

South Australian Employment Tribunal Bill 2014

REPORT

Today I am introducing a Bill to establish the South Australian Employment Tribunal, with jurisdiction to review certain decisions arising from the Return to Work Scheme planned to commence on 1 July 2015.

The South Australian Employment Tribunal ('the Tribunal') will have similar functions, powers and operating approach as the newly established South Australian Civil and Administrative Tribunal.

It will provide efficient and cost effective processes for all parties involved, act with as little formality and technicality as possible and be flexible in the way in which it conducts its business. The Tribunal will also be transparent and accountable, headed by a President who will hold concurrent office as a Judge of the Industrial Relations Court.

Currently, the Workers Compensation Tribunal deals with disputes about claims for workers compensation under the *Workers Rehabilitation and Compensation Act 1986*.

The establishment of a new Return to Work scheme requires a fresh approach to the resolution of disputes arising under the new scheme. The new scheme is designed with less moving parts and should provide injured workers and their employers with greater certainty regarding their entitlements and obligations under the legislation. We therefore anticipate that the rate of disputation should decrease significantly, and those disputes that do arise and cannot be resolved through reconsideration by the Corporation, will be dealt with by the proposed Employment Tribunal.

The Bill has been introduced concurrently with the Return to Work Bill 2014.

Turning now to the main features of the Bill.

Members of the Tribunal

The Bill proposes that the Tribunal be led by a President, supported by 1 or more Deputy Presidents, Magistrates and conciliators.

The President will be the person holding office as the Senior Judge of the Industrial Court.

The President, aside from participating as a member of the Tribunal, has primary responsibility for its administration and will not be subject to the direction or control of a Minister in the performance of his or her functions. The President's functions are expressly prescribed in the Bill to include both administrative and managerial responsibility, which are as follows:

- managing the business of the Tribunal, which includes ensuring it operates efficiently and effectively;
- providing leadership and guidance to the Tribunal and ensuring a collective cohesiveness amongst the members and staff;
- giving directions about practices and procedures to be followed by the Tribunal;
- developing and implementing performance standards and benchmarks;
- being responsible for promoting the training, education and professional development of members;
- overseeing the proper use of resources; and
- providing advice about the membership and operation of the Tribunal.

There will be at least one Deputy President. A Judge, other than the Senior Judge of the Industrial Relations Court, will be a Deputy President of the Tribunal. Other Deputy Presidents, may, if eligible for appointment as a Judge of the Industrial Relations Court, be appointed by the Governor, on the nomination of the Minister.

Aside from participating as a member of the Tribunal, a Deputy President, will assist the President in the management of business and members of the Tribunal.

Conciliation officers

The Bill proposes that the Tribunal should be comprised of conciliation officers who may be legally qualified, but may also be experts from different fields or vocations. Legally qualified officers must be legal practitioners of not less than five years standing and other members must have, 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.

The Bill will allow for the Minister to appoint a panel of persons who will, after consultation with the President, recommend the selection criteria for the conciliation officers of the Tribunal. This same panel of persons will also be responsible for assessing a candidate or

candidates for appointment as a conciliation officer and provide advice to the Minister about this.

All members should be assessed by a panel against selection criteria and appointed by the Governor, after consultation with the President and the Minister, for a term of office, of up to five years. A conciliation officers will be eligible for reappointment at the expiration of a term of office. Conciliation officers will be appointed on conditions specified in the instrument of appointment.

The Bill proposes mechanisms for removal and suspension of senior and ordinary members of the Tribunal, in addition to specifying the grounds upon which a senior or ordinary member ceases to be a member of the Tribunal.

In order to manage unforeseen spikes in workloads, the Bill provides a mechanism to temporarily appoint conciliation officers for a particular matter or for a specified period, either at the request or with the agreement of the President of the Tribunal.

