

# Victorian Civil and Administrative Tribunal Act 1998

Act No. 53/1998

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Victoria

No. 53 of 1998

# Victorian Civil and Administrative Tribunal Act 1998<sup>†</sup>

[Assented to 2 June 1998]

**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.

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- (2) Subject to sub-section (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 sub-section (2) does not come into operation before 31 December 1999, it comes into operation on that day.

### 3. Definitions

In this Act—

**"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 of the Office of Fair Trading and Business Affairs in the Department of Justice;



**"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**;

**"full-time member"** means the President, a Vice President, a Deputy President or a senior or ordinary member who is appointed on a full-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 159 of the **Equal Opportunity Act 1995**;

**"insolvent under administration"** means—

- (a) a person who is an undischarged bankrupt; or
  - (b) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) if the terms of the deed have not been fully complied with; or
  - (c) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another
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jurisdiction) if a final payment has not been made under that composition;

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

**"legal practitioner"** means a person admitted to legal practice in Victoria or an interstate practitioner within the meaning of the **Legal Practice Act 1996**;

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

**"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;

**"part-time member"** means a senior or ordinary member who is appointed on a part-time basis;

**"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 159 of the **Equal Opportunity Act 1995**;
- (b) a compulsory conference under section 83;
- (c) a mediation under section 88—

but, for the avoidance of doubt, not including a referral by the Tribunal to the Equal Opportunity Commission under section 156(1) of the **Equal Opportunity Act 1995**;

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

**"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;

**"Vice President"** means Vice President of the Tribunal.

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**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;
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- (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.
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**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.

**9. *Membership***

The members of the Tribunal are a President and as many Vice Presidents, Deputy Presidents, senior members and ordinary members as are appointed in accordance with this Act.

**10. *President***

- (1) The President must be a 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.
  - (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.
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- (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 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.
- (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.

**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 admitted to legal practice in Victoria for not less than 5 years.
- (3) A Deputy President holds office—
  - (a) subject to this Act, for a term of 5 years; and
  - (b) on a full-time basis.

### **13. Senior members**

- (1) As many senior members as are required for the proper functioning of the Tribunal shall be appointed.
- (2) A person is not eligible for appointment as a senior member unless he or she—
  - (a) has been admitted to legal practice in Victoria 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.
- (3) Subject to this Act, a senior member holds office for a term of 5 years.
- (4) A senior member may be appointed on a full-time or part-time basis, including 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—
    - (a) is a legal practitioner; or
    - (b) has, in the opinion of the Minister, special knowledge or experience in relation to any
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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 of 5 years.
- (4) An ordinary member may be appointed on a full-time or part-time basis, including a sessional basis.

## **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 sub-section (3).
- (5) If the applicant does not consent under sub-section (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***

- (1) Members are appointed by the Governor in Council on the recommendation of the Minister.
- (2) A member is eligible for re-appointment.

- (3) The **Public Sector Management Act 1992** (including Part 9) does not apply to a member in respect of the office of member.

**17. *Remuneration and allowances***

- (1) A member is entitled to receive the remuneration and allowances that are fixed from time to time by the Governor in Council.
- (2) The Governor in Council may fix different remuneration and allowances for different classes of members.
- (3) For the purposes of sub-section (2), the Governor in Council may determine the classes of members in any manner the Governor in Council thinks fit.
- (4) This section does not apply to a judicial member.

**18. *Prohibition on outside employment***

A non-judicial member who is appointed on a full-time basis 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.

**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

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- 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***

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

**22. *Suspension of non-judicial member***

- (1) The Minister, with the approval of the President, may suspend a non-judicial member from office, if the Minister believes that there may be grounds for removal of the member from office.
- (2) A member who is suspended under this section remains entitled to his or her remuneration and allowances as member during the period of suspension.

**23. *Investigation of non-judicial member***

- (1) As soon as practicable after suspending a member from office under section 22, the Minister must appoint a person nominated by the President to undertake an investigation into the member's conduct.

- (2) A person appointed under sub-section (1) must—
- (a) investigate the member's conduct; and
  - (b) report to the Minister on the investigation; and
  - (c) give a copy of the report to the member and the President.
- (3) A report under sub-section (2)(b) may include a recommendation that the member be removed from office.
- (4) After receiving a report under sub-section (2)(b) recommending removal, the Minister, after consulting the President, may recommend to the Governor in Council that the member be removed from office.
- (5) The person who conducted the investigation and the Minister may only recommend that a member be removed if satisfied that the member—
- (a) has been convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
  - (b) has become incapable of performing, or has neglected to perform, the duties of office; or
  - (c) is unfit to hold office because of misconduct.
- (6) The Minister must not make a recommendation under sub-section (4) unless the member has been given a reasonable opportunity to make written and oral submissions to the person who conducted the investigation and the President.
- (7) In making a recommendation under sub-section (4), the Minister is entitled to rely on any findings contained in the report under sub-section (2).
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- (8) If the Minister does not make a recommendation under sub-section (4) he or she must lift the suspension as soon as practicable after receiving the report under sub-section (2)(b).

