonable delay in the proceeding or has failed to comply with an order or direction of the Tribunal without reasonable excuse; and
  - (c) the result of the proceeding, if it has been reached.
- (4) If the Tribunal makes an order under this section before the end of a proceeding, the Tribunal may require that the order be complied with before it continues with the proceeding.

**S. 115B(3)**  
**amended by**  
**No. 62/2014**  
**s. 35(1).**

S. 115C  
(Heading)  
amended by  
No. 62/2014  
s. 35(2).

S. 115C  
inserted by  
No. 23/2014  
s. 14.

S. 115C(1)(d)  
repealed by  
No. 3/2016  
s. 15, new  
s. 115C(1)(d)  
inserted by  
No. 38/2017  
s. 72.

### **115C Presumption of order for reimbursement of fees to successful party in certain proceedings**

- (1) This section applies to the following proceedings—
  - (a) a proceeding relating to a small claim within the meaning of Part 2AB of Schedule 1;
  - (b) a proceeding under the **Domestic Building Contracts Act 1995**;
  - (c) a proceeding under the **Owners Corporations Act 2006**, other than a proceeding on an application for review under section 191 of that Act;
  - (d) a proceeding under section 114, 120 or 149A of the **Planning and Environment Act 1987**;
  - (e) a proceeding of a kind prescribed by the regulations for the purposes of this section.
- (2) Subject to subsection (3), a party who has substantially succeeded against another party in a proceeding to which this section applies is entitled to an order under section 115B that the other party reimburse the successful party the whole of any fees paid by the successful party in the proceeding.
- (3) Subsection (2) does not apply if the Tribunal orders otherwise, having regard to—
  - (a) the nature of, and issues involved in, the proceeding; and
  - (b) the conduct of the parties (whether occurring before or during the proceeding), including whether the successful party has caused unreasonable delay in the proceeding or has

failed to comply with an order or direction of the Tribunal without reasonable excuse.

(4) In this section—

*successful party*, in relation to a proceeding, means a party who has substantially succeeded against another party in the proceeding.

**115CA Presumption of order for reimbursement of fees in certain planning matters**

S. 115CA  
inserted by  
No. 62/2014  
s. 36.

(1) Subject to subsections (2) and (3), an applicant to the Tribunal under section 79 of the **Planning and Environment Act 1987** is entitled to an order under section 115B that the responsible authority reimburse the applicant the whole of any fees paid by the applicant in the proceeding.

**Note**

Section 79 of the **Planning and Environment Act 1987** enables an applicant for a planning permit to apply to the Tribunal for review of a failure of the responsible authority to grant the permit within the prescribed time.

(2) If different fees are payable in a proceeding under section 79 of the **Planning and Environment Act 1987** depending on an election made by the applicant, subsection (1) applies to entitle the applicant to an order for reimbursement of only the amount of the lowest of those fees.

**Example**

If different fees are payable depending on the list of the Tribunal in which the applicant elects to have the proceeding entered, then if the applicant elects to have the proceeding entered in a list that attracts a higher fee, the applicant would only be entitled under subsection (1) to an order for reimbursement of the amount of the lowest of those fees.

(3) Subsection (1) does not apply if the responsible authority satisfies the Tribunal that there was reasonable justification for the responsible

authority to fail to grant the permit before the application to the Tribunal, having regard to—

- (a) the nature and complexity of the permit application; and
- (b) the conduct of the applicant in relation to the permit application; and
- (c) any other matter beyond the reasonable control of the responsible authority.

S. 115D  
inserted by  
No. 23/2014  
s. 14.

**115D Division does not affect Tribunal's powers as to costs**

Nothing in this Division affects any power of the Tribunal under this Act or an enabling enactment to make an order for costs.

**Division 9—Orders**

**116 Form and service**

- (1) An order of the Tribunal must be—
  - (a) in writing; and
  - (b) authenticated in accordance with the rules.
- (2) The Tribunal must—
  - (a) give a copy of any order it makes in a proceeding to each party and each other person entitled to notice of the proceeding or of the order under this Act or the enabling enactment; or
  - (b) direct a party to give a copy of an order to the other parties and each other person entitled to notice of the proceeding or of the order under this Act or the enabling enactment.
- (3) The Tribunal may direct the principal registrar or a party to give a copy of any order made by it to any other person.



- (4) If the Tribunal makes an order affecting the licensing or registration of a person who is licensed or registered by the Business Licensing Authority, the Tribunal must advise the Business Licensing Authority of that order.

### **117 Reasons for final orders**

- (1) The Tribunal must give reasons for any order it makes in a proceeding, other than an interim order, within—
- (a) 60 days after making the order; or
  - (b) such other period as is specified by the rules or the President.
- (2) If the Tribunal gives oral reasons, a party, within 14 days, may request the Tribunal to give written reasons.
- (3) The Tribunal must comply with a request under subsection (2) within 45 days after receiving it.
- (4) The President may extend the 45-day period referred to in subsection (3), but must give reasons for the extension to the party who requested the written reasons for the order.
- (5) If the Tribunal gives written reasons, it must include in those reasons its findings on material questions of fact.
- (6) The reasons for an order, whether oral or written, form part of the order.

### **118 When does an order come into operation?**

- (1) An order of the Tribunal comes into effect immediately after it is made, or at such later time as is specified in it.
- (2) Subsection (1) is subject to an order of the Tribunal under section 149 or an order of the Supreme Court.

### **119 Correcting mistakes**

- (1) The Tribunal may correct an order made by it if the order contains—
  - (a) a clerical mistake; or
  - (b) an error arising from an accidental slip or omission; or
  - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or
  - (d) a defect of form.
- (2) The correction may be made—
  - (a) on the Tribunal's own initiative; or
  - (b) on the application of a party in accordance with the rules.

### **120 Re-opening an order on substantive grounds**

- (1) A person in respect of whom an order is made may apply to the Tribunal for a review of the order if the person did not appear and was not represented at the hearing at which the order was made.
- (2) An application under subsection (1) is to be made in accordance with, and within the time limits specified by, the rules.
- (3) The rules may limit the number of times a person may apply under this section in respect of the same matter without obtaining the leave of the Tribunal.

(4) The Tribunal may—

- (a) hear and determine the application if it is satisfied that—
  - (i) the applicant had a reasonable excuse for not attending or being represented at the hearing; and
  - (ii) it is appropriate to hear and determine the application having regard to the matters specified in subsection (4A); and
- (b) if it thinks fit, order that the order be revoked or varied.

**S. 120(4)(a)**  
substituted by  
**No. 62/2014**  
s. 37(1).

(4A) For the purposes of subsection (4)(a)(ii), the matters are—

- (a) whether the applicant has a reasonable case to argue in relation to the subject-matter of the order; and
- (b) any prejudice that may be caused to another party if the application is heard and determined.

**S. 120(4A)**  
inserted by  
**No. 62/2014**  
s. 37(2).

(4B) The Tribunal may hear and determine an application under this section despite subsection (4A)(b) if the Tribunal is satisfied that any prejudice that may be caused to a party may be addressed by an order for costs under section 109 or an order for reimbursement of fees under section 115B or both.

**S. 120(4B)**  
inserted by  
**No. 62/2014**  
s. 37(2).

(4C) In deciding to hear and determine an application under this section the Tribunal may require the applicant to give any undertaking as to costs or damages that the Tribunal considers appropriate.

**S. 120(4C)**  
inserted by  
**No. 62/2014**  
s. 37(2).

(5) Nothing in Division 3 of Part 3 applies to a review under this section.

### **121 Enforcement of monetary orders**

- (1) A person to whom payment is to be made under a monetary order may enforce the order by filing in the appropriate court—
  - (a) a copy of the order certified by a presidential member or the principal registrar to be a true copy; and
  - (b) that person's affidavit as to the amount not paid under the order.
- (2) No charge is to be made for filing a copy of an order or an affidavit under this section.
- (3) On filing, the order must be taken to be an order of the appropriate court, and may be enforced accordingly.
- (4) In this section—

*appropriate court* means a court that would have jurisdiction to enforce a debt of the equivalent amount to the amount required to be paid under a monetary order.

### **122 Enforcement of non-monetary orders**

- (1) A person may enforce a non-monetary order by filing in the Supreme Court—
  - (a) a copy of the order certified by a presidential member or the principal registrar to be a true copy; and
  - (b) that person's affidavit as to the non-compliance with the order; and
  - (c) a certificate from a judicial member or the principal registrar stating that the order is appropriate for filing in the Supreme Court.
- (2) No charge is to be made for filing a copy of an order, an affidavit or a certificate under this section.

S. 122(1)(c)  
amended by  
No. 23/2014  
s. 15.

- (3) On filing, the order must be taken to be an order of the Supreme Court, and may be enforced accordingly.

## **Division 10—General powers**

### **123 Injunctions**

- (1) The Tribunal may by order grant an injunction, including an interim injunction, in any proceeding if it is just and convenient to do so.
- (2) The Tribunal's power to make an order under subsection (1) is exercisable by a judicial member or a member who is an Australian lawyer.
- (3) The Tribunal may make an order under subsection (1) on application by any party or on its own initiative.
- (4) The Tribunal may make an order under subsection (1) granting an interim injunction whether or not it has given any person whose interests may be affected by the order an opportunity to be heard.
- (5) In making an order granting an interim injunction, the Tribunal—
- (a) may require any undertaking as to costs or damages that it considers appropriate; and
  - (b) may make provision for the lifting of the order if specified conditions are met.

S. 123(2)  
substituted by  
No. 79/2006  
s. 57(1),  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.7).

\* \* \* \* \*

S. 123(6)  
repealed by  
No. 23/2014  
s. 16.

- (7) The Tribunal's power to make an order granting an interim injunction is subject to any conditions specified in the rules.
- (8) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under an enabling enactment to make an order in the nature of an injunction.

#### **124 Declarations**

- (1) The Tribunal may make a declaration concerning any matter in a proceeding instead of any orders it could make, or in addition to any orders it makes, in the proceeding.
- (2) The Tribunal's power to make a declaration under subsection (1) is exercisable by a presidential member or a member who is an Australian lawyer.
- (3) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under an enabling enactment to make a declaration.

S. 124(2)  
amended by  
No. 51/2000  
s. 25,  
substituted by  
No. 79/2006  
s. 57(2),  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.7).

#### **125 Advisory opinions**

An enabling enactment may provide for the Tribunal to give an advisory opinion on any matter or question referred to it in accordance with the enabling enactment.

#### **125A Assessment of costs or damages in undertakings**

The Tribunal may assess any costs or damages that are the subject of an undertaking given to the Tribunal under this Act or an enabling enactment.

S. 125A  
inserted by  
No. 23/2014  
s. 17.

**126 Extension or abridgment of time and waiver of compliance**

- (1) The Tribunal, on application by any person or on its own initiative, may extend any time limit fixed by or under an enabling enactment for the commencement of a proceeding.
- (2) If the rules permit, the Tribunal, on application by a party or on its own initiative, may—
  - (a) extend or abridge any time limit fixed by or under this Act, the regulations, the rules or a relevant enactment for the doing of any act in a proceeding; or
  - (b) waive compliance with any procedural requirement, other than a time limit that the Tribunal does not have power to extend or abridge.
- (3) The Tribunal may extend time or waive compliance under this section even if the time or period for compliance had expired before an application for extension or waiver was made.
- (4) The Tribunal may not extend or abridge time or waive compliance if to do so would cause any prejudice or detriment to a party or potential party that cannot be remedied by an appropriate order for costs or damages.
- (5) In this section—

*relevant enactment* means an enactment specified in the rules to be a relevant enactment for the purposes of this section.

**127 Power to amend documents**

- (1) At any time, the Tribunal may order that any document in a proceeding be amended.
- (2) An order under subsection (1) may be made on the application of a party or on the Tribunal's own initiative.

**128 Retention of documents and exhibits**

- (1) The Tribunal may retain for a reasonable period and make copies of, or take extracts from, any document produced to the Tribunal in the course of a proceeding.
- (2) If—
  - (a) the Tribunal makes a copy of a document referred to in subsection (1); and
  - (b) a member of the Tribunal certifies the copy to be a true copy of the original—the certified copy is admissible in evidence before any court, tribunal or person acting judicially as if it were the original.
- (3) The Tribunal may retain for a reasonable period any non-documentary exhibit or thing produced to the Tribunal in the course of a proceeding.

**129 Power of entry and inspection**

- (1) If the presiding member considers it desirable for the purposes of a proceeding, the Tribunal may—
  - (a) enter and inspect any land or building either in the presence of, or without, the parties; or
  - (b) authorise a member of staff of the Tribunal or other person to enter and inspect any land or building for the purpose of preparing a report to the Tribunal; or



- (c) order an occupier of land or buildings relevant to the proceeding to give a person who is to give evidence in the proceeding reasonable access to the land or buildings.
  - (2) If land or a building is occupied by a person who is not a party, a power of entry under subsection (1)(a) or (b) may only be exercised—
    - (a) with the consent of the occupier; or
    - (b) after 2 days' notice has been given to the occupier.
  - (3) A power of entry and inspection under subsection (1)(a) must be exercised by all members of the Tribunal in a proceeding together, unless the presiding member directs otherwise.
  - (4) A power of entry under subsection (1)(a) or (b) may be exercised at any reasonable time.
  - (5) A person must not—
    - (a) obstruct or hinder; or
    - (b) refuse access to any land or buildings to—  
a person exercising a power of entry and inspection under this section.
- Penalty: Level 9 imprisonment (6 months maximum) or a level 9 fine (60 penalty units maximum) or both.

### **130 Power to impose conditions and make further orders**

- (1) A power of the Tribunal to make an order or other decision includes a power to make the order or decision subject to any conditions or further orders that the Tribunal thinks fit.

- (2) Conditions or further orders may include—
- (a) an adjournment of the proceeding;
  - (b) an order for costs;
  - (c) a condition or order that a party give notice of the proceeding, order or decision to any person specified by the Tribunal;
  - (d) a condition or order that a person give an undertaking to the Tribunal;
  - (e) a condition or order necessary or desirable to give effect to an order or other decision.

**131 Variation or revocation of procedural order or direction**

An order or direction as to the procedure to be followed in a proceeding may be varied or revoked at any time by any member empowered by or under this Act or the rules to make such an order or give such a direction.

**132 Reduction, waiver, postponement, remission or refund of fees**

- (1) The principal registrar in any case may reduce, waive, postpone, remit or refund any fee payable under this Act or the regulations if the principal registrar considers that the payment of the fee would cause the person responsible for its payment financial hardship or on any other prescribed ground in the regulations.

- (1A) If a fee or charge for services provided by the Tribunal of a kind not referred to in subsection (1) is payable, the principal registrar, on application, may reduce, waive, postpone, remit or refund the fee or charge if the principal registrar considers the payment of the fee or charge would cause the person responsible for its payment financial

S. 132  
(Heading)  
inserted by  
No. 20/2015  
s. 18(1).

S. 132(1)  
substituted by  
No. 20/2015  
s. 18(2).

S. 132(1A)  
inserted by  
No. 20/2015  
s. 18(2).

hardship or on any other prescribed ground in the regulations.

- (2) If costs are awarded by the Tribunal against a person who has had a fee reduced, waived, postponed, remitted or refunded under subsection (1) or subsection (1A), the person becomes liable to pay the amount of the fee previously reduced, waived, postponed, remitted or refunded.
- (3) If a person becomes liable to pay a fee because of subsection (2), the person is not entitled, without leave of the Tribunal, to bring any proceeding, or make any application in an existing proceeding, until the fee is paid.

S. 132(2)  
amended by  
No. 20/2015  
s. 18(3)(4).

**132A Tribunal may issue or transmit documents electronically**

S. 132A  
inserted by  
No. 33/2018  
s. 66.

- (1) Any order, determination or other document that the Tribunal, a member of the Tribunal, the principal registrar or a registrar may issue or transmit under this Act or any other Act, statutory rule or other enactment or law may be issued or transmitted by electronic communication.
- (2) If any provision of an Act, a statutory rule or other enactment or law in Victoria permits or requires any order, determination or other document to be issued or transmitted by manual means, that requirement is taken to be met if the issuing or transmission occurs by electronic communication.

**Example**

If an Act or other law requires or permits the Tribunal to sign or seal a document, the Tribunal could use an electronic signature or electronic seal and the requirement is met in the same way as if the document had been signed or sealed by hand.

- (3) Nothing in this section—
- (a) limits the Tribunal, a member of the Tribunal, the principal registrar or a registrar from issuing or providing any order, determination or other document in paper form; or
  - (b) affects or limits any practice, procedure or rules that provide for electronic processes in the Tribunal; or
  - (c) affects or limits the power to make rules; or
  - (d) limits any other power of the Tribunal, a member of the Tribunal, the principal registrar or a registrar.

### **Division 11—Offences**

#### **133 Non-compliance with order**

- (1) A person who does not comply with an order of the Tribunal, other than a monetary order, is guilty of an offence.

Penalty: Imprisonment until the person complies with the order or for 3 months, whichever is sooner or a fine of 20 penalty units and 5 penalty units for each day the non-compliance continues after the making of the order, up to a maximum total fine of 50 penalty units or both imprisonment and fine.

- (2) However, if the Tribunal makes an order without giving the person against whom it is made an opportunity to be heard, subsection (1) only applies on the person being given personally or in accordance with subsection (3)—

- (a) a copy of the order certified by the principal registrar or a member of the Tribunal as being an accurate copy; and
  - (b) a copy of this section.
- (3) If the Tribunal is satisfied that it is not possible or appropriate for a person to be personally given the documents referred to in subsection (2), the Tribunal may specify another method for service of the documents on the person under that subsection.

#### **134 Failing to comply with summons**

- (1) A person who has been properly served with a summons to attend the Tribunal must not, without reasonable excuse, fail to—
- (a) attend as required by the summons until he or she has been excused or released from attendance by the Tribunal; or
  - (b) produce any document referred to in the summons that is in the person's possession.

**Penalty:** Level 9 imprisonment (6 months maximum) or a level 9 fine (60 penalty units maximum) or both, and 5 penalty units for each day that the offence continues after the day on which the person was required to attend or produce the document.

- (2) The Tribunal may direct the apprehension of a person who fails to attend as required by a summons for the purpose of bringing the person before the Tribunal to give evidence or produce documents (as the case requires).
- (3) The Tribunal's power to give a direction under subsection (2) is exercisable only by a judicial member.

S. 134(4)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 177.2).

(4) A police officer must obey and execute a direction of the Tribunal under subsection (2).

S. 134(5)  
inserted by  
No. 79/2006  
s. 58.

(5) The **Bail Act 1977** applies, with any necessary modifications, to and in respect of a person brought before the Tribunal under this section as if—

(a) the person were accused of an offence and were being held in custody in relation to that offence; and

(b) the Tribunal were a bail decision maker within the meaning of that Act.

S. 134(5)(b)  
amended by  
No. 26/2017  
s. 28.

### 135 Failing to give evidence

A person appearing as a witness before the Tribunal must not, without reasonable excuse—

(a) refuse to be sworn in or make an affirmation; or

(b) refuse to answer a question that the person is required by the presiding member to answer.

Penalty: Level 9 imprisonment (6 months maximum) or a level 9 fine (60 penalty units maximum) or both.

### 136 False or misleading information

A person must not knowingly give false or misleading information to the Tribunal or a registrar.

Penalty: Level 9 imprisonment (6 months maximum) or a level 9 fine (60 penalty units maximum) or both.

### 137 Contempt

- (1) A person is guilty of contempt of the Tribunal if they—
  - (a) insult a member of the Tribunal while that member is performing functions as member;  
or
  - (b) insult, obstruct or hinder a person attending a hearing before the Tribunal; or
  - (c) misbehave at a hearing before the Tribunal;  
or
  - (d) interrupt a hearing before the Tribunal; or
  - (e) obstruct or hinder a person from complying with an order of the Tribunal or a summons to attend the Tribunal; or
  - (f) do any other act that would, if the Tribunal were the Supreme Court, constitute contempt of that Court.
- (2) If it is alleged or appears to the Tribunal that a person is guilty of contempt of the Tribunal, the Tribunal may—
  - (a) direct that the person be arrested and brought before the Tribunal; or
  - (b) issue a warrant for his or her arrest in the form prescribed by the rules.
- (3) On the person being brought before the Tribunal, the Tribunal must cause them to be informed of the contempt with which they are charged and thereafter adopt any procedure that the Tribunal thinks fit.
- (4) The **Bail Act 1977** applies, with any necessary modifications, to and in respect of a person brought before the Tribunal under this section as if—

S. 137(4)  
substituted by  
No. 79/2006  
s. 59(1).

S. 137(4)(b)  
amended by  
No. 26/2017  
s. 28.

- (a) the person were accused of an offence and were being held in custody in relation to that offence; and
- (b) the Tribunal were a bail decision maker within the meaning of that Act.

S. 137(5)(a)  
amended by  
No. 10/2004  
s. 15(Sch. 1  
item 34.1).

- (5) If the Tribunal finds that the person is guilty of contempt of the Tribunal, it may—
  - (a) in the case of a natural person, commit the person to prison for a term of not more than 5 years or impose a fine of not more than an amount that is 1000 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004** or do both;

S. 137(5)(b)  
amended by  
No. 10/2004  
s. 15(Sch. 1  
item 34.2).

- (b) in the case of a corporation, impose a fine of not more than an amount that is 5000 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004**.

S. 137(5A)  
inserted by  
No. 79/2006  
s. 59(2).

- (5A) In considering whether, and the term for which, to commit a person to prison for a contempt, the Tribunal may have regard to the provisions of Part 2 of the **Sentencing Act 1991** as if it were a court considering imposing a sentence of imprisonment in respect of an offence.
- (6) If a person is committed to prison for a term, the Tribunal may order his or her discharge before the end of the term.
- (7) The Tribunal may accept an apology for a contempt and may remit any punishment for it either wholly or in part.
- (8) A warrant for the committal of a person found guilty of contempt of the Tribunal must be in the form prescribed by the rules.



- (9) A fine imposed on a person under this section may be enforced as if it were a fine imposed on that person by the Supreme Court on finding them guilty of an offence.
- (10) A power conferred on the Tribunal by this section is exercisable only by a judicial member. **S. 137(10) amended by No. 51/2000 s. 26(a).**
- \* \* \* \* \*
- S. 137(11) repealed by No. 51/2000 s. 26(b).**

### **138 Appeal against punishment for contempt**

- (1) A person who is committed to prison or fined under section 137 may, with the leave of the Court of Appeal, appeal to the Court of Appeal in accordance with Part 6.3 of Chapter 6 of the **Criminal Procedure Act 2009** against the punishment as if—
- (a) they were a person convicted on indictment in the Trial Division of the Supreme Court; and
- (b) the punishment imposed were the sentence imposed on their conviction. **S. 138(1)(b) amended by No. 68/2009 s. 97(Sch. item 131.1(b)).**
- (2) The operation of any order made under section 137 imposing punishment is stayed for 14 days after its making and, if notice of application for leave to appeal to the Court of Appeal against it is given within that period, the stay continues until the appeal is determined.

S. 138(3)  
amended by  
No. 68/2009  
s. 97(Sch.  
item 131.2).

- (3) Despite anything to the contrary in Part 6.3 of Chapter 6 of the **Criminal Procedure Act 2009**, as applied by subsection (1), the Court of Appeal does not have power to give leave to extend the time within which notice of application for leave to appeal may be given.

### **139 Double jeopardy**

If an act or omission constitutes both an offence against this Act and a contempt of the Tribunal, the offender is liable to be charged either with the offence or the contempt or both but is not liable to be punished more than once for the same act or omission.

