



New South Wales

Administrative Decisions Tribunal Legislation Amendment Act 1998 No 48

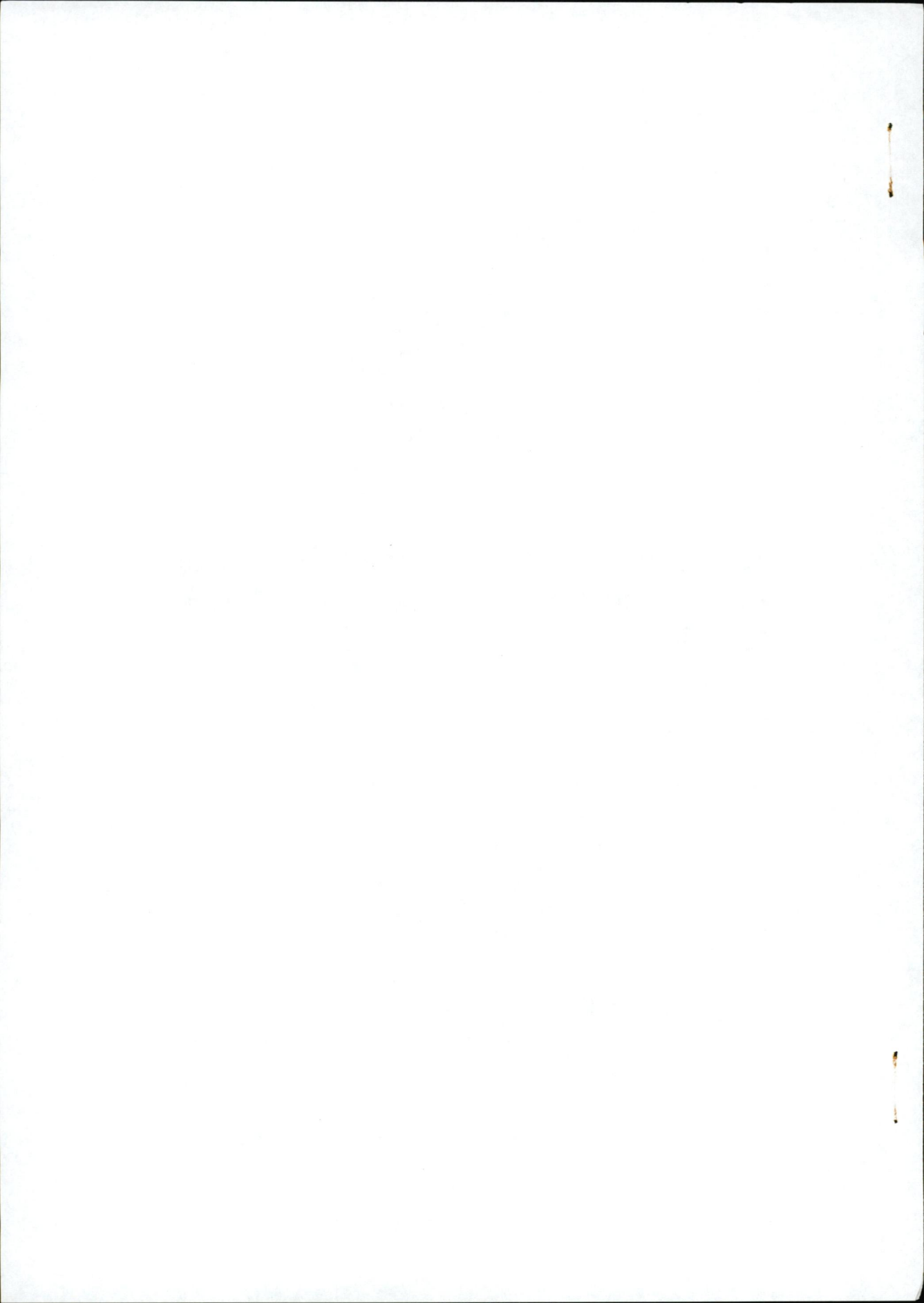
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New South Wales

Administrative Decisions Tribunal Legislation Amendment Act 1998 No 48

Act No 48, 1998

An Act to amend the *Administrative Decisions Tribunal Act 1997* to make further provision with respect to the constitution and functions of the Administrative Decisions Tribunal; to amend various Acts and Regulations to confer jurisdiction on the Tribunal; and for other purposes. [Assented to 29 June 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Administrative Decisions Tribunal Legislation Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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

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

4 Amendment of other Acts and Regulations

Each Act and Regulation specified in Schedule 2 is amended as set out in that Schedule.

5 Explanatory notes

The matter appearing under the heading "Explanatory note" in any of the Schedules does not form part of this Act.

Schedule 1 Amendments to the Administrative Decisions Tribunal Act 1997

(Section 3)

[1] Section 14A

Insert after section 14:

14A Certain members of state tribunals acting as members of Tribunal

- (1) A state tribunal member is taken to have been duly appointed to act as a member of the Tribunal in relation to such matters within the jurisdiction of the Tribunal as are prescribed by the regulations for that class of state tribunal member.
- (2) Any person who is appointed to act as a member by or under this section:
 - (a) holds office as a member of a class (whether judicial or non-judicial) specified in the regulations, and
 - (b) has and may exercise all the functions of a member while acting as a member, and
 - (c) may continue to exercise his or her functions as a holder of office as a member of another state tribunal.
- (3) A state tribunal member who has acted as a member of the Tribunal may attend the sittings of the Tribunal for the purpose of giving reasons for a decision in, or otherwise completing, any proceedings that have been heard by the Tribunal (or were otherwise the subject of deliberations by the Tribunal) while the officer acted as a member, even if the person has ceased to act as a member.
- (4) In this clause:

state tribunal member means a member of any tribunal (other than the Tribunal) established by an Act of the Parliament of New South Wales.