**24. *Removal of non-judicial member from office***

The Governor in Council may remove a non-judicial member from office on the recommendation of the Minister under section 23 but not otherwise.

**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.

**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 may be appointed to act as President.
  - (4) A judge of the Supreme Court may only be appointed to act as President after the Minister has consulted the Chief Justice.
  - (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
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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 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.
- (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 3 months.
- (3) A person appointed as an acting Deputy President—
  - (a) has all the powers and must perform all the duties of the Deputy President for whom he or she is acting; and

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- (b) may resign the acting appointment by delivering to the President a signed letter of resignation; and
  - (c) is eligible for re-appointment (however, the person cannot be re-appointed within 3 months of the expiry of their term of appointment as acting Deputy President).
- (4) 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 to be members of a panel of judges available for acting appointments under this section.
- (2) The Chief Judge may appoint judges of the County Court to be members of a panel of judges available for acting appointments under this section.
- (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 and for
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directing the professional development and training of members.

- (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.

**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. *Appointment of registrars and other staff***

- (1) To assist in the administration of the Tribunal there are to be appointed or employed under the **Public Sector Management Act 1992**—
  - (a) a principal registrar; and
  - (b) a chief executive officer; 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.

**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.

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- (3) A person to whom this section applies may record or disclose information referred to in sub-section (2)—
- (a) with the written consent of the person to whom the information relates; or
  - (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 sub-section (2) to a member of the police force 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 sub-section (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—
- (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
  - (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
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performance of functions under this Act or an enabling enactment.

- (2) Sub-section (1) does not apply to a member of the police force to whom information is disclosed under section 34(4).

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

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

(3) A person referred to in sub-section (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 sub-section (1) to be laid before each House of the Parliament within 14 sitting days of that House after it is received by the Minister.



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*Victorian Civil and Administrative Tribunal Act 1998*  
*Act No. 53/1998*

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

The Tribunal may sit at any place in Victoria.

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**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 section 61 of the **Guardianship and Administration Act 1986** is original jurisdiction, not review jurisdiction.

**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 sub-section (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

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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 sub-section (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 sub-section (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) Sub-section (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 sub-section (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 sub-section (1) to the decision-maker to whom the request for a statement of reasons was made.
  - (3) On an application under sub-section (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 sub-section (5) is exercisable only by the President.
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- (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 sub-section (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 sub-section (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 sub-section (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) Sub-section (1) does not apply—
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- (a) if the enabling enactment provides otherwise; or
  - (b) if the Tribunal makes an order under sub-section (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 sub-section (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 sub-section (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 sub-section (5)(a).
- (7) The Tribunal's power to make an order under sub-section (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 sub-section (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) Sub-section (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.
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- (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.

**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 sub-section (1) applies, the court may direct that sub-section (1) does not apply to that proceeding.

- (3) If a court determines a proceeding to which sub-section (1) applies but does not give a direction under sub-section (2), nothing in this section invalidates the decision of the court.
- (4) In this section—
- "planning enactment"** means—
- (a) **Catchment and Land Protection Act 1994;**
  - (b) **Environment Protection Act 1970;**
  - (c) **Extractive Industries Development Act 1995;**
  - (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);
  - (g) **Subdivision Act 1988** (except sections 38 and 39);
  - (h) section 56 of the **Transport 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
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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 sub-section (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 sub-section (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 sub-section (3), information or a document to which a certificate under sub-section (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 sub-section (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 sub-section (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 sub-section (2) is exercisable only by the President.
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- (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 sub-section (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.
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(3) Sub-section (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.

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**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.

**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
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- (b) a person authorised by the association who is not a member.
  - (3) The Tribunal may require a person referred to in sub-section (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 sub-section (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 authority within the meaning of the **Public Sector Management Act 1992**;
  - (e) the holder of a statutory office within the meaning of the **Public Sector Management Act 1992**;
  - (f) a credit provider within the meaning of the **Consumer Credit (Victoria) Code** or the **Credit Act 1984**;
  - (g) an insurer within the meaning of the **Domestic Building Contracts Act 1995**.
- (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 sub-section (2), a director, secretary or officer who is a professional advocate.
- (4) Despite sub-section (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
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authority for the representation from the party.

(8) In this section—

**"professional advocate"** means—

- (a) a person who is or has been a legal practitioner; or
- (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 sub-section (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**

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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.

**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.
- (2) If the Tribunal is to be constituted at a proceeding—
  - (a) by one member only, that member must be a legal practitioner; and
  - (b) by more than one member, at least one must be a legal practitioner.
- (3) The President determines how the Tribunal is to be constituted for the purposes of each 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

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- 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.

- (4) The principal registrar must give reasonable assistance on request to a person in formulating an application.

**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 application is deemed not to have been lodged 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.
- (4) If an applicant requests the waiver or reduction of a fee in respect of an application, any limitation period for bringing that application is suspended from the time of the request until the request is determined.