## **Division 12—Service of documents**

### **140 Service**

- (1) For the purposes of this Act, a notice, order or other document may be served on or given to a person—
- (a) if the person is a natural person—
- (i) by delivering it personally to the person; or
  - (ii) by sending it by post, facsimile or other electronic transmission to the person at his or her usual or last known residential or business address; or
  - (iii) by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there; or

- (b) if the person is a company incorporated under the Corporations Act—
- (i) by delivering it personally to the registered office of the company; or
  - (ii) by sending it by post, facsimile or other electronic transmission to the registered office of the company; or
  - (iii) in any other way that service of documents may be effected on a body corporate; or
- (c) if the person is an incorporated association within the meaning of the **Associations Incorporation Reform Act 2012**, in accordance with section 217 of that Act; or
- (d) in any case—
- (i) in a manner permitted by the rules; or
  - (ii) in a manner directed by the Tribunal.
- (2) For the purposes of this Act, a notice or other document may be served on or given to an unincorporated association—
- (a) by delivering it personally to the president, secretary or other similar officer of the association; or
  - (b) by sending it by post, facsimile or other electronic transmission to the president, secretary or other similar officer of the association at that person's usual or last known residential or business address; or
  - (c) in any other manner—
    - (i) permitted by the rules; or
    - (ii) directed by the Tribunal.

S. 140(1)(b)  
amended by  
No. 44/2001  
s. 3(Sch.  
item 122).

S. 140(1)(c)  
amended by  
No. 20/2012  
s. 226(Sch. 5  
item 25).

- (3) If the Tribunal directs that notice be given to a person, or a class of persons, by advertisement or publication of the notice, that advertisement or publication must be taken to be service of notice on the person, or persons in that class, as the case requires.

**141 When is service effective?**

- (1) For the purposes of this Act, a notice or other document must be taken to have been served on, or given to, a person or an unincorporated association—
- (a) in the case of delivery in person—at the time the document is delivered;
  - (b) in the case of posting—in the ordinary course of post, unless the rules provide otherwise;
  - (c) in the case of facsimile or other electronic transmission—at the time the facsimile or transmission is received.

S. 141(1)(b)  
substituted by  
No. 38/2017  
s. 41(1).

Note to  
s. 141(1)(b)  
inserted by  
No. 38/2017  
s. 41(2).

**Note**

See section 49 of the **Interpretation of Legislation Act 1984**.

- (2) If a facsimile or other electronic transmission is received after 4.00 p.m. on any day, it must be taken to have been received on the next business day.
- (3) In this section—
- business day*** means a day other than—
- (a) a Saturday or Sunday; or
  - (b) a public holiday or public half-holiday in the place to where the notice is sent or delivered.

## **Division 13—General**

### **142 Judicial notice**

- (1) All courts must take judicial notice of—
  - (a) the signature of a person who is, or was, a member of the Tribunal or the principal registrar or another registrar; and
  - (b) the fact that a person referred to in paragraph (a) is or was a member, the principal registrar or another registrar (as the case requires); and
  - (c) the official seal of the Tribunal affixed to a document.
- (2) If the official seal of the Tribunal is affixed to a document, a court must presume that it was properly affixed until the contrary is proved.

### **143 Immunity of participants**

- (1) A member of the Tribunal has, in the performance of his or her functions as member, the same protection and immunity as a judge of the Supreme Court has in the performance of his or her duties as judge.
- (2) A person representing a party in a proceeding has the same protection and immunity as an Australian lawyer has in representing a party in proceedings in the Supreme Court.
- (3) A party to a proceeding has the same protection and immunity as a party to proceedings in the Supreme Court.
- (4) A person appearing as a witness before the Tribunal has the same protection and immunity as a witness has in proceedings in the Supreme Court.

**S. 143(2)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.7).**

- (5) A person taking evidence on behalf of the Tribunal under section 103 has, in the performance of his or her functions under that section, the same protection and immunity as a member of the Tribunal.
- (6) A mediator has, in the performance of his or her functions as mediator, the same protection and immunity as a member of the Tribunal.
- (7) An expert or special referee has, in the performance of his or her functions under Division 6 of Part 4, the same protection and immunity as a member of the Tribunal.
- (8) The principal registrar or another registrar—

S. 143(8)(a)  
repealed by  
No. 78/2008  
s. 20.

\* \* \* \* \*

S. 143(8)(b)  
amended by  
Nos 64/2010  
s. 68, 23/2014  
s. 18.

- (b) has, in exercising the powers of the Tribunal as permitted by this Act, the rules or an enabling enactment and in performing functions under section 71 (rejection of applications) and 83 (compulsory conferences) in good faith, the same protection and immunity as a member of the Tribunal.

#### **144 Register of proceedings**

- (1) The principal registrar must keep a register of proceedings containing the matters required by the rules.
- (2) The principal registrar must ensure that the register is available for inspection at any time that the principal registry is open for business.
- (3) A party to a proceeding may inspect without charge that part of the register that relates to the proceeding.

- (4) On paying the prescribed fee (if any) any person may—
- (a) inspect the register; and
  - (b) obtain a copy of any part of the register.
- (5) The rights conferred by this section are subject to—
- (a) any conditions specified in the rules; and
  - (b) any order of the Tribunal under Part 5 of the **Open Courts Act 2013**; and
  - (c) any certificate under section 53 or 54.

S. 144(5)(b)  
amended by  
No. 58/2013  
s. 61.

#### **145 Principal registrar's certificate**

- (1) A certificate certifying as to any matter relating to the contents of the register kept under section 144 and purporting to be signed by the principal registrar or another registrar is admissible in any proceeding before a court, tribunal or person acting judicially as evidence of the matter certified.
- (2) Subject to any order of the Tribunal under Part 5 of the **Open Courts Act 2013** and to any certificate under section 53 or 54, the principal registrar must supply such a certificate to any person who asks for it and who pays the prescribed fee (if any).

S. 145(2)  
amended by  
No. 58/2013  
s. 61.

#### **146 Proceeding files**

- (1) The principal registrar must keep a file of all documents lodged in a proceeding until the expiration of the period of 5 years after the final determination of the proceeding.
- (2) A party in a proceeding may inspect the file of that proceeding without charge.

- (3) On paying the prescribed fee (if any) any person may—
- (a) inspect the file in that proceeding; and
  - (b) obtain a copy of any part of the file.
- (4) The rights conferred by this section are subject to—
- (a) any conditions specified in the rules;
  - (b) any direction of the Tribunal to the contrary;
  - (c) any order of the Tribunal under Part 5 of the **Open Courts Act 2013**;
  - (d) any certificate under section 53 or 54.

S. 146(4)(c)  
amended by  
No. 58/2013  
s. 61.

#### **147 Publication of determinations and orders**

For the guidance of those who may wish to bring proceedings, the Tribunal may publish from time to time reports or bulletins of important or typical determinations and orders made by it.



## Part 5—Appeals from the Tribunal

### 148 Appeals from the Tribunal

- (1) A party to a proceeding may appeal on a question of law from an order of the Tribunal in the proceeding—
- S. 148(1) substituted by No. 62/2014 s. 23(1).
- (a) if the Tribunal was constituted for the purpose of making the order by the President or a Vice President, whether with or without others, to the Court of Appeal with leave of the Court of Appeal; or
- Note**  
See sections 14A to 14D of the **Supreme Court Act 1986**.
- Note to s. 148(1)(a) inserted by No. 38/2017 s. 31(1).
- (b) in any other case, to the Trial Division of the Supreme Court with leave of the Trial Division.
- (2) An application for leave to appeal to the Trial Division of the Supreme Court must be made—
- S. 148(2) amended by No. 38/2017 s. 31(2)(a).
- (a) within 28 days after the day of the order of the Tribunal, unless the rules of the Supreme Court otherwise provide; and
- S. 148(2)(a) substituted by No. 38/2017 s. 31(2)(b).
- (b) in accordance with the rules of the Supreme Court.
- (2A) The Trial Division of the Supreme Court may grant an application for leave to appeal under this section only if it is satisfied that the appeal has a real prospect of success.
- S. 148(2A) inserted by No. 38/2017 s. 31(3).
- (3) If leave to appeal to the Trial Division of the Supreme Court is granted, the appeal must be instituted—
- S. 148(3) amended by No. 62/2014 s. 23(2).
- (a) no later than 14 days after the day on which leave is granted; and

S. 148(5)  
amended by  
No. 38/2017  
s. 31(4).

- (b) in accordance with the rules of the Supreme Court.
- (4) If the Tribunal gives oral reasons for making an order and a party then requests it to give written reasons under section 117, the day on which the written reasons are given to the party is deemed to be the day of the order for the purposes of subsection (2).
- (5) The Trial Division of the Supreme Court may at any time extend or abridge any time limit fixed by or under this section.
- (6) A party that institutes an appeal must notify the principal registrar.
- (7) The Court of Appeal or the Trial Division, as the case requires, may make any of the following orders on an appeal—
- (a) an order affirming, varying or setting aside the order of the Tribunal;
  - (b) an order that the Tribunal could have made in the proceeding;
  - (c) an order remitting the proceeding to be heard and decided again, either with or without the hearing of further evidence, by the Tribunal in accordance with the directions of the court;
  - (d) any other order the court thinks appropriate.
- (8) If the court makes an order under subsection (7)(c), it must give directions as to whether or not the Tribunal is to be constituted for the rehearing by the same members who made the original order.

(9) A party to a proceeding under a credit enactment that involves a claim not exceeding \$3000 cannot apply for leave to appeal under this section unless that party agrees to indemnify the reasonable legal costs of the other parties in the proceeding.

(10) For the purposes of subsection (9)—

*credit enactment* means—

\* \* \* \* \*

(b) **Credit Act 1984;**

\* \* \* \* \*

(d) section 45 of the **Motor Car Traders Act 1986.**

S. 148(10)  
def. of  
*credit  
enactment*  
amended by  
Nos 74/2010  
s. 37(Sch.  
item 5.1),  
11/2010  
s. 59(2).

#### **149 Tribunal may stay its order pending appeal**

- (1) The Tribunal, on the application of a party or on its own initiative, may stay the operation of any order it makes pending the determination of any appeal that may be instituted under this Part.
- (2) The Tribunal may attach any conditions it considers appropriate to a stay of an order under subsection (1).

## Part 6—Rules Committee

### Division 1—Establishment of Rules Committee

#### 150 Establishment of Committee

A Rules Committee is established.

#### 151 Functions

The functions of the Rules Committee are—

- (a) to develop rules of practice and procedure and practice notes for the Tribunal;
- (b) to direct the education of members of the Tribunal in relation to those rules of practice and procedure and practice notes;
- (c) any other functions conferred on it by the President.

#### 152 Membership

(1) The members of the Rules Committee are—

S. 152(1)(b)  
amended by  
No. 5/2013  
s. 77.

- (a) the President;
- (b) each Vice President (other than a reserve judge);

S. 152(1)(c)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.8(a)).

- (c) a full-time member of the Tribunal who is not a judicial member or an Australian lawyer, nominated by the Minister after consultation with the President;

S. 152(1)(d)  
substituted by  
Nos 18/2005  
s. 18(Sch. 1  
item 115.2),  
17/2014  
s. 160(Sch. 2  
item 105.8(b)).

- (d) an Australian legal practitioner nominated by the Minister after consultation with the Victorian Legal Services Commissioner;

- (e) 2 persons nominated by the Minister.

- (2) The appointment of the President or a Vice President to the Rules Committee does not affect his or her tenure of office or status as a judge of the Supreme Court or County Court, as the case requires, nor the payment of his or her salary or allowances as a judge nor any other rights or privileges that he or she has as a judge.
- (3) Service in the office of member of the Rules Committee by the President or a Vice President must be taken for all purposes to be service in the office of judge of the Supreme Court or County Court respectively.

**153 Appointment and terms of members**

- (1) Members of the Rules Committee (other than the President or Vice Presidents) are appointed by the Governor in Council.
- (2) Subject to this Act, members of the Rules Committee (other than the President or Vice Presidents) hold office for the following terms—
  - (a) the member referred to in section 152(1)(c)—until he or she ceases to be a member of the Tribunal or 5 years, whichever occurs first;
  - (b) the members referred to in section 152(1)(d) and (e)—5 years.
- (3) The members of the Rules Committee referred to in section 152(1)(c), (d) and (e) are eligible for re-appointment.

S. 153(4)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
12/1999  
s. 4(Sch. 2  
item 22),  
108/2004  
s. 117(1)  
(Sch. 3  
item 219.3).

- (4) The **Public Administration Act 2004** does not apply to a member of the Rules Committee in respect of the office of member.
- (5) A member of the Rules Committee (other than the members who are members of the Tribunal) is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.
- (6) A member of the Rules Committee (other than the President or a Vice President) may resign his or her office as member by delivering to the Governor a signed letter of resignation.

## **Division 2—Procedure of Rules Committee**

### **154 Who presides at a meeting?**

At a meeting of the Rules Committee—

- (a) the President presides if he or she is present;
- (b) if the President is not present but a Vice President is, the Vice President presides or, if there is more than one present, the Vice President appointed by the members present presides;
- (c) if neither the President nor a Vice President is present, the member appointed by the members present presides.

### **155 Quorum and meeting procedure**

- (1) The quorum of the Rules Committee is 4 members.
- (2) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (3) The Rules Committee must ensure that accurate minutes are kept of its meetings.
- (4) In all other respects the Rules Committee may regulate its own proceedings.

### **156 Validity of decisions**

A decision of the Rules Committee is not invalid only because—

- (a) of a vacancy in the office of a member; or
- (b) of a defect or irregularity in, or in connection with, the appointment of a member.

## **Division 3—Exercise of powers**

### **157 Power to make rules**

- (1) The Rules Committee may, at a meeting, make rules regulating the practice and procedure of the Tribunal, including any rules required or permitted to be made by this Act or necessary to be made to give effect to this Act<sup>7</sup>.
- (2) Without limiting the matters in respect of which rules may be made, rules may be made for any matter referred to in Schedule 2.
- (3) The power to make rules is subject to the rules being disallowed by the Parliament.

S. 157(4)  
inserted by  
No. 62/2014  
s. 38.

- (4) Rules made in relation to service of documents may provide for service outside Australia of applications to the Tribunal only with leave of the Tribunal constituted by a member who is a legal practitioner.

S. 157A  
inserted by  
No. 23/2014  
s. 19.

**157A Rules may provide for certain functions of the Tribunal to be performed by principal registrar**

- (1) Rules under section 157 may include rules for or with respect to the functions of the Tribunal that may be performed by the Tribunal constituted by the principal registrar.
- (2) Rules referred to in subsection (1) cannot provide for the Tribunal constituted by the principal registrar to make any orders finally disposing of a proceeding, other than orders made with the consent of all parties to the proceeding.
- (3) To avoid doubt, a reference in subsection (2) to orders finally disposing of a proceeding does not include any orders striking out a proceeding in circumstances where a party has a right to have, or to apply to have, the proceeding or part of it reinstated.
- (4) In making rules referred to in subsection (1), the Rules Committee must consider whether the function is of a kind that ought to be performed by the Tribunal constituted by one or more members rather than the principal registrar.
- (5) Rules referred to in subsection (1)—
  - (a) must specify whether the principal registrar may delegate the function under section 32A; and
  - (b) may specify the person or class of person to whom the function may be delegated under that section.



**157B Review of decision of the Tribunal constituted by principal registrar**

S. 157B  
inserted by  
No. 23/2014  
s. 19.

- (1) The Tribunal constituted by any member may review a decision made by the Tribunal constituted by the principal registrar.
- (2) A review may be conducted under this section at the request of a party or on the Tribunal's own initiative.
- (3) A review under this section is to be conducted as a hearing de novo and nothing in Division 3 of Part 3 applies to the review.

**158 Practice notes**

- (1) The Rules Committee may issue practice notes relating to the practice and procedure of the Tribunal.
- (2) The Rules Committee must give a copy of each practice note to the Minister as soon as practicable after the note is issued.

## **Part 7—Miscellaneous**

### **159 Dealing with inconsistencies**

If a provision of this Act, the regulations or the rules is inconsistent with a provision of an enabling enactment, the provision of the enabling enactment prevails to the extent of the inconsistency.

### **160 Supreme Court—limitation of jurisdiction**

It is the intention of section 52 to alter or vary section 85 of the **Constitution Act 1975**.

### **161 Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) fees payable in respect of any proceeding or in respect of any warrant issued by the Tribunal under this Act or an enabling enactment;
  - (b) fees for inspection and obtaining copies of the register of proceedings and proceeding files;
  - (c) generally prescribing any matter or thing required or permitted by the Act to be prescribed by regulation or necessary to be prescribed by regulation to give effect to this Act.
- (2) The regulations—
  - (a) may be of general or limited application; and
  - (b) may differ according to differences in time, place or circumstances; and

- (c) may provide in a specified case or class of case for the exemption of any proceeding, person or thing or a class of proceeding, person or thing from any of the provisions of the regulations, whether—
- (i) unconditionally or on specified conditions; and
  - (ii) either wholly or to such an extent as is specified; and
- (d) may confer a discretionary authority or impose a duty on any member or a specified class of member or on the principal registrar; and
- (e) may leave any matter or thing dealt with by or in accordance with the regulations to be decided by a member or a specified class of member or by the principal registrar.
- (3) Regulations with respect to fees—
- (a) may provide for different fees for different classes of proceedings or different classes of party;
  - (b) may provide for—
    - (i) specific fees;
    - (ii) maximum fees;
    - (iii) minimum fees;
    - (iv) fees that vary according to value or time;
  - (c) may provide for the means of payment of fees;
  - (d) may provide for the time at which fees are to be paid;

S. 161(2)(c)  
substituted by  
No. 20/2015  
s. 19(1).

S. 161(2)(d)  
inserted by  
No. 20/2015  
s. 19(1).

S. 161(2)(e)  
inserted by  
No. 20/2015  
s. 19(1).

S. 161(3)(a)  
amended by  
No. 20/2015  
s. 19(2).

S. 161(3)(d)  
amended by  
No. 20/2015  
s. 19(3).

S. 161(3)(e)  
inserted by  
No. 20/2015  
s. 19(4).

(e) may provide for the reduction, waiver, postponement, remission or refund, in whole or in part, of any fee; and

S. 161(3)(f)  
inserted by  
No. 20/2015  
s. 19(4).

(f) may provide, in specified circumstances, for the reinstatement or payment, in whole or in part, of any fee which was reduced, waived, postponed, remitted or refunded by or in accordance with the regulations.

S. 161(4)  
inserted by  
No. 20/2015  
s. 19(5).

- (4) If the regulations provide for a remission or refund of a fee fixed under subsection (3)—
- (a) if the fee has been paid into the Consolidated Fund, the Consolidated Fund is, to the necessary extent, appropriated accordingly to enable any remission or refund to be paid; or
  - (b) if the fee has been paid into another fund or account, the fee may be refunded from that fund or account.

S. 162  
inserted by  
No. 14/2006  
s. 26.

**162 Transitional provision—Justice Legislation  
(Miscellaneous Amendments) Act 2006**

The amendments made to Schedule 1 by section 27 of the **Justice Legislation (Miscellaneous Amendments) Act 2006** only apply to proceedings commenced after the commencement of that section.

S. 163  
inserted by  
No. 79/2006  
s. 60.

**163 Transitional provision—Justice Legislation  
(Further Amendment) Act 2006**

The amendment of this Act made by section 59 of the **Justice Legislation (Further Amendment) Act 2006** only applies to contempts of the Tribunal alleged to have been committed on or after the commencement of that section.

**164 Transitional provision—Equal Opportunity Act 2010**

S. 164  
inserted by  
No. 16/2010  
s. 206.

Despite the amendments made by the **Equal Opportunity Act 2010**, this Act as in force immediately before the commencement of Division 1 of Part 14 of that Act, continues to apply to—

- (a) proceedings in respect of complaints referred to in section 193(2) of the **Equal Opportunity Act 2010**, other than a complaint that the parties consent to being dealt with as a dispute; and
- (b) proceedings in respect of applications referred to in section 195(2) of the **Equal Opportunity Act 2010**; and
- (c) proceedings in respect of complaints referred to in section 30(2) of the **Racial and Religious Tolerance Act 2001**, other than a complaint that the parties consent to being dealt with as a dispute.

**165 Transitional—Justice Legislation Amendment (Family Violence and Other Matters) Act 2012**

S. 165  
inserted by  
No. 83/2012  
s. 45.

- (1) Section 12(3) as in force before the commencement of section 41 of the **Justice Legislation Amendment (Family Violence and Other Matters) Act 2012** continues to apply in respect of the current term of a Deputy President appointed before that commencement for the duration of that term.
- (2) Section 13(3) as in force before the commencement of section 42 of the **Justice Legislation Amendment (Family Violence and Other Matters) Act 2012** continues to apply in respect of the current term of a senior member appointed before that commencement for the duration of that term.

- (3) Section 14(3) as in force before the commencement of section 43 of the **Justice Legislation Amendment (Family Violence and Other Matters) Act 2012** continues to apply in respect of the current term of an ordinary member appointed before that commencement for the duration of that term.
- (4) A person who is a non-judicial member at the commencement of section 43 of the **Justice Legislation Amendment (Family Violence and Other Matters) Act 2012** is not required to comply with section 16(4) until the person is reappointed as a non-judicial member or appointed to another position as a non-judicial member.

S. 166  
inserted by  
No. 58/2013  
s. 62.

#### **166 Savings—Open Courts Act 2013**

- (1) Despite the repeal of section 101 by the **Open Courts Act 2013**, section 101 (as in force immediately before its repeal) continues to apply on and after that repeal in relation to a proceeding commenced to be heard (but not determined) by the Tribunal before that repeal.
- (2) Despite the repeal of section 101 by the **Open Courts Act 2013**, an order made under section 101 (as in force immediately before its repeal) and in force at the date of that repeal continues to apply on and after that repeal.

S. 167  
inserted by  
No. 23/2014  
s. 20.

#### **167 Transitional provision—Victorian Civil and Administrative Tribunal Amendment Act 2014**

Each amendment made to this Act by the **Victorian Civil and Administrative Tribunal Amendment Act 2014** applies, on and after the coming into operation of the amendment, in relation to all proceedings in the Tribunal, whether those proceedings were commenced

before or after the coming into operation of the amendment.

**168 Transitional provisions—Courts Legislation  
Miscellaneous Amendments Act 2014**

S. 168  
inserted by  
No. 62/2014  
s. 39.

- (1) Subject to subsection (2), each amendment made to this Act by Division 1 of Part 3 of the **Courts Legislation Miscellaneous Amendments Act 2014** (except section 26) applies, on and after the coming into operation of the amendment, in relation to all proceedings in the Tribunal, whether those proceedings were commenced before or after the coming into operation of the amendment.
- (2) Section 115CA applies only in relation to an application to the Tribunal under section 79 of the **Planning and Environment Act 1987** that is made on or after the coming into operation of section 36 of the **Courts Legislation Miscellaneous Amendments Act 2014**.
- (3) A Deputy President, senior member or ordinary member who was appointed on a part-time basis and who held office immediately before the commencement of section 47 of the **Courts Legislation Miscellaneous Amendments Act 2014**, on and after that commencement—
  - (a) continues to hold office as a Deputy President, senior member or ordinary member (as the case requires); and
  - (b) is taken to be serving under a part-time service arrangement on the same terms as applied to the person immediately before that commencement.

S. 168(3)  
inserted by  
No. 62/2014  
s. 52.

S. 168(4)  
inserted by  
No. 62/2014  
s. 52.

(4) A Deputy President, senior member or ordinary member who was appointed on a full-time basis and who held office immediately before the commencement of section 47 of the **Courts Legislation Miscellaneous Amendments Act 2014**, on and after that commencement continues to hold office as a Deputy President, senior member or ordinary member (as the case requires) on the same terms as applied to the person immediately before that commencement.

S. 168(5)  
inserted by  
No. 62/2014  
s. 52.

(5) To avoid doubt, nothing in this Act prevents a person referred to in subsection (4) from entering into a part-time service arrangement.

S. 169  
inserted by  
No. 3/2016  
s. 16.

**169 Savings—Justice Legislation Further Amendment Act 2016**

Despite the repeal of section 115C(1)(d) by the **Justice Legislation Further Amendment Act 2016**, section 115C(1)(d) (as in force immediately before its repeal) continues to apply on and after that repeal in relation to a proceeding commenced to be heard but not determined by the Tribunal before that repeal.

