

# Resource Management and Planning Appeal Tribunal Act 1993

An Act to establish the Resource Management and Planning Appeal Tribunal and to provide for related matters

[Royal Assent 9 November 1993]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## PART 1 - Preliminary

### 1. Short title

This Act may be cited as the [Resource Management and Planning Appeal Tribunal Act 1993](#).

### 2. Commencement

This Act commences on a day to be proclaimed.

### 3. Interpretation

In this Act, unless the contrary intention appears –

"**Appeal Tribunal**" means the Resource Management and Planning Appeal Tribunal established under [section 5](#);

"**chairperson**", in relation to the Appeal Tribunal, means the chairperson of the Appeal Tribunal;

"**deputy chairperson**", in relation to the Appeal Tribunal, means the deputy chairperson of the Appeal Tribunal;

"**mediation**" has the same meaning as in the [Alternative Dispute Resolution Act 2001](#) and includes neutral evaluation within the meaning of that Act;

"**member**" means a member of the Appeal Tribunal;

"**presiding member**", in relation to the Appeal Tribunal, means the chairperson or member appointed by the chairperson to preside at the hearing of an appeal of the Appeal Tribunal.

### 4. Act to bind Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

## PART 2 - Establishment of Appeal Tribunal

## **5. Establishment of Appeal Tribunal**

(1) A Resource Management and Planning Appeal Tribunal is established.

(2) The Appeal Tribunal has such jurisdiction as may be conferred on it by any other Act.

(3) The Appeal Tribunal is part of the State's resource management and planning system, the objectives of which are set out in [Schedule 1](#).

## **PART 3 - Membership of The Appeal Tribunal**

### **6. Composition of Appeal Tribunal**

The Appeal Tribunal consists of –

(a) the chairperson who must be an Australian legal practitioner of not less than 5 years' standing; and

(ab) the deputy chairperson who must be an Australian legal practitioner of not less than 5 years' standing; and

(b) such number of persons as the Governor considers necessary who possess expertise in planning; and

(c) such number of persons as the Governor considers necessary who possess expertise in resource economics; and

(d) such number of persons as the Governor considers necessary who possess expertise in science; and

(e) such number of persons as the Governor considers necessary who possess expertise in engineering; and

(f) such number of persons as the Governor considers necessary who possess expertise in medicine; and

(g) such number of persons as the Governor considers necessary who possess expertise in environmental management; and

(h) such number of persons as the Governor considers necessary who possess expertise in industry process operations; and

(i) such other persons as the Governor considers necessary having regard to the jurisdiction of the Appeal Tribunal from time to time.

### **7. Appointment of members of Appeal Tribunal**

(1) The chairperson, deputy chairperson and other members are to be appointed by the Governor.

(2) The [State Service Act 2000](#) does not apply to the appointment of a member.

(3) [Schedule 2](#) has effect with respect to the membership of the Appeal Tribunal.

#### **7A. Deputy chairperson**

The deputy chairperson acts as the chairperson –

(a) during a vacancy in the office of the chairperson; or

(b) during any period, or all periods, when the chairperson is absent from duty or is, for any other reason, unable to perform the functions of the office of chairperson.

#### **8. Acting chairperson**

(1) The Governor may appoint a person to act as chairperson –

(a) during a vacancy in the office of chairperson or deputy chairperson; or

(b) during any period, or all periods, when the chairperson or deputy chairperson is absent from duty or is, for any other reason, unable to perform the functions of the office of chairperson.

(2) Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his or her time to the duties of office under that Act, that provision does not operate to disqualify that person from holding that office and also acting as chairperson.

### **PART 4 - Organization of The Appeal Tribunal**

#### **9. Arrangement of business**

(1) Subject to [section 10](#), the chairperson may give directions as to the arrangement of the business of the Appeal Tribunal and as to the members who are to constitute the Appeal Tribunal for the purposes of particular proceedings.

(2) If the chairperson gives a direction as to the members who are to constitute the Appeal Tribunal for the purposes of a particular proceeding, the chairperson may –

(a) at any time after giving the direction and before the start of the hearing of the appeal; or

(b) if, in the case of an appeal before the Appeal Tribunal constituted by more than 2 members, one of those members ceases to be a member, or ceases to be available for the purposes of the appeal, during the hearing of the appeal or after the completion of the hearing but before the

matter to which the appeal relates is determined, at any time after the member ceases to be a member or to be available –

revoke the direction and give a further direction under [subsection \(1\)](#) as to the persons who are to constitute the Appeal Tribunal for the purposes of the appeal.