Constitution of Tribunal and its decision-making processes

Subject to the provisions in the Bill, the President may determine, in relation to particular matters, or particular classes of matters, which member or members of the Tribunal will constitute the Tribunal. Unless the conferring Act states otherwise, the Tribunal is not to be constituted by more than three members.

The Bill also clarifies which member in particular circumstances will be considered the presiding member in the hearing of matters and the order of precedence generally, amongst all members of the Tribunal.

Clarification is also provided about how the Tribunal resolves cases that come before it. For questions that do not amount to a determination of a question of law, the opinion of the majority will apply. Where there is no majority, the opinion of the presiding member prevails. By contrast, where a question of law requires determination by the Tribunal, it will be decided according to the opinion of the presiding member, if that member is legally qualified or the unanimous opinion of two legally qualified members.

There is also a mechanism for a presiding member to refer a question of law to a Presidential member for determination and for a Presidential member to refer it to the Supreme Court. The Bill sets out the process for such referral.

A range of other matters related to the constitution of the Tribunal are set out to assist the day to day operations of the Tribunal, these include:

- permitting the listing of matters into various streams that reflect the areas of jurisdiction;
- validating the acts of the Tribunal;
- setting out requirements of Tribunal members to disclose interests (pecuniary or otherwise);
- authorising of the President of the Tribunal to delegate a function or power under the Bill.

General nature of proceedings

Matters that come before the Tribunal, as per a conferring Act, will be dealt with as a review of the original decision. The Tribunal will examine the decision of the original decision-maker by way of re-hearing.

In order to assist the Tribunal in exercising its review jurisdiction, the Bill imposes obligations upon the original decision-maker for the purposes of assisting the Tribunal so that it can make its decision on the review. The Bill also confirms the effect of the review proceeding on the decision being reviewed.

The Bill also allows for the Tribunal, at any stage of a proceeding for the review of a reviewable decision, to invite the decision-maker to reconsider the decision. Upon being invited to do so by the Tribunal, the original decision-maker may affirm, vary or set aside the decision and substitute a new decision.

Principles, powers and procedures

Principles

The Bill sets out the principles that are to guide the Tribunal in the hearing of any proceeding for which it has jurisdiction. In summary, these principles include: minimising any formality, dispensing with rules of evidence and adopting an inquisitorial approach and finally, acting according to equity and good conscience, without regard to legal technicalities.

Evidentiary Powers

To discharge its various functions as an administrative tribunal, the Tribunal will need powers to establish processes, obtain evidence, control parties and make adequate and appropriate

determinations. Certain powers are proposed for inclusion in the Bill, whereas others will be located in the Regulations or Rules.

First, the Tribunal will be equipped with the power to require the production of evidentiary material or to require an individual to give evidence, which may be exercised by the Tribunal upon the application of a party or by means of its own initiative. This power will be exercised by the issuing of a summons. Failure to comply with this provision of the Bill amount to an offence, which will attract a maximum penalty of a \$25,000 fine or imprisonment for 1 year.

Second, a member of the Tribunal will have the power to enter any land or building and carry out any inspection that the Tribunal considers relevant to a proceeding before a Tribunal.

Obstruction of a member of the Tribunal, or a person authorised by the Tribunal who is exercising this power, will be guilty of an offence, attracting a maximum penalty of \$10,000 or 6 months imprisonment.

Finally, there is a power for the Tribunal to refer any question arising in any proceedings for investigation and report by an expert in the relevant field. However before doing so, the Tribunal must seek submissions from the parties to the proceedings, prior to making such a reference.

Practice and procedures

The Bill outlines a number of obligations upon the Tribunal in terms of practices and procedures generally, and regarding the conduct of proceedings and interaction of parties to proceedings. More specifically, it confirms the Tribunal's ability to give directions, consolidate proceedings, split proceedings, move a proceeding to a more appropriate forum and finally to dismiss or strike out a proceeding that is frivolous, vexatious or an abuse of process. There is also a mechanism for the Tribunal to manage proceedings being conducted to cause disadvantage to a party, either by the application of a party or on its own initiative.