S. 170  
inserted by  
No. 38/2017  
s. 32.

**170 Transitional—Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017**

Section 148(2A) as inserted by the **Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017** applies in respect of an application for leave to appeal made after that subsection commences.

S. 171  
inserted by  
No. 38/2017  
s. 73.

**171 Transitional—Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017**

The amendment made to section 115C by the **Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017** applies, on and after the commencement of that amendment, in relation to all proceedings



in the Tribunal, whether those proceedings were commenced before, on or after that amendment.

**172 Transitional and savings provisions—Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018**

S. 172  
inserted by  
No. 33/2018  
s. 68.

The amendment made to Schedule 2 by the **Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018** does not affect the validity or operation of any rules made under section 157 and that Schedule as in force immediately before that amendment.

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## Schedules

Sections 39 and 58

### Schedule 1—Variations from Parts 3 and 4 for various proceedings<sup>8</sup>

#### Part 1—Introduction

##### 1 Purpose of Schedule

The purpose of this Schedule is to set out variations from Parts 3 and 4 for certain proceedings under certain enabling enactments.

##### 2 Definitions

In this Schedule—

Sch. 1 cl. 2  
def. of  
*credit  
enactment*  
amended by  
Nos 74/2010  
s. 37(Sch.  
item 5.2),  
11/2010  
s. 59(3).

*credit enactment* means—

\* \* \* \* \*

(b) **Credit Act 1984;**

\* \* \* \* \*

(d) section 45 of the **Motor Car Traders Act 1986;**

Sch. 1 cl. 2  
def. of  
*planning  
enactment*  
amended by  
Nos 101/1998  
s. 23(b)(i),  
12/2004  
s. 167(2),  
69/2006  
s. 224(Sch. 3  
item 11.2),  
6/2009  
s. 57(2),  
6/2010  
s. 203(1)  
(Sch. 6  
item 49.2) (as  
amended by  
No 45/2010  
s. 22), 62/2014  
s. 40.

*planning enactment* means—

(a) **Catchment and Land Protection Act 1994;**

(b) **Environment Protection Act 1970;**

(c) the provisions of the **Mineral Resources (Sustainable Development) Act 1990** relating to extractive industries;

(d) section 41 of the **Flora and Fauna Guarantee Act 1988;**

\* \* \* \* \*

- (f) **Planning and Environment Act 1987**  
(except sections 94(5) and 105);
- (fa) section 57 of the **Road Management Act 2004**;
- (fb) section 126 and Schedule 2 of the **Road Management Act 2004**;
- (fc) section 132 of the **Road Management Act 2004** and regulations made under that section;
- (g) **Subdivision Act 1988**  
(except Division 5 of Part 5);
- (h) section 56 of the **Transport (Compliance and Miscellaneous) Act 1983** and regulations made under that section;
- (i) **Water Act 1989** (except sections 19 and 266(6));

*responsible authority* has the same meaning as in the **Planning and Environment Act 1987**;

*taxing Act* means—

- (a) a taxation law (within the meaning of the **Taxation Administration Act 1997**);
- (b) **Back to Work Act 2015**;
- (c) **Business Franchise (Petroleum Products) Act 1979**;
- (d) **First Home Owner Grant Act 2000**;
- (e) **Unclaimed Money Act 2008**.

Sch. 1 cl. 2  
def. of  
*taxing Act*  
amended by  
Nos 5/2000  
s. 55, 74/2000  
s. 3(Sch. 1  
item 139.1),  
88/2005  
s. 117(Sch. 2  
item 11),  
26/2007 s. 116,  
44/2008  
s. 105(1),  
23/2010 s. 32,  
36/2010 s. 21,  
substituted by  
No. 67/2017  
s. 80.

Sch. 1 Pt 1A  
(Heading and  
cl. 2A)  
inserted by  
No. 16/2006  
s. 197.

## **Part 1A—Aboriginal Heritage Act 2006**

Sch. 1 cl. 2A  
inserted by  
No. 16/2006  
s. 197.

### **2A Constitution of Tribunal**

The Tribunal is to be constituted for the purposes of a proceeding under Part 8 of the **Aboriginal Heritage Act 2006** by—

- (a) one member who has sound knowledge of, and experience in, Aboriginal cultural heritage; or
- (b) if it is constituted by 2 members, at least one member who has sound knowledge of, and experience in, Aboriginal cultural heritage; or
- (c) if it is constituted by 3, 4 or 5 members, at least 2 members who have sound knowledge of, and experience in, Aboriginal cultural heritage.

## **Part 2—Accident Compensation Act 1985**

### **3 Privilege**

Section 129I(5) of the **Accident Compensation Act 1985** prevails over section 106(1) of this Act to the extent of any inconsistency between them.

### **4 Powers of Tribunal on review of assessment or amendment of contributions**

Section 51(2)(d) does not apply in a proceeding for review of an assessment or amendment under section 129G of the **Accident Compensation Act 1985**.

## **Part 2A—Assisted Reproductive Treatment Act 2008**

Sch. 1 Pt 2A  
(Heading and  
cls 4A, 4B)  
inserted by  
No. 76/2008  
s. 159.

### **4A Fees**

Despite section 68, no fee is payable in respect of an application under the **Assisted Reproductive Treatment Act 2008**.

Sch. 1 cl. 4A  
inserted by  
No. 76/2008  
s. 159.

### **4B Constitution of Tribunal for hearings**

The Tribunal is to be constituted for the purposes of reviewing a decision under Division 2 of Part 9 of the **Assisted Reproductive Treatment Act 2008** by at least 3 members, of whom at least one must be a woman.

Sch. 1 cl. 4B  
inserted by  
No. 76/2008  
s. 159.

## **Part 2AB—Australian Consumer Law and Fair Trading Act 2012**

Sch. 1 Pt 2AB  
(Heading and  
cls 4C–4J)  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

### **4C What is a *small claim*?**

In this Part *small claim* has the meaning that it has in Chapter 7 of the **Australian Consumer Law and Fair Trading Act 2012**.

Sch. 1 cl. 4C  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

### **4D Representation**

- (1) A party to a proceeding relating to a small claim may be represented by a professional advocate only if—

Sch. 1 cl. 4D  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

(a) the Tribunal is satisfied that no other party to the proceeding will be unfairly disadvantaged if the representation is allowed; and

(b) either—

(i) all parties to the proceeding agree; or

(ii) the Tribunal directs that the representation be allowed.

(2) Section 62(1)(b) does not apply to a proceeding relating to a small claim.

Sch. 1 cl. 4E  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

#### **4E Withdrawal of application**

Despite section 74(1), a person who lodges an application relating to a small claim may withdraw that application without the leave of the Tribunal.

Sch. 1 cl. 4F  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

#### **4F Tribunal cannot extend time for commencing proceedings**

Section 126(1) does not apply to a proceeding relating to a small claim.

Sch. 1 cl. 4G  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

#### **4G Member of Tribunal can mediate**

(1) Section 88(6) does not apply to a proceeding relating to a small claim.

(2) If the mediator is a member of the Tribunal a party may object to the mediator constituting the Tribunal (whether with or without others) for the purpose of hearing the proceeding.

(3) An objection under subclause (2) must be made to the Tribunal before or at the commencement of the hearing.

**4H Resolution of objection to certain members constituting the Tribunal**

Sch. 1 cl. 4H  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

- (1) If a party to a proceeding relating to a small claim objects to the member who presided over a compulsory conference in the proceeding, or to a mediator in the proceeding, constituting the Tribunal for the purpose of hearing the proceeding (whether with or without others), the Tribunal must determine whether or not the member may continue to constitute the Tribunal for that purpose.
- (2) For the purpose of making a determination under subclause (1), the Tribunal may be constituted (whether with or without others) by the member against whom the objection was made.
- (3) Section 86(3) does not apply to a proceeding relating to a small claim.

**4I Costs and security for costs**

Sch. 1 cl. 4I  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

- (1) The Tribunal cannot order costs in a proceeding relating to a small claim, except in a review of a determination under section 120 in respect of such a proceeding.
- (2) Section 79 does not apply to a review of a determination under section 120 in respect of a proceeding relating to a small claim.

**4J Reasons must be requested at time of decision**

Sch. 1 cl. 4J  
inserted by  
No. 21/2012  
s. 239(Sch. 6  
item 46.3).

Despite anything to the contrary in section 117(2), the Tribunal is not obliged to give a person written reasons for an order made in a proceeding relating to a small claim unless the person has made a request to the Tribunal for written reasons for orders that may be made in the proceeding before or at the time of the giving or notification of the Tribunal's decision in the proceeding.

Sch. 1 Pt 2B  
(Heading and  
cls 4K, 4L)  
inserted by  
No. 15/2016  
s. 69.

## Part 2B—Building Act 1993

Sch. 1 cl. 4K  
inserted by  
No. 15/2016  
s. 69.

### 4K Order to stay operation of decision

Despite section 50(4)(b), the Tribunal must give the Victorian Building Authority an opportunity to be heard if the order relates to a decision by the Authority under section 180A of the **Building Act 1993** to immediately suspend the registration of a building practitioner.

Sch. 1 cl. 4L  
inserted by  
No. 15/2016  
s. 69.

### 4L Costs

Despite section 109, the Tribunal may award costs against a building practitioner in a proceeding under Subdivision 3 of Division 4 of Part 11 of the **Building Act 1993** if the building practitioner relied on evidence that was available but not provided to the Victorian Building Authority under that Part.

Sch. 1 Pt 3  
(Heading and  
cls 5, 5A)  
amended by  
No. 58/2000  
s. 8,  
substituted as  
Sch. 1 Pt 3  
(Heading and  
cls 5, 6) by  
No. 48/2006  
s. 35.

## Part 3—Children, Youth and Families Act 2005

Sch. 1 cl. 5  
substituted by  
No. 48/2006  
s. 35.

### 5 Constitution of Tribunal

In a proceeding under section 42, 118, 158 or 333 of the **Children, Youth and Families Act 2005**, the Tribunal is to be constituted by, or to include, a member who, in the opinion of the President,



has knowledge of, or experience in, child welfare matters.

**6 Tribunal cannot alter time limits**

Sections 126(1) and 126(2)(a) do not apply to a proceeding in relation to a decision under Schedule 1 to the **Children, Youth and Families Act 2005**.

New Sch. 1  
cl. 6  
inserted by  
No. 48/2006  
s. 35.

**Part 4—Company Titles (Home Units)  
Act 2013**

**6A Any member of Tribunal may make a declaration**

Despite anything to the contrary in section 124, a declaration may be made in a proceeding under the **Company Titles (Home Units) Act 2013** by the Tribunal constituted by any member.

Sch. 1 Pt 4  
(Heading and  
cl. 6)  
repealed by  
No. 48/2006  
s. 35, new  
Sch. 1 Pt 4  
(Heading and  
cl. 6A)  
inserted by  
No. 19/2013  
s. 20.

**Part 5—Credit enactments**

**7 Constitution of Tribunal in certain proceedings**

In a proceeding under section 85 or 86 of the **Credit Act 1984**, a party may require that the Tribunal be constituted by a presidential member, whether with or without others.

Sch. 1 cl. 7  
amended by  
No. 11/2010  
s. 59(4).

**8 Representation**

- (1) A natural person who is a party to a proceeding under a credit enactment may be represented in that proceeding by—
- (a) the Director; or

Sch. 1  
cl. 8(1)(b)  
substituted by  
No. 35/2000  
s. 53,  
amended by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 219.4),  
11/2010  
s. 59(5).

(b) a person employed under Part 3 of the **Public Administration Act 2004** in the administration of the **Credit Act 1984**; or

(c) a professional advocate within the meaning of section 62.

(2) This clause does not take away from any entitlement to representation under section 62.

#### **9 Referral to Director**

(1) The Tribunal may request the Director to investigate any matter that arises in a proceeding under a credit enactment.

(2) If a request is made under subclause (1)—

(a) the Director may; or

(b) if the Minister administering the credit enactment so determines, the Director must—

investigate the matter and, if he or she does so, must report on the investigation to the Tribunal.

#### **10 Any member of Tribunal may make a declaration**

Despite anything to the contrary in section 124, a declaration may be made in a proceeding under a credit enactment by the Tribunal constituted by any member.

#### **11 Reasons must be requested at time of decision**

Despite anything to the contrary in section 117(2), the Tribunal is not obliged to give a person written reasons for an order made in a proceeding under a credit enactment unless the person has made a

request to the Tribunal for written reasons for orders that may be made in the proceeding before or at the time of the giving or notification of the Tribunal's decision in the proceeding.

## Part 5AA—Disability Act 2006

Sch. 1 Pt 5AA  
(Heading and  
cls 11AA–  
11AI)  
inserted by  
No. 23/2006  
s. 231 (as  
amended by  
No. 25/2007  
s. 34(2)).

### 11AA Application of provisions

- (1) Clauses 11AB to 11AF apply in respect of any proceeding under the **Disability Act 2006**.
- (2) Clauses 11AG to 11AI apply in respect of any proceeding under Division 5 of Part 8 of the **Disability Act 2006**.
- (3) Clause 11AIA applies in relation to any proceeding on an application under section 199A of the **Disability Act 2006**.

Sch. 1 cl. 11AA  
inserted by  
No. 23/2006  
s. 231 (as  
amended by  
No. 25/2007  
s. 34(2)).

Sch. 1  
cl. 11AA(3)  
inserted by  
No. 22/2012  
s. 87(1).

### 11AB Representation

Despite section 62(1)(b), a party to any proceeding under the **Disability Act 2006** may be represented by a professional advocate.

Sch. 1 cl. 11AB  
inserted by  
No. 23/2006  
s. 231.

### 11AC Appointment of litigation guardian

If a party to any proceeding under the **Disability Act 2006** is a person with a disability, the Tribunal may appoint a litigation guardian, in accordance with the rules, to conduct the proceeding on behalf of the person with a disability.

Sch. 1 cl. 11AC  
inserted by  
No. 23/2006  
s. 231.

Sch. 1 cl. 11AD inserted by No. 23/2006 s. 231.	<b>11AD Fees</b>	Despite section 68, no fee is payable in respect of an application under the <b>Disability Act 2006</b> .
Sch. 1 cl. 11AE inserted by No. 23/2006 s. 231, substituted by No. 22/2012 s. 87(2).	<b>11AE Commencement</b>	The Tribunal must commence the hearing of a proceeding on an application under the <b>Disability Act 2006</b> within—  (a) in the case of an application under section 199A of that Act, 5 business days of the application being lodged with the Tribunal; or  (b) in any other case, 30 days of the application being lodged with the Tribunal.
Sch. 1 cl. 11AF inserted by No. 23/2006 s. 231, substituted by No. 23/2014 s. 21(1).	<b>11AF Costs of Tribunal appointed experts</b>	Despite clause 7(5) of Schedule 3, a person with a disability is not responsible for the costs of a Tribunal appointed expert under clause 7 of that Schedule.
Sch. 1 cl. 11AG inserted by No. 23/2006 s. 231.	<b>11AG Personal attendance</b>	The person with an intellectual disability must personally attend the proceeding unless the Tribunal orders that it would be detrimental to the health or well-being of the person to personally attend.
Sch. 1 cl. 11AH inserted by No. 23/2006 s. 231, repealed by No. 58/2013 s. 63.		* * * * *

**11AI Restriction on access to information**

Sch. 1 cl. 11AI  
inserted by  
No. 23/2006  
s. 231.

Despite anything to the contrary in this Act, the Tribunal may order that the person with an intellectual disability not hear any particular evidence or be permitted to inspect a submission or other document if the Tribunal is of the opinion that it is necessary to do to prevent—

- (a) serious harm to the health or well-being of the person with an intellectual disability; or
- (b) exposing another person to a risk of serious harm; or
- (c) the unreasonable disclosure of information relating to the personal affairs of any other person; or
- (d) the disclosure of information given in confidence.

**11AIA Application for review of assessment order**

Sch. 1  
cl. 11AIA  
inserted by  
No. 22/2012  
s. 87(3).

- (1) Section 49(2) does not apply to an application under section 199A of the **Disability Act 2006**.
- (2) If an application is made under section 199A of the **Disability Act 2006**, the copies required to be lodged under section 49(1) must be lodged within one business day after the Senior Practitioner receives notice of the application.

Sch. 1  
Pt 5AAB  
(Heading and  
cl. 11AJ)  
inserted by  
No. 13/2010  
s. 50.

## **Part 5AAB—Health Practitioner Regulation National Law (Victoria)**

Sch. 1  
cl. 11AJ  
inserted by  
No. 13/2010  
s. 50.

### **11AJ Constitution of Tribunal for hearings**

The Tribunal is to be constituted for the purposes of making a final determination under Part 8 of the Health Practitioner Regulation National Law (Victoria) by at least 3 members, of whom at least 2 must be health practitioners with professional qualifications in the health profession regulated by the National Board that is a party to the proceedings.

Sch. 1 Pt 5A  
(Heading and  
cl. 11A)  
inserted by  
No. 97/2005  
s. 181.

## **Part 5A—Health Professions Registration Act 2005**

Sch. 1 cl. 11A  
inserted by  
No. 97/2005  
s. 181,  
amended by  
No. 27/2012  
s. 28.

### **11A Constitution of Tribunal for hearings**

The Tribunal is to be constituted for the purposes of making a final determination under Part 4 of the **Health Professions Registration Act 2005** as in force immediately before its repeal by at least 3 members, of whom at least 2 must be health practitioners with professional qualifications in the health profession regulated by the board that is a party to the proceedings.

## **Part 5B—Health Records Act 2001**

Sch. 1 Pt 5B  
(Heading and  
cls 11F–11J)  
inserted by  
No. 2/2001  
s. 117.

### **11F Intervention by Health Complaints Commissioner**

The Health Complaints Commissioner may intervene at any time in a proceeding under the **Health Records Act 2001**.

Sch. 1 cl. 11F  
(Heading)  
amended by  
No. 22/2016  
s. 248.

Sch. 1 cl. 11F  
inserted by  
No. 2/2001  
s. 117,  
amended by  
No. 22/2016  
s. 249.

### **11G Notification in other proceedings**

Sch. 1 cl. 11G  
inserted by  
No. 2/2001  
s. 117.

(1) If an application is made under section 73 (interim order) or a referral under section 54 (Minister's referral) of the **Health Records Act 2001**, the principal registrar must notify the Health Complaints Commissioner.

Sch. 1  
cl. 11G(1)  
amended by  
No. 22/2016  
s. 250(1).

(2) Subclause (1) does not apply in the case of an application by the Health Complaints Commissioner under section 73 of the **Health Records Act 2001**.

Sch. 1  
cl. 11G(2)  
amended by  
No. 22/2016  
s. 250(2).

### **11H Health Complaints Commissioner may apply for interim injunction**

The Health Complaints Commissioner may apply for an order granting an interim injunction under section 123 in a proceeding under the **Health Records Act 2001** whether or not he or she is a party to that proceeding.

Sch. 1 cl. 11H  
(Heading)  
amended by  
No. 22/2016  
s. 251.

Sch. 1 cl. 11H  
inserted by  
No. 2/2001  
s. 117,  
amended by  
No. 22/2016  
s. 252.

Sch. 1 cl. 11I  
inserted by  
No. 2/2001  
s. 117,  
amended by  
No. 22/2016  
s. 253.

### 11I Compulsory conference

The presiding member at a compulsory conference in a proceeding under the **Health Records Act 2001** may refer any matter to the Health Complaints Commissioner for investigation, negotiation or conciliation.

Sch. 1 cl. 11J  
inserted by  
No. 2/2001  
s. 117.

### 11J Settlement offers

Sections 112 to 115 do not apply to a proceeding under the **Health Records Act 2001**.

## Part 6—Domestic Building Contracts Act 1995

Sch. 1 cl. 11K  
inserted by  
No. 34/2013  
s. 35(Sch. 2  
item 9.1),  
amended by  
No. 15/2016  
s. 13 (ILA  
s. 39B(3)).

### 11K Definitions

(1) In this Part—

Sch. 1 cl. 11K  
def. of  
*Building  
Practitioners  
Board*  
repealed by  
No. 15/2016  
s. 70(1).

\* \* \* \* \*

***Victorian Building Authority*** means the Victorian Building Authority established under Division 2 of Part 12 of the **Building Act 1993**.

Sch. 1  
cl. 11K(2)  
inserted by  
No. 15/2016  
s. 13.

(2) In this Part, words and expressions have the same meanings as they have in the **Domestic Building Contracts Act 1995**.



## 12 Referral to Director or Victorian Building Authority

Sch. 1 cl. 12  
(Heading)  
inserted by  
No. 68/2001  
s. 20(1),  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 9.2),  
substituted by  
No. 15/2016  
s. 70(2)(a).

(1) The Tribunal may request the Director or the Victorian Building Authority to investigate any matter that arises in a proceeding under the **Domestic Building Contracts Act 1995**.

Sch. 1 cl. 12(1)  
amended by  
Nos 68/2001  
s. 20(2),  
34/2013  
s. 35(Sch. 2  
item 9.3),  
15/2016  
s. 70(2)(b).

(2) The Director or the Authority may investigate a matter on request under subclause (1) and, if the Director or the Authority does so, they must report on the investigation to the Tribunal.

Sch. 1 cl. 12(2)  
amended by  
Nos 34/2013  
s. 35(Sch. 2  
item 9.4),  
15/2016  
s. 70(2)(c).

## 12A Tribunal may request information about domestic building dispute

Sch. 1 cl. 12A  
inserted by  
No. 36/2002  
s. 16.

(1) The Tribunal may request the Director or the Victorian Building Authority to provide the Tribunal with any information held by the Director or the Authority that relates to a proceeding under the **Domestic Building Contracts Act 1995** in relation to a domestic building dispute within the meaning of section 3 of that Act.

Sch. 1  
cl. 12A(1)  
amended by  
Nos 34/2013  
s. 35(Sch. 2  
item 9.5),  
15/2016  
s. 14(1).

Sch. 1  
cl. 12A(2)  
amended by  
No. 34/2013  
s. 35(Sch. 2  
item 9.6).

(2) The Director or the Authority (as the case requires) must comply with a request under subclause (1).

Sch. 1  
cl. 12A(3)  
inserted by  
No. 15/2016  
s. 14(2).

(3) Subclause (1) does not apply to information that is inadmissible because of section 46C of the **Domestic Building Contracts Act 1995**.

Sch. 1 cl. 12B  
inserted by  
No. 15/2016  
s. 15.

### **12B Costs in relation to domestic building work disputes generally**

- (1) This clause applies despite section 109 to a domestic building dispute that is a domestic building work dispute.
- (2) Subject to subclause (3), the Tribunal must make an award of costs against an unsuccessful party to the dispute if the dispute had been referred for a conciliation conference and the party—
  - (a) refused to participate in the conciliation conference; or
  - (b) did not participate in the conciliation conference in good faith.
- (3) The Tribunal is not required to make an award of costs against a party (the first party) under subclause (2) if it is satisfied that it would be unfair to do so, having regard to—
  - (a) whether another party has conducted the proceeding in a way that unnecessarily disadvantaged the first party to the proceeding by conduct such as—
    - (i) failing to comply with an order or direction of the Tribunal without reasonable excuse;

- (ii) failing to comply with this Act, the regulations, the rules or the enabling enactment;
  - (iii) asking for an adjournment as a result of subparagraph (i) or (ii);
  - (iv) causing an adjournment;
  - (v) attempting to deceive another party or the Tribunal;
  - (vi) vexatiously conducting the proceeding; and
- (b) whether another party has been responsible for prolonging unreasonably the time taken to complete the proceeding; and
  - (c) the relevant certificate of conciliation; and
  - (d) any other matter the Tribunal considers relevant.

### **12C Costs for withdrawal of application**

- (1) This clause applies if—
  - (a) a party to a domestic building work dispute applies to the Tribunal for the review of a decision to issue a dispute resolution order under Part 4 of the **Domestic Building Contracts Act 1995**; and
  - (b) the party withdraws the application.
- (2) Despite section 109, the Tribunal must award costs against the party that withdrew the application unless the Tribunal is satisfied that it would be unfair to do so.