(3) In giving a direction under this section as to the members who are to constitute the Appeal Tribunal for the purposes of a particular proceeding, the chairperson must have regard to –

- (a) the nature of the issues likely to be involved in the appeal; and
- (b) the particular expertise of each proposed member; and
- (c) the degree of public importance or complexity of the matters to which the appeal relates; and
- (d) the need for the Appeal Tribunal's affairs to be conducted expeditiously and efficiently.

## **10. Constitution of Appeal Tribunal**

(1) Subject to [section 12](#), the Appeal Tribunal is to be constituted for the purposes of the hearing and determination of an appeal by –

- (a) the chairperson; or
- (b) a member other than the chairperson; or
- (c) subject to [subsection \(2\)](#), the chairperson and not more than 4 other members.

(2) The Appeal Tribunal may be constituted for the exercise of powers in relation to the hearing and determination of an appeal, or for purposes other than the hearing and determination of an appeal, by the chairperson or any other member.

## **11. Member presiding**

At the hearing of an appeal before the Appeal Tribunal at which the Appeal Tribunal is constituted for the purposes of the appeal by more than one member, the chairperson or other member appointed by the chairperson is to preside unless another member is directed under [section 12](#) to preside.

## **12. Member ceasing to be available**

(1) If the hearing of an appeal has been started or completed by the Appeal Tribunal constituted by more than 2 members but, before the matter to which the appeal relates has been determined, one of the members constituting the Appeal Tribunal ceases to be a member, or ceases to be available for the purposes of the appeal –

(a) if the parties agree and the chairperson does not give a direction under [section 9](#), the hearing and determination, or the determination of the appeal may be completed by the Appeal Tribunal constituted by the remaining members; or

(b) in any other case, the appeal is to be reheard by the Appeal Tribunal as reconstituted under [section 10](#).

(2) If the member who ceases to be a member, or ceases to be available for the purposes of the appeal, is the member who is, but for this subsection, to preside, the chairperson may, in writing, appoint one of the remaining members, or the remaining member, to preside.

(3) If an appeal is reheard by the Appeal Tribunal, the Appeal Tribunal may, for the purposes of the appeal, have regard to any record of the appeal before the Appeal Tribunal as previously constituted, including any evidence taken in the appeal.

## **PART 5 - Conduct of Appeals Before Appeal Tribunal**

### **13. Institution of appeals to the Appeal Tribunal**

(1) Unless otherwise required by the Act under which the relevant jurisdiction is conferred on the Appeal Tribunal, an appeal to the Appeal Tribunal must be instituted –

(a) in writing; and

(b) within 14 days after the making of the decision appealed against.

(2) The Appeal Tribunal may, on written application by a person, extend the time for the institution of an appeal by the person to the Appeal Tribunal.

(2A) The Appeal Tribunal, when considering whether to extend the time for instituting an appeal under [section 61 of the \*Land Use Planning and Approvals Act 1993\*](#), must take into account –

(a) the reason why the appeal was not lodged within the period specified in [subsection \(1\)](#); and

(b) the time which has elapsed since the end of the period specified in [subsection \(1\)](#) and whether it would be reasonable to expect that the application to extend the appeal could have been lodged before the date on which it was lodged; and

(c) the extent and cost of any work which has been undertaken in accordance with a permit, referred to in the [Land Use Planning and Approvals Act 1993](#), after the expiry of the period specified in [subsection \(1\)](#); and

(d) any other matter that it considers appropriate.

(3) The time for instituting an appeal to the Appeal Tribunal may be extended even though the time has ended.

(4) The Appeal Tribunal must cause written notice of an appeal under [subsection \(1\)](#) or [\(2\)](#) to be given to the person who made the decision appealed against.

(5) The Appeal Tribunal may consolidate any appeals which are instituted and hold a hearing in relation to the consolidated appeal.

(6) A party to an appeal may withdraw his or her appeal by advising the Appeal Tribunal in writing.

(7) If a party withdraws his or her appeal, the Appeal Tribunal is to notify any other parties to the appeal.

#### **14. Parties to appeal before Appeal Tribunal**

(1) Subject to [section 21](#), the parties to an appeal are –

(a) the appellant; and

(b) the person who made the decision appealed against; and

(c) the applicant or a person whose initial action gave rise to the decision appealed against; and

(d) any other person who has been made a party to the appeal by the Appeal Tribunal on application by the person under [subsection \(2\)](#).