Explanatory note

Item [1] inserts a new section 14A in the Act to enable members of other tribunals to be appointed to act as members of the Administrative Decisions Tribunal.

[2] Section 17 Qualifications for membership

Omit section 17 (1). Insert instead:

(1) **The President**

A person is eligible to be appointed as the President only if the person is a Judge of the District Court.

Explanatory note

Item [2] amends section 17 of the Act to require the President of the Tribunal to be a District Court Judge. At present, the Act provides that a Judicial Member of the Industrial Relations Commission or a Judge of the Land and Environment Court or Supreme Court is also qualified to be appointed as President.

[3] Section 17 (4)

Insert after section 17 (3):

(4) **Definition**

In this section:

legal practitioner includes a legal practitioner within the meaning of the *Legal Profession Act 1987*.

Explanatory note

Item [3] amends section 17 of the Act to make it clear that a reference to a legal practitioner includes (but is not limited to) a legal practitioner within the meaning of the *Legal Profession Act 1987*.

[4] Schedule 2 Composition and functions of Divisions

Insert in appropriate alphabetical order in clause 2 (1) of Part 4:

Local Government Act 1993

[5] Schedule 2, Part 4

Insert after clause 5 of Part 4:

5A Local Government Act 1993 (Original decisions)

Applications made under section 329 of the *Local Government Act 1993* are to be determined by 3 Division members of the General Division of the Tribunal.

Explanatory note

Items [4] and [5] amend Schedule 2 to the Act to provide for the allocation of matters under section 329 of the *Local Government Act 1993* to the General Division and to require such matters to be determined by 3 Division members. The amendments are consequential on the amendments made by Schedule 2.10.

[6] Schedule 3 Provisions relating to members of Tribunal

Omit “unless the President ceases to hold that office by reason of being appointed to another of the judicial offices referred to in that subsection” from clause 7 (4) (e).

Explanatory note

Item [6] makes an amendment to Schedule 3 to the Act that is consequential on the amendment made by item [2].

[7] Schedule 3, clause 12A

Insert after clause 12:

12A Provisions where President holding office as member of another tribunal

- (1) Nothing in any Act or other law operates to disqualify:
 - (a) a state tribunal member from also being appointed and holding office as President of the Tribunal, or
 - (b) the President of the Tribunal from also being appointed and holding office as a state tribunal member.
- (2) However, if the President of the Tribunal is appointed to or holds office as a state tribunal member, the latter office is taken to be a part-time office only despite any provision made by or under any Act or other law:
 - (a) requiring the holder of the office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office.
- (3) If the President of the Tribunal also holds office as a state tribunal member, the President is not entitled to any remuneration payable in respect of that office by or under any Act. However, nothing in this clause affects any other right of the President to remuneration that is conferred or recognised by this Act.

(4) In this clause:

state tribunal member means a member of any tribunal (other than the Tribunal) established by an Act of the Parliament of New South Wales.

Explanatory note

Item [7] inserts a new clause 12A in Schedule 3 to the Act to make it clear that the President of the Tribunal may hold office as a member of another tribunal at the same time as he or she holds office as the President of the Tribunal.

[8] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Administrative Decisions Tribunal Legislation
Amendment Act 1998*

Explanatory note

Item [8] amends clause 1 of Schedule 5 to the Act to enable regulations of a savings or transitional nature to be made that are consequent on the enactment of the proposed Act.

[9] Schedule 5, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Administrative Decisions Tribunal
Legislation Amendment Act 1998**

18 Definitions

In this Part:

ADT means the Administrative Decisions Tribunal established by this Act.

amending Act means the *Administrative Decisions Tribunal Legislation Amendment Act 1998*.

19 Pending court proceedings

- (1) This clause applies to proceedings before a court that:
- (a) were instituted before the commencement of any relevant amendment, and

- (b) have not been finally determined by the court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if this Act and the amending Act had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had this Act and the amending Act not been enacted continue to apply to the proceedings as if neither Act had been enacted.
- (4) In this clause:

court includes any tribunal, person or body authorised to determine any appeal.

relevant amendment means an amendment made to another Act by the amending Act the effect of which is to confer jurisdiction on the ADT to determine any matter that, immediately before the commencement of that amendment, could have been determined by the court concerned.

20 Regulations made under substantially re-enacted provisions continue in force

- (1) Subject to this clause, a regulation in force immediately before the commencement of a relevant amendment to the provision under which the regulation was made continues to have effect as a regulation made under the provision (as amended).
- (2) Any reference in a regulation continued in force under subclause (1):
 - (a) to a court or tribunal from which jurisdiction is to be transferred to the ADT is to be read as a reference to the ADT, and
 - (b) to an appeal, complaint or other application to the court or tribunal is to be read as a reference to an application to the ADT.

- (3) Nothing in this clause prevents the future amendment or repeal of any such regulation.
- (4) In this clause, *relevant amendment* means an amendment made to any provision of another Act by the amending Act the effect of which is:
 - (a) to substantially re-enact the provision of the other Act, or
 - (b) to otherwise amend the provision by removing references to any court or tribunal and replacing them with references to the ADT.

Explanatory note

Item [9] amends Schedule 5 to the Act to make provision in respect of certain savings and transitional matters consequent on the enactment of the proposed Act.

Schedule 2 Amendments conferring other jurisdiction on Tribunal

(Section 4)

2.1 Anti-Discrimination Act 1977 No 48 (as amended by the Administrative Decisions Legislation Amendment Act 1997 No 77)

[1] Section 90 President may decline to entertain complaint

Insert after section 90 (2):

- (3) If the President declines under subsection (1) to entertain a complaint for any reason other than that the complaint is vexatious, misconceived or lacking in substance, the complainant may apply to the Tribunal for a review of the President's decision.

