

# ***STATE ADMINISTRATIVE TRIBUNAL BILL 2003***

## **Explanatory Notes**

### **PART 1 - PRELIMINARY**

#### Clause 1 Short title

Provides that the short title of the Act is the *State Administrative Tribunal Act 2003* (the Act).

#### Clause 2 Commencement

Provides for the Act to come into operation on a day, or different days to be fixed by proclamation in the Government Gazette.

#### Clause 3 Terms used in this Act

Definition of commonly used terms appearing repeatedly throughout the Act.

#### Clause 4 What it means to bring or conduct proceeding vexatiously

Adopts the definition of “vexatious proceedings” as defined in section 3 of the *Vexatious Proceedings Restriction Act 2002* (WA) to indicate that a vexatious proceeding may occur, for example, where an application for an original hearing or review of an administrative decision lodged with the State Administrative Tribunal (SAT) is found to be wrongful, improper, unreasonable or intended to harass, annoy or cause detriment to another party.

#### Clause 5 Enabling Act prevails

An “enabling Act” is defined in section 3 to mean another statute (including subsidiary legislation made under that statute) pursuant to which jurisdiction is conferred on SAT.

There are 144 enabling Acts that confer jurisdiction on the SAT. In the event of an inconsistency between an enabling Act and the *State Administrative Tribunal Bill 2003* (WA), the enabling Act prevails.

#### Clause 6 Crown bound

Provides that Western Australia and, to the extent that Western Australian legislative power permits other states in Australia, are bound by the *State Administrative Tribunal Bill 2003* (WA).

## **PART 2 – THE STATE ADMINISTRATIVE TRIBUNAL**

#### Clause 7 Tribunal established

This Act establishes a new tribunal called the “State Administrative Tribunal” (SAT).

SAT will be a single overarching tribunal. It will amalgamate into SAT numerous civil and administrative review tribunals, as well as court and ministerial appeal processes in Western Australia.

SAT will assume (i) the disciplinary functions of existing tribunals and boards including the Finance Brokers Supervisory Board and the Real Estate and Business Agents Supervisory Board; and (ii) the original decision making and disciplinary functions of some existing tribunals including, for example, the Commercial Tribunal and the Equal Opportunity Tribunal.

#### Clause 8 The Tribunal’s jurisdiction

Indicates that SAT’s jurisdiction is set out in Part 3. This jurisdiction is divided into an:

- original jurisdiction which includes the original decision making power and disciplinary functions of several existing tribunals and boards; and a
- review jurisdiction which seeks to amalgamate the present statutory rights of appeal to a number of courts, tribunals and boards, ministers and public officials.

#### Clause 9 Main objectives of the Tribunal

Sets out SAT’s primary objectives.

These will enable SAT 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.

#### Clause 10 Tribunal to operate throughout the State

Indicates that SAT is to facilitate ready access to its services throughout Western Australia and may sit anywhere in Western Australia.

It is proposed that SAT’s main premises will be at 12 St Georges Terrace, Perth.

### Clause 11 President specifies who constitutes the Tribunal

Indicates that SAT is to be constituted by not more than three members, except where exceptional circumstances require four or five members.

The composition of the tribunal is to be determined by the President (who under clause 107(3) is to be a Judge of the Supreme Court). Generally, SAT will be constituted by three members of whom one has knowledge that is relevant to the matter before SAT and one is a lawyer.

When dealing with decisions of a vocational regulatory body, SAT will generally be constituted by three members of whom one is engaged in the same vocation as the applicant, one is a lawyer and one who is not engaged in the same vocation but has knowledge and understanding of the interests of a person engaged in that vocation.

In deciding how a tribunal is to be constituted the President shall have regard to the complexity and any public interest in the matter, any specialist knowledge or expertise needed to hear the matter, whether a member on the tribunal has any previous involvement in the matter as a private citizen and, if the tribunal is exercising its review jurisdiction, then the nature and status of the decision maker who made the original decision. A person who made the original decision cannot also be a member of the appeal tribunal.

### Clause 12 Contemporaneous exercise of Tribunal's jurisdiction

Indicates that SAT hearings can be undertaken concurrently in both original and review jurisdictions dealing with different matters on several lists at any one time. SAT will operate original and review jurisdictions in a single overarching tribunal.

## **PART 3 — JURISDICTION OF THE TRIBUNAL**

### **Division 1 – Preliminary matters**

#### Clause 13 Source of jurisdiction

Provides that SAT has two sources of jurisdiction:

- other legislation (that is, enabling Acts) which permit applications to be made to SAT or enable matters to be referred to SAT and have the effect of conferring jurisdiction on SAT; and
- jurisdiction given to SAT by the *State Administrative Tribunal Bill 2003 (WA)*.

In the first category, there are 144 enabling Acts that confer jurisdiction on the SAT either to conduct a disciplinary hearing instead of an existing tribunal or board, make a decision at first instance or review an administrative decision previously reviewed by either a court, tribunal, minister or public official.

This provision anticipates that future legislation can provide for jurisdiction to be given to SAT, rather than ad-hoc creation of a new board or tribunal.

#### Clause 14 Kinds of jurisdiction

Indicates that SAT will deal with a matter either in its original or review jurisdiction.

### **Division 2 – Original Jurisdiction**

#### Clause 15 What comes within original jurisdiction

Provides that SAT will exercise original jurisdiction when its jurisdiction is conferred by an enabling Act except where that Act gives SAT jurisdiction over a matter that involves a review of a decision.

This original jurisdiction includes disciplinary hearings formerly conducted by Boards and Tribunals and the original jurisdiction of other Boards and Tribunals including, for example, the Commercial Tribunal and the Equal Opportunity Commission.

#### Clause 16 Exercising original jurisdiction

Indicates that in exercising original jurisdiction SAT must act in accordance with the requirements of the *State Administrative Tribunal Bill 2003* (WA) and the enabling Act that confers the jurisdiction.

Provides that the enabling Act may, for the purposes of exercising original jurisdiction, modify the operation of the *State Administrative Tribunal Bill 2003* (WA).

### **Division 3 – Review jurisdiction**

#### **Subdivision 1 – General provisions**

#### Clause 17 What comes within review jurisdiction

A matter will come within SAT's review jurisdiction where the enabling Act refers to SAT a matter that expressly or necessarily involves a review of a decision. Such a decision is "a reviewable decision" for the purposes of this Act.

SAT's review jurisdiction will consist of a number of statutory appeal rights made to courts (including appeals from administrative decisions to the Supreme, District, Local and Court of Petty Sessions) and also statutory appeals from administrative decisions now made to a plethora of tribunals, ministers and senior public officials now being referred to SAT.

## Clause 18 Exercising review jurisdiction

Indicates that in exercising its review jurisdiction SAT must act in accordance with the requirements of the *State Administrative Tribunal Bill 2003 (WA)* and the enabling Act that confers jurisdiction.

Provides that the enabling Act may, for the purposes of exercising its review jurisdiction, modify the operation of the *State Administrative Tribunal Bill 2003 (WA)*.

