

# Tribunal Independence

**Council of Australasian Tribunals**  
**4 April 2014**

**Justice Greg Parker**  
President, South Australian Civil and Administrative Tribunal



# 8—Main objectives of Tribunal

The main objectives of the Tribunal in dealing with matters within its jurisdiction are—

- (a) in the exercise of its jurisdiction, to promote the best principles of public administration, including—
  - (i) independence in decision-making; and
  - (ii) natural justice and procedural fairness; and
  - (iii) high-quality, consistent decision-making; and
  - (iv) transparency and accountability in the exercise of statutory functions, powers and duties; and
- (b) to be accessible by being easy to find and easy to access, and to be responsive to parties, especially people with special needs; and

## 8—Main objectives of Tribunal cont.

- (c) to ensure that applications are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high-quality processes and the use of mediation and alternative dispute resolution procedures wherever appropriate; and
- (d) to keep costs to parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and
- (e) to use straightforward language and procedures (including, insofar as is reasonably practicable and appropriate, by using simple and standardised forms); and
- (f) to act with as little formality and technicality as possible, including by informing itself in such manner as the Tribunal thinks fit; and
- (g) to be flexible in the way in which the Tribunal conducts its business and to adjust its procedures to best fit the circumstances of a particular case or a particular jurisdiction.

## 33—Original jurisdiction

- (1) Subject to subsection (2), if the matter that a relevant Act gives the Tribunal to deal with does not involve a review of a decision, the matter comes within the Tribunal's original jurisdiction.
- (2) Subject to subsections (3) and (4), the Tribunal will, in its original jurisdiction, act as the original decision-maker in the matter (and accordingly apply those principles which, according to law, are to be applied to bodies that make such decisions pursuant to statute).
- (3) In exercising its original jurisdiction, the Tribunal is to deal with a matter in accordance with this Act and the relevant Act.
- (4) Furthermore, the relevant Act may modify the operation of this Act in relation to a matter that comes within the Tribunal's original jurisdiction.

# 34—Decisions within review jurisdiction

- (1) If the matter that a relevant Act gives the Tribunal jurisdiction to deal with is a matter that expressly or necessarily involves a review of a decision, the matter comes within the Tribunal's review jurisdiction.
- (2) For the purposes of this Act, a decision mentioned in subsection (1) is a **reviewable decision** and the person or body that made or is taken to have made the decision is the **decision-maker** for the reviewable decision.
- (3) Subject to subsections (4), (5) and (6), the Tribunal will, in exercising its review jurisdiction, examine the decision of the decision-maker by way of rehearing.
- (4) On a rehearing, the Tribunal must reach the correct or preferable decision but in doing so must have regard to, and give appropriate weight to, the decision of the original decision-maker.

## 34—Decisions within review jurisdiction cont.

(5) A procedure on a rehearing will include—

(a) an examination of the evidence or material before the decision-maker (unless any such evidence or material is to be excluded under another provision of this Act or under any other law); and

(b) a consideration of any further evidence or material that the Tribunal decides, in the circumstances of the particular case, to admit for the purposes of rehearing the matter.

(6) In exercising its review jurisdiction, the Tribunal is to deal with a matter in accordance with this Act and the relevant Act.

(7) Furthermore, the relevant Act may modify the operation of this Act in relation to a matter that comes within the Tribunal's review jurisdiction.

# 11—President's functions generally

- (1) The President of the Tribunal has the functions conferred on the President under this Act or any other Act.
- (2) The functions of the President include—
  - (a) participating as a member of the Tribunal; and
  - (b) having primary responsibility for the administration of the Tribunal; and
  - (c) managing the business of the Tribunal, including by ensuring that the Tribunal operates efficiently and effectively and continually improves the way in which it carries out its functions; and
  - (d) providing leadership and guidance to the Tribunal and engendering cohesiveness and collaboration amongst the members and staff of the Tribunal; and

## 11—President's functions generally cont.

- (e) giving directions about the practices and procedures to be followed by the Tribunal; and
- (f) developing and implementing performance standards and setting benchmarks for the Tribunal; and
- (g) being responsible for promoting the training, education and professional development of members of the Tribunal; and
- (h) overseeing the proper use of the resources of the Tribunal; and
  - (i) providing advice about—
  - (ii) the membership of the Tribunal; and
  - (iii) the operations and activities of the Tribunal.