**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.

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- (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 sub-section (2).
- (4) No fee is payable for a referral under sub-section (2).
- (5) On a referral under sub-section (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 sub-section (1), the principal registrar may refer it to the Tribunal.
- (7) On a referral under sub-section (6), the Tribunal may order that the application be rejected if it is



an application referred to in sub-section (1)(a), (b) or (c).

- (8) Nothing in Division 3 of Part 3 applies to a review under sub-section (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) Sub-section (1) does not apply if—
- (a) the principal registrar undertakes service on behalf of the applicant; or
  - (b) a presidential member makes an order under sub-section (3).
- (3) A presidential member may make an order that service under sub-section (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 sub-section (3) may be made on the application of the applicant or at the presidential member's own initiative.
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**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 **Fair Trading Act 1985**.
- (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.

**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) Sub-section (2)(a) does not apply if the principal registrar notifies the other parties in writing on behalf of the applicant.
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**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 sub-section (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 sub-section (1) or (2) is exercisable by—
  - (a) the Tribunal as constituted for the proceeding; or
  - (b) a presidential member.
- (4) An order under sub-section (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—
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- (a) the Tribunal as constituted for the proceeding; or
  - (b) a presidential member.
- (3) An order under sub-section (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 sub-section (1) is exercisable only by a judicial member.
- (3) If the Tribunal makes an order under sub-section (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 sub-section (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
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- (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.
- (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.

**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
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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 sub-section (1)(a) is exercisable by a presidential member.
- (3) The Tribunal's power to give a direction under sub-section (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.

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- (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
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person nominated by the Tribunal or principal registrar (as the case requires).

- (2) A referral may be made under sub-section (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.
- (6) If a member of the Tribunal is a mediator in a proceeding, he or she cannot constitute the Tribunal for the purpose of hearing the proceeding.
- (7) Subject to this Act and the rules, the procedure for mediation is at the discretion of the mediator.

**89. *Tribunal may require personal attendance at mediation***

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

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

If the parties agree to settle a proceeding as a result of mediation, the mediator must notify the Tribunal that the parties have agreed to settle.

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

If the mediator has attempted unsuccessfully to settle the proceeding 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**

- (1) If the parties agree to settle a proceeding 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 sub-section (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 at a compulsory conference at which the principal registrar is presiding, the principal registrar may exercise the Tribunal's power to make orders under sub-section (1).

**Division 6—Referral to experts**

**94. Use of experts**

- (1) The Tribunal may call in the assistance of an expert to advise it in respect of any matter arising in a proceeding.
- (2) The parties are responsible for any costs of an expert, and are to pay those costs in the proportions determined by the Tribunal.

**95. Special referees**

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- (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 sub-section (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***

*Victorian Civil and Administrative Tribunal Act 1998*  
*Act No. 53/1998*

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- (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 sub-section (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.
- (3) Subject to this Act, the regulations and the rules, the Tribunal may regulate its own procedure.
- (4) Sub-section (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
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- (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.

**101. *Hearings to be public unless otherwise ordered***

- (1) Unless another provision of this Act provides otherwise, all hearings of the Tribunal must be held in public.
- (2) The Tribunal, on its own initiative or on the application of a party, may direct that a hearing or any part of it be held in private.
- (3) In the circumstances set out in sub-section (4) the Tribunal may order—
  - (a) that any evidence given before it;
  - (b) that the contents of any documents produced to it;
  - (c) that any information that might enable a person who has appeared before it to be identified—

must not be published except in the manner and to the persons (if any) specified by the Tribunal.

- (4) The Tribunal may make an order under sub-section (3) if the Tribunal considers it is necessary to do so—
- (a) to avoid—
    - (i) endangering the national security or international security of Australia; or
    - (ii) prejudicing the administration of justice; or
    - (iii) endangering the physical safety of any person; or
    - (iv) offending public decency or morality; or
    - (v) the publication of confidential information or information the subject of a certificate under section 53 or 54; or
  - (b) for any other reason in the interests of justice.
- (5) The Tribunal's power to make an order under sub-section (3) is exercisable only by the presiding member.

### **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 sub-section (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.
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- (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 affidavit<sup>5</sup>.
- (4) A member of the Tribunal may administer or cause to be administered an oath or take or cause to be taken an affirmation for the purpose of taking and receiving evidence at a hearing.

**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 sub-section (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 sub-section (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 sub-section (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***

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

- (a) the question must be decided by another member who is a judicial member or legal practitioner; 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.

**108. *Reconstitution of Tribunal***

- (1) At any time during the hearing of a proceeding a party may apply to the Tribunal requesting that it be reconstituted for the purposes of the proceeding.
  - (2) At any time during the hearing of a proceeding, the President or a member of the Tribunal may give notice to the parties that the President or member seeks the reconstitution of the Tribunal for the purposes of the proceeding.
  - (3) On application under sub-section (1), or after notice is given under sub-section (2)—
    - (a) the Tribunal, as presently constituted, after allowing the parties to make submissions, may decide that it should be reconstituted; and
    - (b) if so, the President must reconstitute the Tribunal.
  - (4) If the Tribunal rejects an application under sub-section (1) for reconstitution, a party may require the matter to be referred to the President.
  - (5) If a matter is referred to the President under sub-section (4), the President, after allowing the parties to make submissions, may reconstitute the Tribunal.
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- (6) 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;
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- (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 sub-section (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 sub-section (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.