Conferences, mediation and settlement

An important emphasis is placed on the role of alternative dispute resolution in proceedings before the Tribunal. The Bill provides the Tribunal with the scope, at an initial directions hearing or at any other time, to require the parties to attend a compulsory conference, or refer the matter, or any aspect of the matter, for mediation by a person specified as a mediator by the Tribunal. The Bill also sets out the procedures for both conferences and mediation. The Tribunal itself may also endeavour to achieve a negotiated settlement of a matter before the Tribunal.

Parties and representation

The Bill defines who is considered a 'party' for the purposes of a proceeding before the Tribunal, confirms who may be joined as a party, and who can intervene in a proceeding before the Tribunal and on what grounds. The matter of representation before the Tribunal is also addressed.

Other procedural and related provisions

The Bill addresses a range of other miscellaneous, procedural and related provisions, which are summarised as follows:

- the time and location of Tribunal sittings;
- the requirement for hearings to be heard in public, unless the Tribunal is satisfied that it is desirable to either hear all or part of a hearing in private or there is a need for example to prohibit/restrict publication of the name and addresses of persons appearing before the Tribunal and/or evidence given at the Tribunal;
- the power to make any order that may be necessary to preserve the subject matter of proceedings or interests of a party;
- security as to costs;
- the power to make interlocutory orders;
- the power to make declaratory judgments;
- the power to make conditional and alternative orders;
- the power to refer questions arising in a proceeding to a special referee;
- the power to provide relief from time limits for doing anything in connection with a proceeding or the commencement of any proceeding;
- equipping the Tribunal with the capacity to undertake electronic hearings and proceedings without hearings (on the basis of documents);
- other claims of privilege.

Appeals

The Bill sets out an avenue to appeal:

- to the Full Court of the Industrial Relations Court, if the Tribunal was constituted for the purpose of making the order by the President or a Deputy President, whether with or without others; or
- to a single judge of the Industrial Relations Court in any other case.

The Bill then sets out what orders can be made by the Industrial Relations Court on appeal. Under the *Fair Work Act 1994*, a decision of the Full Court of the Industrial Relations Court can be appealed to the Supreme Court.

Staff of the Tribunal

It is proposed that the Tribunal have one principal registrar, supported by one or more other registrars (to be known as 'Deputy Registrars').

The functions of the Registrar will be:

- to assist the President of the Tribunal in the administration of the Tribunal;
- to be responsible for the registry and records of the Tribunal;
- to undertake responsibility for the day-to-day case management of the Tribunal;
- to constitute the Tribunal to the extent specified under this Act; and
- to fulfil other functions assigned to the Registrar by the President or under the rules of the Tribunal.

The Bill also confirms that there will be other staff of the Tribunal, consisting of persons employed in a public sector agency and made available to act as members of the staff of the Tribunal.

Miscellaneous

Finally, the Bill contains a number of miscellaneous measures relating to the operation and functions of the Tribunal and a regulation making power.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause contains definitions of words and phrases used in the Bill, including applicant, decision-maker, evidentiary material, legally qualified member and Tribunal.

4—Relevant Acts prevail

A “relevant Act” is defined in clause 3 to mean 'an Act which confers jurisdiction on the Tribunal'. There will be numerous relevant Acts that confer jurisdiction on the Tribunal. In the event of an inconsistency between a relevant Act and the proposed Act, the relevant Act prevails.

Part 2—South Australian Employment Tribunal

Division 1—Establishment of Tribunal

5—Establishment of Tribunal

This Bill establishes a new tribunal called the South Australian Employment Tribunal ("the Tribunal").

6—Jurisdiction of Tribunal

This clause provides that the Tribunal’s jurisdiction is as conferred by statute.