## **11—President's functions generally cont.**

- (3) The President may do all things necessary or convenient to be done in the performance of the President's functions.
- (4) In the performance of the President's functions, the President is not subject to direction or control by the Minister.

# 19—Appointment of senior members and ordinary members

- (1) The Governor may, on the recommendation of the Minister, appoint a person as—
  - (a) a senior member of the Tribunal; or
  - (b) an ordinary member of the Tribunal.
- (2) The Minister may from time to time appoint a panel of persons who will, at the request of the Minister—
  - (a) after consultation with the President, recommend the selection criteria for the senior members and ordinary members of the Tribunal;
  - (b) assess a candidate or candidates for appointment as a senior member or ordinary member of the Tribunal (and, as appropriate, to provide advice to the Minister for the purposes of subsection (1)).

## 19—Appointment of senior members and ordinary members cont.

- (3) A person is eligible for appointment as a senior member or ordinary member of the Tribunal only if the person—
  - (a) is a legal practitioner of at least 5 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State); or
  - (b) has, in the Minister's opinion, extensive knowledge, expertise or experience relating to a class of matter for which functions may be exercised by the Tribunal.
- (4) In recommending persons for appointment as members, the Minister must have regard to—
  - (a) any criteria applying under subsection (2)(a); and
  - (b) any advice provided under subsection (2)(b); and

## 19—Appointment of senior members and ordinary members cont.

(c) the following:

- (i) the need for balanced gender representation in the membership of the Tribunal;
- (ii) the need for the membership of the Tribunal to reflect social and cultural diversity;
- (iii) the range of knowledge, expertise and experience required within the membership of the Tribunal.

(5) The Minister must consult with the President of the Tribunal before making a recommendation under subsection (1).

## 20—Member ceasing to hold office and suspension

- (1) The Governor may, on the recommendation of the Minister, remove a senior member or ordinary member of the Tribunal from office for—
  - (a) mental or physical incapacity to carry out official duties satisfactorily; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.
- (2) A person ceases to be a senior member or an ordinary member of the Tribunal if the person—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or

## 20—Member ceasing to hold office and suspension cont.

(d) ceases to satisfy any qualification by virtue of which the person was eligible for appointment to the Tribunal; or

(e) is removed from office under subsection (1).

(3) The Minister must consult with the President before making a recommendation under subsection (1).

(4) The President may, on his or her own initiative or at the request of the Minister, suspend a senior member or ordinary member of the Tribunal from office if it appears that there may be grounds for the removal of the member from the member's office.

(5) If a senior member or ordinary member of the Tribunal who is appointed on a full-time or part-time basis is suspended under subsection (4), the member remains entitled to the member's usual remuneration and allowances during the period of suspension.

## 29—Disclosure of interest by members of Tribunal

If the Tribunal is constituted of, or includes, a member who has a pecuniary or other interest that could conflict with the proper performance of the member's functions in proceedings before the Tribunal, the member—

- (a) must disclose the interest to the parties to the proceedings and to the President of the Tribunal; and
- (b) must not take part in the proceedings or exercise powers affecting the proceedings—
  - (i) if the President directs the member to withdraw from the proceedings; or
  - (ii) if a party to the proceedings does not consent to the member hearing and determining, or participating in the hearing and determination of, the proceedings.

# 79—Immunities

- (1) A member of the Tribunal, mediator, expert or special referee has the same protections, privileges and immunities from liability as a Judge of the Supreme Court.
- (2) A member of the staff of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.
- (3) A person representing a party to proceedings before the Tribunal has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.
- (4) A party to proceedings before the Tribunal has the same protection and immunity as a party to proceedings in the Supreme Court.



## 79—Immunities cont.

- (5) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before the Supreme Court.
- (6) A person taking evidence on behalf of the Tribunal has, in doing so, the same protections, privileges and immunities as a member of the Tribunal.

# 80—Protection from liability for torts

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act or a relevant Act as a member of the Tribunal or as a member of staff or an officer of the Tribunal.
- (2) The Crown is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act or a relevant Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

# 81—Protection for compliance with Act

- (1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.
- (2) In particular, if a person produced a document or other material as required under this Act, no civil liability attaches to the person for producing the document or material, whether the liability would arise under a contract or otherwise.