(2) If an appeal has been instituted by a person, any other person whose interests are affected by the decision appealed against may, subject to [subsections \(3\)](#) and [\(4\)](#), apply, in writing, to the Appeal Tribunal to be made a party to the appeal and the Appeal Tribunal may, by order, make the person a party to the appeal.

(3) The Appeal Tribunal may not, under [subsection \(2\)](#), make a person a party to an appeal against a decision –

(a) in respect of the granting of a permit under [section 57 of the \*Land Use Planning and Approvals Act 1993\*](#) unless –

(i) the person made a representation under [section 57\(5\)](#) of that Act in respect of the application for the permit; or

(ii) the Tribunal considers that the person has a proper interest in the subject matter of the appeal and that it is not reasonable to expect the person to have made a representation in respect of the application for the permit; or

(b) in respect of the granting of a permit under [section 58 of the Land Use Planning and Approvals Act 1993](#) unless the Tribunal considers that the person has a proper interest in the subject matter of the appeal.

(4) The Appeal Tribunal may not, under [subsection \(2\)](#), make a person a party to an appeal against a decision to issue an environment protection notice under [section 27\(6\) of the Environmental Management and Pollution Control Act 1994](#) in respect of an activity unless –

(a) the person made a representation in respect of the activity during the assessment by the Board of the Environment Protection Authority of the activity; or

(b) the Tribunal considers that the person has a proper interest in the subject matter of the appeal and that it is not reasonable to expect the person to have made a representation in respect of the activity.

(5) If a person referred to in [subsections \(3\)](#) and [\(4\)](#) has been made a party to an appeal, the person is not entitled to present arguments at the hearing of the appeal in respect of any matters that are not related to the conditions or restrictions –

(a) which are specified in a permit referred to in [subsection \(3\)](#) or an environment protection notice referred to in [subsection \(4\)](#); and

(b) which have been appealed against by a person who lodged an appeal under [section 61 of the Land Use Planning and Approvals Act 1993](#).

## **15. Representation before Appeal Tribunal**

(1) At the hearing of an appeal before the Appeal Tribunal, a party to the appeal may appear in person or be represented by some other person (whether or not the person is an Australian lawyer or an Australian legal practitioner).

(2) The Appeal Tribunal may in exceptional circumstances refuse to allow a party to the appeal to be represented if the Appeal Tribunal is satisfied that another party to the appeal would be significantly disadvantaged by that representation.

## **16. Procedure of Appeal Tribunal**

(1) In an appeal before the Appeal Tribunal –

(a) the procedure of the Appeal Tribunal is within the discretion of the Appeal Tribunal; and

(b) the appeal is to be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the Appeal Tribunal permits; and

(c) the Appeal Tribunal is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate; and

(d) the Appeal Tribunal must observe the rules of natural justice; and

(e) the Appeal Tribunal is entitled to hear matters afresh and to take account of new evidence not considered by the person who made the decision which gave rise to the appeal; and

(f) the Appeal Tribunal must hear and determine the appeal within 90 days after it is instituted or within such further period as may be granted under [subsection \(6\)](#).

(2) For the purposes of [subsection \(1\)](#), directions as to the procedure to be followed at or in connection with the hearing of an appeal before the Appeal Tribunal may be given –

(a) if the hearing of the appeal has not started – by the chairperson or by a presiding member authorized by the chairperson to give procedural directions; and

(b) if the hearing of the appeal has started – by the member presiding at the hearing or by another member authorized by the member presiding to give procedural directions.

(3) A direction may be varied or revoked by a member empowered to give the direction.

(4) An authorization by the chairperson may be of general application or may relate to the hearing of a particular proceeding or class of proceedings.

(5) The chairperson may vary or revoke an authorization.

(6) The Minister may, by notice in writing given to the chairperson, extend the period of 90 days referred to in [subsection \(1\)\(f\)](#) where the Minister is of the opinion that the interests of justice so require.

(7) The extension by the Minister under [subsection \(6\)](#) of the period of 90 days referred to in [subsection \(1\)\(f\)](#) is not necessary if all parties agree in writing to the extension of that period.

## **16A. Mediation**

(1) Before hearing an appeal, the Appeal Tribunal –

(a) must consider whether the appeal could be settled expeditiously by the use of mediation; and

(b) may, on its own motion or on the motion of a party to the appeal, direct the parties to the appeal to mediation using the services of a mediator approved by the Appeal Tribunal.

(2) The Appeal Tribunal may stay the proceedings on an appeal until any mediation directed by it has been completed.