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

**111. Amount of costs**

- (1) If the Tribunal makes an order for costs, the Tribunal may fix the amount of costs itself or order that costs be assessed or settled by the principal registrar.
- (2) An assessment of costs by the principal registrar is to be taken to be an assessment of costs by the Tribunal.

**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 sub-section (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—
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- (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.
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- (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 sub-section (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.
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**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.
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- (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 sub-section (2) within 45 days after receiving it.
  - (4) The President may extend the 45-day period referred to in sub-section (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) Sub-section (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 sub-section (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 the applicant had a reasonable excuse for not attending or being represented at the hearing; and
  - (b) if it thinks fit, order that the order be revoked or varied.
- (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
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- (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 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.
- (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**

*Victorian Civil and Administrative Tribunal Act 1998*  
*Act No. 53/1998*

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- (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)—
  - (a) in the case of an interim injunction, is exercisable by a judicial member or a member who is a legal practitioner; and
  - (b) in any other case, is exercisable only by a judicial member.
- (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.
- (6) The Tribunal may assess any costs or damages referred to in subsection (5)(a).
- (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

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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 sub-section (1) is exercisable only by a judicial member.
- (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.

**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.

**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 sub-section (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 sub-section (1); and
    - (b) a member of the Tribunal certifies the copy to be a true copy of the original—
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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 sub-section (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 sub-section (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 sub-section (1)(a) or (b) may be exercised at any reasonable time.
- (5) A person must not—
- (a) obstruct or hinder; or
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(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. *Waiver of fees***

- (1) The principal registrar may in any case—
    - (a) waive; or
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- (b) if permitted by the regulations, reduce—  
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 ground prescribed in the regulations.
- (2) If costs are awarded by the Tribunal against a  
person who has had a fee waived or reduced under  
sub-section (1), the person becomes liable to pay  
the amount of the fee previously waived or  
reduced.
- (3) If a person becomes liable to pay a fee because of  
sub-section (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.

#### **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, sub-section (1) only  
applies on the person being given personally or in  
accordance with sub-section (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 sub-section (2), the Tribunal may specify another method for service of the documents on the person under that sub-section.

**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 sub-section (2) is exercisable only by a judicial member.
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- (4) A member of the police force must obey and execute a direction of the Tribunal under subsection (2).

**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 the person were accused of an offence and were being held in custody in relation to that offence.
- (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 \$100 000 or do both;
  - (b) in the case of a corporation, impose a fine of not more than \$500 000.
- (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.
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- (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 the President.
  - (11) Despite anything to the contrary in section 46 of the **Public Prosecutions Act 1994**, that section applies in relation to a contempt of the Tribunal to the same extent as it would if the contempt were a contempt of the Supreme Court and the Tribunal were the Supreme Court.

**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 VI of the **Crimes Act 1958** 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 passed on their conviction.
  - (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.
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- (3) Despite anything to the contrary in Part VI of the **Crimes Act 1958**, as applied by sub-section (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 Law—
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- (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 Act 1981**, in accordance with section 48 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.
- (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
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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—2 business days after the day on which the document was posted;
  - (c) in the case of facsimile or other electronic transmission—at the time the facsimile or transmission is received.
- (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
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- (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 a legal practitioner 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.
- (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—
  - (a) has, in performing functions under section 111(1) (assessment or settlement of costs), the same protection and immunity as the Taxing Master of the Supreme Court has in respect of the assessment or settlement of bills of costs; and
  - (b) has, in exercising the powers of the Tribunal as permitted by this Act or an enabling enactment and in performing functions under section 71 (rejection of applications) and 83 (compulsory conferences), 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—
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- (a) any conditions specified in the rules; and
  - (b) any order of the Tribunal under section 101;  
and
  - (c) any certificate under section 53 or 54.

**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 section 101 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).

**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 section 101;
- (d) any certificate under section 53 or 54.

**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.

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**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—
  - (a) to the Court of Appeal, if the Tribunal was constituted for the purpose of making the order by the President or a Vice President, whether with or without others; or
  - (b) to the Trial Division of the Supreme Court in any other case—

if the Court of Appeal or the Trial Division, as the case requires, gives leave to appeal.
- (2) An application for leave to appeal must be made—
  - (a) no later than 28 days after the day of the order of the Tribunal; and
  - (b) in accordance with the rules of the Supreme Court.
- (3) If leave is granted, the appeal must be instituted—
  - (a) no later than 14 days after the day on which leave is granted; and
  - (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 Court of Appeal or the Trial Division, as the case requires, 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 sub-section (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 sub-section (9)—
- "credit enactment"** means—
- (a) sections 25 and 26 of the **Chattel Securities Act 1987**;
  - (b) **Credit Act 1984**;
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- (c) **Consumer Credit (Victoria) Code**  
(except Part 4);
- (d) section 45 of the **Motor Car Traders Act 1986**.