[2] Section 126A Exemption for special needs programs and activities

Insert after section 126A (5):

- (6) A person who is in charge of a program or activity may apply to the Tribunal for a review of a decision of the Minister under this section concerning the certification of the program or activity.

Explanatory note

Item [1] amends section 90 of the *Anti-Discrimination Act 1977* to enable a complainant to seek a review by the Administrative Decisions Tribunal of certain decisions of the President of the Anti-Discrimination Board declining to entertain a complaint.

Item [2] amends section 126A of the Act to enable the Tribunal to review decisions of the Minister concerning the certification of special needs programs and activities on the application of a person in charge of the program or activity.

2.2 Architects Act 1921 No 8

[1] Section 16 Refusal to register

Omit the section.

[2] Section 17 Removal from register

Omit section 17 (10)–(13).

[3] Section 20

Insert after section 19:

20 Reviews of certain decisions by the Administrative Decisions Tribunal

- (1) Subject to subsection (2), any person whose application to be enrolled in a division of the register has been refused by the board may apply to the Administrative Decisions Tribunal for a review of the refusal.
- (2) A person is not entitled to apply to the Tribunal for a review of a refusal of an application to the board for enrolment if the application to the board was refused on the ground that the person had not passed an examination referred to in section 13 (1) (a) or (b) or (2) (a) (ii) or (b).
- (3) A person may apply to the Tribunal for a review of any of the following decisions made under section 17 by the board:
 - (a) a decision removing the name of the person from the register or the division of chartered architects,
 - (b) a decision reprimanding or fining the person.

Explanatory note

The amendments to the *Architects Act 1921* transfer jurisdiction from the District Court to the Administrative Decisions Tribunal to review certain registration decisions of the Board of Architects of New South Wales.

2.3 Boxing and Wrestling Control Act 1986 No 11

Section 28 Applications may be made to Administrative Decisions Tribunal for review of decisions (as inserted by the Administrative Decisions Legislation Amendment Act 1997 No 77)

Omit section 28 (e). Insert instead:

- (e) a decision to refuse the person's application for registration or renewal of registration as a boxer where the refusal is on the ground that the person is not a fit and proper person,
- (f) a decision under section 20 to refuse to register the person as an industry participant,
- (g) a decision under section 23 to cancel or suspend the person's registration as an industry participant,
- (h) a decision under section 25 to refuse to renew the person's registration as an industry participant,
- (i) a decision under section 43 to refuse to issue a permit to the person in respect of a boxing contest,
- (j) a decision under section 51 to give a certificate that the person is not medically fit to engage in a proposed boxing contest,
- (k) a decision under section 62C to refuse to issue a permit to the person to hold or promote a wrestling contest or an amateur boxing contest.

Explanatory note

The amendment to the *Boxing and Wrestling Control Act 1986* confers on the Administrative Decisions Tribunal jurisdiction to review certain decisions under the Act concerning boxers, industry participants and boxing promoters in addition to the jurisdiction to be conferred on it by the *Administrative Decisions Legislation Amendment Act 1997*.

2.4 Community Justice Centres Act 1983 No 127

Section 11 Mediators

Insert after section 11 (2):

- (3) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Minister under this section:
- (a) a decision refusing the person accreditation as a mediator,
 - (b) a decision revoking the accreditation of the person as a mediator.

Explanatory note

The amendment to the *Community Justice Centres Act 1983* enables the Administrative Decisions Tribunal to review decisions of the Minister refusing or revoking the accreditation of a person as a mediator for Community Justice Centres.

2.5 Conveyancers Licensing Act 1995 No 57

Part 2, Division 3

Omit the Division. Insert instead:

Division 3 Reviews of decisions

14 Reviews by the Administrative Decisions Tribunal

A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a decision of the Director-General refusing to grant a licence to the person,
- (b) a decision of the Director-General to impose a condition on a licence of the person,

- (c) a decision of the Director-General suspending or cancelling a licence of the person.

Explanatory note

The amendment to the *Conveyancers Licensing Act 1995* enables the Administrative Decisions Tribunal to review decisions of the Director-General of the Department of Fair Trading concerning the licensing of conveyancers under that Act. Presently, such decisions are appealable to the Commercial Tribunal.

2.6 Firearms Act 1996 No 46

[1] Section 75 Right to seek review from Administrative Decisions Tribunal (as inserted by the Administrative Decisions Legislation Amendment Act 1997 No 77)

Insert after section 75 (1) (f):

- (g) a decision made under the regulations concerning the person that belongs to a class of decisions prescribed by the regulations for the purposes of this paragraph.

[2] Section 75 (2)

Insert after section 75 (1):

- (2) Despite subsection (1), a regulation referred to in subsection (1) (g) may limit the class of persons who may make an application for a review of a decision referred to in that paragraph.
- (3) A regulation referred to in subsection (1) (g) cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

The amendments made to the *Firearms Act 1996* ensure that the regulations under that Act may be made prescribing classes of decisions made under the regulations that can be the subject of an application to the Administrative Decisions Tribunal under section 75 of the Act.

2.7 Firearms (General) Regulation 1997

[1] Clause 75 Appeals concerning shooting range approvals

Omit the clause.

[2] Clause 83 Appeals concerning club approvals

Omit the clause.

[3] Clause 106 Appeals

Omit the clause.