## Clause 19 Relationship of statutory right of review to judicial review

Sets out the relationship between statutory review and judicial review (which includes prerogative writs and declaratory judgments).

Provides that a right to review decisions in SAT does not exclude the right to have a decision judicially reviewed. Therefore, if an individual wishes to review an administrative decision they have two options:

- they can make application to the SAT; or
- they can commence judicial review proceedings in court.

However, an individual must choose one option and cannot utilize both SAT and court proceedings at the same time.

Subsection 19(4)(a) provides if review of an administrative decision is commenced in SAT and then subsequently struck out under s50(1) of the *State Administrative Tribunal Bill 2003 (WA)* then judicial review proceedings can be commenced.

Subsection 19(4)(b) provides that once SAT has handed down its decision, the applicant can institute judicial review proceedings in respect of SAT's decision.

Subsection 19(5)(a) provides if a judicial review of an administrative decision is commenced and then subsequently dismissed or struck out because of procedural defects, then a review of the administrative decision can be commenced in SAT.

Subsection 19(5)(b) provides if a judicial review proceeding has commenced and is then subsequently dismissed or struck out because the court considers them to be inappropriate or considers that a SAT proceeding would be more appropriate, then a review of the administrative decision can be commenced in SAT.

## **Subdivision 2 – Information about reviewable decision**

#### Clause 20 Advice of decision and right to have it reviewed

Provides that an original decision maker, of a reviewable decision, must take reasonable steps to notify a person of the decision made and, if applicable, their right of review to the SAT.

This notification is not required in several specified circumstances, including those decisions that are prescribed by regulations. Failure to notify a person does not invalidate the decision.

#### Clause 21 Statement of reasons for decision

Enables a person to apply to the decision-maker for the decision-maker to supply reasons. This is not necessary if the decision-maker has already supplied reasons or the enabling Act contains an entitlement to reasons.

Indicates that, when requested in writing, a decision maker is to provide, within 28 days, a written statement of reasons, including findings of fact and other evidence, for their reviewable decision.

#### Clause 22 Tribunal may order decision-maker to provide reasons

Gives SAT power to make an order requiring the decision-maker to provide a written statement of reasons when the original decision maker has not provided a written statement of reasons as requested under clause 21. The person may apply to SAT for an order that the decision maker provide this information. Notice of this application must be provided to the decision maker in accordance with rules made by SAT's Rules Committee.

#### Clause 23 Exceptions to what has to be provided

Provides that a written statement of reasons for decision cannot include any material that the Attorney General has certified in a certificate made under clause 156(4) would be contrary to the public interest. Such material includes high-level policy and political deliberations of Cabinet, information protected by Parliamentary privilege or information that could damage national security. However, the President of SAT sitting alone under clause 156(6) has the power to override the effect of a certificate and order that the disclosure of the information in question is not contrary to the public interest.

Sub-section 2 enables the decision maker to refuse to provide a written statement if, because of a certificate made under s156(4), the resulting written statement would be false or misleading. The decision-maker must notify the person that the statement is not being provided because of this.

#### Clause 24 Provision of documents and material by decision-maker

Provides that the decision maker, in accordance with SAT rules, must provide SAT with reasons for their decision, documents and other materials relevant to SAT's review of the decision.

### **Subdivision 3 – The review**

#### Clause 25 Effect of proceeding on reviewable decision

Indicates that review proceedings in SAT do not affect the implementation or operation of the decision, unless the enabling Act conferring jurisdiction on the SAT provides otherwise or SAT, taking into account specified matters including the public interest, orders a stay. If a stay is ordered SAT may require an undertaking as to costs or damages.

#### Clause 26 Restriction on powers of decision-maker after review commenced

Indicates that once a proceeding for review has commenced in SAT the original decision maker cannot vary their decision or set aside their original decision and substitute a new decision unless:

- the power to do so is contained in the enabling Act that confers jurisdiction on SAT;
- the parties to the review proceeding freely consent to this; or
- the original decision maker is invited under clause 31 to reconsider the decision.

#### Clause 27 Nature of the hearing

Gives SAT a broad power to conduct a hearing de novo when exercising its review jurisdiction. A review hearing:

- is not limited to reviewing matters that were before the original decision maker;
- may consider any new material that has arisen since the original decision was made that assists SAT to reach the correct and preferable decision; and
- is not limited in scope to the issues raised in the Statement of reasons for decision or in the applicant's application.

#### Clause 28 Considering government policy

Indicates that if the Minister administering the enabling Act certifies that a statement of government policy that had been published in the *Government Gazette* was in existence at the time that the original decision was made and the original decision maker states they relied on that statement of government policy in making their decision, then SAT in conducting its review must apply the statement of government policy at the time of its review. This clause does not apply to the extent that the statement of government policy published in the *Government Gazette* is outside the power conferred by the enabling Act.

## Clause 29 Powers of Tribunal on review

Gives SAT the power to:

- affirm;
- vary; or
- set aside

the decision of the original decision maker.

If SAT 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 upon reconsideration is open to review by SAT. Once SAT has decided to affirm, vary or substitute the original decision then this reviewed decision is to be regarded 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 enabling Act states or SAT orders otherwise. Once a decision is affirmed, varied or substituted it is not again open to review by the SAT but can be appealed pursuant to Part 5 of the Act.

If the applicant does not appear either personally at their review hearing or by way of legal representation then SAT is to affirm the decision of the original decision maker.

Gives the original decision maker power to do anything necessary to implement SAT's decision.

## Clause 30 Decision-maker to assist Tribunal

Indicates that the original decision maker is obliged to use their best endeavours to assist SAT make its review decision.

## Clause 31 Tribunal may invite decision-maker to reconsider

Indicates that at any stage SAT may invite the original decision maker to reconsider their decision the subject of review. Upon reconsideration the decision maker may:

- affirm;
- vary; or
- set aside

their decision and substitute a new decision.

If, after reconsideration, the decision maker varies or sets aside their decision and substitutes a new decision then the review proceedings in SAT (unless the proceedings are withdrawn) are taken to be for the review of the decision as varied or substituted.

## **PART 4 — TRIBUNAL’S PROCEDURES**

### **Division 1 - Introduction**

#### Clause 32 Practice and procedure, generally

Indicates that SAT:

is bound by rules of natural justice except to the extent that legislation otherwise authorizes:

- is not bound by the *Evidence Act 1906* (WA) or rules of evidence or court rules, practices or procedures, except to the extent that SAT adopts these matters;
- can inform itself on any matter as it sees fit;
- is to determine its own practice and procedures except where these matters are prescribed by legislation;
- is to assist the parties by, for example, explaining procedures and enabling them to have to have the fullest opportunity to give evidence and be heard; and
- must ensure that all relevant material is available to it and may require documents to be served outside of Western Australia.

#### Clause 33 Practice notes

Enables the Rules Committee (established under clause 167) to issue practice notes about SAT’s practice and procedure. The Minister is to receive a copy of each practice note issued and such a practice note is not a rule and does not form part of the rules.