Sch. 1 cl. 12C  
inserted by  
No. 15/2016  
s. 15.

Sch. 1 cl. 12D  
inserted by  
No. 15/2016  
s. 15.

**12D Costs on review of decision to issue dispute resolution order**

- (1) This clause applies despite section 109.
- (2) This clause applies to an application to the Tribunal for review of a decision to issue a dispute resolution order.
- (3) If the applicant is the builder, the Tribunal may award costs against the builder if the determination of the Tribunal is—
  - (a) to affirm the decision to issue the dispute resolution order; or
  - (b) to vary the dispute resolution order to increase the obligations on the builder or decrease the obligations on the building owner.
- (4) If the applicant is the building owner, the Tribunal may award costs against the building owner if the determination of the Tribunal is—
  - (a) to affirm the decision to issue the dispute resolution order, including a dispute resolution order that includes a finding referred to in section 49D(1) of the **Domestic Building Contracts Act 1995**; or
  - (b) to vary the dispute resolution order to increase the obligations on the building owner or to decrease the obligations on the builder.
- (5) In determining whether to award costs under this clause, the Tribunal must consider—
  - (a) whether the application was vexatious, frivolous or lacking in substance; and

- (b) any certificate of conciliation relating to the domestic building work dispute to which the dispute resolution order relates; and
- (c) any other matter the Tribunal considers relevant.

## Part 7—Equal Opportunity Act 2010

Sch. 1 Pt 7  
(Heading and  
cls 13–28)  
amended by  
Nos 51/2000  
s. 27, 43/2006  
s. 47(Sch.  
items 8.2–8.6),  
14/2009 s. 18,  
substituted as  
Sch. 1 Pt 7  
(Heading and  
cls 13–23) by  
No. 16/2010  
s. 207 (as  
amended by  
No. 26/2011  
ss 31, 34(Sch.  
items 9.7,  
9.8)).

### 13 Meaning of Commission

In this Part—

*Commission* means the Victorian Equal  
Opportunity and Human Rights  
Commission.

Sch. 1 cl. 13  
substituted by  
No. 16/2010  
s. 207 (as  
amended by  
No. 26/2011  
ss 31, 34(Sch.  
items 9.7,  
9.8)).

### 14 Unincorporated associations can be parties

- (1) Section 61(1) does not apply to a proceeding under the **Equal Opportunity Act 2010**.

#### Note

Section 187 of the **Equal Opportunity Act 2010** contains provisions for unincorporated associations in proceedings under that Act.

Sch. 1 cl. 14  
substituted by  
No. 16/2010  
s. 207 (as  
amended by  
No. 26/2011  
ss 31, 34(Sch.  
items 9.7,  
9.8)).

- (2) An unincorporated association that is a party to a proceeding under the **Equal Opportunity Act 2010** has the same right to representation in the proceeding as a body corporate.

Sch. 1 cl. 15 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

#### 15 Notification of commencement in certain section 89 matters

- (1) If the Tribunal proposes to grant, renew or revoke an exemption under section 89 of the **Equal Opportunity Act 2010** on its own initiative, it must notify, in any manner it thinks fit, all persons whose interests, in the opinion of the Tribunal, may be affected by the proposed grant, renewal or revocation.
- (2) For the purposes of subclause (1)—
- (a) *interests* means interests of any kind and is not limited to proprietary, economic or financial interests;
- (b) a reference to interests affected includes a reference to interests that are directly or indirectly affected and whether or not any other person's interests are also affected by the proposed grant, renewal or revocation.

Sch. 1 cl. 16 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

#### 16 Notification in proceedings for interim orders

- (1) If an application is made under section 121 of the **Equal Opportunity Act 2010** for an interim order, the principal registrar must notify the Commission.
- (2) Subclause (1) does not apply in the case of an application by the Commission under section 121 of the **Equal Opportunity Act 2010**.

**17 Withdrawal of proceeding**

(1) Despite section 74(1), an applicant is not required to obtain the leave of the Tribunal to withdraw an application under the **Equal Opportunity Act 2010**.

Sch. 1 cl. 17 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

(2) Nothing in subclause (1) affects the Tribunal's power to award costs in any proceeding that is withdrawn.

**18 Summary dismissal of application more than 12 months old**

The Tribunal may make an order under section 76 summarily dismissing an application under the **Equal Opportunity Act 2010** in respect of an alleged contravention of Part 4, 6 or 7 of that Act if the alleged contravention occurred more than 12 months before the application was made.

Sch. 1 cl. 18 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

**19 Commission may apply for interim injunction**

The Commission may apply for an order granting an interim injunction under section 123 in a proceeding under the **Equal Opportunity Act 2010** whether or not the Commission is a party to that proceeding.

Sch. 1 cl. 19 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

**20 Exemptions under section 89**

(1) The Tribunal may determine to grant an exemption under section 89 of the **Equal Opportunity Act 2010** without a hearing whether or not the parties agree to dispense with the hearing.

Sch. 1 cl. 20 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

(2) For the avoidance of doubt, an exemption under section 89 of the **Equal Opportunity Act 2010** is not an order of the Tribunal.

Sch. 1 cl. 21 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

## 21 Evidence of mediation not admissible even if parties agree

- (1) Evidence of anything said or done in the course of a mediation in a proceeding under the **Equal Opportunity Act 2010** is not admissible in any hearing before the Tribunal in the proceeding, whether or not the parties agree to the giving of the evidence.
- (2) Section 92 does not apply to a proceeding under the **Equal Opportunity Act 2010**.

Sch. 1 cl. 22 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

## 22 Settlement offers

Sections 112 to 115 do not apply to a proceeding under the **Equal Opportunity Act 2010**.

Sch. 1 cl. 23 substituted by No. 16/2010 s. 207 (as amended by No. 26/2011 ss 31, 34(Sch. items 9.7, 9.8)).

## 23 Notification of commencement of inquiry under section 139(2)(c)

- (1) If a matter is referred to the Tribunal for inquiry under section 139(2)(c) of the **Equal Opportunity Act 2010**, the Tribunal may direct the principal registrar to notify any person who the Tribunal considers may have an interest in that matter.
- (2) The principal registrar must notify a person specified under subclause (1) in the manner specified by the Tribunal.
- (3) The Tribunal may direct that notification under subclause (1) be done by the publication of an advertisement in the manner specified by the Tribunal.



\* \* \* \* \*

Sch. 1 Pt 7AA  
(Heading and  
cls 28AA–  
28HH)  
inserted by  
No. 30/2003  
s. 79,  
repealed by  
No. 21/2012  
s. 239(Sch. 6  
item 46.4).

## Part 8—Freedom of Information Act 1982

### 29 Statement of reasons for decision

A decision-maker complies with section 46 in relation to a request for a statement of reasons for a decision made under the **Freedom of Information Act 1982** if the decision-maker gives, or has given, the person who made the request a notice that complies with section 27 of that Act.

#### 29A Person whose personal privacy is affected may intervene

If—

- (a) an agency or Minister or the Information Commissioner makes a decision refusing to grant access to a document under the **Freedom of Information Act 1982**; and
- (b) a reason for the decision is that the document is an exempt document under section 33(1) of that Act because its disclosure would involve the unreasonable disclosure of

Sch. 1 cl. 29A  
inserted by  
No. 38/1999  
s. 5,  
substituted by  
No. 57/1999  
s. 12,  
amended by  
Nos 6/2012  
s. 52(b),  
20/2017  
s. 134(Sch. 1  
item 19.1(b)).

Sch. 1  
cl. 29A(a)  
amended by  
Nos 6/2012  
s. 52(a),  
20/2017  
s. 134(Sch. 1  
item 19.1(a)).

information relating to the personal affairs  
of a person—

the person to whom the information relates may  
intervene in a proceeding on an application under  
section 50(1)(b), (d) or (e) or (3D) of that Act for  
review of the decision.

Sch. 1 cl. 29B  
inserted by  
No. 7/2003  
s. 45.

## **29B Powers of Tribunal**

- (1) This clause applies to an application to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, where—
  - (a) the document is claimed to be an exempt document under section 29A of the **Freedom of Information Act 1982**; and
  - (b) a certificate is in force in respect of the document under section 29A(2) of that Act.
- (2) The Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for the claim referred to in subclause (1)(a).

Sch. 1 cl. 29C  
inserted by  
No. 7/2003  
s. 45.

## **29C Constitution of Tribunal for purposes of proceedings under clause 29B**

- (1) If a request is made to the Tribunal in accordance with clause 29B(2), the Tribunal must be constituted in accordance with subclause (2) for the purposes of any proceedings for the determination of the question referred to in that clause.
- (2) For the purposes of a proceeding referred to in subclause (1) the Tribunal is to be constituted by a judicial member or judicial members.

**29D Hearing of certain proceedings before the Tribunal**

Sch. 1 cl. 29D  
inserted by  
No. 7/2003  
s. 45.

- (1) At the hearing of a proceeding referred to in clause 29C(1), the Tribunal must hold in private the hearing of any part of the proceeding during which—
- (a) evidence or information is given, or a document is produced, to the Tribunal by—
    - (i) an agency or an officer of an agency; or
    - (ii) a Department Head or a member of staff of a Department Head; or
    - (iii) the Chief Commissioner of Police or a member of Victoria Police personnel; or
  
  - (b) a submission is made to the Tribunal by or on behalf of an agency, Department Head or the Chief Commissioner of Police in relation to the claim that the document is an exempt document—

Sch. 1  
cl. 29D(1)  
(a)(iii)  
amended by  
No. 37/2014  
s. 10(Sch.  
item 177.3).

and must hold the hearing of any other part of the proceeding in public.

- (2) Where the hearing of any part of a proceeding is held in private in accordance with subclause (1), the Tribunal—
- (a) may, by order, give directions as to the persons who may be present at that hearing; and
  - (b) must give directions prohibiting the publication of—
    - (i) any evidence or information given to the Tribunal; or

- (ii) the contents of any documents lodged with, or received in evidence by, or produced to, the Tribunal; or
- (iii) any submission made to the Tribunal at that hearing.

**30 Tribunal file in FOI proceeding not open for inspection**

Despite anything to the contrary in section 146, the file kept by the principal registrar under that section in a proceeding under the **Freedom of Information Act 1982** is not open for inspection or copying by any person.

**Part 9—Guardianship and Administration Act 1986**

**31 Constitution of Tribunal for proceedings**

Sch. 1 cl. 31  
amended by  
No. 101/1998  
s. 23(b)(i).

Sch. 1 cl. 31(1)  
amended by  
No. 64/2010  
s. 33(1).

- (1) Section 64(2)(a) does not apply to a proceeding under the **Guardianship and Administration Act 1986**, other than a proceeding for a temporary order under Division 4 of Part 4 or Division 4 of Part 5 or for an order or temporary order under Part 5A.
- (2) The Tribunal is to be constituted for the purposes of a proceeding for a temporary order under Division 4 of Part 4 or Division 4 of Part 5 of the **Guardianship and Administration Act 1986** by—
  - (a) a presidential member; or

(b) a member who is an Australian lawyer—

S. 31(2)(b)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.9(a)).

sitting alone.

(3) The Tribunal is to be constituted for the purposes of a rehearing under Division 1 of Part 6 of the **Guardianship and Administration Act 1986** by—

Sch. 1 cl. 31(3)  
inserted by  
No. 78/2000  
s. 11(2).

(a) a senior member or presidential member, if the order at first instance was made by the Tribunal constituted by an ordinary member;

Sch. 1  
cl. 31(3)(a)  
amended by  
No. 41/2002  
s. 43.

(b) a presidential member, if the order at first instance was made by the Tribunal constituted by a senior member;

(c) a judicial member, if the order at first instance was made by the Tribunal constituted by a Deputy President;

(d) a Vice President, if the order at first instance was made by the Tribunal constituted by more than one member (except where one or more of the members was a Vice President);

(e) the President, if the order at first instance was made by the Tribunal constituted by a Vice President (whether with or without others).

## 32 Notification of commencement

(1) Despite section 72(3), the Tribunal cannot make an order dispensing with service of a copy of an application under the **Guardianship and Administration Act 1986** on the Public Advocate.

Sch. 1 cl. 32(3)  
inserted by  
No. 64/2010  
s. 33(2).

- (2) The Tribunal must inform the Public Advocate if it makes an order under section 72(3) dispensing with service of a copy of an application under the **Guardianship and Administration Act 1986** for a guardianship order or an administration order (including a temporary order) on the person in respect of whom the application is made.
- (3) Subclause (2) does not apply to an application for an order or temporary order appointing an administrator in respect of the estate of a missing person under Part 5A of the **Guardianship and Administration Act 1986**.

### **33 Public Advocate may intervene or be joined**

The Public Advocate—

- (a) may intervene at any time; and
- (b) is entitled to be joined as a party—

in a proceeding under the **Guardianship and Administration Act 1986**.

### **34 Withdrawal of application does not preclude future application**

Section 74(2)(d) does not apply to a proceeding under the **Guardianship and Administration Act 1986**.

### **35 Referral to administrators for report**

- (1) The Tribunal may refer any matter relating to a proceeding under the **Guardianship and Administration Act 1986** to a government department, public authority, service provider, the Public Advocate or a guardian or administrator appointed under that Act for investigation and report.
- (2) A person or body to whom a matter is referred under this clause must investigate and report to the Tribunal on that matter.

- (3) The Tribunal must not determine a question referred to a person or body under this clause unless the Tribunal has received and considered the report of the person or body.

### **36 Proceeding not invalidated by failure to give notice**

A hearing or order of the Tribunal in a proceeding under the **Guardianship and Administration Act 1986** is not invalidated or affected only because of a failure to give notice—

- (a) to a person in respect of whom an application has been made or to a represented person (within the meaning of that Act) if the Tribunal—
- (i) has dispensed with the requirement for notice to be given to that person; and
  - (ii) has notified the Public Advocate that it has done so; or
- (b) to any other person.

### **37 Confidentiality of proceedings**

- (1) Unless the Tribunal orders otherwise, a person must not publish or broadcast or cause to be published or broadcast any report of a proceeding under the **Guardianship and Administration Act 1986** that identifies, or could reasonably lead to the identification of, a party to the proceeding.

Penalty: 20 penalty units.

- (2) The Tribunal may make an order under subclause (1) only if it considers that it would be in the public interest to do so.
- (3) An order of the Tribunal under subclause (1) must specify that pictures are not to be taken of any party to the proceeding.

Sch. 1 cl. 37(4)  
inserted by  
No. 64/2010  
s. 33(3).

(4) This clause does not apply to an application for an order or temporary order appointing an administrator in respect of the estate of a missing person under Part 5A of the **Guardianship and Administration Act 1986**.

### 38 Settlement offers

Sections 112 to 115 do not apply to a proceeding under the **Guardianship and Administration Act 1986**.

Sch. 1 Pt 10  
(Heading and  
cl. 39)  
substituted by  
No. 7/2017  
s. 308.

## Part 10—Heritage Act 2017

### 39 National Trust must be given opportunity to be heard

The National Trust (within the meaning of the **Heritage Act 2017**)—

- (a) may intervene at any time; and
- (b) is entitled to be joined as a party—

in a proceeding under Part 5 of that Act.

#### Note

Section 109 of the **Heritage Act 2017** gives the Minister administering that Act a call-in power in respect of proceedings before the Tribunal under that Act.

Sch. 1 Pt 11  
(Heading and  
cl. 40)  
amended by  
Nos 68/2001  
s. 20(3)(4),  
34/2013  
s. 35(Sch. 2  
items 9.7–9.9),  
repealed by  
No. 37/2016  
s. 5.

\* \* \* \* \*



*	*	*	*	*	Sch. 1 Pt 11A (Heading and cls 40A–40E) inserted by No. 98/2000 s. 78, repealed by No. 60/2014 s. 138.
*	*	*	*	*	Sch. 1 Pt 12 amended by No. 75/2003 ss 6, 7, repealed by No. 57/2014 s. 164.

## Part 13—Land Acquisition and Compensation Act 1986

### 45 Documents to accompany application

An application under section 80(a) of the **Land Acquisition and Compensation Act 1986** must be accompanied by—

- (a) the notice of acquisition (if appropriate); and
- (b) the initial offer of compensation made by the Authority (if any); and
- (c) the claim made by the claimant; and
- (d) the reply (if any) of the Authority to the claim.

### 46 Costs

Nothing in section 109 applies to a proceeding under the **Land Acquisition and Compensation Act 1986**<sup>9</sup>.

## Part 13A—Legal Profession Uniform Law Application Act 2014

Sch. 1 Pt 13A  
(Heading)  
substituted by  
No. 17/2014  
s. 160(Sch. 2  
item 105.9(b)).

Sch. 1 Pt 13A  
(Heading and  
cls 46A–46D)  
inserted by  
No. 99/2004  
s. 8.1.3.

Sch. 1 cl. 46A  
inserted by  
No. 99/2004  
s. 8.1.3,  
repealed by  
No. 17/2014  
s. 160(Sch. 2  
item 105.9(c)).

Sch. 1 cl. 46B  
inserted by  
No. 99/2004  
s. 8.1.3.

Sch. 1  
cl. 46B(1)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 105.9(d)).

Sch. 1  
cl. 46B(3)  
repealed by  
No. 17/2014  
s. 160(Sch. 2  
item 105.9(e)).

\* \* \* \* \*

### 46B Representation and appearances

- (1) A law practice that is a party to any proceeding under the Legal Profession Uniform Law (Victoria) may appear or be represented by—
  - (a) a principal of the law practice; or
  - (b) an employee of the law practice authorised in writing by a principal of the practice to appear on the practice's behalf.
- (2) Subclause (1) does not affect or take away from section 62 (other than section 62(3)).

\* \* \* \* \*

	*	*	*	*	*		
							Sch. 1 cl. 46C inserted by No. 99/2004 s. 8.1.3, amended by No. 28/2007 s. 3(Sch. item 70), repealed by No. 17/2014 s. 160(Sch. 2 item 105.9(e)).
<b>46D Costs in disciplinary matters</b>							
							Sch. 1 cl. 46D inserted by No. 99/2004 s. 8.1.3.
	*	*	*	*	*		Sch. 1 cl. 46D(1) repealed by No. 17/2014 s. 160(Sch. 2 item 105.9(e)).
(2) The Tribunal must make an order requiring an Australian legal practitioner whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs (including the costs of the Victorian Legal Services Commissioner and the complainant (if any)) unless the Tribunal is satisfied that exceptional circumstances exist.							Sch. 1 cl. 46D(2) amended by No. 17/2014 s. 160(Sch. 2 item 105.9(f)).
(3) The Tribunal must not make an order for costs against the Victorian Legal Services Commissioner unless satisfied that special circumstances make it appropriate to do so.							Sch. 1 cl. 46D(3) amended by No. 17/2014 s. 160(Sch. 2 item 105.9(f)).
(4) Section 109 does not apply to a proceeding under Division 3 of Part 5.4 of the Legal Profession Uniform Law (Victoria).							Sch. 1 cl. 46D(4) amended by No. 17/2014 s. 160(Sch. 2 item 105.9(g)).

Sch. 1  
cl. 46D(5)  
repealed by  
No. 17/2014  
s. 160(Sch. 2  
item 105.9(h)).

\* \* \* \* \*

Sch. 1 Pt 13B  
(Heading and  
cls 46E, 46F)  
inserted by  
No. 67/2008  
s. 93.

## Part 13B—Local Government Act 1989

Sch. 1 cl. 46E  
inserted by  
No. 67/2008  
s. 93.

### 46E Constitution of Tribunal

Sch. 1  
cl. 46E(1)  
amended by  
No. 53/2015  
s. 95(1).

(1) The Tribunal is to be constituted for the purposes of proceedings under sections 30 and 81E of the **Local Government Act 1989** by at least 2 members—

Sch. 1  
cl. 46E(1)(a)  
amended by  
No. 63/2012  
s. 31.

(a) one of whom is a senior member or presidential member and has been admitted to legal practice;

(b) one of whom is a person who has at least 5 years experience in local government governance matters.

Sch. 1  
cl. 46E(2)  
amended by  
No. 63/2012  
s. 31.

(2) The Tribunal is to be constituted for the purposes of proceedings for review of a decision made by a Councillor Conduct Panel under section 81Q of the **Local Government Act 1989** by a senior member or presidential member who has been admitted to legal practice sitting alone.

#### **46F Costs**

Sch. 1 cl. 46F  
inserted by  
No. 67/2008  
s. 93,  
substituted by  
No. 63/2012  
s. 32.

- (1) Despite section 109, the Council must bear the costs of the proceedings if the Council applies to VCAT for review under section 81Q(2) of the **Local Government Act 1989**.
- (2) The Council is not required to bear the costs of the proceedings under subclause (1) if VCAT otherwise orders.

Sch. 1  
cl. 46F(1)  
substituted by  
No. 53/2015  
s. 95(2).

### **Part 14—Medical Treatment Planning and Decisions Act 2016**

Sch. 1 Pt 14  
(Heading)  
amended by  
No. 69/2016  
s. 153.

#### **46G Constitution of Tribunal for proceedings**

The Tribunal is to be constituted for the purposes of a rehearing under Division 2 of Part 6 of the **Medical Treatment Planning and Decisions Act 2016** by—

Sch. 1 cl. 46G  
inserted by  
No. 69/2016  
s. 154.

- (a) a senior member or presidential member, if the order at first instance was made by the Tribunal constituted by an ordinary member;
- (b) a presidential member, if the order at first instance was made by the Tribunal constituted by a senior member;
- (c) a judicial member, if the order at first instance was made by the Tribunal constituted by a Deputy President;
- (d) a Vice President, if the order at first instance was made by the Tribunal constituted by more than one member (except where one or more of the members was a Vice President);

- (e) the President, if the order at first instance was made by the Tribunal constituted by a Vice President (whether with or without others).

Sch. 1 cl. 47  
amended by  
No. 69/2016  
s. 155.

#### **47 Public Advocate may intervene or be joined**

The Public Advocate—

- (a) may intervene at any time; and  
(b) is entitled to be joined as a party—

in a proceeding under the **Medical Treatment Planning and Decisions Act 2016**.

#### **48 Referral to administrators for report**

Sch. 1 cl. 48(1)  
amended by  
No. 69/2016  
s. 155.

- (1) The Tribunal may refer any matter relating to a proceeding under the **Medical Treatment Planning and Decisions Act 2016** to a government department, public authority, service provider, the Public Advocate or a guardian or administrator appointed under that Act for investigation and report.
- (2) A person or body to whom a matter is referred under this clause must investigate and report to the Tribunal on that matter.
- (3) The Tribunal must not determine a question referred to a person or body under this clause unless the Tribunal has received and considered the report of the person or body.

Sch. 1 cl. 49  
amended by  
No. 69/2016  
s. 155.

#### **49 Proceeding not invalidated by failure to give notice**

A hearing or order of the Tribunal in a proceeding under the **Medical Treatment Planning and Decisions Act 2016** is not invalidated or affected only because of a failure to give notice—

- (a) to a person in respect of whom an application has been made, if the Tribunal—
  - (i) has dispensed with the requirement for notice to be given to that person; and
  - (ii) has notified the Public Advocate that it has done so; or
- (b) to any other person.

### 50 Confidentiality of proceedings

- (1) Unless the Tribunal orders otherwise, a person must not publish or broadcast or cause to be published or broadcast any report of a proceeding under the **Medical Treatment Planning and Decisions Act 2016** that identifies, or could reasonably lead to the identification of, a party to the proceeding.

Sch. 1 cl. 50(1)  
amended by  
No. 69/2016  
s. 155.

Penalty: 20 penalty units.

- (2) The Tribunal may make an order under subclause (1) only if it considers that it would be in the public interest to do so.
- (3) An order of the Tribunal under subclause (1) must specify that pictures are not to be taken of any party to the proceeding.

## Part 15—Mineral Resources (Sustainable Development) Act 1990

Sch. 1 Pt 15  
(Heading)  
amended by  
No. 63/2006  
s. 61(Sch.  
item 32.1).