[4] Clause 117

Insert after clause 116:

117 Prescribed decisions for purposes of applications to Administrative Decisions Tribunal under section 75 (1) (g)

- (1) The following decisions are prescribed for the purposes of section 75 (1) (g) of the Act:
 - (a) a decision of the Commissioner under clause 32 refusing an application to change the premises to which a firearms dealer licence relates,
 - (b) a decision of the Commissioner under Part 8 refusing or failing to grant an approval under that Part,
 - (c) a decision of the Commissioner under Part 8 imposing conditions on an approval under that Part (or varying any such condition),
 - (d) a decision of the Commissioner under Part 8 revoking an approval under that Part,
 - (e) a decision of the Commissioner under Part 9 refusing or failing to grant an approval under that Part,

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- (f) a decision of the Commissioner under Part 9 imposing conditions on an approval under that Part.
- (2) The persons who may make an application to the Administrative Decisions Tribunal under section 75 (1) (g) of the Act in relation to the decisions referred to in subclause (1) (e) and (f) are limited to a secretary or other relevant office holder of the club concerned.

Explanatory note

Item [4] of the amendments to the *Firearms (General) Regulation 1997* prescribes certain decisions made under the Regulation that may be the subject of an application to the Administrative Decisions Tribunal under section 75 of the *Firearms Act 1996*. In particular, certain decisions concerning approvals under Parts 8 and 9 that are presently appealable to the Local Court are to be reviewable by the Tribunal instead.

Item [3] omits a clause that will be obsolete when section 75 of the *Firearms Act 1996* is replaced by the *Administrative Decisions Legislation Amendment Act 1997*.

The other items are consequential on the amendment made by item [4].

2.8 Forestry Act 1916 No 55

Section 40

Insert after section 39:

40 Reviews of certain decisions under Act by Administrative Decisions Tribunal

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:
- (a) a decision of the commission refusing to issue the person with a sawmill licence under section 28 (3),
 - (b) a decision of the commission refusing to grant or renew a hunting licence to the person under section 32B (3),

- (c) a decision of the commission refusing to grant or renew a special purposes permit to the person under section 32F (3),
 - (d) a decision of the commission under section 35 to suspend or cancel any licence or permit of the person referred to in the preceding paragraphs,
 - (e) a decision made under the regulations that belongs to a class of decisions prescribed by the regulations for the purposes of this paragraph.
- (2) Despite subsection (1), a regulation referred to in subsection (1) (e) may limit the class of persons who may make an application for a review of a decision referred to in that paragraph.
- (3) A regulation referred to in subsection (1) (e) cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

The amendment to the *Forestry Act 1916* enables aggrieved persons to apply to the Administrative Decisions Tribunal for a review of certain decisions under the Act or the regulations under the Act.

2.9 Home Building Act 1989 No 147

[1] Section 20 Issue of licences

Omit section 20 (5). Insert instead:

- (5) A decision of the Director-General relating to determining standards or other requirements under subsection (2) cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.

[2] Section 25 Issue of certificates

Omit section 25 (4). Insert instead:

- (4) A decision of the Director-General relating to:
- (a) the determining of qualifications or other requirements under subsection (2), or
 - (b) the setting of standards or selecting of examinations or tests under subsection (3),

cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.

[3] Section 41 Effect of certain applications for renewal or restoration

Omit section 41 (2). Insert instead:

- (2) Except for the purposes of any proceedings for an offence or relating to a complaint under Part 4, an authority that is the subject of an application for restoration (a *restoration application*) that has been made in accordance with this Division is to be taken to have continued in force from the time the authority expired until:

- (a) the authority is renewed by the Director-General, or
- (b) if the Director-General rejects the application and:
 - (i) no application for a review of the rejection is lodged with the Administrative Decisions Tribunal—30 days have expired after the restoration application is rejected, or
 - (ii) an application for the review of the rejection is lodged with the Administrative Decisions Tribunal—the application is decided or withdrawn, or

(c) the restoration application is withdrawn, whichever occurs first.

[4] Section 80 Enforcement of cash penalties and payment of costs

Omit section 80 (3). Insert instead:

- (3) The Director-General's failure to enter into an agreement under this section cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.

[5] Part 4A

Insert after Part 4:

Part 4A Reviews by Administrative Decisions Tribunal

83A Definitions

In this Part:

authority means:

- (a) a licence (whether or not an endorsed licence), or
- (b) a supervisor or registration certificate, or
- (c) an owner-builder permit, or
- (d) a permit under the regulations.

Tribunal means the Administrative Decisions Tribunal.

83B Reviews by the Tribunal

- (1) An applicant for the issue or alteration of an authority aggrieved by any decision of the Director-General relating to the application may apply to the Tribunal for a review of the decision.
- (2) The holder of an authority aggrieved by any decision of the Director-General to alter an authority or to cancel a provisional authority may apply to the Tribunal for a review of the decision.

- (3) A person aggrieved by any determination or order made by the Director-General under Part 4 may apply to the Tribunal for a review of the determination or order.
- (4) For the purposes of this section, the Director-General is to be taken to have refused any application that has not been withdrawn if the Director-General has not served on the applicant notice of the decision on the application:
 - (a) within 40 days of its being lodged at an office of the Department of Fair Trading, or
 - (b) if the Director-General and the applicant agree on a longer period—within the longer period after its being so lodged.

[6] Section 84 Definitions

Omit the definition of *authority*.

[7] Sections 85 Right of appeal

Omit section 85 (a)–(c).

Explanatory note

The amendments to the *Home Building Act 1989* ensure that certain decisions of the Director-General of the Department of Fair Trading that are presently appealable to the Commercial Tribunal may be reviewed instead by the Administrative Decisions Tribunal.

2.10 Local Government Act 1993 No 30

Sections 329–331

Omit the sections. Insert instead:

329 Can the holder of a civic office be dismissed?

- (1) Any person may apply to the Administrative Decisions Tribunal for an order that a person be dismissed from civic office.