#### Clause 34 Directions

Enables SAT 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 notwithstanding any rules of law regarding privilege or public interest in relation to the production of documents. Cannot direct a party to disclose protected information to another party.

#### Clause 35 Obtaining information from third parties

Empowers SAT to order persons who are not party to the proceedings to produce to SAT or a party documents or materials relevant to SAT’s proceedings. Cannot direct a third party to disclose protected information.

### Clause 36 Parties

Indicates that parties to SAT proceedings include the applicant; persons joined as a party under clause 38; intervenors; persons specified in legislation and persons whose capacity to lawfully pursue a vocation will be affected by SAT's decision. The decision maker is to be described by their official description, not their personal name.

### Clause 37 Intervening in proceeding

Indicates the Attorney General may intervene at any time in SAT's proceedings.

Indicates that the Commissioner for Consumer Affairs as defined in s5(1) of the *Fair Trading Act 1987* has the power to intervene in SAT's proceedings under an enabling Act for which the Minister for Consumer and Employment Protection has portfolio responsibility. The intent of subsection 37(2), is to limit this right of intervention of the Commissioner for Consumer Affairs only to those enabling Acts for which the Minister for Consumer and Employment Protection has portfolio responsibility.

Indicates any other person may be given leave to intervene if SAT thinks fit.

### Clause 38 Joining as a party

Enables SAT, in specified circumstances, to join persons as parties to proceedings and may make an order on the application of any person.

### Clause 39 Representation

Enables parties to SAT proceedings to:

- appear in person and represent themselves;
- to be represented by a lawyer; or
- in specified circumstances (including where SAT agrees to representation by a non-lawyer or this is authorised by regulations or rules) to be represented by persons who are not lawyers.

Subsection 39(2) provides that where a non-lawyer represents a person in a proceeding before SAT, this section does not entitle this person to demand or receive any fee or reward for their services, unless they were already entitled to such a fee or reward.

Subsection 39(3) provides a lawyer who has been struck off the roll of practitioners of the Supreme Court cannot represent a party in proceedings before SAT.

#### Clause 40 Tribunal may appoint representative or guardian

Enables SAT to appoint:

- a person to represent an unrepresented party; and
- where a party is a child, a litigation guardian to conduct the proceedings on the child's behalf.

#### Clause 41 Interpreters

Except where SAT otherwise orders, enables interpreters to assist a party or a parties representative.

### **Division 2 – Preliminary procedures**

#### Clause 42 Commencing proceeding

Requires persons to bring matters before SAT in accordance with the *State Administrative Tribunal Bill 2003* (WA) except where enabling legislation otherwise provides.

Requires SAT's Executive Officer (pursuant to clause 145(1)) to assist persons who want to commence SAT proceedings.

Indicates that SAT's review jurisdiction commences when the application (defined in clause 3(1)) is accepted by its Executive Officer. Indicates when other proceedings commence, for example, when the matter is referred to SAT.

#### Clause 43 Fee for commencing proceeding

Rules made by SAT's Rules Committee may:

- require payment of a fee for commencing a proceeding;
- provide for the stay of a proceeding until such fee is paid, or payment is waived or postponed; and
- may authorize waiver or reduction of such a fee.

#### Clause 44 Rejecting an application or accepting an application conditionally

Enables SAT's Executive Officer to reject an application because it is made by a person not entitled to make it; it is made out of time; or it does not comply with the legislation. The Executive Officer's decision to accept or reject an application or impose conditions can be reviewed by SAT and no appeal from SAT's decision can be made under Part 5.

Clause 45 Who has to be given a copy of an application

Specifies persons to whom an applicant is to give a copy of an application including other parties to the proceedings, unless the Executive Officer undertakes to do so or SAT orders that such service does not have to occur.

Indicates that the rules may provide for the manner in which and the time within which copies of an application are to be provided.

Clause 46 Dismissing proceeding on withdrawal or for want of prosecution

Enables SAT to allow applicant's to withdraw all or part of the proceedings or to order that proceedings or parts of proceedings be dismissed or struck out if the applicant withdraws, or agrees to withdraw, the proceedings or part of the proceedings.

Clause 47 Unjustified proceedings

Enables SAT to dismiss or strike out proceedings if they are frivolous, vexatious, misconceived, lacking in substance, being used for an improper purpose or otherwise are an abuse of process. This can be done on SAT's own initiative or following an application by a party to the proceedings.

Clause 48 Conduct of proceeding causing disadvantage

Enables SAT 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 SAT's own initiative or following an application by a party to the proceedings.

Clause 49 Restriction on new application

Indicates that if a proceeding is dismissed or struck out by a judicial member, SAT must give leave before a similar proceeding in relation to the same matter can be commenced.

Clause 50 More appropriate forum

Enables SAT to strike out a proceeding or part of a proceeding if another tribunal, court or person can more appropriately deal with the matter. A judicial member can only make these orders and SAT can refer a matter to another forum if it considers it appropriate.

### Clause 51 Consolidation of proceedings

Enables SAT to consolidate proceedings into one proceeding or require proceedings to be heard together. Evidence given in consolidated proceedings is admissible in relation to the proceedings that have been consolidated.

### Clause 52 Compulsory conference

Enables SAT to hold private compulsory conferences to identify and clarify issues and promote settlement of disputes.

### Clause 53 Failure to attend compulsory conference

Enables compulsory conferences to proceed in the absence of a party and the proceedings can be determined adversely to an absent party.

### Clause 54 Mediation

Enables matters dealt with at a directions hearing (under clause 34(4)) or a compulsory conference (under clause 52) to be referred, with or without the parties' consent, for private mediation by a person approved by the President to resolve the matters in dispute.

### Clause 55 Evidence of certain things inadmissible

Renders inadmissible in subsequent proceedings evidence of things said or done in a compulsory conference or mediation unless parties agree including directions or orders or reasons for those directions or orders; it is relevant to the offence of giving false or misleading information, contempt proceedings (under clause 99) or a determination made in the absence of a party from a compulsory conference (under clause 53(b)(i)).

### Clause 56 Settlement

Enables SAT to make an order giving effect to parties written agreement to settle proceedings where SAT would otherwise have power to make a decision in accordance with that settlement.

## **Division 3 – Proceedings and hearings**

### Clause 57 Presiding member

Sets out the seniority of SAT members and the order or precedence of officers.

#### Clause 58 Decision of Tribunal if 2 or more sitting members

Other than on questions of law, SAT decisions are to be by majority and where there is an equal division the question is resolved according to the presiding member's opinion.

#### Clause 59 Deciding questions of law

Specifies that questions of law (including mixed law and fact) are decided by:

- the presiding member if that member is a legally qualified member;
- another member who is legally qualified where the presiding member is not legally qualified and if there are two or more other members who are so qualified then a decision on a question of law is resolved by the unanimous opinion of these qualified members;
- the President, if the question of law is referred to the President, who has the power to:
  - decide the question of law;
  - give the question to another member who is legally qualified; or
  - refer the question to the Supreme Court provided it is not a question of mixed law and fact.