(3) At the hearing of an appeal before the Appeal Tribunal, evidence about anything that happens at mediation held under [subsection \(1\)](#) in relation to the appeal is inadmissible.

## 17. Conferences

(1) If an appeal is made to the Appeal Tribunal, the chairperson may direct the holding of a conference of the parties presided over by a presiding member or another person performing duties on behalf of the Appeal Tribunal.

(2) If a conference is held under [subsection \(1\)](#) and –

(a) at or after the conference, agreement is reached between the parties as to the terms of a decision of the Appeal Tribunal in the appeal that would be acceptable to the parties; and

(b) the terms of the agreement are reduced to writing, signed by the parties and given to the Appeal Tribunal; and

(c) the Appeal Tribunal is satisfied that –

(i) a decision in those terms would be within the powers of the Appeal Tribunal; and

(ii) that it would be appropriate to make a decision in those terms –

the Appeal Tribunal may, without holding a hearing, make a decision in accordance with those terms.

(3) At the hearing of an appeal before the Appeal Tribunal, evidence about anything that happens at a conference held under [subsection \(1\)](#) in relation to the appeal is inadmissible.

(4) If –

(a) a conference held under [subsection \(1\)](#) in relation to an appeal is presided over by a member; and

(b) a party to the appeal who was present at the conference notifies the Appeal Tribunal before, or at the start of, the hearing that the party objects to the member participating in the hearing –

the member is not entitled to be a member of the Appeal Tribunal as constituted for the purposes of the appeal.

## 18. Procedure at hearings of appeals

(1) Subject to this section, a hearing of an appeal must be held in public.

(2) If –

(a) a person appearing to give evidence at a hearing objects to doing so in public; and

(b) the Appeal Tribunal considers –

(i) that the evidence is of a confidential nature; and

(ii) the interest in confidentiality is greater than the interest in having the evidence taken in public –

the Appeal Tribunal may take the evidence in private.

(3) If the Appeal Tribunal considers –

(a) that evidence to be given at a hearing is of a confidential nature even though the person appearing to give the evidence has not objected to doing so in public; and

(b) the interest in confidentiality is greater than the interest in having the evidence taken in public –

the Appeal Tribunal may take the evidence in private.

(4) The Appeal Tribunal may, if it thinks fit, permit or require a person who is to give evidence to the Appeal Tribunal to do so in writing.

## **19. Opportunity to make submissions**

Subject to [section 18](#), the Appeal Tribunal must ensure that every party to an appeal before the Appeal Tribunal is given a reasonable opportunity to present the party's case and, in particular, to inspect any documents to which the Appeal Tribunal proposes to have regard in reaching a decision in the appeal and to make submissions in relation to the documents.

## **20. Particular powers of Appeal Tribunal**

(1) For the purpose of an appeal, the Appeal Tribunal may –

(a) take evidence on oath or affirmation; or

(b) proceed in the absence of a party who has had reasonable notice of the appeal; or

(c) adjourn the appeal from time to time.

(2) For the purposes of an appeal to be, or being, heard by the Appeal Tribunal, a presiding member may summon a person to produce such documents (if any) as are specified in the summons or to appear at a hearing to give evidence.

(3) The member who presides at the hearing of an appeal –

(a) may require a person appearing before the Appeal Tribunal to give evidence either to take an oath or to make an affirmation; and

**(b)** may administer an oath or affirmation to a person appearing before the Appeal Tribunal.

**(4)** The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

**(5)** The Appeal Tribunal may permit a person appearing as a witness before the Appeal Tribunal to give evidence by tendering a written statement, verified, if the Appeal Tribunal directs, by oath or affirmation.

## **21. Power of Appeal Tribunal to dismiss claim or strike out party**

If a party to an appeal before the Appeal Tribunal who has had reasonable notice of the appeal fails either to appear at a conference under [section 17\(1\)](#) or at the hearing of the appeal, the Appeal Tribunal may –

**(a)** if the only other party to the appeal is the person who made the decision – dismiss the application concerned; or

**(b)** direct that the person who failed to appear is to cease to be a party to the appeal; or

**(c)** make such other order as it considers necessary.

## **22. General powers**

**(1)** For the purpose of an appeal, the Appeal Tribunal may do all things necessary or convenient to be done for or in connection with the hearing and determination of the appeal.