- (2) On any such application, the Tribunal may order the dismissal of a person from civic office:
 - (a) if there has been any irregularity in the manner in which the person has been elected or appointed to that office, or
 - (b) if the person is disqualified from holding civic office.
- (3) Proceedings based on the ground that there has been an irregularity in the manner in which a person has been elected or appointed to civic office may not be commenced more than 3 months after the date of the person's election or appointment to that office.
- (4) If the proceedings are based on the ground that a person is disqualified from holding civic office, the Tribunal may refuse to order the dismissal of the person from that office if it is satisfied:
 - (a) that the facts and circumstances giving rise to the disqualification are of a trifling character, and
 - (b) that the acts which gave rise to that disqualification were done in good faith and without knowledge that the person would incur disqualification by doing those acts.
- (5) Subsection (4) does not apply to a person who is disqualified from holding civic office by a decision of the Pecuniary Interest Tribunal under section 482.
- (6) The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings commenced by an application made under this Part.

330 Appeals to Supreme Court against dismissal order

- (1) A person against whom an order of dismissal is made by the Tribunal may appeal against the order, on a question of law, to the Supreme Court.
- (2) Such an appeal may not be made more than 28 days after the date on which the order of dismissal is made.

331 When does an order of dismissal take effect?

An order of dismissal made by the Tribunal takes effect:

- (a) if no appeal to the Supreme Court is made against the order, at the end of the period during which such an appeal may be made, or
- (b) if such an appeal is made within that period and the order is confirmed on appeal, when the order is confirmed, or
- (c) if, within that period, the person against whom the order is made serves on the general manager of the council concerned written notice of intention not to appeal against the order, when the notice is lodged.

Explanatory note

The amendment to the *Local Government Act 1993* enables the Administrative Decisions Tribunal to make orders for the dismissal of a person from civic office. Presently, such orders may only be made by a Local Court, the District Court or the Supreme Court.

2.11 Motor Accidents Act 1988 No 102

Section 109A

Insert after section 109:

109A Reviews of licensing decisions by Administrative Decisions Tribunal

- (1) A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Authority under this Division:
 - (a) a decision to refuse the person's application for a licence,
 - (b) a decision to impose conditions on the person's licence,
 - (c) a decision to refuse to grant approval to the person to assign a licence,

- (d) a decision to suspend the person's licence,
 - (e) a decision to cancel the person's licence.
- (2) Despite the provisions of Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*, the Tribunal may not order that a decision referred to in subsection (1) be stayed pending the determination of an application for its review.

Explanatory note

The amendment made to the *Motor Accidents Act 1988* inserts a new section 109A into the Act to enable the Administrative Decisions Tribunal to review certain decisions concerning the licensing of insurers under that Act that presently are not appealable to any other person or body.

2.12 Motor Dealers Act 1974 No 52

Section 20F

Omit the section. Insert instead:

20F Reviews by the Administrative Decisions Tribunal

If the Director-General:

- (a) refuses to grant an application for, or suspends or cancels, a licence, or
- (b) imposes a condition or restriction under section 13, or
- (c) imposes a disqualification referred to in section 20E (1) (d),

the applicant for the licence, the person who held the licence or the person disqualified (as the case may be) may apply to the Administrative Decisions Tribunal for a review of the decision of the Director-General.

Explanatory note

The amendment made to the *Motor Dealers Act 1974* enables the Administrative Decisions Tribunal to review certain decisions concerning licensing made by the Director-General of the Department of Fair Trading. Presently, such decisions are appealable to the Commercial Tribunal.

2.13 Motor Vehicle Sports (Public Safety) Act 1985 No 24

[1] Section 3 Definitions

Insert in alphabetical order:

Tribunal means the Administrative Decisions Tribunal.

[2] Part 3

Insert after Part 2:

Part 3 Reviews by the Tribunal

9 Applications for reviews by the Tribunal

A person may apply to the Tribunal for a review of any of the following decisions:

- (a) a decision of the Minister refusing to issue a licence or permit to the person,
- (b) a decision of the Minister imposing conditions on the person's licence or permit,
- (c) a decision of the Minister cancelling, varying or suspending the person's licence or permit.

Explanatory note

The amendments to the *Motor Vehicle Sports (Public Safety) Act 1985* insert a new Part 3 into the Act to enable the Administrative Decisions Tribunal to review certain licensing and permit decisions of the Minister under the Act that are presently not appealable to a court or other body.

2.14 Mount Panorama Motor Racing Act 1989 No 108

[1] Section 3 Definitions

Insert in alphabetical order:

Tribunal means the Administrative Decisions Tribunal.

[2] Part 2A

Insert after Part 2:

Part 2A Reviews by the Tribunal

8A Applications for reviews by the Tribunal

A person may apply to the Tribunal for a review of any of the following decisions:

- (a) a decision of the Minister refusing to issue a permit to the person,
- (b) a decision of the Minister imposing conditions on the person's permit,
- (c) a decision of the Minister cancelling, varying or suspending the person's permit.

Explanatory note

The amendments to the *Mount Panorama Motor Racing Act 1989* insert a new Part 2A into the Act to enable the Administrative Decisions Tribunal to review certain permit decisions of the Minister under the Act that are presently not appealable to a court or other body.

2.15 Occupational Health and Safety Act 1983 No 20

Section 46A

Insert after section 46:

46A Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal

- (1) A person aggrieved by a decision made under the regulations that belongs to a class of decisions prescribed by the regulations for the purposes of this subsection may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) Despite subsection (1), a regulation referred to in that subsection may limit the class of persons who may make an application for a review of a decision referred to in that subsection.

- (3) A regulation referred to in subsection (1) cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

The amendment to the *Occupational Health and Safety Act 1983* enables the regulations made under the Act to provide for applications to be made to the Administrative Decisions Tribunal for reviews of certain kinds of decisions made under the regulations. However, it is a precondition to the making of any such regulation that the Minister administering the *Administrative Decisions Tribunal Act 1997* concurs in the making of the regulation.