A party can also ask a presiding member to refer the matter to the President.

#### Clause 60 Electronic hearings and proceedings without hearings

Enables SAT to have proceedings using telephones, video links or other communication systems. Also enables SAT to conduct proceedings solely on the basis of documents without need for a hearing.

#### Clause 61 Public hearings

Indicates that SAT's hearings are to be public unless legislation or SAT indicates (for reasons specified in the Bill) that the hearing or part of the hearing is to be private. In exercising its powers, SAT can also place restrictions on the publication of all or any part of proceedings. This can be done where SAT considers it is necessary to do so.

#### Clause 62 Publication of information from or about a proceeding

Indicates that SAT on its own initiative or on the application of a party may, in certain circumstances, order that any evidence, contents of any document or identifying information disclosed during a proceeding not be published, or be published but only to persons specified by SAT.

Provides that SAT's power to make such an order is only exercisable by a presiding member, if there is no other legally qualified member sitting on that proceeding.

Clause 63 Notice of hearings

Requires SAT's Executive Officer to give notice of a hearing to each party, each other person so entitled and any other person SAT instructs should receive notice. A person's failure to attend a hearing after a notice has been given enables the hearing to proceed in the absence of that person.

Clause 64 Tribunal may call on expert or professional assistance

Enables SAT to appoint lawyers or other experts to assist SAT and to require parties to contribute to the costs of engaging such a person.

Clause 65 Special referees

Enables SAT to refer questions to a special referee for the referees decision or opinion and to require parties to contribute to the costs.

Clause 66 Summoning witness

Enables SAT and its Executive Officer to issue a summons to attend and produce documents and other materials and to determine fees and allowances payable to witnesses.

Clause 67 Powers relating to witnesses

Enables SAT to call, examine on oath, cross-examine witnesses and compel them to answer questions. However, SAT cannot compel witnesses to answer questions if the witness has a reasonable excuse for refusing to answer the question.

Clause 68 Privilege against self-incrimination

Indicates that persons are not excused from answering questions or producing documents or materials on the ground that this might incriminate them or render them liable to a penalty. However, any answer given or document or material produced in response to a requirement to answer or produce is not admissible in criminal proceedings against that person other than perjury proceedings or the offence of false or misleading answers under the Bill.

#### Clause 69 Other claims of privilege

Preserves the position regarding compulsion to answer questions or produce documents or material in accordance with the position that prevails in the Supreme Court (other than under clause 68 or a SAT direction to produce under clause 34(5)).

#### Clause 70 Oaths and affirmations

SAT members may administer oaths or affirmations for purposes of the *State Administrative Tribunal Bill 2003* (WA).

#### Clause 71 Authorising person to take evidence

Enables SAT to authorize persons, including non-SAT members, to take evidence on behalf of SAT including evidence outside of Western Australia. Such evidence is to be regarded as having been given to SAT and given in Western Australia.

#### Clause 72 Dealing with things produced

Enables SAT to inspect, retain and make copies of documents or material produced to it.

### **Division 4 – Decisions made by Tribunal**

#### Clause 73 Conditional and ancillary orders and directions

Indicates that SAT's power to make orders and directions includes the power to impose conditions and make ancillary orders (including requiring a person who was not the original decision maker to implement SAT's decision made in its review jurisdiction).

#### Clause 74 Form of decision

Stipulates that SAT's decisions must be in writing and, in specified circumstances, authenticated.

#### Clause 75 To whom copy of written decision has to be given

Requires SAT to give a copy of its written decision to parties, other relevant persons and where necessary to vocational regulatory bodies.

Clause 76 Time limit for reserved decision

Requires SAT to deliver its decision within 90 days of the date on which it reserved its decision, unless the President grants an extension.

Clause 77 Reasons for final decision

Requires SAT to give reasons (including findings on factual issues and referring to evidence on which those findings are based) for its final decisions.

Clause 78 Written reasons may be requested

Enables parties to request SAT to give its reasons in writing for its final or other decisions. Reasons are to be given within 90 days after a request is made.

Clause 79 Written decision or reasons using transcript

Indicates that a written transcript suffices as a decision or reasons in writing where the decision or reasons are given orally.

Clause 80 Validity of decision

Indicates that SAT's failure to comply with Division 4 of Part 4 does not affect the validity of SAT's decisions.

Clause 81 When decision has effect

Provides that SAT's decisions take effect immediately when given unless the decision specifies a later time or the enabling Act specifies a different time (clause 29 (6)). However, this does not prevent a stay of the decision ordered by the Supreme Court under clause 105 where there is an application for leave to appeal from a decision of SAT.

Clause 82 Correcting mistakes

Enables SAT to correct its decisions or statement of reasons so as to rectify, for example, clerical mistakes or formal defects.

### Clause 83 Tribunal may review its decision if person was absent

Enables persons who did not appear and were not represented at hearings to apply to SAT for a review of SAT's decision and enables SAT to revoke or vary its decision. As far as is practicable, SAT should be constituted by the same members who made the original decision.

### Clause 84 Enforcement of monetary order

Indicates that where SAT makes a monetary order, the person to whom the money is owing may enforce that order in an appropriate court and that SAT's order is deemed to be an order of that court and can be so enforced and s142(1) of the *Supreme Court Act 1935* applies to the amount not paid under the order as if it were payable under a judgment of the court.

### Clause 85 Enforcement of decision other than monetary order

Enables a person seeking to enforce a non-monetary order to file SAT's decision in the Supreme Court and that decision is deemed to be a decision of the Supreme Court and can be so enforced.

## **Division 5 – Costs**

### Clause 86 Costs of parties and others

Indicates that parties are to bear their own costs of proceedings in SAT unless:

- a party makes an application to SAT which requires a person (who is not a party to the proceedings) to supply a document or information that is relevant to the proceedings before SAT, then SAT may make an order requiring the applicant to pay all the costs covering production of this material;
- SAT makes a costs order that a party pay the costs of another party which can include payment to compensate for any expense, loss, inconvenience or embarrassment;
- an enabling Act indicates the position with regard to costs; or
- the *State Administrative Tribunal Bill 2003* (WA) makes any other provision in regard to costs.

SAT can also order that a party's representative pay costs if the representative's behaviour resulted in unnecessary costs.

### Clause 87 Costs of proceeding

Enables SAT to order that a party pay all or any of the costs of a proceeding, except where the proceeding is in SAT's review jurisdiction. In the latter case, SAT can only make such a costs order if a party brought or conducted proceedings frivolously or vexatiously or orders could have been made under clauses 46, 47 or 48.

#### Clause 88 Amount of costs

Stipulates that where SAT does not specify the amount of costs, those costs are to be assessed or settled according to the rules.

### **Division 6 – Other procedural provisions**

#### Clause 89 Injunction

Enables a judicial member of SAT to grant an injunction (including an interim injunction, which can also be granted by a legally qualified SAT member) and to require undertakings as to costs or damages. This power is not curtailed by powers to make an order in the nature of an injunction conferred on SAT by other enabling legislation.