### 51 Costs

Nothing in section 109 applies to a proceeding under the **Mineral Resources (Sustainable Development) Act 1990**<sup>10</sup>.

Sch. 1 cl. 51  
amended by  
No. 63/2006  
s. 61(Sch.  
item 32.2).

Sch. 1  
Pt 15AA  
(Heading and  
cls 51AA–  
51AC)  
inserted by  
No. 49/2005  
s. 67(2).

## **Part 15AA—Owner Drivers and Forestry Contractors Act 2005**

Sch. 1  
cl. 51AA  
inserted by  
No. 49/2005  
s. 67(2).

### **51AA Representation**

In a proceeding under Part 5 of the **Owner Drivers and Forestry Contractors Act 2005**, a party may be represented by—

- (a) a professional advocate; or
- (b) the party's negotiating agent (within the meaning of that Act); or
- (c) in the case of a party that is a contractor—  
an association, including a trade union, that represents contractors or a class of contractors; or
- (d) in the case of a party that is a hirer—  
an association that represents hirers or a class of hirers.

Sch. 1  
cl. 51AB  
inserted by  
No. 49/2005  
s. 67(2).

### **51AB Costs**

- (1) In determining whether to make an order for costs in a proceeding under the **Owner Drivers and Forestry Contractors Act 2005**, the Tribunal may have regard to whether a party refused to take part in, or withdrew from, alternative dispute resolution conducted under Part 5 of that Act.
- (2) Subclause (1) is in addition to the matters that the Tribunal may have regard to under section 109(3).

Sch. 1  
cl. 51AC  
inserted by  
No. 49/2005  
s. 67(2).

### **51AC Effect of certain orders**

Section 118(1) does not apply to an order made under section 46 or 51 of the **Owner Drivers and Forestry Contractors Act 2005**.



\* \* \* \* \*

Sch. 1 Pt 15A  
(Heading and  
cl. 51A)  
inserted by  
No. 92/1998  
s. 13,  
repealed by  
No. 61/2005  
s. 223.

## Part 15AB—Owners Corporations Act 2006

Sch. 1  
Pt 15AB  
(Heading and  
cl. 51AD)  
inserted by  
No. 69/2006  
s. 223.

### 51AD Any member of Tribunal may make a declaration

Despite anything to the contrary in section 124, a declaration may be made in a proceeding under the **Owners Corporations Act 2006** by the Tribunal constituted by any member.

Sch. 1  
cl. 51AD  
inserted by  
No. 69/2006  
s. 223.

### 51ADA Tribunal may make orders for costs incurred by owners corporations

- (1) The Tribunal may make an order for costs under section 109 incurred by a lot owner or an owners corporation, either directly or indirectly (including the costs of professional and volunteer managers), in an application to the Tribunal relating to the recovery of fees and charges imposed by an owners corporation under Division 1 of Part 3 of the **Owners Corporations Act 2006**.
- (2) Costs awarded under subclause (1) are not limited to costs incurred by a professional advocate under section 62.

Sch. cl.  
51ADA  
inserted by  
No. 63/2010  
s. 80.

Sch. 1  
Pt 15AC  
(Heading and  
cl. 51AE)  
inserted by  
No. 39/2010  
s. 131.

## **Part 15AC—Pharmacy Regulation Act 2010**

Sch. 1  
cl. 51AE  
inserted by  
No. 39/2010  
s. 131.

### **51AE Constitution of Tribunal for hearings**

The Tribunal is to be constituted for the purposes of a proceeding under Division 5 of Part 3 of the **Pharmacy Regulation Act 2010** by at least 3 members of whom at least 2 must be registered pharmacists that are regulated under the Health Practitioner Regulation National Law.

Sch. 1  
Pt. 15AD  
(Heading and  
cls 51AF–  
51AJ)  
inserted by  
No. 57/2014  
s. 165.

## **Part 15AD—Powers of Attorney Act 2014**

Sch. 1  
cl. 51AF  
inserted by  
No. 57/2014  
s. 165.

### **51AF Constitution of Tribunal for proceedings**

The Tribunal is to be constituted for the purposes of a rehearing under Division 4 of Part 8 of the **Powers of Attorney Act 2014** by—

- (a) a senior member or presidential member, if the order at first instance was made by the Tribunal constituted by an ordinary member;
- (b) a presidential member, if the order at first instance was made by the Tribunal constituted by a senior member;
- (c) a judicial member, if the order at first instance was made by the Tribunal constituted by a Deputy President;

- (d) a Vice President, if the order at first instance was made by the Tribunal constituted by more than one member (except where one or more of the members was a Vice President);
- (e) the President, if the order at first instance was made by the Tribunal constituted by a Vice President (whether with or without others).

**51AG Public Advocate may intervene or be joined**

The Public Advocate—

- (a) may intervene at any time; and
- (b) is entitled to be joined as a party—

in a proceeding under Part 8 of the **Powers of Attorney Act 2014**.

Sch. 1  
cl. 51AG  
inserted by  
No. 57/2014  
s. 165.

**51AH Referral to administrators for report**

- (1) The Tribunal may refer any matter relating to a proceeding under Part 8 of the **Powers of Attorney Act 2014** to a government department, public authority, service provider, the Public Advocate or a guardian or administrator appointed under that Act for investigation and report.
- (2) A person or body to whom a matter is referred under this clause must investigate and report to the Tribunal on that matter.
- (3) The Tribunal must not determine a question referred to a person or body under this clause unless the Tribunal has received and considered the report of the person or body.

Sch. 1  
cl. 51AH  
inserted by  
No. 57/2014  
s. 165.

**51AI Proceeding not invalidated by failure to give notice**

A hearing or order of the Tribunal in a proceeding under Part 8 of the **Powers of Attorney Act 2014** is not invalidated or affected only because of a failure to give notice—

Sch. 1 cl. 51AI  
inserted by  
No. 57/2014  
s. 165.

- (a) to a person in respect of whom an application has been made, if the Tribunal—
  - (i) has dispensed with the requirement for notice to be given to that person; and
  - (ii) has notified the Public Advocate that it has done so; or
- (b) to any other person.

Sch. 1  
cl. 51AJ  
inserted by  
No. 57/2014  
s. 165.

### **51AJ Confidentiality of proceedings**

- (1) Unless the Tribunal orders otherwise, a person must not publish or broadcast or cause to be published or broadcast any report of a proceeding under Part 8 of the **Powers of Attorney Act 2014** that identifies, or could reasonably lead to the identification of, a party to the proceeding.

Penalty: 20 penalty units.

- (2) The Tribunal may make an order under subclause (1) only if it considers that it would be in the public interest to do so.
- (3) An order of the Tribunal under subclause (1) must specify that pictures are not to be taken of any party to the proceeding.

## **Part 16—Planning enactments**

### **52 Constitution of Tribunal**

- (1) The Tribunal is to be constituted for the purposes of a proceeding under a planning enactment by—
  - (a) one member who has sound knowledge of, and experience in, planning or environmental practice in Victoria; or
  - (b) if it is constituted by 2 members, at least one member who has sound knowledge of, and experience in, planning or environmental practice in Victoria; or

(c) if it is constituted by 3, 4 or 5 members, at least 2 members who have sound knowledge of, and experience in, planning or environmental practice in Victoria.

(2) Section 64(2) does not apply to a proceeding under a planning enactment.

**53 Decision-maker not obliged to give reasons**

Nothing in section 45 applies to a decision under a planning enactment.

**54 Decision-maker not obliged to lodge documents**

Nothing in section 49 applies to a decision under a planning enactment.

**55 Further notice if there is a failure to comply with legislation**

(1) If in any proceeding under a planning enactment the Tribunal considers that there has been a failure to comply with any enactment, the Tribunal may direct that a specified party give notice or further notice of the proceeding to any person, in the form and manner specified by the Tribunal.

(2) The Tribunal may adjourn the proceeding for the purpose of allowing notice or further notice to be given.

(3) If the Tribunal directs that a responsible authority gives notice or further notice under this clause, the Tribunal may order that another party pay the responsible authority's costs of giving the notice.

**56 Person wishing to contest proceeding to lodge grounds**

(1) A person who wishes to contest a proceeding under a planning enactment must lodge with the Tribunal, in accordance with the rules, a statement of the grounds on which the person intends to rely at the hearing of the proceeding.

Sch. 1 cl. 56  
(Heading)  
inserted by  
No. 62/2014  
s. 41(1).

- (2) Subclause (1) does not apply to a responsible authority in a proceeding—
- (a) for review of a decision of the authority—
    - (i) to refuse to grant a permit; or
    - (ii) to extend time within which any development is to be commenced or completed; or
  - (b) in respect of the failure of the authority to grant a permit.
- (3) A copy of each statement lodged under subclause (1) must be served on the applicant and the responsible authority.
- (4) If a person fails to comply with this clause, the Tribunal must not allow the person to be heard in the proceeding unless it has obtained and considered the views of the applicant and the responsible authority on whether or not the person should be heard.
- (5) A person who lodges a statement under subclause (1) may lodge with the statement a written notice that the person does not intend to participate in the hearing of the proceeding.
- (6) If a person lodges a notice under subclause (5), the person is not, or ceases to be, a party to the proceeding (as the case requires).

Sch. 1 cl. 56(5)  
inserted by  
No. 62/2014  
s. 41(2).

Sch. 1 cl. 56(6)  
inserted by  
No. 62/2014  
s. 41(2).

## 57 Intervention

- (1) The relevant Minister may intervene at any time in a proceeding under a planning enactment if he or she considers that—
- (a) the proceeding raises a major issue of policy;  
and
  - (b) in the case of a review brought under the **Planning and Environment Act 1987**, the determination of the review may have a

substantial effect on the future planning of the area in which the land the subject of the review is situated.

- (2) For the avoidance of doubt, the relevant Minister may intervene in a proceeding under a planning enactment after the Tribunal has heard the proceeding but before it has delivered its final determination in the proceeding.
- (3) Section 73 does not apply to a proceeding under a planning enactment.
- (4) In this clause—

*relevant Minister* means the Minister administering the planning enactment under which the proceeding is brought.

**58 Minister's call in powers in Planning and Environment Act matters**

Sch. 1 cl. 58  
substituted by  
No. 53/2004  
s. 3.

- (1) This clause applies to a proceeding for review of a decision under the **Planning and Environment Act 1987** if the Minister administering the **Planning and Environment Act 1987** considers that—
  - (a) the proceeding raises a major issue of policy; and
  - (b) the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.
- (2) The Minister administering the **Planning and Environment Act 1987** may—
  - (a) by notice in writing to the principal registrar call in the proceeding; or

- (b) invite the Tribunal—
  - (i) to decline to hear or to continue to hear the proceeding and refer it to the Governor in Council for determination; or
  - (ii) to hear or to continue to hear the proceeding but, without determining it, refer it with recommendations to the Governor in Council for determination.
- (3) A notice or invitation under subclause (2) is of no effect unless it is given—
  - (a) before the final determination of the proceeding; and
  - (b) no later than 7 days before the day fixed for the hearing of the proceeding.
- (4) If the Minister calls in a proceeding under subclause (2)(a)—
  - (a) the Tribunal must not commence or continue to hear the proceeding; and
  - (b) the principal registrar must refer the proceeding to the Governor in Council for determination.
- (5) In subclause (3) a reference to a hearing does not include a reference to a hearing in the nature of a directions hearing, preliminary hearing or interlocutory hearing.
- (6) This clause applies to a proceeding existing on or after the commencement of section 3 of the **Victorian Civil and Administrative Tribunal (Amendment) Act 2004**.

Sch. 1 cl. 59  
substituted by  
No. 53/2004  
s. 3.

## **59 Call in powers in other planning matters**

- (1) This clause applies to a proceeding for review of a decision under a planning enactment other than the **Planning and Environment Act 1987** if the



Minister administering the relevant planning enactment considers that the proceeding raises a major issue of policy.

- (2) The Minister administering the relevant planning enactment may request the Minister administering the **Planning and Environment Act 1987** to—
- (a) by notice in writing to the principal registrar call in the proceeding; or
  - (b) invite the Tribunal—
    - (i) to decline to hear or to continue to hear the proceeding and refer it to the Governor in Council for determination; or
    - (ii) to hear or to continue to hear the proceeding but, without determining it, refer it with recommendations to the Governor in Council for determination.
- (3) The Minister administering the **Planning and Environment Act 1987** must comply with a request under subclause (2).
- (4) A notice or invitation under this clause is of no effect unless it is given—
- (a) before the final determination of the proceeding; and
  - (b) no later than 7 days before the day fixed for the hearing of the proceeding.
- (5) If the Minister calls in a proceeding by notice under this clause—
- (a) the Tribunal must not commence or continue to hear the proceeding; and
  - (b) the principal registrar must refer the proceeding to the Governor in Council for determination.

(6) In subclause (4) a reference to a hearing does not include a reference to a hearing in the nature of a directions hearing, preliminary hearing or interlocutory hearing.

(7) This clause applies to a proceeding existing on or after the commencement of section 3 of the **Victorian Civil and Administrative Tribunal (Amendment) Act 2004**.

**60 Tribunal may refer planning matters to Governor in Council**

(1) This clause applies to a proceeding for review of a decision under a planning enactment if, after the hearing of the proceeding has begun, the Tribunal considers that—

(a) the proceeding raises a major issue of policy; and

(b) in the case of a proceeding for review of a decision under the **Planning and Environment Act 1987**, the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.

(2) In a proceeding to which this clause applies, the Tribunal—

(a) may invite the Minister administering the **Planning and Environment Act 1987** to make submissions to the Tribunal; and

(b) may continue to hear the proceeding but, without determining it, refer it with recommendations to the Governor in Council for determination.

## **61 Effect of referral to Governor in Council**

- (1) If a proceeding is referred to the Governor in Council under clause 58, 59 or 60—
- (a) the principal registrar must—
    - (i) give a copy of the recommendations that accompanied the referral to each party to the proceeding within a reasonable time after the referral; and
    - (ii) make a copy of the recommendations available during office hours for inspection by any person without charge; and
  - (b) the Governor in Council may determine the proceeding and make any orders in relation to the proceeding that could have been made by the Tribunal.

- (1A) If a proceeding is referred to the Governor in Council under clause 58, 59 or 60, the Governor in Council is not bound by any decision, determination or order made by the Tribunal in the proceeding.

Sch. 1  
cl. 61(1A)  
inserted by  
No. 53/2004  
s. 4.

- (2) An order made by the Governor in Council referred to in subclause (1)(b) is deemed to be an order of the Tribunal.

## **62 Tribunal may disregard failures to comply**

The Tribunal has jurisdiction to determine a proceeding under a planning enactment despite any failure to comply with the planning enactment or any other enactment and, in doing so, may determine to disregard that failure if the Tribunal considers it in the interests of justice to do so.

Sch. 1 cl. 62A  
inserted by  
No. 52/2008  
s. 268,  
repealed by  
No. 83/2012  
s. 46(1).

\* \* \* \* \*

### 63 Costs

- (1) In determining whether or not to make an order for costs in a proceeding under the **Planning and Environment Act 1987**, the Tribunal may have regard to whether the proceeding was brought primarily to secure or maintain a direct or indirect commercial advantage for the person who brought the proceeding.
- (2) Subclause (1) is in addition to the matters that the Tribunal may have regard to under section 109(3).

### 64 Amendment of application

- (1) This clause applies to the following proceedings—
  - (a) a proceeding for review of a decision under the **Planning and Environment Act 1987** of a responsible authority in respect of an application for a permit or the failure of a responsible authority to grant a permit;
  - (b) a proceeding for review of a decision under the **Environment Protection Act 1970** in relation to—
    - (i) a determination of the Environment Protection Authority or a delegated agency in respect of an application for a works approval or licence; or

- (ii) a failure of the Environment Protection Authority or a delegated agency to determine an application for a works approval or licence.
- (2) At any time in a proceeding to which this clause applies the Tribunal may make any amendment it thinks fit to the application for the permit, works approval or licence the subject of the proceeding.
- (3) Without limiting the generality of subclause (2), the Tribunal may make an amendment to an application for a permit under the **Planning and Environment Act 1987**—
  - (a) as to a use or development different from the use or development mentioned in the application;
  - (b) as to the land to the use or development of which the application relates.
- (4) This clause is in addition to, and does not limit or affect section 127.

## **65 Extension of time**

- (1) The Tribunal must not extend the time for commencing a proceeding under a planning enactment if—
  - (a) a proceeding in respect of the same or related facts and circumstances has already been set down for hearing; or
  - (b) a permit, licence or works approval has been issued to any person on or after the expiration of the time appointed for lodging an application for review of the decision to grant that permit, licence or approval.
- (2) Subclause (1) does not apply if leave is granted under section 82B of the **Planning and Environment Act 1987**.

## 66 Questions of law

Sch. 1 cl. 66(1)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item  
105.10(a)).

(1) Despite section 107(1), if the Tribunal is constituted for the purposes of a proceeding under a planning enactment without a judicial member or a member who is an Australian lawyer, a question of law arising in the proceeding may be decided—

Sch. 1  
cl. 66(1)(a)  
amended by  
No. 14/2006  
s. 27(1).

(a) by the presiding member unless the parties that are present at the hearing of the proceeding disagree; or

Sch. 1  
cl. 66(1)(b)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item  
105.10(a)).

(b) in accordance with the opinion of a judicial member or a member who is an Australian lawyer nominated by the President.

(2) Section 107(3)(b) does not apply to a proceeding under a planning enactment.

Sch. 1 cl. 66(3)  
inserted by  
No. 14/2006  
s. 27(2).

(3) For the purpose of this clause, the determination of a question of law in a proceeding under a planning enactment is deemed to be an order for the purposes of section 120.

## Part 16AA—Privacy and Data Protection Act 2014

Sch. 1  
Part 16AA  
(Heading and  
cls 66AA–  
66AF)  
inserted by  
No. 60/2014  
s. 139.

### 66AA Meaning of *Information Commissioner*

In this Part—

Sch. 1  
cl. 66AA  
(Heading)  
amended by  
No. 20/2017  
s. 134(Sch. 1  
item 19.2).

Sch. 1  
cl. 66AA  
inserted by  
No. 60/2014  
s. 139.

*Information Commissioner* means the  
Information Commissioner appointed under  
the **Freedom of Information Act 1982** in  
the Information Commissioner's capacity  
under the **Privacy and Data Protection  
Act 2014**.

Sch. 1  
cl. 66AA def.  
of *Commis-  
sioner*  
substituted as  
*Information  
Commis-  
sioner* by  
No. 20/2017  
s. 134(Sch. 1  
item 19.3).

### 66AB Intervention by Information Commissioner

The Information Commissioner may intervene at  
any time in a proceeding under the **Privacy and  
Data Protection Act 2014**.

Sch. 1  
cl. 66AB  
(Heading)  
amended by  
No. 20/2017  
s. 134(Sch. 1  
item 19.4).

Sch. 1  
cl. 66AB  
inserted by  
No. 60/2014  
s. 139,  
amended by  
No. 20/2017  
s. 134(Sch. 1  
item 19.5).

Sch. 1  
cl. 66AC  
inserted by  
No. 60/2014  
s. 139.

## 66AC Notification in other proceedings

Sch. 1  
cl. 66AC(1)  
amended by  
No. 20/2017  
s. 134(Sch. 1  
item 19.6).

(1) If an application is made under section 72 (interim order) or a referral under section 65 (Minister's referral) of the **Privacy and Data Protection Act 2014**, the principal registrar must notify the Information Commissioner.

Sch. 1  
cl. 66AC(2)  
amended by  
No. 20/2017  
s. 134(Sch. 1  
item 19.6).

(2) Subclause (1) does not apply in the case of an application by the Information Commissioner under section 72 of the **Privacy and Data Protection Act 2014**.

Sch. 1  
cl. 66AD  
(Heading)  
amended by  
No. 20/2017  
s. 134(Sch. 1  
item 19.7).

## 66AD Information Commissioner may apply for interim injunction

The Information Commissioner may apply for an order granting an interim injunction under section 123 in a proceeding under the **Privacy and Data Protection Act 2014** whether or not the Information Commissioner is a party to that proceeding.

Sch. 1  
cl. 66AD  
inserted by  
No. 60/2014  
s. 139,  
amended by  
No. 20/2017  
s. 134(Sch. 1  
item 19.8).

Sch. 1  
cl. 66AE  
inserted by  
No. 60/2014  
s. 139,  
amended by  
No. 20/2017  
s. 134(Sch. 1  
item 19.9).

## 66AE Compulsory conference

The presiding member at a compulsory conference in a proceeding under the **Privacy and Data Protection Act 2014** may refer any matter to the Information Commissioner for investigation, negotiation or conciliation.

Sch. 1  
cl. 66AF  
inserted by  
No. 60/2014  
s. 139.

## 66AF Settlement offers

Sections 112 to 115 do not apply to a proceeding under the **Privacy and Data Protection Act 2014**.



## **Part 16A—Property Law Act 1958**

Sch. 1 Pt 16A  
(Heading and  
cl. 66A)  
inserted by  
No. 71/2005  
s. 6.

### **66A Constitution of Tribunal**

In a proceeding under Part IV of the **Property Law Act 1958**, the Tribunal is to be constituted by or is to include a member who, in the opinion of the President, has knowledge of or experience in property law matters.

Sch. 1 cl. 66A  
inserted by  
No. 71/2005  
s. 6.

## **Part 16B—Public Health and Wellbeing Act 2008**

Sch. 1 Pt 16B  
(Heading and  
cls 66B–66G)  
inserted by  
No. 46/2008  
s. 267.

### **66B Application of provisions**

These provisions apply in respect of any proceeding under section 122 of the **Public Health and Wellbeing Act 2008**.

Sch. 1 cl. 66B  
inserted by  
No. 46/2008  
s. 267.

### **66C Constitution of Tribunal**

The Tribunal is to be constituted by a presidential member.

Sch. 1 cl. 66C  
inserted by  
No. 46/2008  
s. 267.

### **66D Compulsory conferences, mediation and settlement not to apply**

Division 5 of Part 4 does not apply.

Sch. 1 cl. 66D  
inserted by  
No. 46/2008  
s. 267.

### **66E Costs of Tribunal appointed experts**

Despite clause 7(5) of Schedule 3, a person to whom the public health order applies is not responsible for the costs of a Tribunal appointed expert under clause 7 of that Schedule.

Sch. 1 cl. 66E  
inserted by  
No. 46/2008  
s. 267,  
substituted by  
No. 23/2014  
s. 21(2).

Sch. 1 cl. 66F  
inserted by  
No. 46/2008  
s. 267.

**66F Restriction on access to information**

Despite anything to the contrary in this Act, the Tribunal may order that the person to whom the public health order applies not hear any particular evidence or be permitted to inspect a submission or other document if the Tribunal is of the opinion that it is necessary to do so to prevent serious harm to the health or wellbeing of that person or of any other person.

Sch. 1 cl. 66G  
inserted by  
No. 46/2008  
s. 267.

**66G Confidentiality of proceeding**

- (1) Unless the Tribunal orders otherwise, a person must not publish or broadcast or cause to be published or broadcast any report of a proceeding that identifies, or could reasonably lead to the identification of, a party to the proceeding.

Penalty: 20 penalty units.

- (2) The Tribunal may make an order under subclause (1) only if it considers that it would be in the public interest to do so.
- (3) An order of the Tribunal under subclause (1) must specify that pictures are not to be taken of any party to the proceeding.

## Part 16C—Racial and Religious Tolerance Act 2001

Sch. 1 Pt 16C  
(Heading and  
cls 66H–66M)  
inserted by  
No. 16/2010  
s. 208 (as  
amended by  
No. 26/2011  
s. 34(Sch.  
items 9.9,  
9.10)).

### 66H Meaning of Commission

In this Part—

*Commission* means the Victorian Equal  
Opportunity and Human Rights  
Commission.

Sch. 1 cl. 66H  
inserted by  
No. 16/2010  
s. 208 (as  
amended by  
No. 26/2011  
s. 34(Sch.  
items 9.9,  
9.10)).