**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 sub-section (1).
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**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—

- (a) the President;
- (b) each Vice President;
- (c) a full-time member of the Tribunal who is not a judicial member or legal practitioner, nominated by the Minister after consultation with the President;
- (d) a current practitioner or interstate practitioner (within the meaning of the **Legal Practice Act 1996**), nominated by the Minister after consultation with the Legal Practice Board;
- (e) 2 persons nominated by the Minister.

(2) The appointment of the President or a Vice President to the Rules Committee does not affect

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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.
- (4) The **Public Sector Management Act 1992** (including Part 9) 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.
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- (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
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- (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.

**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.
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**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 exempt persons or things or classes or persons or things from any of the provisions of the regulations, whether unconditionally
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or on specified conditions and either wholly or to such an extent as is specified.

- (3) Regulations with respect to fees—
- (a) may provide for different fees for different classes of proceedings;
  - (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.
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**SCHEDULES**

Sections 39 and 58

**SCHEDULE 1**

**VARIATIONS FROM PARTS 3 AND 4 FOR VARIOUS  
PROCEEDINGS**

**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—

**"credit enactment"** means—

- (a) sections 25 and 26 of the **Chattel Securities Act 1987**;
- (b) **Credit Act 1984**;
- (c) Consumer Credit (Victoria) Code (except Part 4);
- (d) section 45 of the **Motor Car Traders Act 1986**;

**"planning enactment"** means—

- (a) **Catchment and Land Protection Act 1994**;
- (b) **Environment Protection Act 1970**;
- (c) **Extractive Industries Development Act 1995**;
- (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);

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- (g) **Subdivision Act 1988** (except sections 38 and 39);
  - (h) section 56 of the **Transport 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) Business Franchise Acts;
- (b) **Debits Tax Act 1990**;
- (c) **Financial Institutions Duty Act 1982**;
- (d) **Gift Duty Act 1971**;
- (e) **Land Tax Act 1958**;
- (f) **Pay-roll Tax Act 1971**;
- (g) **Probate Duty Act 1962**;
- (h) **Stamps Act 1958**;
- (i) **Taxation Administration Act 1997**.

#### 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 3—CHILDREN AND YOUNG PERSONS ACT 1989

##### 5. *Constitution of Tribunal*

In a proceeding under section 122 of the **Children and Young Persons Act 1989** the Tribunal is to be constituted by, or to include, a member who, in the opinion of the



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President, has knowledge of, or experience in, child welfare matters.

**PART 4—COMMUNITY SERVICES ACT 1970**

**6. Constitution of Tribunal**

In a proceeding under section 13F of the **Community Services Act 1970** 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.

**PART 5—CREDIT ENACTMENTS**

**7. Constitution of Tribunal in certain proceedings**

In a proceeding under section 85 or 86 of the **Credit Act 1984** or section 101 of the **Consumer Credit (Victoria) Code**, a party may require that the Tribunal be constituted by a presidential member, whether with or without others.

**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
  - (b) a person employed in the Office of Fair Trading and Business Affairs in the Department of Justice; 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 sub-clause (1)—
    - (a) the Director may; or
    - (b) if the Minister administering the credit enactment so determines, the Director must—
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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 6—DOMESTIC BUILDING CONTRACTS ACT 1995**

**12. Referral to Director, Building Control Commission or Building Practitioners Board**

- (1) The Tribunal may request the Director, the Building Control Commission or the Building Practitioners Board to investigate any matter that arises in a proceeding under the **Domestic Building Contracts Act 1995**.
- (2) The Director, Commission or Board may investigate a matter on request under sub-clause (1) and, if the Director, Commission or Board does so, they must report on the investigation to the Tribunal.

**PART 7—EQUAL OPPORTUNITY ACT 1995**

**13. Constitution of Tribunal in special complaint proceedings**

In a proceeding in respect of a special complaint under Division 5 of Part 7 of the **Equal Opportunity Act 1995** a party may require that the Tribunal be constituted by the President (whether with or without others).

**14. Unincorporated associations can be parties**

- (1) Section 61(1) does not apply to a proceeding under the **Equal Opportunity Act 1995**<sup>8</sup>.
- (2) An unincorporated association that is a party to a proceeding under the **Equal Opportunity Act 1995** has the

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same right to representation in the proceeding as a body corporate.

**15. *Commission is not a party to a review of its determination***

Despite section 59(1)(b)(ii), the Equal Opportunity Commission is not a party to a proceeding for review of a determination made by it under section 119 of the **Equal Opportunity Act 1995** (expedited complaint).

**16. *Certain procedures and rights not to apply in respect of determinations regarding expediting a complaint***

- (1) Nothing in section 45 (right to reasons) applies to a decision being a determination of the Equal Opportunity Commission under section 119 of the **Equal Opportunity Act 1995**.
- (2) Sections 49, 50(3), 51(2)(d) and 51(3)(b) do not apply to a proceeding for review of a determination under section 119 of the **Equal Opportunity Act 1995**.

**17. *Joinder of parties***

The Tribunal may not make an order under section 60 joining a person as a party in any proceeding under section 109, 121 or 124 of the **Equal Opportunity Act 1995**.