#### Clause 90 Declaration

Enables a judicial SAT member to make a declaration and this power is not curtailed by powers to make a declaration conferred on SAT by other enabling legislation.

#### Clause 91 Relief from procedural requirements

Enables SAT's rules to modify procedural requirements even if those requirements are imposed by legislation, unless the enabling Act expressly precludes such modification.

#### Clause 92 Entry and inspection

Provides SAT, its staff or other authorized persons to enter places, buildings, vehicles, vessels or other things and enables SAT to order an occupier to give persons (who will give evidence in SAT proceedings) reasonable access to those places, buildings, vehicles, vessels or other things. Where the occupier is not a party to the SAT proceedings, such entry cannot occur unless:

- the occupier consents to the entry;
- the occupier is given at least two days notice before the entry occurs; or
- a judicial SAT member considers that the need for entry is urgent or exceptional.

Creates an offence of obstructing, hindering or refusing access with a \$5000 penalty.

Clause 93 Tribunal to give Supreme Court documents and things

Requires SAT's Executive Officer to give the Supreme Court documents and materials when there is an appeal from SAT's decision (under clause 104) or a question of law is referred to the Supreme Court by SAT's President (under clause 60(7)(c)). The Supreme Court is required to return those documents and materials to SAT.

**Division 7 – Offences**

Clause 94 Failing to comply with decision

Creates an offence of failing to comply with a SAT decision (penalty \$10,000.00), other than for SAT monetary orders.

Clause 95 Failing to comply with summons

Creates an offence of failing, without reasonable excuse, to comply with a witness summons issued under clause 66(1) (penalty \$5,000.00).

Clause 96 Failing to give evidence as required

Creates an offence of refusing to swear an oath or make an affirmation or statutory declaration or refusing to answer a question when required to do so by SAT, unless there is a reasonable excuse (\$5,000.00).

Clause 97 Giving false or misleading information

Creates an offence of knowingly giving to SAT information that is false or misleading in a material particular (penalty \$10,000.00).

Clause 98 Misbehaviour and other conduct

Creates offences relating to specified misbehaviour and conduct including insulting, obstructing or hindering SAT members and interrupting SAT hearings (penalty \$10,000.00).

### Clause 99 Contempt

Gives the Supreme Court jurisdiction to deal with matters that the President reports on to the Supreme Court, as if those matters were a contempt of the Supreme Court.

## **Division 8 – Arrest warrants**

### Clause 100 Exercise of powers under this Division

Indicates that Part 4 Division 8 powers are only exercisable by a judicial SAT member.

### Clause 101 Arrest

Enables:

- SAT to issue warrants for the apprehension of persons who fail to attend when required to do so by a witness summons issued under clause 66(1);
- the apprehended person to be detained in custody until released by SAT (on conditions specified in clause 102) or the Supreme Court (on conditions indicated in clause 103);
- persons executing arrest warrants may break and enter, for example, buildings and vessels and use reasonable force to apprehend persons named in the warrant.

### Clause 102 Conditional release from custody

Enables SAT to impose conditions, for example, the surrender of a passport, when releasing a person who has been detained pursuant to an arrest warrant issued under clause 101 and creates an offence of failing, without reasonable excuse, to comply with those conditions (penalty \$5,000.00).

### Clause 103 Review by Supreme Court

Enables the Supreme Court to review a SAT decision not to release or to release on conditions persons detained under an arrest warrant and to impose similar conditions to those that can be imposed by SAT.

## **PART 5 – APPEALS FROM TRIBUNAL’S DECISIONS**

### Clause 104 Appeal from Tribunal's decision

Indicates that appeals from SAT to a court can only occur:

- if the court gives leave to appeal;
- if the appeal involves questions of law, unless there is an express indication to the contrary; and
- to the Full Court where SAT's decision was made by a judicial member or SAT included a judicial member and, in any other case, to the Supreme Court.

Indicates that SAT and its members are not parties to the appeal.

Provides that the court may, for example, affirm, vary or set-aside SAT's decision; or make any decision that SAT could have made; or send the matter back to SAT for reconsideration.

### Clause 105 Effect of decision against which appeal made

Enables the Supreme Court to stay the operation of SAT's decision while the Supreme Court decides whether to grant leave to appeal and, if so, while it decides the appeal. If the Supreme Court does not make such an order, the appeal does not affect SAT's decision or prevent implementation of that decision.

## **PART 6 – TRIBUNAL'S MEMBERSHIP AND OTHER PROVISIONS**

### **Division 1 – Members of the Tribunal**

#### **Subdivision 1 – Kinds of members**

### Clause 106 Tribunal members

Specifies that SAT is to have judicial members (including a President and at least one deputy President) and other members (either senior or ordinary members).

#### **Subdivision 2 – President**

### Clause 107 Appointment of President

Requires that the SAT President be a Supreme Court Judge who is to be appointed by the Governor after the Minister has consulted with the Chief Justice.

#### Clause 108 Tenure of President's office

The President can be appointed for a maximum of 5 years and is eligible for re-appointment.

#### Clause 109 Vacating office prematurely

Enables the President by a written letter to the Governor to resign (but this does not affect their office as a Supreme Court Judge, clause 110(4)).

Indicates that the President:

- holds office during good behaviour; and
- can be removed by the Governor, on the address of the Legislative Council and Legislative Assembly.

#### Clause 110 President's status as Supreme Court Judge

Indicates that appointment as the President does not affect that person's tenure, status, rights or privileges as a Supreme Court Judge. A person's service as President is to be taken for all practical purposes as service as a Supreme Court Judge. Nothing in the *State Administrative Tribunal Bill 2003 (WA)* prevents the President from doing anything in their capacity as a Supreme Court Judge. Resignation of the President does not affect their office as a Supreme Court Judge.

### **Subdivision 3 – Deputy President**

#### Clause 111 Appointment of Deputy President

Requires a Deputy President to be a District Court Judge.

Indicates that a Deputy President is appointed by the Governor after the Minister consults with the Chief Justice and the Chief Judge of the District Court.

#### Clause 112 Tenure of Deputy President's office

The Deputy President can be appointed for a maximum of 5 years and is eligible for re-appointment.

### Clause 113 Vacating office prematurely

Enables the Deputy President by a written letter to the Governor to resign (but this does not affect their office as a District Court Judge, clause 114(4)).

Indicates that the Deputy President:

- holds office during good behaviour; and
- can be removed by the Governor, on the address of the Legislative Council and Legislative Assembly.

### Clause 114 Deputy President's status as District Court Judge

Indicates that appointment as a Deputy President does not affect that person's tenure, status, rights or privileges as a District Court Judge. A person's service as a Deputy President is to be taken for all practical purposes as service as a District Court Judge. Nothing in the *State Administrative Tribunal Bill 2003* (WA) prevents a Deputy President from doing anything in their capacity as a District Court Judge. Resignation of a Deputy President or termination of that person's term as a Deputy President does not affect their office as a District Court Judge.