2.16 Pawnbrokers and Second-hand Dealers Act 1996 No 13

[1] Section 8 Qualifications for obtaining licence

Omit section 8 (4). Insert instead:

- (4) On an application under section 39 for a review of a decision of the Director-General refusing to grant a licence to a person because the person is disqualified under subsection (1) (d) or (2) (b), the Administrative Decisions Tribunal may determine that the fact that the person has committed the offence concerned should be ignored on one or more of the following grounds:
- (a) the triviality of the acts or omissions giving rise to the offence,
 - (b) the time that has passed since the offence was committed,
 - (c) the subsequent good behaviour of the offender,
 - (d) any other ground prescribed by the regulations.

[2] Section 10 Grant and renewal of licences

Omit "appeal rights" from section 10 (4).
Insert instead "review rights".

[3] Section 39

Omit the section. Insert instead:

39 Reviews of decisions of Director-General

- (1) An applicant for a licence or for renewal of a licence whose application has been refused may apply to the Administrative Decisions Tribunal for a review of the refusal.
- (2) A licensee whose licence has been revoked or suspended by the Director-General, or on whose licence a condition has been imposed (whether on grant or renewal of the licence or otherwise) may apply to the Administrative Decisions Tribunal for a review of the revocation, suspension or imposition.

Explanatory note

The amendments to the *Pawnbrokers and Second-hand Dealers Act 1996* ensure that certain licensing decisions of the Director-General of the Department of Fair Trading that are presently appealable to the Commercial Tribunal will be reviewable instead by the Administrative Decisions Tribunal.

2.17 Police Service Act 1990 No 47

Section 211C

Insert after section 211B:

**211C Reviews of certain decisions under Act by
Administrative Decisions Tribunal**

A person aggrieved by a decision of the Commissioner under section 208 (1) as to the amount payable by the person under that subsection where no such amount is prescribed by the regulations may apply to the Administrative Decisions Tribunal for a review of the decision.

Explanatory note

The amendment to the *Police Service Act 1990* enables aggrieved persons to apply to the Administrative Decisions Tribunal for a review of certain decisions under the Act concerning the payment of charges.

2.18 Registration of Interests in Goods Act 1986 No 37

[1] Section 3 Definitions

Omit the definition of *Commercial Tribunal* from section 3 (1).
Insert in alphabetical order:

Tribunal means the Administrative Decisions Tribunal.

[2] Section 7 Cancellation of registration

Omit section 7 (4). Insert instead:

- (4) If a notice has been given under subsection (3), the Commissioner must, not earlier than the expiration of the period specified in the notice, cancel the registration of the interest to which the notice relates unless:
 - (a) cause has been shown why the registration should not be cancelled, or
 - (b) an order of the Tribunal staying or prohibiting the cancellation, or written notice of such an order, has been served on the Commissioner.
- (4A) A person to whom a notice has been given under subsection (3) may apply to the Tribunal for a review of any decision of the Commissioner to cancel the registration of an interest to which the notice relates.

[3] Section 15

Omit the section. Insert instead:

15 Reviews by the Administrative Decisions Tribunal

- (1) A person aggrieved by a decision of the Commissioner on an application under section 12 or 13 may apply to the Tribunal for a review of the decision.

- (2) The Commissioner is to give effect to:
- (a) any such order of the Tribunal, and
 - (b) any order made under a prescribed provision of a corresponding law concerning compensation payable by the Commissioner under this Act in respect of an interest arising under a law of a participating State.

Explanatory note

The amendments to the *Registration of Interests in Goods Act 1986* enable the Administrative Decisions Tribunal to review certain decisions under the Act concerning the cancellation of a registered interest and certain compensation decisions. Presently, these matters are dealt with by the Commercial Tribunal.

2.19 Sentencing Act 1989 No 87

Section 22M Victims Register and notice to victims and other persons

Insert after section 22M (4):

- (5) A person who has requested that he or she be given notice under this Subdivision of the possible parole of a prisoner may apply to the Administrative Decisions Tribunal for a review of the refusal or failure of the government agency referred to in subsection (2) to record the person's name in the Victims Register.

Explanatory note

The amendment to section 22M of the *Sentencing Act 1989* enables a person whose name has not been recorded in the Victims Register in relation to a prisoner to apply to the Administrative Decisions Tribunal for a review of the decision not to record the person's name. At present, no appeal lies to a court or other body in relation to such decisions.

2.20 Theatres and Public Halls Act 1908 No 13

Section 27 Prohibition or regulation of public entertainments

Insert after section 27 (3):

- (4) A person notified by the Minister under this section may apply to the Administrative Decisions Tribunal for a review of a prohibition or regulation of the holding by that person of any public entertainment or other entertainment by the person.

Explanatory note

The amendment to section 27 of the *Theatres and Public Halls Act 1908* enables a person who proposes to hold any entertainment prohibited or regulated by the Minister by notice under the section to seek a review of the Minister's decision by the Administrative Decisions Tribunal. At present, no appeal lies to a court or other body in relation to such decisions.

2.21 Timber Marketing Act 1977 No 72

Part 4B

Insert after Part 4A:

Part 4B Reviews by the Administrative Decisions Tribunal

26D Applications for review by the Administrative Decisions Tribunal

A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a refusal by the Commission under section 20 to approve the person's preservative treatment and register the brand for the treatment,
- (b) the suspension by the Commission under section 22 of an approval of the person's preservative treatment and registration of a brand,

- (c) a refusal by the Commission under section 23 of an application by the person to renew an approval of a preservative treatment and registration of a brand,
- (d) a refusal by the Commission under section 24 of the person's application for its consent to a variation to the terms of an approval or the form and design of the brand registered in respect of the approval,
- (e) a refusal by the Commission under section 25 of the person's application for its consent to the transfer of an approval and the brand registered in respect of that approval.