**18. *Notification of commencement in certain section 83 matters***

- (1) If the Tribunal proposes to grant, renew or revoke an exemption under section 83 of the **Equal Opportunity Act 1995** 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 sub-clause (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.

**19. *Notification of commencement of inquiry under section 158(3)***

- (1) If a matter is referred to the Tribunal for inquiry under section 158(3) of the **Equal Opportunity Act 1995**, the
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principal registrar must notify, in the manner specified by the Tribunal—

- (a) any person alleged to have been discriminated against; and
  - (b) any other person the Tribunal directs be notified.
- (2) The Tribunal may direct that notification under sub-clause (1) be done by the publication of an advertisement in the manner specified by the Tribunal.

**20. Notification in other proceedings**

- (1) If an application is made under section 109(1) (strike out), section 121 (review), section 124 (expedited complaint) or section 131 (interim order) or a referral under section 111 (Minister's referral) of the **Equal Opportunity Act 1995**, the principal registrar must notify the Equal Opportunity Commission.
- (2) Sub-clause (1) does not apply in the case of an application by the Equal Opportunity Commission under section 131 of the **Equal Opportunity Act 1995**.

**21. Withdrawal of proceeding**

- (1) Despite section 74(1), an applicant is not required to obtain the leave of the Tribunal to withdraw an application or referral under the **Equal Opportunity Act 1995**.
- (2) Nothing in sub-clause (1) affects the Tribunal's power to award costs in any proceeding that is withdrawn.

**22. Commission may apply for interim injunction**

The Equal Opportunity Commission may apply for an order granting an interim injunction under section 123 in a proceeding under the **Equal Opportunity Act 1995** whether or not it is a party to that proceeding.

**23. Compulsory conference**

The presiding member at a compulsory conference in a proceeding under the **Equal Opportunity Act 1995** may refer any matter to the Equal Opportunity Commission for investigation, negotiation or conciliation.

**24. Exemptions under section 83**

- (1) The Tribunal may determine to grant an exemption under section 83 of the **Equal Opportunity Act 1995** without a

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hearing whether or not the parties agree to dispense with the hearing.

- (2) For the avoidance of doubt, an exemption under section 83 of the **Equal Opportunity Act 1995** is not an order of the Tribunal.

**25. *Restriction on evidence in certain proceedings***

- (1) A party is not entitled to call or give oral evidence at a hearing of an application under section 109, 121 or 124 of the **Equal Opportunity Act 1995**, but is entitled to make written or oral submissions.
- (2) For the avoidance of doubt, the Tribunal may allow a party to call or give evidence in the circumstances referred to in sub-clause (1) if the Tribunal thinks fit.

**26. *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 1995** 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 1995**.

**27. *Costs of special complaint proceedings***

- (1) The Tribunal may order the payment of costs in any proceeding in respect of a special complaint under Division 5 of Part 7 of the **Equal Opportunity Act 1995**.
  - (2) Unless there are special circumstances, costs ordered under sub-clause (1) must reflect—
    - (a) the costs reasonably incurred by the person in whose favour the order for costs is made; and
    - (b) any other pecuniary loss incurred by the person because of the proceeding.
  - (3) If a party that is the State, an agency of the State or a person funded in whole or part by the State requires the Tribunal to be constituted by the President for the purposes of a proceeding in respect of a special complaint, the Tribunal must, unless there are special circumstances and regardless of who succeeds in the proceeding, order that party to pay an amount fixed by the Tribunal that reasonably reflects the
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additional costs incurred by the other party as a result of the complaint having been treated as a special complaint.

- (4) If the President determines that a complaint is not a special complaint, the Tribunal must order that the party who required the Tribunal to be constituted by the President for the purposes of the proceeding in respect of the complaint must pay all costs relating to the making of that determination.
- (5) Section 109 does not apply to a proceeding in respect of a special complaint.

**28. *Settlement offers***

Sections 112 to 115 do not apply to a proceeding under the **Equal Opportunity Act 1995**.

**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.

**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***

- (1) Section 64(2) 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.
- (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

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(b) a member who is a legal practitioner—  
sitting alone.

**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.
- (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.

**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

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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 sub-clause (1) only if it considers that it would be in the public interest to do so.
- (3) An order of the Tribunal under sub-clause (1) must specify that pictures are not to be taken of any party to the proceeding.

**38. Settlement offers**

Sections 112 to 115 do not apply to a proceeding under the **Guardianship and Administration Act 1986**.

**PART 10—HERITAGE ACT 1995<sup>9</sup>**

**39. National Trust must be given opportunity to be heard**

The National Trust (within the meaning of the **Heritage Act 1995**)—

- (a) may intervene at any time; and
- (b) is entitled to be joined as a party—

in a proceeding under Division 1 of Part 4 of that Act.