## **Subdivision 4 – Other members**

### Clause 115 Appointment of non-judicial members

Requires non-judicial members to be legal practitioners with at least 5 years experience or person with extensive or special knowledge or experience involving any class of matters which can be dealt with by SAT.

Requires senior SAT members to be legal practitioners with at least 8 years experience or person with extensive knowledge or experience involving any class of matters which can be dealt with by SAT.

Indicates that before these SAT members are appointed by the Governor, the Minister must consult with the President and may consult other appropriate Ministers, persons or bodies.

### Clause 116 Tenure of non-judicial office

Non-Judicial SAT members can be appointed for a maximum of 5 years, with eligibility for re-appointment, on a full-time, part-time or sessional basis.

#### Clause 117 Conditions of service as non-judicial member

Indicates that the Governor will determine the non-judicial SAT member's salaries and benefits unless the *Salaries and Allowances Act 1975 (WA)* applies to that members office.

Creates a standing appropriation to cover the cost of these salaries and benefits.

#### Clause 118 Outside employment prohibited

Prohibits full-time non-judicial SAT members engaging in any other profession or paid employment without the President's consent.

Enables part-time non-judicial SAT members to engage in a profession or paid employment if they advise the President in writing and the President has not advised that there would or may be a conflict of interest.

Subsection 118(4) prohibits non-judicial SAT members from paid employment as a Public Service Officer.

#### Clause 119 Code of conduct

Requires President to make and maintain a written code of conduct and non-judicial members must comply with that code.

#### Clause 120 Suspension of non-judicial member

Enables the President, with the Minister's approval, to suspend a non-judicial SAT member.

#### Clause 121 Why termination may be recommended

Indicates the reasons, including conviction of an indictable offence and misconduct, why a non-judicial SAT member's term of office may be terminated.

#### Clause 122 Investigation of non-judicial member

Requires the President to appoint an investigator to investigate a non-judicial SAT member who has been suspended.

Indicates that the investigators report may recommend the termination of that person's term of office.

### Clause 123 Action on investigator's report

Enables the Minister, after considering the investigator's report and consulting with the President, to recommend that the Governor terminate that person's office.

Requires the President to terminate the person's suspension if the Minister does not make such a recommendation.

### Clause 124 Deciding whether to recommend termination

Requires the person subject to an investigation to be given a reasonable opportunity to make written and oral submissions to the investigator and President before the Minister can recommend that the person's term of office be terminated.

### Clause 125 Vacating office prematurely

Enables a non-judicial SAT member to resign by writing to the Governor. A person who has resigned as a non-judicial member is not precluded from being appointed a non-judicial member again.

## **Division 2 – Acting and supplementary members**

### **Subdivision 1 – Acting President**

#### Clause 126 Appointment to act as President

Enables the Governor or Minister to appoint a person to act as President if:

- there is, or is expected to be a vacancy in the office; or
- the President is, or is expected to be absent or unable to perform their duties.

The Governor only may make such an appointment for a term not exceeding 6 months.

The Minister may make such an appointment for a term not exceeding 3 months, only if the Minister has not previously appointed the person under this clause.

A person appointed to act as SAT President must be a Supreme Court Judge.

Before the Minister appoints a person, or recommends to the Governor that a person should be so appointed the Minister must consult with the Chief Justice.

A person's eligibility for re-appointment by the Governor to act as President is not affected by an earlier appointment.

#### Clause 127 Terminating acting prematurely

Indicates that a person appointed under clause 126 to act as President may resign by giving the Minister a signed letter of resignation that is not effective until the Minister accepts it. If accepted, the resignation takes effect from date of acceptance or at a later date stated in the resignation letter. A person who has so resigned is not precluded from being re-appointed to act in the office.

Enables the Governor to terminate, at any time, a person's appointment to act in the office of President.

Indicates that if a person ceases to be a Supreme Court Judge they simultaneously cease to be an acting President.

#### Clause 128 Acting President's status as Supreme Court Judge

Indicates that the appointment of a Supreme Court Judge to act as President does not affect that person's status, tenure of office, salary, allowances, entitlements, rights or privileges as a Supreme Court Judge. Therefore, a person's service acting as President is taken as service as a Supreme Court Judge.

An acting President's resignation from office or termination of their term of acting in this office under clause 127, does not of itself affect that person's office as a Supreme Court Judge.

#### Clause 129 Deputy President may sometimes act as President

Provides that the Deputy President may act in the office of President if there is a vacancy in the office of President or the President is absent or otherwise unable to perform their duties. If there is more than one Deputy President then the most senior of them will act as President. If there is a dispute as to which is the most senior, then the Minister may determine which person is most senior.

#### Clause 130 Deputy President's allowance for acting as President

Indicates that a Deputy President appointed under clause 129 to act as President is entitled to be paid an allowance equal to the difference between the wages and benefits of their former position and their acting position for the period that they act as President.

#### Clause 131 Consequences of acting

Provides that a person appointed to act as President under either s126 or s129 of the Act, is to be regarded as the President for the purposes of this Act and enabling Acts.

## **Subdivision 2 – Acting Deputy President**

### Clause 132 Appointment to act as Deputy President

Enables the Governor or Minister to appoint a person to act as Deputy President if:

- there is, or is expected to be a vacancy in that office; or
- the Deputy President is, or is expected to be absent or unable to perform their duties.

The Governor only may make such an appointment for a term not exceeding 6 months.

The Minister may make such an appointment for a term not exceeding 3 months provided the Minister has not previously appointed the person under this clause.

Any person appointed to act as Deputy President of SAT must be a District Court Judge.

Requires that before the Minister appoints a person, or recommends to the Governor that a person be appointed as Deputy President the Minister is to consult with the Chief Justice and the Chief Judge of the District Court.

A person's eligibility for re-appointment to act as Deputy President is not affected by an earlier appointment.

### Clause 133 Terminating acting prematurely

Indicates that a person appointed under clause 132 acting as Deputy President may resign by giving the Minister a signed letter of resignation. The resignation is not effective until the Minister has accepted it. If accepted, the resignation takes effect from date of acceptance or at a later date stated in the resignation letter. A person who has so resigned is not precluded from being re-appointed to act in the office.

Enables the Governor to terminate, at any time, a person's appointment to act as Deputy President.

Indicates that an acting Deputy President's term of office terminates if they cease to be a District Court Judge.

### Clause 134 Acting Deputy President's status as District Court Judge

Indicates that the appointment of a District Court Judge to act as Deputy President does not affect that person's status, tenure of office, salary, allowances, entitlements, rights or privileges as a

District Court Judge. Therefore, a person's service acting as Deputy President is taken as service in their position as a District Court Judge.

An acting Deputy President's resignation from office or termination of their term of acting as President under clause 133, does not of itself affect that person's office as a District Court Judge.

#### Clause 135 Consequences of acting

Provides that a person appointed to act as Deputy President under s132 of the Act is to be regarded as a Deputy President for the purposes of this Act and enabling Acts.