Explanatory note

The amendment to the *Timber Marketing Act 1977* inserts a new Part 4B to enable a person to seek a review from the Administrative Decisions Tribunal of certain decisions of the Forestry Commission concerning approvals of timber preservative treatments and the registration of associated brands. At present, such decisions are not appealable to a court or other body.

2.22 Trade Measurement Act 1989 No 233

[1] Section 58 Taking of disciplinary action

Omit section 58 (2). Insert instead:

- (2) The licensing authority takes any such action by serving written notice of it on the licensee but any action taken is stayed:
 - (a) until the end of the time for lodging an application with the review tribunal for a review of the decision to take the action, and
 - (b) if such an application has been duly lodged—until determination or abandonment of the application, unless the review tribunal otherwise orders.
- (3) Subsection (2) applies despite the provisions of Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

[2] Part 6, Division 4

Omit the Division. Insert instead:

**Division 4 Reviews by the Administrative Decisions
Tribunal**

59 Rights of review

A person may apply to the review tribunal under the Administration Act for a review of a decision of the licensing authority:

- (a) to refuse the person's application for a licence, or
- (b) to make an order under section 55 in respect of the person, or
- (c) to impose or vary a condition to which the person's licence is to be subject, or
- (d) to reprimand the person as a licensee, or
- (e) to suspend the person's licence, or
- (f) to cancel the person's licence and disqualify the former licensee from holding a licence.

Explanatory note

The amendments to the *Trade Measurement Act 1989* enable the Administrative Decisions Tribunal to review certain decisions of licensing authorities under that Act. At present, such decisions are appealable to the appeals tribunal, which is defined in the *Trade Measurement Administration Act 1989* to be the Commercial Tribunal.

2.23 Trade Measurement Administration Act 1989 No 234

[1] Section 3 Definitions

Omit the definition of *Commercial Tribunal* from section 3 (1).
Insert in alphabetical order:

Administrative Decisions Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[2] Part 5

Omit the Part. Insert instead:

**Part 5 Reviews by the Administrative Decisions
 Tribunal**

**19 Review tribunal (disciplinary proceedings against
licensees)**

For the purposes of section 59 (Rights of review) of the Principal Act, the review tribunal is the Administrative Decisions Tribunal.

20 Powers on review

- (1) The review tribunal is to determine any such application for review under section 59 of the Principal Act and in doing so may:
 - (a) in the case of an application for the review of a decision to refuse an application for a licence—make any decision that the licensing authority could have made on the application, and
 - (b) in the case of an application for a review of a decision to make an order under section 55 (Order preventing employment of certain persons) of the Principal Act—amend the order, and
 - (c) in the case of an application for a review of a decision to impose or vary a condition of a licence—impose a different condition or vary the condition differently, and
 - (d) in the case of an application for a review of a decision to take disciplinary action against a licensee—remit the matter to the licensing authority and direct it to take specified disciplinary action under section 58 (1) of the Principal Act.

- (2) Nothing in subsection (1) limits any other powers that the review tribunal has under Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

Explanatory note

The amendments to the *Trade Measurement Administration Act 1989* are consequential on the amendments made to the *Trade Measurement Act 1989* by Schedule 2.22.

2.24 Travel Agents Act 1986 No 5

[1] Section 3 Definitions

Omit the definition of *Tribunal* from section 3 (1). Insert instead:

Tribunal means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

[2] Part 2, Division 4

Omit the Division. Insert instead:

Division 4 Reviews by the Tribunal

22 Rights of review by the Tribunal

- (1) If the Commissioner refuses to grant an application for a licence or imposes conditions or restrictions to which a licence is to be subject, the applicant or licensee may apply to the Tribunal for a review of the decision of the Commissioner.
- (2) If the Commissioner suspends or cancels a licence or imposes a disqualification in accordance with section 21 (2), the former licensee or the person disqualified may apply to the Tribunal for a review of the decision of the Commissioner.

- (3) If an applicant, or a prospective applicant, for a licence is refused participation in the compensation scheme, the applicant or prospective applicant may apply to the Tribunal for a review of the refusal.
- (4) If the participation of a licensee in the compensation scheme has been terminated otherwise than by the licensee, the licensee, may apply to the Tribunal for a review of the termination.

23 Determination of review of disciplinary action may include fine

- (1) If the Tribunal, after completing consideration of an application under section 22 (2), is satisfied that any matter referred to in section 20 (1) has been established, it may fine an applicant licensee an amount not exceeding an amount equal to 10 penalty units.
- (2) Nothing in subsection (1) limits any other powers that the Tribunal has under Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

24 Determination of review concerning compensation scheme

- (1) After completing consideration of an application for review under section 22 (3) or (4), the Tribunal may:
 - (a) if the application relates to a refusal referred to in section 22 (3)—admit the applicant to participation in the compensation scheme conditionally on the applicant being or becoming licensed, or
 - (b) if the application related to a termination referred to in section 22 (4)—annul the termination, or
 - (c) in either case—dismiss the application.

- (2) Nothing in subsection (1) limits any other powers that the Tribunal has under Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.
- (3) Subject to Chapter 7 of the *Administrative Decisions Tribunal Act 1997*, a decision by the Tribunal under subsection (1) (a) or (b) is taken to be a decision made in accordance with the law governing the compensation scheme and is to be given effect accordingly.

Explanatory note

The amendments to the *Travel Agents Act 1986* enable the Administrative Decisions Tribunal to review certain decisions concerning the licensing of travel agents and participation in compensation schemes under that Act. At present, such decisions are appealable to the Commercial Tribunal.