7—Tribunal to operate throughout State

This clause provides that the Tribunal is to facilitate access to its services throughout South Australia and may sit at any place. The President, after consultation with the Minister, will determine where Registries of the Tribunal will be located.

Division 2—Main objectives of Tribunal

8—Main objectives of Tribunal

This clause sets out the Tribunal’s primary objectives. These will enable the Tribunal to be an accessible ‘one-stop shop’ that can resolve disputes quickly, with minimal formality and costs and utilise Tribunal members who have the appropriate experience and expertise.

The objects of the Tribunal are—

- to promote the best principles of decision-making;

- to be accessible and be responsive to parties, especially people with special needs;
- to ensure that applications are processed and resolved as quickly as possible while achieving a just outcome;
- resolving disputes through high-quality processes and the use of mediation and other alternative dispute resolution procedures where appropriate;
- to keep costs to parties involved in proceedings before the Tribunal to a minimum;
- to use straight forward language and procedures;
- to act with as little formality and technicality as possible;
- to be flexible in the way in which the Tribunal conducts its business.

Division 3—Members of Tribunal

Subdivision 1—The members

9—The members

The proposed section provides for membership of the Tribunal. This clause specifies that members of the Tribunal are the President, the Deputy Presidents, magistrates who are designated as members, and conciliation officers.

Subdivision 2—The President

10—Appointment of President

This clause provides that the Senior Judge of the Industrial Relations Court is the President of the Tribunal.

11—President's functions generally

This clause outlines the functions of the President of the Tribunal.

12—Acting President

This clause provides for the appointment of a Deputy President as Acting President of the Tribunal if there is a vacancy in the office of President or the President is absent or unable to perform the functions of office.

Subdivision 3—The Deputy Presidents

13—Appointment of Deputy Presidents

This clause provides that a Judge of the Industrial Relations Court is a Deputy President of the Tribunal. The clause also provides for appointment of a person as a Deputy President of the Tribunal if the person is eligible for appointment as a Judge of the Industrial Relations Court.

14—Deputy President's functions generally

This clause outlines the functions of a Deputy President of the Tribunal.

Subdivision 4—Magistrates

15—Magistrates

Under this clause, magistrates may be designated by the Governor by proclamation as members of the Tribunal. Before the Governor makes such a proclamation, the Attorney-General must consult with the President of the Tribunal and the Chief Magistrate. Appointment as a magistrate of the Tribunal does not affect that person's tenure, status, rights or privileges as a magistrate.

Subdivision 5—Conciliation officers

16—Appointment of conciliation officers

The proposed section provides for the appointment of conciliation officers to the Tribunal. The Minister may appoint a panel of persons from time to time who will, at the Minister's request, recommend the selection criteria for conciliation officers. This panel may also, at the request of the Minister, assess candidates for appointment as conciliation officers. A person is eligible for appointment as a conciliation officer if he or she is a legal practitioner of at least 5 years standing or has extensive knowledge, expertise or experience relating to a class of matter for which functions may be exercised by the Tribunal. The Minister is required to consult with the President of the Tribunal before he or she makes a recommendation for the appointment of a conciliation officer. A conciliation officer will be appointed for a term of office not exceeding 5 years.

17—Conciliation officer ceasing to hold office and suspension

This clause contains standard provisions regarding the removal or suspension of conciliation officers of the Tribunal. A conciliation officer may be removed from office by the Governor (on the recommendation of the Minister) for misconduct, neglect of duty, incompetence or incapacity to carry out duties satisfactorily.

18—Supplementary conciliation officers

This clause allows the Minister, after consultation with the President of the Tribunal, to temporarily appoint a person to act as a supplementary senior member or a supplementary conciliation officer in relation to particular matters or for a specified period.

Division 4—Constitution of Tribunal and its decision-making processes

19—Constitution of Tribunal

This clause provides for the constitution of the Tribunal. Generally, the composition of the Tribunal is to be determined by the President. Under the proposed section, the Tribunal is to be constituted by not more than 3 members. Under the measure, the President of the Tribunal will have discretion to organise the Tribunal's business and regulate proceedings before the Tribunal.