### **Subdivision 3 – Supplementary Judicial Members**

#### Clause 136 Supplementary President

Gives the Minister power to appoint an additional supplementary President to act as President in relation to a particular matter or matters or for a specified period provided three conditions are met:

- the President must request such an appointment;
- such a person must be a Judge, acting Judge, auxiliary Judge or retired Supreme Court Judge; and
- the Minister must have the Chief Justice's consent, except where a retired Judge is appointed.

The appointment must be in writing.

The supplementary President may act as President in relation to a matter for the period of time specified in their appointment and when so acting is to be regarded as the President for the purposes of this Act and enabling Acts.

Indicates the supplementary President is not authorized to perform certain functions as detailed in subsection 136(5).

Indicates that clause 127 relating to "Terminating acting prematurely" applies to a supplementary President acting as President.

#### Clause 137 Supplementary President's status as Supreme Court Judge

Indicates that the appointment of a Supreme Court Judge as a Supplementary President to act as President does not affect that person's status, tenure of office, salary, allowances, entitlements, rights or privileges as a Supreme Court Judge. Therefore, their service as supplementary President acting as President is taken as service as a Supreme Court Judge.

### Clause 138 Supplementary Deputy Presidents

Gives the Minister power to appoint an additional supplementary Deputy President to act as Deputy President in relation to a particular matter or matters or for a specified period provided three conditions are met:

- the President must request such an appointment;
- such a person must be a Judge, acting Judge, auxiliary Judge or retired District Court Judge; and
- the Minister must have the Chief Judge's consent, except where a retired Judge is appointed.

The appointment must be in writing.

The supplementary Deputy President may act as a Deputy President in relation to a matter or for the period of time specified in their appointment and when so acting is to be regarded as a Deputy President for the purposes of this Act and enabling Acts.

Indicates that clause 133 relating to "Terminating acting prematurely" applies to a supplementary Deputy President acting as Deputy President.

### Clause 139 Supplementary Deputy President's status as District Court Judge

Indicates that the appointment of a District Court Judge as a supplementary Deputy President to act as a Deputy President does not affect that person's status, tenure of office, salary, allowances, entitlements, rights or privileges as a District Court Judge. Therefore, that person's service as supplementary Deputy President acting as a Deputy President is taken as service in their position as a District Court Judge.

## **Division 3 – Other matters about Tribunal members**

### Clause 140 Fixing the period of appointment

Indicates that when determining the periods for which judicial and non-judicial members are appointed regard shall be had to securing, developing and retaining a tribunal membership that has experience and expertise in the exercise of SAT's jurisdiction.

### Clause 141 Training

Requires judicial SAT members to be responsible for ensuring education, training and professional development of SAT members.

Requires the Rules Committee to assist the judicial SAT members where the training or professional development of SAT members relates to SAT's rules, practice and general procedure.

Requires the Minister to ensure that there is appropriate provision for SAT member's education, training and professional development.

#### Clause 142 Disclosure of interests

Requires that a person who has a conflict of interest (whether pecuniary or non-pecuniary) must disclose that interest to the President and if it is the President who has such a conflict of interest they must disclose it to the Chief Justice.

Prohibits a SAT member from sitting or performing any SAT function in relation to matters where they have a conflict of interest, unless each party involved in that matter agrees to their sitting or performing such a function.

#### Clause 143 Completion of matters

Enables matters to be completed or to continue to be dealt with, even though a SAT member's term of office has expired.

### **PART 7 – ADMINISTRATION**

#### Clause 144 Responsibility for administration of Act

Stipulates that the President is responsible:

- to the Minister for the administration of this Act; and
- organizing SAT's business, including its hearings.

#### Clause 145 President to advise Minister

Enables the President to advise the Minister in relation to matters which will make:

- SAT and its proceedings more convenient, economic, efficient and expeditious; and
- the legislative framework of SAT more effective.

#### Clause 146 Executive Officer and other staff of Tribunal

Requires the Departmental CEO to make available to SAT from the Department an Executive Officer and other departmental staff.

Enables the Departmental CEO and President to agree to the use of the department's services and facilities for carrying out the *State Administrative Tribunal Bill 2003* (WA).

Clause 147 Delegation by judicial member

Enables judicial SAT members to delegate in writing administrative matters to other persons, but the President can only delegate a clause 10 power or duty to constitute SAT to a Deputy President.

Prohibits a delegate from further delegating the delegated powers or duties.

Clause 148 Annual reports of the Tribunal

Requires the President to submit to the Minister an Annual Report containing specified matters, including details relating to SAT's performance.

Requires the Minister to table a copy of that report in Parliament.

Requires the President, when requested by the Minister, to report to the Minister about SAT.

Enables the President to report (without having received a Ministerial request) to report to the Minister about SAT.

Clause 149 Laying before House of Parliament that is not sitting

Facilitates the tabling of a report when the Legislative Council or the Legislative Assembly is not sitting.

**PART 8 – OTHER MATTERS**

Clause 150 Official seal

Requires SAT to have a seal or seals.

Clause 151 Judicial notice

Stipulates matters about which other courts and judicial officers must take judicial notice.

### Clause 152 Validity of decisions

Specifies matters, for example, irregularities or defects in appointments, which do not of themselves render a SAT decision invalid.

### Clause 153 Register of proceedings

Requires the Executive Officer to maintain a publicly open register of SAT proceedings that can be inspected and copied.

### Clause 154 Publication of Tribunal's decisions

Permits SAT to publish its decisions.

### Clause 155 Secrecy

Imposes secrecy requirements on SAT members, SAT's Executive Officer and staff and persons acting under SAT's authority concerning information relating to a person's affairs except:

- where that person consents to the disclosure of the information;
- that disclosure is required under legislation;
- that disclosure is made to the Police to report a suspected offence or assist a criminal investigation; or
- that disclosure is for statistical purposes which is a non-identifying disclosure.

### Clause 156 Protection from disclosure by others

Places secrecy obligations on person's to which information about another person's affairs is disclosed.

### Clause 157 Whether disclosure contrary to public interest

Enables the Attorney General to certify that disclosures of information may, because of specified reasons (including national security or damage to inter-governmental relations) would be contrary to the public interest.

Enables the President to order that the disclosure of such information is not contrary to the public interest.

Enables the Attorney General, if an appeal against the President's order is taken to the Supreme Court, to confirm the public interest certificate and, if so, that certificate continues to have effect and the President's order ceases to have effect.

Indicates that the *Freedom of Information Act 1992* (WA):

- continues to apply to disclosures of exempt documents to person's and bodies; but
- does not prevent disclosure of documents to SAT as required or authorized by the *State Administrative Tribunal's Bill 2003* (WA).

#### Clause 158 How Tribunal is to deal with protected matter

A "protected matter" is defined in section 3 as:

- any matter that the Attorney General determines under s157(2) that the disclosure of which would be contrary to the public interest for reasons specified in a certificate, except to the extent that an order of the Tribunal under s157(4) determining that its disclosure would not be contrary to the public interest has effect; or
- an exempt document as defined in the *Freedom of Information Act 1992*.