### 66I Unincorporated associations can be parties

- (1) Section 61(1) does not apply to a proceeding  
under the **Racial and Religious Tolerance  
Act 2001**.

#### Note

Section 21 of the **Racial and Religious Tolerance Act 2001**  
contains provisions for unincorporated associations in  
proceedings under that Act.

- (2) An unincorporated association that is a party to a  
proceeding under the **Racial and Religious  
Tolerance Act 2001** has the same right to  
representation in the proceeding as a body  
corporate.

Sch. 1 cl. 66I  
inserted by  
No. 16/2010  
s. 208 (as  
amended by  
No. 26/2011  
s. 34(Sch.  
items 9.9,  
9.10)).

### 66J Withdrawal of proceeding

- (1) Despite section 74(1), an applicant is not required  
to obtain the leave of the Tribunal to withdraw an  
application under the **Racial and Religious  
Tolerance Act 2001**.

Sch. 1 cl. 66J  
inserted by  
No. 16/2010  
s. 208 (as  
amended by  
No. 26/2011  
s. 34(Sch.  
items 9.9,  
9.10)).

- (2) Nothing in subclause (1) affects the Tribunal's power to award costs in any proceeding that is withdrawn.

Sch. 1 cl. 66K inserted by No. 16/2010 s. 208 (as amended by No. 26/2011 s. 34(Sch. items 9.9, 9.10)).

**66K Summary dismissal of application more than 12 months old**

The Tribunal may make an order under section 76 summarily dismissing an application under the **Racial and Religious Tolerance Act 2001** in respect of an alleged contravention of Part 2 of that Act if the alleged contravention occurred more than 12 months before the application was made.

Sch. 1 cl. 66L inserted by No. 16/2010 s. 208 (as amended by No. 26/2011 s. 34(Sch. items 9.9, 9.10)).

**66L Commission may apply for interim injunction**

The Commission may apply for an order granting an interim injunction under section 123 in a proceeding under the **Racial and Religious Tolerance Act 2001** whether or not the Commission is a party to that proceeding.

Sch. 1 cl. 66M inserted by No. 16/2010 s. 208 (as amended by No. 26/2011 s. 34(Sch. items 9.9, 9.10)).

**66M Evidence of mediation not admissible even if parties agree**

- (1) Evidence of anything said or done in the course of a mediation in a proceeding under the **Racial and Religious Tolerance Act 2001** is not admissible in any hearing before the Tribunal in the proceeding, whether or not the parties agree to the giving of the evidence.
- (2) Section 92 does not apply to a proceeding under the **Racial and Religious Tolerance Act 2001**.

## **Part 17—Residential Tenancies Act 1997**

### **67 Representation**

Despite section 62(1)(b), a party to a proceeding for a possession order under the **Residential Tenancies Act 1997** may be represented by a professional advocate.

## 67A Support person

Sch. 1 cl. 67A  
inserted by  
No. 83/2012  
s. 46(2).

(1) If a party to a proceeding under the **Residential Tenancies Act 1997** is a protected person or a respondent under a family violence intervention order under the **Family Violence Protection Act 2008** or a non-local DVO made by a court that is a recognised DVO, the party may be accompanied at a hearing by a person (a *support person*) for the purposes of that person providing support to the party.

Sch. 1  
cl. 67A(1)  
amended by  
No. 53/2016  
s. 126(1).

(2) The support person may be—

- (a) a legal practitioner; or
- (b) a social worker; or
- (c) a friend or family member of the party; or
- (d) any other person chosen by the party.

(3) In this clause—

*non-local DVO* means a non-local DVO within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

*recognised DVO* means a recognised DVO within the meaning of the **National Domestic Violence Order Scheme Act 2016**.

Sch. 1  
cl. 67A(3)  
inserted by  
No. 53/2016  
s. 126(2).

## 68 Notification not required for certain applications

Section 72 does not apply to an application under section 414 of the **Residential Tenancies Act 1997** (application for rent owing if tenant cannot be located).

## 69 Withdrawal of application

- (1) Despite section 74(1), an applicant is not required to obtain the leave of the Tribunal to withdraw an application under the **Residential Tenancies Act 1997**.
- (2) Nothing in subclause (1) affects the Tribunal's power to award costs in any proceeding that is withdrawn.

Sch. 1 cl. 70  
repealed by  
No. 62/2014  
s. 42.

\* \* \* \* \*

## 71 Resolution of objection to certain members constituting the Tribunal

- (1) If a party to a proceeding under the **Residential Tenancies Act 1997** objects to the member who presided over a compulsory conference in the proceeding, or to a mediator in the proceeding, constituting the Tribunal for the purpose of hearing the proceeding (whether with or without others), the Tribunal must determine whether or not the member may continue to constitute the Tribunal for that purpose.
- (2) For the purpose of making a determination under subclause (1), the Tribunal may be constituted (whether with or without others) by the member against whom the objection was made.
- (3) Section 86(3) does not apply to a proceeding under the **Residential Tenancies Act 1997**.

## 72 Referral to Director

- (1) The principal registrar must refer an application under the **Residential Tenancies Act 1997** to the Director for investigation and report if it is of a kind that the Director has directed the principal registrar to refer.

- (2) At any time before the hearing of an application under the **Residential Tenancies Act 1997** the principal registrar or the Tribunal, at the request of a party, may refer the application to the Director for investigation and report.
- (3) Subclause (2) does not apply to an application for a possession order.
- (4) The Director must investigate and report to the Tribunal on any application referred to him or her under this clause.
- (5) The Tribunal must not determine an application referred to the Director unless the Tribunal has received and considered the Director's report.

### **73 Amendment of application**

With the consent of each party, the principal registrar may amend an application in a proceeding under the **Residential Tenancies Act 1997** at any time before it is heard.

### **73A Evidence**

- (1) Despite section 102(1)(b), if any of the parties to a proceeding under the **Residential Tenancies Act 1997** are the protected person and the respondent under the same family violence intervention order under the **Family Violence Protection Act 2008** or a non-local DVO made by a court that is a recognised DVO, the respondent is not allowed to personally cross-examine the protected person unless the Tribunal gives the respondent leave to do so.
- (2) In this clause—

***non-local DVO*** means a non-local DVO within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

Sch. 1 cl. 73A  
inserted by  
No. 52/2008  
s. 269,  
amended by  
No. 53/2016  
s. 127(1)(2)  
(ILA s. 39B(3)).

Sch. 1  
cl. 73A(2)  
inserted by  
No. 53/2016  
s. 127(2).

*recognised DVO* means a recognised DVO within the meaning of the **National Domestic Violence Order Scheme Act 2016**.

Sch. 1 cl. 73B  
inserted by  
No. 52/2008  
s. 269.

**73B Alternative arrangements for giving evidence**

- (1) The Tribunal may direct that any of the following alternative arrangements be made for the giving of evidence by a witness in a proceeding under the **Residential Tenancies Act 1997**—
  - (a) permitting the evidence to be given from a place other than the hearing room by means of closed circuit television or other facilities that enable communication between that place and the hearing room;
  - (b) using screens to remove a party from the witness's direct line of vision;
  - (c) permitting a person to be beside the witness while the witness is giving evidence for the purpose of providing emotional support to the witness;
  - (d) requiring Australian lawyers to be seated while examining or cross-examining the witness;
  - (e) permitting only persons specified by the Tribunal to be present while the witness is giving evidence;
  - (f) any other alternative arrangements the Tribunal considers appropriate.
- (2) If the witness is 18 years of age or over, the Tribunal may make a direction under subclause (1) on its own initiative or on the application of a party to the proceeding.

Sch. 1  
cl. 73B(1)(d)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item  
105.10(b)).



- (3) If the witness is under 18 years of age, the Tribunal must make a direction under subclause (1) unless it considers it is not appropriate to do so having regard to—
  - (a) the wishes expressed by the witness; and
  - (b) the age and maturity of the witness; and
  - (c) any other matters that the Tribunal considers relevant.
- (4) The Tribunal may hear an application under subclause (2), or ascertain the matters in subclause (3), in camera and, except as otherwise directed by the Tribunal, persons who are not parties to the proceeding or their representatives are not permitted to be present while the hearing takes place or the matters are being ascertained.
- (5) Any place outside the hearing room where a witness is permitted to give evidence under this section is to be taken to be part of the hearing room while the witness is there for the purpose of giving evidence.
- (6) The Tribunal may at any time in the course of the proceeding vary or revoke a direction made under subclause (1) on its own initiative or on the application of a party to the proceeding.
- (7) In this section—

*hearing room* means the room in which the hearing for the proceeding is being conducted.

#### **74 Evidence before Tribunal cannot be used in criminal proceedings**

Evidence before the Tribunal in a proceeding under the **Residential Tenancies Act 1997** cannot be used in criminal proceedings except proceedings for an offence against this Act or the **Residential Tenancies Act 1997** or for perjury.

**75 Any member of Tribunal may make a declaration**

Despite anything to the contrary in section 124, a declaration may be made in a proceeding under the **Residential Tenancies Act 1997** by the Tribunal constituted by any member.

**76 Reasons must be requested at time of decision**

Despite anything to the contrary in section 117(2), the Tribunal is not obliged to give a person written reasons for an order made in a proceeding under the **Residential Tenancies Act 1997** unless the person has made a request to the Tribunal for written reasons for orders that may be made in the proceeding before or at the time of the giving or notification of the Tribunal's decision in the proceeding.

**77 Service on landlords**

In addition to any manner of service provided for in section 140, a notice or other document in a proceeding under the **Residential Tenancies Act 1997** may be served on, or given to, a landlord by—

- (a) delivering it personally to the landlord's agent or to the person who usually collects the rent; or
- (b) sending it by post to the landlord's agent at the agent's usual place of business; or
- (c) giving it to a person apparently employed in the office of the landlord's agent.

Sch. 1 cl. 77A  
inserted by  
No. 45/2002  
s. 101.

**77A Failure to comply with determinations**

Section 133 does not apply to the failure to comply with a determination of the Tribunal made under the **Residential Tenancies Act 1997**.

**Note**

See section 480 of the **Residential Tenancies Act 1997**.

## **Part 18—Sentencing Act 1991**

Sch. 1 Pt 18  
(Heading and  
cls 78–82)  
inserted by  
No. 81/2014  
s. 5.

### **78 Application of Part**

The Part applies in respect of a proceeding under Part 8 of the **Sentencing Act 1991**.

Sch. 1 cl. 78  
inserted by  
No. 81/2014  
s. 5.

### **79 Constitution of Tribunal**

The Tribunal is to be constituted by a presidential member or senior member.

Sch. 1 cl. 79  
inserted by  
No. 81/2014  
s. 5,  
amended by  
No. 3/2016  
s. 17.

### **80 Confidentiality of proceeding**

(1) Unless the Tribunal orders otherwise, a person must not publish or broadcast, or cause to be published or broadcast, any report of a proceeding that identifies, or could reasonably lead to the identification of—

Sch. 1 cl. 80  
inserted by  
No. 81/2014  
s. 5.

- (a) a party to the proceeding; or
- (b) any other person who has given evidence in the proceeding as to—
  - (i) whether any person involved in the conduct constituting the offence (including the applicant) that is the subject of the proceeding consented to the conduct; or
  - (ii) the ages, or respective ages, of any such persons at the time of that conduct.

Penalty: 20 penalty units.

(2) The Tribunal may make an order under subclause (1) only if it considers that it would be in the public interest to do so.

- (3) An order of the Tribunal under subclause (1) must specify that pictures are not to be taken of any party to the proceeding or other person covered by subclause (1)(b).

Sch. 1 cl. 81  
inserted by  
No. 81/2014  
s. 5.

### **81 Effect of original decision pending review**

- (1) This clause applies, despite anything to the contrary in section 50, if a data controller (within the meaning of Part 8 of the **Sentencing Act 1991**) commences a proceeding.
- (2) The operation of the decision that is the subject of the proceeding is stayed pending the determination by the Tribunal of the proceeding and the expiration of the appeal period.
- (3) For the purposes of subclause (2) the appeal period expires—
- (a) at the end of the period during which an application for leave to appeal from the order of the Tribunal determining the proceeding may be made under Part 5 if an application is not made within that period; or
  - (b) if an application for leave to appeal is made, when that application is determined if leave is not granted; or
  - (c) if leave is granted, at the end of the period during which the appeal may be instituted under Part 5 if an appeal is not instituted within that period; or
  - (d) if an appeal is instituted, when the appeal is determined.

Sch. 1 cl. 82  
inserted by  
No. 81/2014  
s. 5.

### **82 Tribunal file not open for inspection**

Despite anything to the contrary in section 146, the file kept by the principal registrar under that section in a proceeding is not open for inspection or copying by any person.

*	*	*	*	*	Sch. 1 Pt 17A (Heading and cl. 77B) inserted by No. 4/2003 s. 123, repealed by No. 79/2006 s. 57(3).
*	*	*	*	*	Sch. 1 Pt 18 (Heading and cls 78–87) repealed by No. 30/2003 s. 80.

## Part 19—Taxing Acts

### 88 Tribunal need not be constituted by a lawyer

Section 64(2) does not apply to a proceeding under a taxing Act.

### 89 Information to be provided to the Tribunal

- (1) If the Commissioner of State Revenue is requested to refer a decision to the Tribunal under a taxing Act, the Commissioner must lodge with the Tribunal—
  - (a) written notice of the request; and
  - (b) 2 copies of all documents on file in the Commissioner's office relating to the relevant—
    - (i) assessment or decision; and
    - (ii) objection; and
    - (iii) disallowance of objection.
- (2) Section 49 does not apply to a proceeding under a taxing Act for review of a decision of the Commissioner of State Revenue.

Sch. 1 cl. 90  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 139.2).

## **90 Compulsory conference in tax proceedings**

In a proceeding under a taxing Act for review of a decision of the Commissioner of State Revenue, the Tribunal or the principal registrar may only require the parties to attend a compulsory conference with the consent of the Commissioner.

## **91 Costs**

- (1) Each party is to bear their own costs in a proceeding under a taxing Act.
- (2) Division 8 of Part 4 does not apply to a proceeding under a taxing Act.

Sch. 1 cl. 91A  
inserted by  
No. 44/2008  
s. 105(2).

## **91A Reference to Commissioner to be construed as Registrar in some circumstances**

For the purposes of this Part, if the taxing Act is the **Unclaimed Money Act 2008**, any reference to the Commissioner of State Revenue is taken to be a reference to the Registrar of Unclaimed Money.

Sch. 1 Pt 19A  
(Heading and  
cl. 91B)  
inserted by  
No. 62/2010  
s. 129.

## **Part 19A—Traditional Owner Settlement Act 2010**

Sch. 1 cl. 91B  
inserted by  
No. 62/2010  
s. 129.

## **91B Constitution of Tribunal for Traditional Owner Settlement Matters**

The Tribunal is to be constituted for the purposes of a proceeding under Part 4 of the **Traditional Owner Settlement Act 2010** by—

- (a) one member who has sound knowledge of, and experience in, Aboriginal culture and land use; or
- (b) if it is constituted by 2 or more members, at least one member who has sound knowledge of, and experience in, Aboriginal culture and land use.

## **Part 20—Transport Accident Act 1986**

### **92 Costs**

Nothing in section 109 applies to a proceeding under the **Transport Accident Act 1986**<sup>11</sup>.

### **93 Settlement offers**

Despite section 112(1)(a), sections 112 to 115 apply to a proceeding for review of a decision under section 77 of the **Transport Accident Act 1986**.

### **94 Tribunal cannot alter time limits**

Section 126(1) and (2)(a) do not apply to a proceeding under the **Transport Accident Act 1986**.

## **Part 21—Valuation of Land Act 1960**

### **95 Tribunal need not be constituted by a lawyer**

Section 64(2) does not apply to a proceeding under the **Valuation of Land Act 1960**.

### **96 Information to be provided to the Tribunal**

\* \* \* \* \*

Sch. 1 cl. 96(1)  
repealed by  
No. 22/2006  
s. 19(1)(a).

(2) Section 49 does not apply in the case of an application for review under section 22(1) of the **Valuation of Land Act 1960**.

Sch. 1 cl. 96(2)  
amended by  
No. 22/2006  
s. 19(1)(b).

### **97 Notification of commencement**

Section 72 does not apply to a proceeding under section 22 of the **Valuation of Land Act 1960**.

Sch. 1 cl. 97  
amended by  
No. 22/2006  
s. 19(2).

Sch. 1 cl. 97A  
inserted by  
No. 62/2014  
s. 43.

### **97A Valuer-general may intervene and be represented**

The valuer-general may intervene, and be represented by a professional advocate, at any time in a proceeding for review under Division 4 of Part III of the **Valuation of Land Act 1960**.

### **98 Questions of law**

Sch. 1 cl. 98(1)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item  
105.10(c)).

- (1) Despite section 107(1), if the Tribunal is constituted for the purposes of a proceeding under the **Valuation of Land Act 1960** without a judicial member or a member who is an Australian lawyer, a question of law arising in the proceeding may be decided—
  - (a) by the presiding member if the parties agree;  
or
  - (b) in accordance with the opinion of a judicial member or a member who is an Australian lawyer nominated by the President.

Sch. 1 cl.  
98(1)(b)  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item  
105.10(c)).

- (2) Section 107(3)(b) does not apply to a proceeding under the **Valuation of Land Act 1960**.

### **99 Costs**

Nothing in section 109 applies to a proceeding under the **Valuation of Land Act 1960**<sup>12</sup>.



## Part 22—Victorian Institute of Teaching Act 2001

Sch. 1 Pt 22  
(Heading and  
cl. 100)  
inserted by  
No. 96/2001  
s. 89.

### 100 Constitution of Tribunal for teaching matters

Despite section 64(2), in a proceeding under the **Education and Training Reform Act 2006**, the Tribunal is to be constituted by, or to include, a member who, in the opinion of the President, has knowledge of, or experience in, the teaching profession.

Sch. 1 cl. 100  
inserted by  
No. 96/2001  
s. 89,  
amended by  
No. 24/2006  
s. 6.1.2(Sch. 7  
item 44).

## Part 23—Working with Children Act 2005

Sch. 1 Pt 23  
(Heading and  
cls 101–103)  
inserted by  
No. 57/2005  
s. 52.

### 101 Constitution of Tribunal for Working with Children matters

The Tribunal is to be constituted for the purposes of a proceeding under the **Working with Children Act 2005** by a presidential member sitting alone.

Sch. 1 cl. 101  
inserted by  
No. 57/2005  
s. 52.

\* \* \* \* \*

Sch. 1 cl. 102  
inserted by  
No. 57/2005  
s. 52,  
substituted by  
No. 61/2012  
s. 17,  
repealed by  
No. 66/2014  
s. 44.

Sch. 1 cl. 103  
inserted by  
No. 57/2005  
s. 52  
substituted by  
No. 61/2012  
s. 18,  
repealed by  
No. 66/2014  
s. 45.

\* \* \* \* \*

Sch. 1 Pt 24  
(Heading and  
cls 104, 105)  
inserted by  
No. 67/2013  
s. 649(Sch. 9  
item 33).

## **Part 24—Workplace Injury Rehabilitation and Compensation Act 2013**

### **104 Tribunal may request information about a determination**

- (1) The Tribunal may request the Victorian WorkCover Authority to provide the Tribunal with any information held by the Authority that relates to an application made by an employer for a review of a reviewable decision or a determination made by the Authority.
- (2) The Authority must comply with a request under subclause (1).

### **105 Compulsory conference in WorkCover proceedings**

In a proceeding for review of a reviewable decision or a determination by the Victorian WorkCover Authority, the Tribunal or the principal registrar may require the parties to attend a compulsory conference only with the consent of the Authority.

## Schedule 2—Subject matter for rules

Section 157(2)

Establishing divisions of the Tribunal and establishing lists within those divisions.

Procedure for making applications and referrals to the Tribunal.

Procedure for withdrawing applications and referrals.

The manner of giving security for costs.

Procedure for calling in experts.

Procedure for referring questions to special referees.

The taking of evidence under section 103.

Issuing and service of summonses.

Assessments of costs, including scales of costs to be allowed.

Procedure for filing orders of the Tribunal with a court for enforcement.

Procedure for applying for re-opening of an order, including time limits.

Form and content and procedure for maintaining the register of proceedings.

Classes of persons who are disqualified from being professional advocates for the purposes of section 62.

Service of documents, including service outside Victoria (including outside Australia).

Service by post, including time periods for presumed service under this Act.

Contents of register of proceedings and availability and procedure for inspecting and obtaining copies of register of proceedings and proceeding files.

Procedure for making and accepting settlement offers under sections 112, 113 and 114.

Form and content of a warrant of possession under section 355 of the **Residential Tenancies Act 1997**.

Sch. 2  
amended by  
Nos 45/2002  
s. 102, 22/2012  
s. 88, 58/2013  
s. 64, 62/2014  
s. 44, 42/2014  
s. 108, 20/2015  
s. 20, 38/2017  
s. 42, 33/2018  
s. 67.

Form and content of a warrant of possession under section 85B of the **Disability Act 2006**.

Procedure under the **Open Courts Act 2013**.

Procedure under the **Vexatious Proceedings Act 2014**.

Form, content and procedure for the reduction, waiver, postponement, remission, refund, reinstatement or payment in whole or in part, of any fee fixed by or in accordance with the regulations or reduced, waived, postponed, remitted or refunded under section 132, including providing for different periods for payment and postponement by the principal registrar in relation to proceedings under different enabling enactments.

Electronic communication and electronic processes, including, but not limited to—

- (a) applications by electronic means and electronic filing of documents in any proceeding; and
- (b) the transmission and issuing of orders, determinations and other documents by electronic communication; and
- (c) use of electronic signatures and seals.

## **Schedule 3—Expert witnesses and expert evidence**

Sch. 3  
inserted by  
No. 23/2014  
s. 22.

Section 94

### **1 Objects of this Schedule**

The main objects of this Schedule are to—

- (a) enhance the case management powers of the Tribunal in relation to expert evidence in proceedings; and
- (b) restrict expert evidence to that evidence which is reasonably required to resolve a proceeding; and
- (c) emphasise the paramount duty of an expert witness to the Tribunal.

### **2 Directions in relation to expert evidence**

- (1) The Tribunal may give any directions under section 80 that it considers appropriate in relation to expert evidence in a proceeding.
- (2) Those directions may include, but are not limited to, the following—
  - (a) the preparation of an expert's report;
  - (b) the time for service of an expert's report;
  - (c) limiting expert evidence to specified issues;
  - (d) providing that expert evidence may not be adduced on specified issues;
  - (e) limiting the number of expert witnesses who may be called to give evidence on a specified issue;
  - (f) providing for the appointment of—
    - (i) single joint experts; or
    - (ii) Tribunal appointed experts;

- (g) any other direction that may assist an expert witness in the exercise of his or her functions as an expert witness in the proceeding.

**Note**

Section 102(2) empowers the Tribunal to refuse to allow a party to call evidence in certain circumstances, which includes expert evidence (see clause 8(1)(a)).

**3 Directions to expert witnesses—conferences and joint experts reports**

- (1) Directions under section 80 may direct expert witnesses in a proceeding—
  - (a) to hold a conference of experts; or
  - (b) to prepare a joint experts report; or
  - (c) to hold a conference and prepare a joint experts report.
- (2) The Tribunal may direct under section 80 that a conference of experts be held with or without the attendance of all or any of the following—
  - (a) the parties to the proceeding;
  - (b) the legal practitioners (if any) of the parties;
  - (c) an independent facilitator.
- (3) A direction to prepare a joint experts report may include, but is not limited to, the following—
  - (a) that the joint experts report specifies—
    - (i) the matters agreed and not agreed by the experts; and
    - (ii) the reasons for any agreement or disagreement;
  - (b) the issues to be dealt with in the joint experts report by the expert witnesses;
  - (c) the facts, and assumptions of fact, on which the joint experts report is to be based.

- (4) Directions referred to in this clause may be general or in relation to specified issues.