20—Who presides at proceedings of Tribunal

This clause makes provision for who will preside over proceedings in the Tribunal where the Tribunal is constituted by 2 or more members.

21—Decision if 2 or more members constitute Tribunal

If the Tribunal is constituted by 2 or more members to resolve a question, it is resolved according to the majority opinion. If the opinion on how to resolve a question is split between members, it is resolved according to the opinion of the presiding member.

22—Determination of questions of law

This clause provides for referral of questions of law to Presidential members of the Tribunal.

Division 5—Related matters

23—Streams

Under the measure, the President of the Tribunal will be able to establish various streams or lists that reflect the areas of jurisdiction of the Tribunal.

24—Validity of acts of Tribunal

Acts or proceedings of the Tribunal are not invalidated by reason of a vacancy or defect in appointment.

25—Disclosure of interest by members of Tribunal

The proposed section provides procedures for disclosure where a member has a pecuniary interest or conflict of interest in proceedings before the Tribunal.

26—Delegation

This clause provides for delegations by the President of the Tribunal.

Part 3—Exercise of jurisdiction

27—General nature of proceedings

A matter that comes before the Tribunal will be dealt with as a review of the decision that constitutes the matter. The Tribunal will examine the decision of the decision-maker by way of rehearing in accordance with the proposed Act and the relevant Act. 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. A rehearing will include an examination of the evidence or material before the decision-maker and any further evidence or material that the Tribunal decides to admit.

28—Decision-maker must assist Tribunal

In review proceedings, the decision-maker for the reviewable decision must use his or her best endeavours to help the Tribunal so that it can make its decision on the review.

29—Effect of review proceedings on decision being reviewed

This clause provides that the commencement of a review does not affect the operation of the original decision unless provided for by the relevant Act, or the Tribunal or decision-maker makes an order for a stay of the decision.

30—Decision on review

The Tribunal may on a review affirm, vary, or set aside the decision of the original-decision maker. If the Tribunal sets-aside the decision it may substitute its own decision or send the matter back to the original decision-maker for reconsideration. Any decision made on reconsideration is open to review by the Tribunal. Once the Tribunal has decided to affirm, vary or substitute the original decision then this reviewed decision is to be regarded as, and given effect as, a decision of the original decision-maker. The reviewed decision has effect from the time of the original decision, unless the relevant Act allows or the Tribunal orders otherwise.

31—Tribunal may invite decision-maker to reconsider decision

At any stage the Tribunal may invite the original decision-maker to reconsider the decision the subject of review. On reconsideration, the decision-maker may affirm, vary, or set aside their decision and substitute a new decision.

Part 4—Principles, powers and procedures

Division 1—Principles governing hearings

32—Principles governing hearings

This clause provides the general principles that the Tribunal will uphold in the performance of its functions. The main principles are that the Tribunal:

- will act subject to the relevant Act;
- will conduct itself with minimal formality;
- is not bound by the rules of evidence;
- will act according to equity, good conscience and the substantial merits of the case;
- will act without regard to legal technicalities and forms.

Further, this clause makes clear that nothing in this measure affects any rule or principle of law relating to legal professional privilege, "without prejudice" privilege or public interest immunity.

Division 2—Evidentiary powers

33—Power to require person to give evidence or to provide evidentiary material

The proposed section provides powers for the Tribunal to order persons to appear before the Tribunal or to produce to the Tribunal documents or materials relevant to the Tribunal's proceedings. In addition it contains provisions relating to the giving of evidence on oath or affirmation. The clause also creates an offence relating to refusal to comply with the requirements of the proposed section, the maximum penalty being \$25 000 or imprisonment for 1 year.