**(2)** Where a person appeals, or purports to appeal, to the Appeal Tribunal and it appears to the Appeal Tribunal that –

**(a)** a failure to comply with a requirement of this Act or of another Act or law affects the appeal or purported appeal, or decision or purported decision, against which the appeal or purported appeal has been brought; and

**(b)** it would not be unjust or inequitable to exercise the powers conferred by this subsection –

the Appeal Tribunal may excuse the failure by ordering that, subject to such conditions as may be determined by the Appeal Tribunal, the requirement be dispensed with to the necessary extent.

**(3)** Where a person appeals to the Appeal Tribunal and it appears to the Appeal Tribunal that –

**(a)** the appeal relates to an application made by one party to the appeal to another party to the appeal; and

(b) the appeal could be resolved in a manner that is fair to all parties if certain modifications to the application were made; and

(c) it would be conducive to the expeditious administration of justice if the powers conferred by this subsection were exercised –

the Appeal Tribunal may, by order, amend the application accordingly.

(4) [Subsection \(2\)](#), as amended by the [Resource Management and Planning Appeal Tribunal Amendment Act 2000](#), is taken to extend to the exercise, or purported exercise, of any power under that subsection by the Appeal Tribunal before the commencement of that Act.

(5) [Subsection \(4\)](#) does not disturb the effect of a decision of the Supreme Court made before the commencement of the [Resource Management and Planning Appeal Tribunal Amendment Act 2000](#).

## **22A. Power of Appeal Tribunal to dismiss an appeal**

The Appeal Tribunal is to dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious or may dismiss an appeal if the appellant fails to comply with its directions.

## **23. Determination of appeal**

(1) For the purpose of determining an appeal, the Appeal Tribunal may exercise all the powers that are conferred by the relevant legislation on the person who made the decision that gave rise to the appeal.

(2) The Appeal Tribunal must make a decision in writing –

(a) affirming the decision appealed against; or

(b) varying the decision appealed against; or

(c) setting aside the decision appealed against and –

(i) making a decision in substitution for the decision appealed against; or

(ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Appeal Tribunal.

(3) The Appeal Tribunal must notify each party to the appeal of its decision as soon as practicable after making its decision.

(4) A decision of the Appeal Tribunal comes into effect at the expiration of the period of 10 days after the day on which the decision is made or, if a later day is specified in the decision, that day.

(5) The Appeal Tribunal may correct a clerical mistake or an error arising from any accidental slip or omission or an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in its decision.

(6) The Appeal Tribunal may amend its decision on an appeal if it is satisfied that the amendment –

(a) does not change the effect of any condition required by the Appeal Tribunal; and

(b) will not cause an increase in detriment to any person.

(7) The Appeal Tribunal's decision in relation to an appeal must be given effect to by the person who is responsible for giving effect to the decision that gave rise to the appeal.

#### **24. Reasons to be given by Appeal Tribunal**

(1) Subject to this section and to [section 23](#), the Appeal Tribunal must give written reasons for its determination of an appeal.

(2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

(3) The Appeal Tribunal must cause a written copy of its reasons to be given to each party to the appeal.

#### **25. Appeals to Supreme Court from decisions of Appeal Tribunal**

(1) A party to an appeal before the Appeal Tribunal may appeal to the Supreme Court, on a question of law, from any decision of the Appeal Tribunal in the appeal.

(2) An appeal from a decision of the Appeal Tribunal must be made to the Supreme Court –

(a) within 28 days after the making of the decision; and

(b) in accordance with any applicable Rules of Court made by the Supreme Court and any regulations made for the purposes of this section.

(3) The Supreme Court may extend the time for instituting the appeal.

(4) The time for instituting the appeal may be extended even though the time has ended.

(5) The Supreme Court must hear and determine an appeal duly made under this section, and may make such orders as it considers appropriate.

(6) Withoutlimiting [subsection \(5\)](#), the orders that may be made by the Supreme Court on an appeal include –

- (a) an order affirming a decision of the Appeal Tribunal; and
- (b) an order setting aside a decision of the Appeal Tribunal and –
- (i) making a decision in substitution for the decision set aside; or
- (ii) remitting the matter for reconsideration in accordance with any directions of the Supreme Court.

## **26. Operation and implementation of a decision subject to appeal**

(1) Subject to [subsection \(2\)](#), the institution of an appeal to the Supreme Court from a decision of the Appeal Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Supreme Court may make an order staying or otherwise affecting the operation or implementation of –

- (a) the whole or a part of the decision of the Appeal Tribunal; or
- (b) the whole or a part of the decision to which the appeal before the Appeal Tribunal related –

if the Court considers it appropriate to do so for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) An order under this section –

- (a) may, by order, be varied or revoked; and
- (b) is subject to such conditions as are specified in the order; and
- (c) has effect until –
- (i) the end of the period of operation (if any) specified in the order; or
- (ii) the giving of the decision of the Court on the appeal –

whichever is the earlier.