**4 Use of conference of experts and joint experts reports in proceeding**

- (1) Unless the parties to the proceeding agree, or the Tribunal otherwise orders, anything said or done during a conference of experts, except as referred to in a joint experts report, must not be referred to at any hearing of the proceeding to which it relates.
- (2) A joint experts report may be tendered at the hearing of the proceeding as evidence (as appropriate) of—
- (a) joint or separate opinions of the experts; or
  - (b) matters agreed by the experts; or
  - (c) matters not agreed by the experts.

**5 Directions about giving of evidence, including concurrent evidence, by expert witnesses**

- (1) The Tribunal may give any directions under section 80 that it considers appropriate in relation to the giving of evidence by any expert witness.
- (2) Without limiting subclause (1), the Tribunal may direct that any expert witness—
- (a) give evidence at any stage of the proceeding, including after all factual evidence has been adduced on behalf of all parties; or
  - (b) give evidence concurrently with one or more expert witnesses; or
  - (c) give an oral exposition of his or her opinion on any issue; or

Sch. 3 cl. 5(2)  
amended by  
No. 62/2014  
s. 45.

- (d) give his or her opinion of any opinion given by other expert witnesses; or
  - (e) be examined, cross-examined or re-examined in a particular manner or sequence, including by putting to each expert witness, in turn, each issue relevant to one matter or issue at a time; or
  - (f) be permitted to ask questions of any other expert witness who is concurrently giving evidence.
- (3) The Tribunal may question any expert witness to identify the real issues in dispute between 2 or more expert witnesses, including questioning more than one expert witness at the same time.

#### **6 Single joint experts**

- (1) The Tribunal may order that an expert be engaged jointly by 2 or more parties to a proceeding.
- (2) The Tribunal may make an order for the engagement of a single joint expert at any stage of the proceeding.
- (3) In making an order to engage a single joint expert, the Tribunal must consider—
  - (a) whether the engagement of 2 or more expert witnesses would be disproportionate to—
    - (i) the complexity or importance of the issues in dispute; and
    - (ii) the amount in dispute in the proceeding; and
  - (b) whether the issue falls within a substantially established area of knowledge; and
  - (c) whether it is necessary for the court to have a range of expert opinion; and



- (d) the likelihood of the engagement expediting or delaying the proceeding; and
  - (e) any other relevant consideration.
- (4) A single joint expert is to be selected—
- (a) by agreement between the parties; or
  - (b) if the parties fail to agree, by direction of the Tribunal.
- (5) A person must not be engaged as a single joint expert unless he or she consents to the engagement.
- (6) Any party who knows that a person is under consideration for engagement as a single joint expert—
- (a) must not, prior to the engagement, communicate with the person to obtain an opinion on the issues concerned; and
  - (b) must notify the other parties to the proceeding of the substance of any previous communications on the issues concerned.
- (7) Unless the Tribunal orders otherwise, a single joint expert's report may be tendered in evidence by any of the parties to the proceeding.

## **7 Tribunal appointed experts**

- (1) The Tribunal may make an order appointing an expert—
- (a) to assist the Tribunal; and
  - (b) to inquire into and report on any issue in a proceeding.
- (2) The Tribunal may make an order appointing a Tribunal appointed expert at any stage of the proceeding.

- (3) In making an order to appoint a Tribunal appointed expert, the Tribunal must consider—
  - (a) whether the appointment of a Tribunal appointed expert would be disproportionate to—
    - (i) the complexity or importance of the issues in dispute; and
    - (ii) the amount in dispute in the proceeding; and
  - (b) whether the issue falls within a substantially established area of knowledge; and
  - (c) whether it is necessary for the Tribunal to have a range of expert opinion; and
  - (d) the likelihood of the appointment expediting or delaying the proceeding; and
  - (e) any other relevant consideration.
- (4) A person must not be appointed as a Tribunal appointed expert unless he or she consents to the appointment.
- (5) The parties are responsible for any costs of a Tribunal appointed expert and are to pay those costs in the proportions determined by the Tribunal.

## **8 Interaction with other powers of Tribunal**

- (1) Nothing in this Schedule limits any other power the Tribunal may have—
  - (a) in relation to case management, evidence or witnesses, including expert witnesses; or
  - (b) to take any action that the Tribunal is empowered to take in relation to a contravention of a direction given or an order made by the Tribunal.

- (2) Nothing in this Schedule limits—
- (a) the jurisdiction of the Tribunal; or
  - (b) any other powers of the Tribunal under any other Act (including any Commonwealth Act), the rules, practice notes or practice directions.
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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 9 April 1998*

*Legislative Council: 19 May 1998*

The long title for the Bill for this Act was "to establish a Victorian Civil and Administrative Tribunal and for other purposes."

#### **Constitution Act 1975:**

*Section 85(5) statement:*

*Legislative Assembly: 9 April 1998*

*Legislative Council: 19 May 1998*

*Absolute majorities:*

*Legislative Assembly: 14 May 1998*

*Legislative Council: 20 May 1998*

The **Victorian Civil and Administrative Tribunal Act 1998** was assented to on 2 June 1998 and came into operation as follows:

Part 1 (sections 1–7) on 2 June 1998; section 2(1); rest of Act on 1 July 1998; Government Gazette 18 June 1998 page 1511.

### **INTERPRETATION OF LEGISLATION ACT 1984 (ILA)**

#### **Style changes**

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### **References to ILA s. 39B**

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

### **Interpretation**

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

This publication incorporates amendments made to the **Victorian Civil and Administrative Tribunal Act 1998** by Acts and subordinate instruments.

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### **Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

### **Land Titles Validation (Amendment) Act 1998, No. 92/1998**

*Assent Date:* 24.11.98  
*Commencement Date:* Pt 4 (s. 13) on 24.11.98: Special Gazette (No. 136) 24.11.98 p. 4  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

### **Licensing and Tribunal (Amendment) Act 1998, No. 101/1998**

*Assent Date:* 1.12.98  
*Commencement Date:* Pt 9 (s. 23) on 1.2.99: Government Gazette 24.12.98 p. 3204  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

### **Public Sector Reform (Further Amendments) Act 1999, No. 12/1999**

*Assent Date:* 11.5.99  
*Commencement Date:* S. 4(Sch. 2 item 22) on 11.5.99: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

### **Freedom of Information (Amendment) Act 1999, No. 38/1999**

*Assent Date:* 8.6.99  
*Commencement Date:* 1.7.99: s. 2  
*Current State:* All of Act in operation

### **Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999**

*Assent Date:* 18.5.99  
*Commencement Date:* S. 49 on 1.9.99: Government Gazette 19.8.99 p. 1901  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Freedom of Information (Miscellaneous Amendments) Act 1999, No. 57/1999**

*Assent Date:* 21.12.99  
*Commencement Date:* S. 12 on 1.1.00: s. 2  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Courts and Tribunals Legislation (Amendment) Act 2000, No. 1/2000**

*Assent Date:* 28.3.00  
*Commencement Date:* S. 10 on 29.3.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**First Home Owner Grant Act 2000, No. 5/2000**

*Assent Date:* 11.4.00  
*Commencement Date:* S. 55 on 1.7.00: s. 2  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Business Registration Acts (Amendment) Act 2000, No. 35/2000**

*Assent Date:* 6.6.00  
*Commencement Date:* S. 53 on 19.6.00: Government Gazette 15.6.00 p. 1248  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Courts and Tribunals Legislation (Further Amendment) Act 2000, No. 51/2000**

*Assent Date:* 5.9.00  
*Commencement Date:* Ss 12–27 on 6.9.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Children and Young Persons (Reciprocal Arrangements) Act 2000, No. 58/2000**

*Assent Date:* 8.11.00  
*Commencement Date:* S. 8 on 2.3.01: Government Gazette 1.3.01 p. 303  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 139) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Courts and Tribunals Legislation (Miscellaneous Amendments) Act 2000,  
No. 78/2000**

*Assent Date:* 28.11.00  
*Commencement Date:* S. 11 on 28.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Information Privacy Act 2000, No. 98/2000**

*Assent Date:* 12.12.00  
*Commencement Date:* S. 78 on 1.9.01: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Health Records Act 2001, No. 2/2001**

*Assent Date:* 10.4.01  
*Commencement Date:* S. 117 on 1.7.02: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 122) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Building (Amendment) Act 2001, No. 68/2001**

*Assent Date:* 7.11.01  
*Commencement Date:* S. 20 on 1.7.02: s. 2(5)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Victorian Institute of Teaching Act 2001, No. 96/2001**

*Assent Date:* 18.12.01  
*Commencement Date:* S. 89 on 31.12.02: Government Gazette 19.12.02  
p. 3278  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
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**Domestic Building Contracts (Conciliation and Dispute Resolution) Act 2002,  
No. 36/2002**

*Assent Date:* 18.6.02  
*Commencement Date:* S. 16 on 1.7.02: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
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**Guardianship and Administration (Amendment) Act 2002, No. 41/2002**

*Assent Date:* 17.9.02  
*Commencement Date:* S. 43 on 1.1.03: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Residential Tenancies (Amendment) Act 2002, No. 45/2002**

*Assent Date:* 22.10.02  
*Commencement Date:* Ss 101, 102 on 1.7.03: Government Gazette 5.6.03 p. 1287  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Retail Leases Act 2003, No. 4/2003**

*Assent Date:* 15.4.03  
*Commencement Date:* S. 123 on 1.5.03: s. 2(5)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Small Business Commissioner Act 2003, No. 6/2003**

*Assent Date:* 15.4.03  
*Commencement Date:* S. 16 on 1.5.03: 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Terrorism (Community Protection) Act 2003, No. 7/2003**

*Assent Date:* 15.4.03  
*Commencement Date:* S. 45 on 16.4.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Fair Trading (Amendment) Act 2003, No. 30/2003**

*Assent Date:* 27.5.03  
*Commencement Date:* Ss 79, 80 on 9.10.03: Government Gazette 9.10.03 p. 2589  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Instruments (Enduring Powers of Attorney) Act 2003, No. 75/2003**

*Assent Date:* 21.10.03  
*Commencement Date:* Ss 6, 7 on 1.4.04: Government Gazette 19.2.04 p. 333  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Monetary Units Act 2004, No. 10/2004**

*Assent Date:* 11.5.04  
*Commencement Date:* S. 15(Sch. 1 item 34) on 1.7.04: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Road Management Act 2004, No. 12/2004** (as amended by No. 39/2004)

*Assent Date:* 11.5.04  
*Commencement Date:* S. 167 on 1.7.04: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Victorian Civil and Administrative Tribunal (Amendment) Act 2004, No. 53/2004**

*Assent Date:* 31.8.04  
*Commencement Date:* 31.8.04: s. 2  
*Current State:* All of Act in operation

**Legal Profession Act 2004, No. 99/2004**

*Assent Date:* 14.12.04  
*Commencement Date:* S. 8.1.3 on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 219) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Courts Legislation (Judicial Conduct) Act 2005, No. 16/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 9 on 28.4.06: Special Gazette (No. 119) 28.4.06 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Legal Profession (Consequential Amendments) Act 2005, No. 18/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 115) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Owner Drivers and Forestry Contractors Act 2005, No. 49/2005**

*Assent Date:* 24.8.05  
*Commencement Date:* S. 67 on 1.12.06: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Working with Children Act 2005, No. 57/2005**

*Assent Date:* 13.9.05  
*Commencement Date:* S. 52 on 3.4.06: Government Gazette 30.3.06 p. 615  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Pipelines Act 2005, No. 61/2005**

*Assent Date:* 20.9.05  
*Commencement Date:* S. 223 on 1.4.07: Government Gazette 29.3.07 p. 532  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Property (Co-ownership) Act 2005, No. 71/2005**

*Assent Date:* 25.10.05  
*Commencement Date:* S. 6 on 1.2.06: Government Gazette 19.1.06 p. 70  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Land Tax Act 2005, No. 88/2005**

*Assent Date:* 29.11.05  
*Commencement Date:* S. 117(Sch. 2 item 11) on 1.1.06: s. 2  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 181 on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Workplace Rights Advocate Act 2005, No. 100/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 15 on 1.3.06: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Justice Legislation (Miscellaneous Amendments) Act 2006, No. 14/2006**

*Assent Date:* 11.4.06  
*Commencement Date:* Ss 21–27 on 12.4.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Aboriginal Heritage Act 2006, No. 16/2006**

*Assent Date:* 9.5.06  
*Commencement Date:* S. 197 on 28.5.07: Government Gazette 24.5.07 p. 921  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Valuation of Land (Amendment) Act 2006, No. 22/2006**

*Assent Date:* 9.5.06  
*Commencement Date:* S. 19 on 1.7.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Disability Act 2006, No. 23/2006** (as amended by No. 25/2007)

*Assent Date:* 16.5.06  
*Commencement Date:* S. 231 on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Education and Training Reform Act 2006, No. 24/2006**

*Assent Date:* 16.5.06  
*Commencement Date:* S. 6.1.2(Sch. 7 item 44) on 1.7.07: Government Gazette 28.6.07 p. 1304  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Charter of Human Rights and Responsibilities Act 2006, No. 43/2006**

*Assent Date:* 25.7.06  
*Commencement Date:* S. 47(Sch. item 8) on 1.1.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* S. 35 on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Evidence (Document Unavailability) Act 2006, No. 53/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* S. 6 on 1.9.06: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Mineral Resources Development (Sustainable Development) Act 2006, No. 63/2006**

*Assent Date:* 29.8.06  
*Commencement Date:* S. 61(Sch. item 32) on 30.8.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Owners Corporations Act 2006, No. 69/2006**

*Assent Date:* 19.9.06  
*Commencement Date:* Ss 223, 224(Sch. 3 item 11) on 31.12.07: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Justice Legislation (Further Amendment) Act 2006, No. 79/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* Ss 56–60 on 18.10.06: Special Gazette (No. 273) 17.10.06 p. 1  
*Current State:* This information relates only to the provisions amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Courts Legislation Amendment (Judicial Education and Other Matters) Act 2007, No. 24/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* Ss 6, 7 on 27.6.07: s. 2  
*Current State:* This information relates only to the provisions amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Payroll Tax Act 2007, No. 26/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 116 on 1.7.07: s. 2(1)  
*Current State:* This information relates only to the provisions amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Statute Law Revision Act 2007, No. 28/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 3(Sch. item 70) on 27.6.07: s. 2(1)  
*Current State:* This information relates only to the provisions amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Motor Car Traders Amendment Act 2008, No. 4/2008**

*Assent Date:* 4.3.08  
*Commencement Date:* S. 32(Sch. item 35) on 1.12.08: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Unclaimed Money Act 2008, No. 44/2008**

*Assent Date:* 26.8.08  
*Commencement Date:* S. 105 on 1.1.09: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Public Health and Wellbeing Act 2008, No. 46/2008**

*Assent Date:* 2.9.08  
*Commencement Date:* S. 267 on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Family Violence Protection Act 2008, No. 52/2008**

*Assent Date:* 23.9.08  
*Commencement Date:* Ss 268, 269 on 8.12.08: Special Gazette (No. 339) 4.12.08 p. 1  
*Current State:* This information relates only to the provisions amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Local Government Amendment (Councillor Conduct and Other Matters) Act 2008, No. 67/2008**

*Assent Date:* 18.11.08  
*Commencement Date:* S. 93 on 19.11.08: s. 2(1)  
*Current State:* This information relates only to the provisions amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Assisted Reproductive Treatment Act 2008, No. 76/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 159 on 1.1.10: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Courts Legislation Amendment (Costs Court and Other Matters) Act 2008, No. 78/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* Ss 18–20 on 31.12.09: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Salaries Legislation Amendment (Salary Sacrifice) Act 2008, No. 83/2008**

*Assent Date:* 11.12.08  
*Commencement Date:* S. 13 on 11.12.08: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Resources Industry Legislation Amendment Act 2009, No. 6/2009**

*Assent Date:* 3.3.09  
*Commencement Date:* S. 57 on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Equal Opportunity Amendment (Governance) Act 2009, No. 14/2009**

*Assent Date:* 7.4.09  
*Commencement Date:* S. 18 on 1.10.09: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Workplace Rights Advocate (Repeal) Act 2009, No. 21/2009**

*Assent Date:* 10.6.09  
*Commencement Date:* S. 6 on 1.10.10: Government Gazette 30.9.10 p. 2286  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 97(Sch. item 131) on 1.1.10: Government Gazette 10.12.09 p. 3215  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009**

*Assent Date:* 24.11.09  
*Commencement Date:* S. 54(Sch. Pt 2 item 57) on 1.1.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)**

*Assent Date:* 2.3.10  
*Commencement Date:* S. 203(1)(Sch. 6 item 49) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Credit (Commonwealth Powers) Act 2010, No. 11/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* S. 59 on 1.6.15: Special Gazette (No. 122) 26.5.15 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010**

*Assent Date:* 30.3.10  
*Commencement Date:* S. 50 on 1.7.10: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Equal Opportunity Act 2010, No. 16/2010** (as amended by No. 26/2011)

*Assent Date:* 27.4.10  
*Commencement Date:* Ss 205–208 on 1.8.11: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010, No. 23/2010**

*Assent Date:* 1.6.10  
*Commencement Date:* S. 32 on 1.7.10: Special Gazette (No. 242) 25.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**State Taxation Acts Amendment Act 2010, No. 36/2010**

*Assent Date:* 15.6.10  
*Commencement Date:* S. 21 on 16.6.10: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Pharmacy Regulation Act 2010, No. 39/2010**

*Assent Date:* 30.6.10  
*Commencement Date:* S. 131 on 24.8.10: Government Gazette 12.8.10 p. 1759  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Traditional Owner Settlement Act 2010, No. 62/2010**

*Assent Date:* 21.9.10  
*Commencement Date:* S. 129 on 23.9.10: Special Gazette (No. 382) 22.9.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**



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**Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010**

*Assent Date:* 28.9.10  
*Commencement Date:* S. 80 on 1.1.11: Government Gazette 14.10.10 p. 2404  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Justice Legislation Further Amendment Act 2010, No. 64/2010**

*Assent Date:* 28.9.10  
*Commencement Date:* S. 33 on 28.10.10: Government Gazette 21.10.10 p. 2530; s. 68 on 1.11.10: Government Gazette 21.10.10 p. 2530  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* S. 48(Sch. item 24) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Personal Property Securities (Statute Law Revision and Implementation) Act 2010, No. 74/2010**

*Assent Date:* 19.10.10  
*Commencement Date:* S. 37(Sch. item 5) on 30.1.12: Special Gazette (No. 423) 21.12.11 p. 3  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012, No. 6/2012**

*Assent Date:* 6.3.12  
*Commencement Date:* S. 52 on 1.12.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Associations Incorporation Reform Act 2012, No. 20/2012**

*Assent Date:* 1.5.12  
*Commencement Date:* S. 226(Sch. 5 item 25) on 26.11.12: Special Gazette (No. 384) 20.11.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Australian Consumer Law and Fair Trading Act 2012, No. 21/2012**

*Assent Date:* 8.5.12  
*Commencement Date:* S. 239(Sch. 6 item 46) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Disability Amendment Act 2012, No. 22/2012**

*Assent Date:* 8.5.12  
*Commencement Date:* Ss 87, 88 on 1.7.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Health Professions Registration (Repeal) Act 2012, No. 27/2012**

*Assent Date:* 29.5.12  
*Commencement Date:* S. 28 on 1.7.12: s. 2  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Working with Children Amendment Act 2012, No. 61/2012**

*Assent Date:* 23.10.12  
*Commencement Date:* Ss 17, 18 on 31.12.12: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Local Government Legislation Amendment (Miscellaneous) Act 2012, No. 63/2012**

*Assent Date:* 30.10.12  
*Commencement Date:* Ss 31, 32 on 31.10.12: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Justice Legislation Amendment (Family Violence and Other Matters) Act 2012, No. 83/2012**

*Assent Date:* 18.12.12  
*Commencement Date:* Ss 41–46 on 15.5.13: Special Gazette (No. 156) 23.4.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Courts Legislation Amendment (Reserve Judicial Officers) Act 2013, No. 5/2013**

*Assent Date:* 26.2.13  
*Commencement Date:* Ss 69–77 on 27.2.13: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Company Titles (Home Units) Act 2013, No. 19/2013**

*Assent Date:* 23.4.13  
*Commencement Date:* S. 20 on 1.10.13: Special Gazette (No. 337) 24.9.13  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
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**Building and Planning Legislation Amendment (Governance and Other Matters)  
Act 2013, No. 34/2013**

*Assent Date:* 18.6.13  
*Commencement Date:* S. 35(Sch. 2 item 9) on 1.7.13: s. 2  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Open Courts Act 2013, No. 58/2013**

*Assent Date:* 22.10.13  
*Commencement Date:* Ss 58–64 on 1.12.13: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Courts Legislation Amendment (Judicial Officers) Act 2013, No. 63/2013**

*Assent Date:* 6.11.13  
*Commencement Date:* S. 80 on 1.1.14: Special Gazette (No. 431) 3.12.13 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013**

*Assent Date:* 12.11.13  
*Commencement Date:* S. 649(Sch. 9 item 33) on 1.7.14: s. 2(1)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Court Services Victoria Act 2014, No. 1/2014**

*Assent Date:* 11.2.14  
*Commencement Date:* S. 76 on 1.7.14: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Legal Profession Uniform Law Application Act 2014, No. 17/2014**

*Assent Date:* 25.3.14  
*Commencement Date:* S. 160(Sch. 2 item 105) on 1.7.15: Special Gazette  
(No. 151) 16.6.15 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
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**Victorian Civil and Administrative Tribunal Amendment Act 2014, No. 23/2014**

*Assent Date:* 1.4.14  
*Commencement Date:* Ss 4–22 on 2.6.14: Special Gazette (No. 159) 27.5.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 177) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Vexatious Proceedings Act 2014, No. 42/2014**

*Assent Date:* 17.6.14  
*Commencement Date:* S. 108 on 31.10.14: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Powers of Attorney Act 2014, No. 57/2014**

*Assent Date:* 26.8.14  
*Commencement Date:* Ss 164, 165 on 1.9.15: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Privacy and Data Protection Act 2014, No. 60/2014**

*Assent Date:* 2.9.14  
*Commencement Date:* Ss 138, 139 on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Courts Legislation Miscellaneous Amendments Act 2014, No. 62/2014**

*Assent Date:* 9.9.14  
*Commencement Date:* Ss 25–45 on 10.9.14: s. 2(1); ss 46–52 on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 1; s. 23 on 10.11.14: Special Gazette (No. 364) 14.10.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Working with Children Amendment (Ministers of Religion and Other Matters)  
Act 2014, No. 66/2014**

*Assent Date:* 9.9.14  
*Commencement Date:* Ss 44, 45 on 26.10.14: Special Gazette (No. 330)  
23.9.14 p. 2  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Sentencing Amendment (Historical Homosexual Convictions Expungement)  
Act 2014, No. 81/2014**

*Assent Date:* 21.10.14  
*Commencement Date:* S. 5 on 1.9.15: s. 2(2)  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Local Government Amendment (Improved Governance) Act 2015, No. 53/2015**

*Assent Date:* 27.10.15  
*Commencement Date:* S. 95 on 1.3.16: Special Gazette (No. 25) 23.2.16 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Justice Legislation Amendment Act 2015, No. 20/2015**

*Assent Date:* 16.6.15  
*Commencement Date:* Ss 17–20 on 6.4.16: Special Gazette (No. 86) 5.4.16  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Justice Legislation Further Amendment Act 2016, No. 3/2016**

*Assent Date:* 16.2.16  
*Commencement Date:* Ss 15–17 on 1.5.16: Special Gazette (No. 114) 26.4.16  
p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
Tribunal Act 1998**

**Building Legislation Amendment (Consumer Protection) Act 2016, No. 15/2016**

*Assent Date:* 19.4.16  
*Commencement Date:* S. 14(1) on 4.7.16: Special Gazette (No. 194) 21.6.16  
p. 1; Ss 69, 70 on 1.9.16: Special Gazette (No. 261)  
23.8.16 p. 1; ss 13, 14(2), 15 on 26.4.17: Special  
Gazette (No. 94) 27.3.17 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
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**Judicial Commission of Victoria Act 2016, No. 16/2016**

*Assent Date:* 19.4.16  
*Commencement Date:* S. 212 on 1.7.17: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Health Complaints Act 2016, No. 22/2016**

*Assent Date:* 3.5.16  
*Commencement Date:* Ss 248–253 on 1.2.17: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**House Contracts Guarantee Repeal Act 2016, No. 37/2016**

*Assent Date:* 28.6.16  
*Commencement Date:* S. 5 on 29.6.16: s. 2  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**National Domestic Violence Order Scheme Act 2016, No. 53/2016**

*Assent Date:* 18.10.16  
*Commencement Date:* Ss 126, 127 on 25.11.17: Special Gazette (No. 388) 15.11.17 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Medical Treatment Planning and Decisions Act 2016, No. 69/2016**

*Assent Date:* 29.11.16  
*Commencement Date:* Ss 153–155 on 12.3.18: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Heritage Act 2017, No. 7/2017**

*Assent Date:* 15.3.17  
*Commencement Date:* S. 308 on 1.11.17: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Small Business Commission Act 2017, No. 16/2017**

*Assent Date:* 10.5.17  
*Commencement Date:* S. 29 on 1.7.17: Special Gazette (No. 216) 27.6.17 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017**

*Assent Date:* 16.5.17  
*Commencement Date:* S. 134(Sch. 1 item 19) on 1.9.17: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Bail Amendment (Stage One) Act 2017, No. 26/2017**

*Assent Date:* 27.6.17  
*Commencement Date:* S. 28 on 21.5.18: Special Gazette (No. 218) 15.5.18 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017, No. 38/2017**

*Assent Date:* 29.8.17  
*Commencement Date:* Ss 72, 73 on 30.8.17: s. 2(1); ss. 31, 32, 41, 42 on 1.5.18: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**State Taxation Acts Further Amendment Act 2017, No. 67/2017**

*Assent Date:* 19.12.17  
*Commencement Date:* S. 80 on 20.12.17: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Oaths and Affirmations Act 2018, No. 6/2018**

*Assent Date:* 27.2.18  
*Commencement Date:* S. 68(Sch. 2 item 132) on 1.3.19: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Justice Legislation Amendment (Access to Justice) Act 2018, No. 15/2018**

*Assent Date:* 29.5.18  
*Commencement Date:* Ss 59–63 on 7.12.18: Special Gazette (No. 497) 23.10.18 p. 1  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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**Justice Legislation Amendment (Family Violence Protection and Other Matters)  
Act 2018, No. 33/2018**

*Assent Date:* 14.8.18  
*Commencement Date:* Ss 66–68 on 29.3.19: Special Gazette (No. 114)  
26.3.19 p. 1  
*Current State:* This information relates only to the provision/s  
amending the **Victorian Civil and Administrative  
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### 3 Amendments Not in Operation

This publication does not include amendments made to the **Victorian Civil and Administrative Tribunal Act 1998** by the following Act/s.