34—Entry and inspection of property

Under this clause, a member of the Tribunal may enter any land or building, or authorise an officer of the Tribunal to enter any land or building, that the member considers relevant to a proceeding before the Tribunal. In addition, the clause creates an offence of obstructing a member or authorised officer of the Tribunal while exercising powers under the proposed section.

35—Expert reports

The proposed section enables the Tribunal to appoint experts to assist the Tribunal and to require the parties to proceedings to contribute to the costs of engaging such persons.

Division 3—Procedures

36—Practice and procedure generally

The Tribunal is to assist the parties by, for example, explaining procedures and enabling them the opportunity to be heard or otherwise have their submissions received. The Tribunal must ensure that all relevant material is available to it and may require documents to be served outside of the State. To the extent that the practice or procedure of the Tribunal is not prescribed under the proposed Act or a relevant Act, it is to be as determined by the Tribunal.

37—Directions for conduct of proceedings

This clause enables the Tribunal to give directions and do other things to enable the proceedings to be fair and expeditious. These directions can require the production of a document or material or provision of information.

38—Consolidating and splitting proceedings

The Tribunal may consolidate proceedings into one proceeding or require proceedings to be heard together. The Tribunal may also direct that proceedings commenced by 2 or more persons jointly be split into separate proceedings or that any aspect of proceedings be heard and determined separately.

39—More appropriate forum

This proposed section enables the Tribunal to strike out a proceeding or part of a proceeding if another tribunal, court or person can more appropriately deal with the matter.

40—Dismissing proceedings on withdrawal or for want of prosecution

This clause sets out provisions relating to the ability of a party to withdraw proceedings. The Tribunal will also have power to dismiss or strike out proceedings for want of jurisdiction.

41—Frivolous, vexatious or improper proceedings

This clause allows the Tribunal to make an order that a proceeding is dismissed or struck out, if the Tribunal considers that the proceeding is frivolous, vexatious, misconceived or lacking in substance, or involves a trivial matter or amount, or is being used for an improper purpose. If a proceeding is dismissed or struck out under

the proposed section, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of a Presidential member.

42—Proceedings being conducted to cause disadvantage

This clause enables the Tribunal to dismiss or strike out proceedings if a party is conducting proceedings in a way which unnecessarily disadvantages another party to the proceedings. A list of examples of such conduct is provided. This can be done on the Tribunal's own initiative or following an application by a party to the proceedings.

Division 4—Conferences, mediation and settlement

43—Conferences

The proposed section empowers the Tribunal to hold compulsory private conferences to identify and clarify issues and promote settlement of disputes.

44—Mediation

This clause enables the Tribunal to refer a matter, with or without the parties' consent, for private mediation by a person approved by the President to resolve the matters in dispute.

45—Settling proceedings

The proposed section allows the Tribunal to make an order giving effect to a written agreement between the parties to a dispute to settle proceedings where the Tribunal would otherwise have power to make a decision in accordance with that settlement. A settlement under the proposed section must not be inconsistent with a relevant Act.

Division 5—Parties

46—Parties

This clause outlines that parties to the Tribunal's proceedings include the applicant; decision-makers in review proceedings; persons joined as a party by order of the Tribunal; intervener and other persons specified in legislation. The decision-maker is to be described by his or her official description, not his or her personal name.

47—Person may be joined as party

The proposed section enables the Tribunal, in specified circumstances, to join persons as parties to proceedings. The Tribunal may make an order under the proposed section on the application of any person.

48—Intervening

The clause indicates that the Attorney-General may intervene at any time in the Tribunal's proceedings. In addition, any other person may be given leave to intervene if the Tribunal thinks fit.

Division 6—Representation

49—Representation

The proposed section enables parties to the Tribunal's proceedings to appear in person and represent themselves or be represented by a lawyer. With leave of the Tribunal, parties may be represented by persons who are not lawyers. Unless specified by the Tribunal, a party appearing may be assisted by another person as a friend. The clause also makes it clear that a legal practitioner who has been suspended, struck off or would be acting contrary to disciplinary proceedings is not permitted to act as a representative in proceedings before the Tribunal.