Indicates that SAT is to ensure all protected matter provided to it:

- is returned to the person who provided it when no longer required by SAT; and
- is not disclosed in any way other than to a sitting member of the Tribunal or to a person to whom, with the consent of the President of SAT, has been allowed access subject to any conditions imposed by SAT.

Provides that a person cannot be given access to, or allowed to inspect, an exempt document or information in it.

#### Clause 159 Application of the *Freedom of Information Act 1992*

Indicates that the *State Administrative Tribunal Act 2003* does not affect the application of the *Freedom of Information Act 1992* in relation to the disclosure of an exempt document to a person or body other than SAT.

Also indicates that the *Freedom of Information Act 1992* should not prevent the disclosure of a document to SAT as required or authorized by the *State Administrative Tribunal Act 2003*.

#### Clause 160 Immunity

Provides SAT members, persons and their representatives, witnesses, persons taking evidence for SAT, mediators, special referees, persons assisting SAT and lawyers with the same protections and immunities as they would have in the Supreme Court.

### Clause 161 Protection from liability

Provides protection from tort liability to the State and to persons acting in good faith in performance of their functions as a SAT member or SAT staff.

### Clause 162 Protection for compliance with this Act

Provides protection from civil and criminal liability for matters done in good faith and compliance with legislative requirements.

### Clause 163 Proceedings for defamation not to lie

Provides protection from civil and criminal liability in relation to the printing or publishing of SAT proceedings, decisions or reasons for decisions.

### Clause 164 General principles governing transfer of jurisdiction

Transfer day is defined in this section as the day on which jurisdiction is conferred on SAT.

Subsection 164(1) indicates an enabling Act confers on SAT jurisdiction to deal with a certain kind of matter that is handled by a “former adjudicator”.

Subsection 164(2)(a) indicates any transferable matter a hearing for which has been sought, but not commenced before a former adjudicator is to be transferred to SAT.

Subsection 164(2)(b) indicates any transferable matter partly or fully heard by a former adjudicator, but not yet determined, is to continue until determination by the former adjudicator, except where the transferable matter is transferred to SAT under subsection 164(3).

Subsection 164(2)(c) indicates that if a transferable matter that has been determined by a former adjudicator:

- would have been appealable had the law in force immediately before the transfer day continued to apply; or
- was actually the subject of an appeal that was not determined before the transfer day,

then that matter is to continue to be dealt with as if the law in force immediately before the transfer day had continued in force.

Subsection 164(2)(d) indicates anything ordered, decided or otherwise done by a former adjudicator in respect of a transferable matter before transfer day is to be of the same effect and enforceable as if it were an order or decision made by SAT after the transfer day.

Subsection 164(3) refers back to subsection 164(2)(b) to indicate the circumstances in which a partly or fully heard matter that is not yet determined by a former adjudicator may be transferred to SAT after transfer day.

Subsection 164(3)(a) provides if the former adjudicator feels it would be practicable for the matter to be transferred to SAT, the former adjudicator may transfer such a matter.

Subsection 164(3)(b) provides the former adjudicator is required to transfer the matter to SAT if:

- the matter cannot be, or is unlikely to be, determined within 6 months after transfer day; or
- the President of SAT directs that the matter be transferred.

Subsection 164(4) reinforces the fact that a former adjudicator who continues to deal with a matter after transfer day under either subsections 164(2)(b) or 164(2)(c) will continue to apply the law in force before the transfer day to the extent that it is necessary to enable the former adjudicator to deal with and determine the matter or appeal.

Subsection 164(5) reinforces the fact that anything ordered, decided or done by a former adjudicator after transfer day under this section has the same force and effect (and is subject to appeal) as anything ordered, decided or done by SAT after transfer day.

Subsection 164(6) indicates the appeal lies to the Supreme Court unless the former adjudicator is or includes a judge of the Supreme or District court.

Subsection 164(7) provides a former adjudicator is to provide the Executive Officer of SAT with:

- records of anything the former adjudicator orders, decides or does under this section; and
- all records relating to a matter finalized under this section or a matter that is transferred under this section to SAT.

Subsection 164(8) provides a former adjudicator who has not completed dealing with a matter under this section within 6 months after transfer day is required, within 7 days after that period expires, to give to the President of SAT a written report about the matter. This written report is to include details of why the matter has neither been completed nor referred to SAT.

Subsection 164(9) provides that regulations may be made to apply any of the general principles described in this section in a case of a particular kind.

### Clause 165 Regulations

Enables the Governor to make regulations.

### Clause 166 Tribunal's rules

Enables the Rules Committee to make rules for SAT.

### Clause 167 Rules Committee

Establishes a Rules Committee comprising SAT judicial members and senior and ordinary SAT members, the latter of which are to be specified by the President.

## **PART 9 – MINOR AMENDMENTS TO OTHER ACTS**

### Clause 168 *Constitution Acts Amendment Act 1899* amended

It is proposed to amend Schedule V Part 1 Division 1 of the *Constitution Acts Amendment Act 1899* to disqualify a member of the State Administrative Tribunal from eligibility to become a member of either the Legislative Assembly or the Legislative Council.

### Clause 169 *Interpretation Act 1984* amended

A written law is defined in s5 of the *Interpretation Act 1984* as all Acts for the time being in force and all subsidiary legislation for the time being in force.

It is proposed to amend s5 of the *Interpretation Act 1984* titled “Definitions applicable to written laws” to insert a definition of State Administrative Tribunal to be interpreted when reading any written law in Western Australia as meaning the State Administrative Tribunal established under the *State Administrative Tribunal Act 2003*.

It is also proposed to amend s51 of the *Interpretation Act 1984* titled “Power to issue licences and other authorizations is discretionary” to reflect the fact that the State Administrative Tribunal will be a single overarching tribunal amalgamating numerous civil and administrative review tribunals, as well as court and ministerial appeal processes in Western Australia and therefore appeals that were previously made to these bodies will, upon the conferral of jurisdiction, now be made by way of an application to SAT to seek a review of the decision to refuse to grant or renew a licence as the case may be.

### Clause 170 *Legal Representation of Infants Act 1977* amended

This Act makes provision for the legal representation of infants in legal proceedings.

It is proposed to amend s3 of the *Legal Representation of Infants Act 1977* titled “Application” to insert “the State Administrative Tribunal” so that the provisions of this Act shall extend to infants who are a party to proceedings before the State Administrative Tribunal.

Clause 171 *Parliamentary Commissioner Act 1971* amended

It is proposed to amend Schedule 1 of the *Parliamentary Commissioner Act 1971* titled “Entities, and extent, to which this Act does not apply” to insert the words “The State Administrative Tribunal established under the *State Administrative Tribunal Act 2003*” to ensure that the Parliamentary Commissioner for Administrative Investigations (State Ombudsman) does not have jurisdiction to investigate administrative decisions of the State Administrative Tribunal.