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**Building Amendment (Enforcement and Other Measures) Act 2017, No. 21/2017**

*Assent Date:* 23.5.17  
*Commencement Date:* S. 109 not yet proclaimed  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Justice Legislation Amendment (Access to Justice) Act 2018, No. 15/2018**

*Assent Date:* 29.5.18  
*Commencement Date:* Ss 64–76 not yet proclaimed  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Racing Amendment (Integrity and Disciplinary Structures) Act 2018, No. 37/2018**

*Assent Date:* 21.8.18  
*Commencement Date:* S. 35 not yet proclaimed  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Disability Service Safeguards Act 2018, No. 38/2018**

*Assent Date:* 28.8.18  
*Commencement Date:* Ss 318, 319 not yet proclaimed  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Environment Protection Amendment Act 2018, No. 39/2018**

*Assent Date:* 28.8.18  
*Commencement Date:* S. 59 not yet proclaimed  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

**Residential Tenancies Amendment Act 2018, No. 45/2018**

*Assent Date:* 18.9.18  
*Commencement Date:* S. 378 not yet proclaimed  
*Current State:* This information relates only to the provision/s amending the **Victorian Civil and Administrative Tribunal Act 1998**

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At the date of this publication, the following provisions amending the **Victorian Civil and Administrative Tribunal Act 1998** were Not in Operation:

**Amending Act/s:**

**Building Amendment (Enforcement and Other Measures)  
Act 2017, No. 21/2017**

**109 New clause 4JA inserted in Schedule 1 to the  
Victorian Civil and Administrative Tribunal  
Act 1998**

In Part 2B in Schedule 1 to the **Victorian Civil  
and Administrative Tribunal Act 1998** before  
clause 4K insert—

**"4JA Costs for proceedings under section 25BF**

- (1) In determining a proceeding under section 25BF of the **Building Act 1993**, the Tribunal may order the Victorian Building Authority (within the meaning of that Act) to pay the costs of the applicant if—
  - (a) the review relates to a refusal of the Authority under section 25BC(2) of that Act to issue a building permit number (within the meaning of that Act); and
  - (b) the Tribunal is satisfied that the Authority did not have reasonable grounds for refusing to issue the building permit number.
- (2) The power of the Tribunal under subclause (1) is additional to the Tribunal's power to make an order for costs under section 109(2).
- (3) Section 109(6) applies to an order made under this clause as if it were made under section 109(2)."

**Justice Legislation Amendment (Access to Justice) Act 2018,  
No. 15/2018**

**64 Compulsory conferences**

(1) For section 83(1) of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"(1) Before a proceeding is heard by the Tribunal, the Tribunal or principal registrar may require the parties to the proceeding to attend one or more compulsory conferences before—

- (a) a member of the Tribunal; or
- (b) the principal registrar; or
- (c) a person nominated by the Tribunal or the principal registrar."

(2) After section 83(1) of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"(1A) A person nominated under subsection (1)(c) or clause 52(3) of Schedule 1 to conduct a compulsory conference must not make directions under subsection (2)(d)."

**65 Settlement of proceeding**

After section 93(3) of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"(4) If the parties agree to settle a proceeding or any part of it at a compulsory conference at which a person nominated under section 83(1)(c) or clause 52(3) of Schedule 1 is presiding—

- (a) the Tribunal may make any orders under subsection (1); or

- (b) the principal registrar may exercise the Tribunal's power to make any orders under subsection (1)."

**66 Schedule 1—Variations from Parts 3 and 4 for various proceedings**

- (1) In clause 52(1) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, for "The" substitute "Subject to subclause (3), the".
- (2) After clause 52(2) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—
- "(3) For a proceeding under a planning enactment, the Tribunal or principal registrar may nominate a person to conduct a compulsory conference or a mediation in accordance with Division 5 of Part 4.
- (4) A person nominated under subclause (3) must have sound knowledge of, and experience in, planning or environmental practice in Victoria."

**67 New section 120A inserted**

After section 120 of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

**"120A Re-opening an order for enforcement reasons**

- (1) A person in whose favour an order of the Tribunal is made may apply to the Tribunal for review of the order to remedy a problem with enforcing or complying with the order.
- (2) An application under subsection (1) is to be made in accordance with, and within the time limits specified by, the rules.

- (3) The rules may limit the number of times a person may apply under this section in respect of the same matter without obtaining the leave of the Tribunal.
- (4) The Tribunal may vary the order, or revoke the order and make any other order that the Tribunal could have made in the proceeding in which the order was made, if the Tribunal is satisfied that—
  - (a) there are problems with enforcing or complying with the order; and
  - (b) having regard to those problems, it is appropriate to vary the order, or revoke the order and make another order (as the case requires)."

#### **68 Section 121 substituted**

For section 121 of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

#### **"121 Enforcement of monetary orders**

- (1) A person in whose favour a monetary order is made may enforce the order in—
  - (a) if the amount owing under the order is within the jurisdictional limit of the Magistrates' Court, the Magistrates' Court; or
  - (b) otherwise, either the County Court or the Supreme Court.
- (2) For the purposes of the enforcement of a monetary order under subsection (1), the order is taken to be an order of the court in which it is to be enforced."

**69 Section 122 substituted**

For section 122 of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

**"122 Enforcement of non-monetary orders**

- (1) A person in whose favour a non-monetary order is made may enforce the order in the Supreme Court.
- (2) For the purposes of the enforcement of a non-monetary order under subsection (1), the order is taken to be an order of the Supreme Court."

**70 Contempt**

- (1) After section 137(1)(e) of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"(ea) fail to comply with an order of the Tribunal in circumstances where, if the order were an order of the Supreme Court, the failure would constitute contempt of that Court; or".

- (2) In section 137(10) of the **Victorian Civil and Administrative Tribunal Act 1998**, for "judicial" substitute "presidential".

**71 Schedule 2 amended**

In Schedule 2 to the **Victorian Civil and Administrative Tribunal Act 1998**, for the entry relating to "Procedure for filing orders" substitute—

"Enforcement of orders of the Tribunal in courts, including the procedure for transmitting orders to courts."

## 72 Service

- (1) For section 140(1)(a)(ii) of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—
  - "(ii) by sending it by post to the person at his or her usual or last known residential or business address; or
  - (ia) subject to the rules, by sending it by electronic communication to the electronic address applicable to the person under the rules; or".
- (2) For section 140(1)(b)(ii) of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—
  - "(ii) by sending it by post to the registered office of the company; or
  - (ia) subject to the rules, by sending it by electronic communication to the electronic address applicable to the company under the rules; or".
- (3) In section 140(2) of the **Victorian Civil and Administrative Tribunal Act 1998**, for "a notice" substitute "a notice, order".
- (4) For section 140(2)(b) of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—
  - "(b) by sending it by post to the president, secretary or other similar officer of the association at that person's usual or last known residential or business address; or
  - (ba) subject to the rules, by sending it by electronic communication to the electronic address applicable to the president, secretary or other similar officer of the association under the rules; or".

(5) After section 140(2) of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"(2A) Rules for the purposes of subsections (1)(a)(iia), (1)(b)(iia) and (2)(ba) may only prescribe, as an electronic address that is applicable to a person or company—

(a) an electronic address that has been provided to the Tribunal by the person or company (including by the person or company communicating with the Tribunal from that address); or

(b) an electronic address—

(i) from which the person or company has communicated with a party, or potential party, to the proceeding to which the notice, order or other document relates; and

(ii) that is provided to the Tribunal by that party or potential party."

(6) After section 140(3) of the **Victorian Civil and Administrative Tribunal Act 1998** insert—

"(4) Despite section 8 of the **Electronic Transactions (Victoria) Act 2000**, a notice, order or other document served or given by electronic communication in accordance with this section is taken to have been served or given whether or not the person on whom it is served, or to whom it is given, consented to it being served or given by means of electronic communication."

### **73 When is service effective?**

(1) In section 141(1) of the **Victorian Civil and Administrative Tribunal Act 1998**, for "a notice" **substitute** "a notice, order".



(2) For section 141(1)(a) of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"(a) in the case of delivery in person—

- (i) if the document was delivered on a business day before 4.00 p.m., at the time of delivery; or
- (ii) in any other case, on the business day following the day of delivery;"

(3) For section 141(1)(c) of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"(c) in the case of electronic communication—

- (i) if the communication was delivered on a business day before 4.00 p.m., at the time of delivery; or
- (ii) in any other case, on the business day following the day of delivery."

(4) For section 141(2) of the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"(2) For the purposes of subsection (1)(c), unless the rules provide otherwise, an electronic communication is *delivered*—

- (a) unless paragraph (b) applies, at the time the communication was dispatched; or
- (b) if the Tribunal finds that the communication was not capable of being retrieved until a later time, at that later time.

**Note**

Section 13 of the **Electronic Transactions (Victoria) Act 2000** specifies the time of dispatch of an electronic communication.

(2A) Subsections (1)(c) and (2) apply despite section 13A of the **Electronic Transactions (Victoria) Act 2000**."

**74 Schedule 2 amended**

In Schedule 2 to the **Victorian Civil and Administrative Tribunal Act 1998**, before the entry relating to "Contents of register of proceedings" **insert—**

"Service by electronic communication, including the electronic address for that service, requirements to provide an electronic address for service, requirements for that service and circumstances in which that service is not permitted."

**75 Schedule 1 amended**

In Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, clause 4J is **repealed**.

**76 Sections 172, 173 and 174 inserted**

At the end of Part 7 of the **Victorian Civil and Administrative Tribunal Act 1998** **insert—**

**"172 Transitional—Justice Legislation Amendment (Access to Justice) Act 2018—general provisions**

- (1) Section 120A applies to an order of the Tribunal made before, on or after the commencement of section 67 of the **Justice Legislation Amendment (Access to Justice) Act 2018**.
- (2) Despite the repeal of clause 4J of Schedule 1, that clause continues to apply, on and after its repeal, in relation to an order made before that repeal.

**173 Transitional—Justice Legislation Amendment (Access to Justice) Act 2018—enforcement of monetary orders**

- (1) This section applies to a monetary order that was made before the day on which section 68 of the **Justice Legislation Amendment (Access to Justice) Act 2018** comes into operation (the *commencement day*).
- (2) Subject to subsection (3), section 121 as substituted by section 68 of the **Justice Legislation Amendment (Access to Justice) Act 2018** applies to the monetary order.
- (3) If, before the commencement day, the monetary order was taken to be an order of a court under section 121(3) as then in force, section 121 as then in force continues to apply despite its substitution by section 68 of the **Justice Legislation Amendment (Access to Justice) Act 2018**.

**174 Transitional—Justice Legislation Amendment (Access to Justice) Act 2018—enforcement of non-monetary orders**

- (1) This section applies to a non-monetary order that was made before the day on which section 69 of the **Justice Legislation Amendment (Access to Justice) Act 2018** comes into operation (the *commencement day*).

- (2) Subject to subsection (3), section 122 as substituted by section 69 of the **Justice Legislation Amendment (Access to Justice) Act 2018** applies to the non-monetary order.
- (3) If, before the commencement day, the non-monetary order was taken to be an order of a court under section 122(3) as then in force, section 122 as then in force continues to apply despite its substitution by section 69 of the **Justice Legislation Amendment (Access to Justice) Act 2018**."

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**Racing Amendment (Integrity and Disciplinary Structures)  
Act 2018, No. 37/2018**

**35 Schedule 1 amended**

After clause 66M of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**  
insert—

**"Part 16D—Racing Act 1958**

**66N Tribunal bound by findings of fact made  
by Victorian Racing Tribunal**

Despite section 51, in determining a proceeding for review of a decision of the Victorian Racing Tribunal under section 83OH of the **Racing Act 1958** in relation to a penalty imposed by the Victorian Racing Tribunal, the Tribunal is bound by the findings of fact that were made by the Victorian Racing Tribunal."

**Disability Service Safeguards Act 2018, No. 38/2018**

**318 New clause 67AA inserted in Schedule 1**

Before clause 67 in Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—

**"67AA Application of provisions**

Except for the following specified provisions, this Part does not apply in respect of any proceeding under Part 12A of the **Residential Tenancies Act 1997**—

- (a) clauses 67 to 68;
- (b) clauses 71 to 75;
- (c) clauses 77A to 77F."

**319 New clauses 77B to 77E inserted in Schedule 1**

After clause 77A of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—

**"77B Appointment of litigation guardian**

If a party to any proceeding under Part 12A of the **Residential Tenancies Act 1997** is a person with a disability, the Tribunal may appoint a litigation guardian, in accordance with the rules, to conduct the proceeding on behalf of the person with a disability.

**77C Fees**

Despite section 68, no fee is payable in respect of an application under Part 12A of the **Residential Tenancies Act 1997**.

**77D Commencement**

The Tribunal must commence the hearing of a proceeding on an application under Part 12A of the **Residential Tenancies Act 1997** within 30 days of the application being lodged with the Tribunal unless a provision of that Part of that Act specifies a different period of time for commencement of the hearing of the proceeding.

**77E Costs of Tribunal experts**

Despite clause 7(5) of Schedule 3, a person with a disability is not responsible for the costs of a Tribunal appointed expert under clause 7 of that Schedule in respect of a proceeding under Part 12A of the **Residential Tenancies Act 1997**.

**77F Service on SDA providers**

In addition to any manner of service provided for in section 140, a notice or other document in a proceeding under the **Residential Tenancies Act 1997** may be served on, or given to, an SDA provider—

- (a) delivering it personally to the SDA provider's agent or to the person who usually collects the rent; or
- (b) sending it by post to the SDA provider's agent at the agent's usual place of business; or
- (c) giving it to a person apparently employed in the office of the SDA provider's agent."

**Environment Protection Amendment Act 2018, No. 39/2018**

**59 Victorian Civil and Administrative Tribunal Act 1998**

- (1) In section 52(4) of the **Victorian Civil and Administrative Tribunal Act 1998**, in paragraph (b) of the definition of *planning enactment*, for "**Environment Protection Act 1970**" substitute "**Environment Protection Act 2017**".
- (2) In clause 2 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, in paragraph (b) of the definition of *planning enactment*, for "**Environment Protection Act 1970**" substitute "**Environment Protection Act 2017**".
- (3) For clause 64(1)(b) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** substitute—
  - "(b) a proceeding for review of a decision under the **Environment Protection Act 2017** in relation to—
    - (i) a determination of the Environment Protection Authority or a delegated agency in respect of an application for a development licence, operating licence or a pilot project licence; or
    - (ii) a failure of the Environment Protection Authority or a delegated agency to determine an application for a development licence, operating licence or a pilot project licence."

**Residential Tenancies Amendment Act 2018, No. 45/2018**

**378 Victorian Civil and Administrative Tribunal Act 1998**

- (1) For clause 67AA(b) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"(b) clauses 71, 72, 73, 73A, 73B, 74 and 75;"

- (2) For clause 67A(1) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"(1) The following parties to a proceeding under the **Residential Tenancies Act 1997** may be accompanied at a hearing by a person (*support person*) for the purposes of that person providing support to the party—

- (a) a party who is a protected person;
- (b) a party who is a respondent under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order."

- (3) For clause 67A(3) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

"(3) In this clause—

*family violence intervention order* has the same meaning as in the **Family Violence Protection Act 2008**;

*family violence safety notice* has the same meaning as in the **Family Violence Protection Act 2008**;

*personal safety intervention order* has the same meaning as in the **Personal Safety Intervention Orders Act 2010**;



*protected person* has the same meaning as in the **Residential Tenancies Act 1997**;

*recognised non-local DVO* has the same meaning as in the **Residential Tenancies Act 1997**."

- (4) For clause 68 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

**"68 Notification of commencement in circumstances of family violence**

- (1) The principal registrar must undertake service of a copy of an application on an applicant's behalf under section 72 if—
- (a) the applicant is a protected person; and
  - (b) the applicant has made an application under section 91V, 142S, 206AG or 207M of the **Residential Tenancies Act 1997**; and
  - (c) the applicant is required under section 72(1) to serve a copy of the application on a person who is a respondent under a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order under which the applicant is a protected person; and
  - (d) the applicant requests the principal registrar to undertake service on the respondent on behalf of the protected person; and

- (e) the applicant gives the principal registrar the last known residential or business address of the respondent.
- (2) In this clause—
- family violence intervention order* has the same meaning as in the **Family Violence Protection Act 2008**;
- family violence safety notice* has the same meaning as in the **Family Violence Protection Act 2008**;
- personal safety intervention order* has the same meaning as in the **Personal Safety Intervention Orders Act 2010**;
- protected person* has the same meaning as in the **Residential Tenancies Act 1997**;
- recognised non-local DVO* has the same meaning as in the **Residential Tenancies Act 1997**."
- (5) After clause 72 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** insert—
- "72A Notification of certain orders and application withdrawals for bonds**
- The principal registrar must give written notice to the Residential Tenancies Bond Authority established under section 429 of the **Residential Tenancies Act 1997** of—
- (a) an order by the Tribunal under section 420B of that Act; or
- (b) the withdrawal of any application made under section 419A of that Act."

(6) For clause 73A of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998** substitute—

**"73A Evidence**

- (1) Despite section 102(1)(b), in a proceeding under the **Residential Tenancies Act 1997**, unless the Tribunal gives leave—
  - (a) a person subjected to family violence must not be personally cross-examined by the person who subjected that person to the family violence; and
  - (b) a protected person under a personal safety intervention order must not be personally cross-examined by the person against whom the personal safety intervention order was made.
- (2) For the purposes of subclause (1), a reference to a person subjected to family violence includes a protected person under a family violence safety notice, family violence intervention order or recognised non-local DVO.
- (3) In this clause—

*family violence intervention order* has the same meaning as in the **Family Violence Protection Act 2008**;

*family violence safety notice* has the same meaning as in the **Family Violence Protection Act 2008**;

*personal safety intervention order* has the same meaning as in the **Personal Safety Intervention Orders Act 2010**;

*recognised non-local DVO* has the same meaning as in the **Residential Tenancies Act 1997**."

- (7) In the heading to clause 77 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, for "landlords" substitute "residential rental providers".
- (8) In clause 77 of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**—
- (a) for "landlord" substitute "residential rental provider";
  - (b) in paragraphs (a), (b) and (c), for "landlord's" substitute "residential rental provider's".

#### 4 Explanatory details

<sup>1</sup> S. 34(6): Section 133 makes it an offence not to comply with the Tribunal's order that certain information not be published.

<sup>2</sup> S. 39(2): In particular, see Schedule 1 clauses 4, 16, 29, 53, 54, 90 and 97.

<sup>3</sup> S. 41: The Tribunal's original jurisdiction consists primarily of functions conferred on the Tribunal by enabling enactments for the Tribunal to make a first-instance decision. The jurisdiction includes original disciplinary jurisdiction, that is, the Tribunal's jurisdiction under various Acts to hold inquiries or otherwise hear disciplinary matters at first-instance.

<sup>4</sup> S. 49(5): However, sections 53 and 54 require the Tribunal not to disclose certain matter contained in material lodged with it under this section.

<sup>5</sup> S. 102(3)(b): Section 102 (*repealed*) of the **Evidence (Miscellaneous Provisions) Act 1958**, No. 6246/1958, provides that an affirmation can be made instead of an oath. Section 38 of the **Interpretation of Legislation Act 1984**, No. 10096/1984, provides that a reference to "oath" includes a reference to "affirmation" and a reference to "affidavit" includes a reference to "declaration".

<sup>6</sup> S. 104(1): Section 134 creates an offence of failing to comply with a summons.

<sup>7</sup> S. 157(1): Rules made under this section are statutory rules for the purposes of the **Subordinate Legislation Act 1994**, No. 104/1994, (see paragraph (b) of the definition of *statutory rule* in section 3(1) of that Act).

<sup>8</sup> Sch. 1: The amendment to Schedule 1 proposed by Part 6 of the **Federal Awards (Uniform System) Act 2003**, No. 18/2003 (*repealed*) cannot be proclaimed as a proclamation was made bringing section 52 of that Act into operation on 17 December 2003. See section 2(3) of the **Federal Awards (Uniform System) Act 2003**, No. 18/2003 (*repealed*) and Special Gazette (No. 238), 17 December 2003, page 1.

<sup>9</sup> Sch. 1 Pt 13 cl. 46: Section 91 of the **Land Acquisition and Compensation Act 1986**, No. 121/1986, sets out the Tribunal's powers with respect to costs in proceedings under that Act.

<sup>10</sup> Sch. 1 Pt 15 cl. 51: Section 88(3) of the **Mineral Resources (Sustainable Development) Act 1990**, No. 92/1990, sets out the Tribunal's powers with respect to costs in proceedings under that Act.

<sup>11</sup> Sch. 1 Pt 20 cl. 92: Section 79 of the **Transport Accident Act 1986**, No. 111/1986, sets out the Tribunal's powers with respect to costs in proceedings under that Act.

<sup>12</sup> Sch. 1 Pt 21 cl. 99: Section 26 of the **Valuation of Land Act 1960**, No. 6653/1960, sets out the Tribunal's powers with respect to costs in proceedings under that Act.