Division 7—Costs

50—Costs

This clause makes provision for costs liability between parties to the proceedings in the Tribunal. In general, parties are to bear their own costs, unless there are reasons for the Tribunal to order otherwise.

51—Costs—related matters

This clause provides that the power of the Tribunal to make an order for the payment by a party of the costs of another party may include the power to make an order for the payment of an amount to compensate the other party for any expenses or loss resulting from the proceedings. The rules of the Tribunal may deal with the effect of certain offers to settle (and any response to such an offer) on an order for the payment of the costs of another party.

Division 8—Other procedural and related provisions

52—Sittings

The Tribunal will sit at such times and places as the President of the Tribunal may direct.

53—Hearings in public

This clause provides that hearings are to be public unless the Tribunal specifies (for reasons outlined in the proposed Act) that the hearing or part of the hearing is to be private. In exercising its powers, the Tribunal can also place restrictions on the publication of all or any part of proceedings where the Tribunal considers it is necessary to do so.

54—Preserving subject matter of proceedings

Under this clause, the Tribunal may make orders it considers necessary to preserve the subject matter of proceedings.

55—Security as to costs etc

This clause allows the Tribunal to order a party to proceedings to give security for costs or an undertaking in relation to payment of costs. An order under the proposed

section may be made by a legally qualified member or a non-legally qualified member with the concurrence of a legally qualified member.

56—Interlocutory orders

The proposed section gives the Tribunal the power to make interlocutory orders.

57—Conditional, alternative and ancillary orders and directions

The Tribunal may make orders and give directions on conditions the Tribunal considers appropriate. The Tribunal will, by ancillary order, be able to provide that a decision of the Tribunal is to be implemented by a third party.

58—Special referees

The proposed section enables the Tribunal to refer questions to a special referee for the referee's decision or opinion and to require parties to contribute to the costs.

59—Relief from time limits

The rules may provide for the Tribunal to extend or abridge a time limit for doing anything in connection with a proceeding.

60—Electronic hearings and proceedings without hearings

This clause enables the Tribunal to have proceedings using telephones, video links or other communication systems. It also allows the Tribunal to conduct proceedings solely on the basis of documents without need for a hearing.

61—Completion of part-heard matters

Under the proposed section, persons who no longer hold office as members of the Tribunal may continue to act in the relevant office for the purposes of completing part-heard proceedings (other than where the member has had his or her appointment revoked or has been removed from office).

62—Other claims of privilege

A person may not be compelled to answer a question or produce a document or other material in proceedings before the Tribunal if the person could not be compelled to do so if the proceedings were before the Supreme Court.

Part 5—Appeals

Division 1—Appeals

63—Appeals to Industrial Relations Court

Under the proposed section, appeals from decisions of the Tribunal lie to the Industrial Relations Court. This clause outlines the procedure in relation to appeals. Generally, the Industrial Relations Court may, for example, affirm, vary or set-aside the Tribunal's decision or send the matter back to the Tribunal for reconsideration. The clause also provides that the regulations may prescribe scales of costs that are payable in respect of proceedings before the Industrial Relations Court on an appeal under this clause.

Division 2—Related matters

64—Effect of appeal on decision

The proposed section enables the Tribunal or a court to stay the operation of a Tribunal decision while the court decides whether to grant leave to review or appeal and, if so, while it decides the review or appeal. If the Tribunal or court does not make such an order, the review or appeal does not affect the Tribunal's decision or prevent implementation of that decision.

65—Reservation of questions of law

This clause enables a Presidential member of the Tribunal to refer any question of law arising in proceedings for determination by the Full Court of the Supreme Court.

Part 6—Staff

Division 1—Registrars

66—Registrars

The proposed section provides that there will be a principal registrar of the Tribunal (to be known as the Registrar), as well as 1 or more Deputy Registrars.