**PART 11—HOUSE CONTRACTS GUARANTEE ACT 1987**

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**40. Referral to Director, Building Control Commission or Building Practitioners Board**

- (1) The Tribunal may request the Director, the Building Control Commission or the Building Practitioners Board to investigate any matter that arises in a proceeding under the **House Contracts Guarantee Act 1987**.
- (2) The Director, Commission or Board may investigate a matter on request under sub-clause (1) and, if the Director, Commission or Board does so, they must report on the investigation to the Tribunal.

**PART 12—INSTRUMENTS ACT 1958**

**41. 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 section 118 of the **Instruments Act 1958**.

**42. Referral to administrators for report**

- (1) The Tribunal may refer any matter relating to a proceeding under section 118 of the **Instruments Act 1958** 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.

**43. Proceeding not invalidated by failure to give notice**

A hearing or order of the Tribunal in a proceeding under section 118 of the **Instruments Act 1958** 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—
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- (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.

**44. 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 section 118 of the **Instruments Act 1958** 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 sub-clause (1) only if it considers that it would be in the public interest to do so.
- (3) An order of the Tribunal under sub-clause (1) must specify that pictures are not to be taken of any party to the proceeding.

**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>10</sup>.

**PART 14—MEDICAL TREATMENT ACT 1988**

**47. Public Advocate may intervene or be joined**

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The Public Advocate—

- (a) may intervene at any time; and
- (b) is entitled to be joined as a party—

in a proceeding under section 5C of the **Medical Treatment Act 1988**.

**48. Referral to administrators for report**

- (1) The Tribunal may refer any matter relating to a proceeding under section 5C of the **Medical Treatment Act 1988** 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.

**49. Proceeding not invalidated by failure to give notice**

A hearing or order of the Tribunal in a proceeding under section 5C of the **Medical Treatment Act 1988** 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 section 5C of the **Medical Treatment Act 1988** that identifies, or could reasonably lead to the identification of, a party to the proceeding.

Penalty: 20 penalty units.

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- (2) The Tribunal may make an order under sub-clause (1) only if it considers that it would be in the public interest to do so.
  - (3) An order of the Tribunal under sub-clause (1) must specify that pictures are not to be taken of any party to the proceeding.

**PART 15—MINERAL RESOURCES DEVELOPMENT ACT 1990**

**51. *Costs***

Nothing in section 109 applies to a proceeding under the **Mineral Resources Development Act 1990**<sup>11</sup>.

**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

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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. Parties 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.
- (2) Sub-clause (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 sub-clause (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.

**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
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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**

- (1) This clause applies to a proceeding for review of a decision under the **Planning and Environment Act 1987** if—
    - (a) the Tribunal has not commenced to hear the proceeding; and
    - (b) the Minister administering the **Planning and Environment Act 1987** considers that—
      - (i) the proceeding raises a major issue of policy; and
      - (ii) 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) direct the principal registrar to refer a proceeding to which this clause applies to the Governor in Council for determination; or
    - (b) invite the Tribunal—
      - (i) to decline to hear the proceeding and refer it to the Governor in Council for determination; or
      - (ii) 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** cannot give a direction or invitation under sub-
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clause (2) later than 7 days before the date fixed for the hearing of the proceeding unless the President directs otherwise.

**59. *Call in power 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—
  - (a) the Tribunal has not commenced to hear the proceeding; and
  - (b) 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) direct the principal registrar to refer a proceeding to which this clause applies to the Governor in Council for determination; or
  - (b) invite the Tribunal—
    - (i) to decline to hear the proceeding and refer it to the Governor in Council for determination; or
    - (ii) to hear the proceeding but, without determining it, refer it with recommendations to the Governor in Council for determination.
- (3) Subject to sub-clause (4), the Minister administering the **Planning and Environment Act 1987** must comply with a request under sub-clause (2).
- (4) The Minister administering the **Planning and Environment Act 1987** cannot give a direction or invitation under this clause later than 7 days before the date fixed for the hearing of the proceeding unless the President directs otherwise.

**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
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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.
- (2) An order made by the Governor in Council referred to in sub-clause (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.

**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



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direct or indirect commercial advantage for the person who brought the proceeding.

- (2) Sub-clause (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 sub-clause (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
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- (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) Sub-clause (1) does not apply if leave is granted under section 82B of the **Planning and Environment Act 1987**.

**66. Questions of law**

- (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 a legal practitioner, 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 a legal practitioner nominated by the President.
- (2) Section 107(3)(b) does not apply to a proceeding under a planning enactment.

**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.

**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 sub-clause (1) affects the Tribunal's power to award costs in any proceeding that is withdrawn.

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**70. Member of Tribunal can mediate**

- (1) Section 88(6) does not apply to a proceeding under the **Residential Tenancies Act 1997**.
- (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 sub-clause (2) must be made to the Tribunal before or at the commencement of the hearing.

**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 sub-clause (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) Sub-clause (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.
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- (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.

**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.

**PART 18—SMALL CLAIMS ACT 1973**

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**78. Representation**

- (1) A party to a proceeding under the **Small Claims Act 1973** may be represented by a professional advocate only if—
  - (a) the Tribunal is satisfied that none of the other parties 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 under the **Small Claims Act 1973**.