2.25 Veterinary Surgeons Act 1986 No 55 (as amended by the Administrative Decisions Legislation Amendment Act 1997 No 77)

[1] Section 21

Omit the section. Insert instead:

21 Reviews by the Tribunal

- (1) An applicant for registration as a veterinary surgeon under section 12 may apply to the Tribunal for a review of a decision of the Board refusing to register the applicant (not being a refusal on the ground that the applicant failed to pass the prescribed examination).
- (2) A person whose name has been removed from the Register by the Board under section 20 (1) (b) or (c) may apply to the Tribunal for a review of the decision to remove the person's name.

[2] Section 53

Omit the section. Insert instead:

53 Reviews by the Tribunal

A person may apply to the Tribunal for a review of any of the following decisions:

- (a) the refusal of the Board to issue a licence to the person under this Part,
- (b) a decision of the Board to issue the person with a licence under this Part of a class other than the class that the person applied for,
- (c) the suspension of the person's licence by the Board under this Part,
- (d) the cancellation of the person's licence (other than at the person's request) by the Board under this Part.

Explanatory note

Item [1] of the amendments to the *Veterinary Surgeons Act 1986* enables the Administrative Decisions Tribunal to review certain registration decisions of the Board of Veterinary Surgeons that are presently appealable to the District Court. Item [2] enables the Tribunal to review certain decisions concerning licences for veterinary hospitals that are presently appealable to the District Court.

**2.26 Vocational Education and Training Accreditation Act
1990 No 120**

Section 29

Insert after section 28B:

29 Reviews by the Administrative Decisions Tribunal

A person or body may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a decision of the Board under section 11:
 - (i) refusing an authority to the person or body,
or

- (ii) imposing or varying conditions on an authority of the person or body, or
 - (iii) revoking an authority of the person or body,
- (b) a decision of the Board under section 12:
 - (i) refusing to accredit a vocational course conducted by the person or body, or
 - (ii) imposing or varying conditions on the accreditation of a vocational course conducted by the person or body,
- (c) a decision of the Board under section 13 withdrawing the accreditation of a vocational course of the person or body or imposing or varying conditions on any such accreditation,
- (d) a decision of an authorised accrediting body under section 15:
 - (i) refusing to accredit a vocational course conducted by the person or body, or
 - (ii) imposing or varying conditions on the accreditation of a vocational course conducted by the person or body,
- (e) a decision of an authorised accrediting body under section 16 withdrawing the accreditation of a vocational course of the person or body or imposing or varying conditions on any such accreditation,
- (f) a decision of the Board under section 22B:
 - (i) refusing an authority to the person or body, or
 - (ii) imposing or varying conditions on an authority of the person or body, or
 - (iii) revoking an authority of the person or body,

- (g) a decision of the Board under section 22C:
 - (i) refusing to register or approve the person or body, or
 - (ii) imposing or varying conditions on the registration or approval of the person or body,
- (h) a decision of the Board under section 22D:
 - (i) varying the registration or approval of the person or body, or
 - (ii) varying any condition to which the registration or approval is subject, or
 - (iii) imposing additional conditions on the registration or approval, or
 - (iv) withdrawing or suspending the registration or approval,
- (i) a decision of an authorised registering body under section 22F:
 - (i) refusing to register or approve the person or body, or
 - (ii) imposing or varying conditions on the registration or approval of the person or body,
- (j) a decision of an authorised registering body under section 22G:
 - (i) varying the registration or approval of the person or body, or
 - (ii) varying any condition to which the registration or approval is subject, or
 - (iii) imposing additional conditions on the registration or approval, or
 - (iv) withdrawing or suspending the registration or approval.

Explanatory note

The amendment to the *Vocational Education and Training Accreditation Act 1990* enables the Administrative Decisions Tribunal to review certain decisions under the Act of the Board and accrediting registering bodies to register, accredit or approve vocational courses and course providers.

Notes

Acts and Regulations amended by Schedules 1 and 2

- Administrative Decisions Tribunal Act 1997 No 76—Sch 1
- Anti-Discrimination Act 1977 No 48—Sch 2.1
- Architects Act 1921 No 8—Sch 2.2
- Boxing and Wrestling Control Act 1986 No 11—Sch 2.3
- Community Justice Centres Act 1983 No 127—Sch 2.4
- Conveyancers Licensing Act 1995 No 57—Sch 2.5
- Firearms Act 1996 No 46—Sch 2.6
- Firearms (General) Regulation 1997—Sch 2.7
- Forestry Act 1916 No 55—Sch 2.8
- Home Building Act 1989 No 147—Sch 2.9
- Local Government Act 1993 No 30—Sch 2.10
- Motor Accidents Act 1988 No 102—Sch 2.11
- Motor Dealers Act 1974 No 52—Sch 2.12
- Motor Vehicle Sports (Public Safety) Act 1985 No 24—Sch 2.13
- Mount Panorama Motor Racing Act 1989 No 108—Sch 2.14
- Occupational Health and Safety Act 1983 No 20—Sch 2.15
- Pawnbrokers and Second-hand Dealers Act 1996 No 13—Sch 2.16
- Police Service Act 1990 No 47—Sch 2.17
- Registration of Interests in Goods Act 1986 No 37—Sch 2.18
- Sentencing Act 1989 No 87—Sch 2.19
- Theatres and Public Halls Act 1908 No 13—Sch 2.20
- Timber Marketing Act 1977 No 72—Sch 2.21
- Trade Measurement Act 1989 No 233—Sch 2.22
- Trade Measurement Administration Act 1989 No 234—Sch 2.23

Notes

Travel Agents Act 1986 No 5—Sch 2.24

Veterinary Surgeons Act 1986 No 55—Sch 2.25

Vocational Education and Training Accreditation Act 1990 No 120—
Sch 2.26

[Minister's second reading speech made in—
Legislative Council on 28 May 1998
Legislative Assembly on 3 June 1998]

BY AUTHORITY