67—Functions of registrars

This clause outlines the functions of the Registrar and Deputy Registrars of the Tribunal.

68—Delegation

This clause provides for delegations by the Registrar of the Tribunal.

Division 2—Other staff of Tribunal

69—Other staff of Tribunal

This clause makes provision for the Tribunal to use persons employed in a public sector agency who are made available to act as staff of the Tribunal.

Division 3—Use of services or staff

70—Use of services or staff

This clause allows the Tribunal to use the services, facilities or staff of a government department, agency or instrumentality, the Courts Administration Council or another tribunal or court.

Part 7—Miscellaneous

71—Immunities

This clause provides for the protection of members of the Tribunal, and other persons, who must perform functions under the proposed Act or who are parties, legal representatives or witnesses.

72—Protection from liability for torts

A member of the Tribunal, or a member of the staff or an officer of the Tribunal, will be protected from liability in tort for anything done in the performance, or purported performance, of a function under the proposed Act or a relevant Act.

73—Protection from compliance with Act

No liability will attach to a person for compliance, or purported compliance, in good faith, with a requirement under the proposed Act.

74—Alternative orders and relief

This clause empowers the Tribunal to grant any form of relief that it considers appropriate, despite the fact that another form of relief may be sought by an applicant.

75—Power to cure irregularities

The Tribunal may, under this clause, cure an irregularity by making an order for a requirement of the Act to be dispensed with to the extent necessary for the purpose.

76—Correcting mistakes

This clause allows the Tribunal to correct a decision or statement of reasons so as to rectify, for example, clerical mistakes or defects of form.

77—Tribunal may review its decision if person was absent

Under the proposed section, if the Tribunal makes a decision in respect of a person who did not appear and was not represented at a relevant hearing before the Tribunal, the person may apply to the Tribunal for a review of the decision. The Tribunal must be satisfied that the applicant for the review had a reasonable excuse for not attending or being represented at the relevant hearing. The Tribunal may, on such a review, revoke or vary its decision. As far as is practicable, the Tribunal should be constituted by the same members who made the original decision.

78—Tribunal may authorise person to take evidence

The Tribunal will be able to authorise a person (whether or not a member of the Tribunal) to take evidence on behalf of the Tribunal. The Tribunal may authorise evidence to be taken under this clause outside the State.

79—Miscellaneous provisions relating to legal process and service

This clause is a standard provision setting out how notices and documents may be served.

80—Proof of decisions and orders of Tribunal

Generally, an apparently genuine document purporting to be a copy of a decision or order of the Tribunal and certified as such by a registrar will be accepted in any legal proceedings as a true copy of a decision or order of the Tribunal.

81—Enforcement of decisions and orders of Tribunal

If the Tribunal makes a monetary order, the amount specified may be recovered in an appropriate court by a person recognised by the regulations as if it were a debt. If a person contravenes or fails to comply with some other order of the Tribunal, the person is guilty of an offence.

82—Accessibility of evidence

This clause outlines the procedures that will apply if a member of the public seeks to inspect or obtain documentary material.

83—Costs of proceedings

The Tribunal will be able, in limited circumstances, to order that a party pay for all or a part of proceedings before the Tribunal.

84—Annual report

The President of the Tribunal will prepare an annual report, which will be tabled in both Houses of the Parliament.

85—Additional reports

The Minister will also be able to request the President of the Tribunal to provide a report on a matter relevant to the administration of the Tribunal.

86—Disrupting proceedings of Tribunal

A person will be guilty of an offence if, at a place where Tribunal proceedings are being conducted, he or she wilfully interrupts Tribunal proceedings, behaves in an offensive or disorderly manner or uses offensive language.

87—Rules

The proposed section enables the President and a Deputy President of the Tribunal to make rules for the Tribunal.

88—Regulations

This clause makes provision for the Governor to make regulations for the purposes of the measure.