**79. Notification of commencement**

- (1) The principal registrar must serve a copy of an application under the **Small Claims Act 1973**, within the time specified in the rules—
  - (a) on the respondent; and
  - (b) on every person who appears from the application to have a sufficient interest in a resolution of the dispute to which the application relates; and
  - (c) on any other person that the Tribunal directs be given notice of the proceeding.
- (2) The Tribunal may give a direction under sub-clause (1)(c) only if satisfied that the person appears to have a sufficient interest in a resolution of the dispute to which the application relates.
- (3) Section 72 does not apply to an application under the **Small Claims Act 1973**.

**80. Withdrawal of application**

Despite section 74(1), an applicant is not required to obtain the leave of the Tribunal to withdraw an application under the **Small Claims Act 1973**.

**81. Joinder of parties**

The Tribunal must join a person as a party to a proceeding under the **Small Claims Act 1973** if the person satisfies the Tribunal that the person has a sufficient interest in a resolution of the dispute to which the proceeding relates.

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**82. Tribunal cannot extend time for commencing proceedings**

Section 126(1) does not apply to a small claim within the meaning of the **Small Claims Act 1973**.

**83. Member of Tribunal can mediate**

- (1) Section 88(6) does not apply to a proceeding under the **Small Claims Act 1973**.
- (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 sub-clause (2) must be made to the Tribunal before or at the commencement of the hearing.

**84. Resolution of objection to certain members constituting the Tribunal**

- (1) If a party to a proceeding under the **Small Claims Act 1973** 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 sub-clause (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 **Small Claims Act 1973**.

**85. Costs**

- (1) The Tribunal cannot order costs in a proceeding under the **Small Claims Act 1973**, except in a review of a determination under section 120 in respect of a proceeding under that Act.
- (2) Section 79 does not apply to a review of a determination under section 120 in respect of a proceeding under the **Small Claims Act 1973**.

**86. Notification of lodgement of money**

If an applicant lodges money with the principal registrar under section 20A of the **Small Claims Act 1973** in respect of a small claim, the applicant must serve a notice

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containing details of that lodgement with the copy of the application in respect of that claim.

**87. *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 **Small Claims Act 1973** 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 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.

**90. *Compulsory conference in tax proceedings***

In a proceeding under a taxing Act for review of a decision of the Commissioner of State Revenue, a member 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.
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- (2) Division 8 of Part 4 does not apply to a proceeding under a taxing Act.

**PART 20—TRANSPORT ACCIDENT ACT 1986**

**92. *Costs***

Nothing in section 109 applies to a proceeding under the **Transport Accident Act 1986**<sup>12</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***

- (1) In the case of a referral to the Tribunal under section 22(1) of the **Valuation of Land Act 1960**, the rating authority must, within 1 month after receiving the notice referred to in that section, forward to the principal registrar the notice of objection and copies of any notices given in connection with the objection under section 21 of that Act.
- (2) Section 49 does not apply in the case of a referral under section 22(1) of the **Valuation of Land Act 1960**.

**97. *Notification of commencement***

Section 72 does not apply to a proceeding under section 22(1) of the **Valuation of Land Act 1960**.

**98. *Questions of law***

- (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 a legal practitioner, a question of law arising in the proceeding may be decided—



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- (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 a legal practitioner nominated by the President.
- (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>13</sup>.

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**SCHEDULE 2**

Section 157(2)

**SUBJECT MATTER FOR RULES**

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.

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.

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**NOTES**

<sup>†</sup> *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*

<sup>1</sup> Section 101 empowers the Tribunal to order that certain information not be published. Section 133 makes it an offence not to comply with the Tribunal's order.

<sup>2</sup> In particular, see clauses 4, 16, 29, 53, 54, 90 and 97.

<sup>3</sup> 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> 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> Section 102 of the **Evidence Act 1958** provides that an affirmation can be made instead of an oath. Section 38 of the **Interpretation of Legislation Act 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> Section 134 creates an offence of failing to comply with a summons.

<sup>7</sup> Rules made under this section are statutory rules for the purposes of the **Subordinate Legislation Act 1994** (see paragraph (b) of the definition of "statutory rule" in section 3 of that Act).

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- <sup>8</sup> Section 208 of the **Equal Opportunity Act 1995** contains provisions for unincorporated associations in proceedings under that Act.
- <sup>9</sup> Sections 78 and 81 of the **Heritage Act 1995** give the Minister administering that Act a call-in power in respect of proceedings before the Tribunal under that Act.
- <sup>10</sup> Section 91 of the **Land Acquisition and Compensation Act 1986** sets out the Tribunal's powers with respect to costs in proceedings under that Act.
- <sup>11</sup> Section 88(3) of the **Mineral Resources Development Act 1990** sets out the Tribunal's powers with respect to costs in proceedings under that Act.
- <sup>12</sup> Section 79 of the **Transport Accident Act 1986** sets out the Tribunal's powers with respect to costs in proceedings under that Act.
- <sup>13</sup> Section 25(3) of the **Valuation of Land Act 1960** sets out the Tribunal's powers with respect to costs in proceedings under that Act.