## **27. Reference of questions of law to Supreme Court**

(1) The Appeal Tribunal may, at the request of a party or of its own initiative, refer a question of law arising in an appeal before the Appeal Tribunal to the Supreme Court for decision.

(2) A question is not to be referred without the agreement of the presiding member (if any) who is presiding or the chairperson of the Appeal Tribunal.

(3) If a question arising in an appeal before the Appeal Tribunal has been referred to the Supreme Court, the Appeal Tribunal must not, in the appeal –

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a way, or make a decision, that is inconsistent with the decision of the Supreme Court on the question.

## **28. Costs**

(1) Each party to an appeal is to pay its own costs.

(2) However, the Appeal Tribunal may order a party to an appeal to pay all or part of the costs of another party to the appeal if the Appeal Tribunal is satisfied that it is fair and reasonable to do so.

(3) For the purposes of [subsection \(2\)](#), the Appeal Tribunal may take into account any of the following matters:

- (a) whether the appeal appears to the Appeal Tribunal to have been instituted merely to delay or obstruct;
- (b) whether in the Appeal Tribunal's opinion a party has raised frivolous or vexatious issues;
- (c) the relative merits of the claims made by each of the parties;
- (d) whether in the Appeal Tribunal's opinion a party has unnecessarily or unreasonably prolonged the appeal or increased the costs of it;
- (e) whether a party has failed to comply with a direction or order of the Appeal Tribunal without reasonable excuse;
- (f) whether a party has failed to comply with any relevant law or planning scheme;
- (g) the nature, complexity and outcome of the appeal;
- (h) the capacity of the parties to meet an order for costs;
- (i) any other matter the Appeal Tribunal considers relevant.

(4) If the Appeal Tribunal makes an order for costs under [subsection \(2\)](#), it –

- (a) is to specify the time within which those costs are to be paid; and

(b) may, by a further order, extend the time if it considers it reasonable in the circumstances.

(5) If the Appeal Tribunal makes an order for costs before the end of any proceedings, it may require that the order be complied with before it continues with the proceedings.

(6) An order for costs under this section may be registered in a court having jurisdiction for the recovery of debts of the amount ordered to be paid by or under the order.

(7) Proceedings for the enforcement of an order for costs under this section may be taken as if the order were a judgment of the court in which the order is registered.

### **29. Protection of members, &c.**

(1) A member has, in the performance of the member's duties as a member, the same protection and immunity as a judge of the Supreme Court.

(2) A person summoned to attend or appearing before the Appeal Tribunal as a witness has the same protection as a witness in an appeal in the Supreme Court.

(3) A person performing duties on behalf of the Appeal Tribunal under [sections 16A](#) and [17](#) has the same protection and immunity as if the person were a member of the Appeal Tribunal.

### **30. Failure of witness to attend**

A person served, as prescribed, with a summons to appear as a witness before the Appeal Tribunal must not, without reasonable excuse –

(a) fail to attend as required by the summons; or

(b) fail to appear from time to time in the course of the appeal as required by the presiding member.

Penalty:

Fine not exceeding 20 penalty units.

### **31. Refusal of witness to be sworn or answer questions, &c.**

(1) A person appearing as a witness at a hearing of the Appeal Tribunal must not, without reasonable excuse –

(a) fail to be sworn or to make an affirmation; or

(b) fail to answer a question that the person is required to answer by the presiding member; or

(c) fail to produce a document that the person was required to produce by a summons served on the person as prescribed.

Penalty:

Fine not exceeding 20 penalty units.

(2) A person is not excused from answering a question or producing a document on the ground that the answer to the question or the production of the document might tend to incriminate the person.

(3) Where a person claims, before answering a question or producing a document, that the answer to the question or the production of the document might tend to incriminate the person, the answer or document is not admissible in evidence against the person in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer or document.

### **32. False or misleading evidence**

A person appearing as a witness before the Appeal Tribunal must not knowingly give evidence that is false or misleading.

Penalty:

Fine not exceeding 20 penalty units.

### **33. Contempt of Appeal Tribunal**

A person must not –

(a) insult a member in relation to the performance of his or her functions as a member; or

(b) interrupt an appeal of the Appeal Tribunal; or

(c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Appeal Tribunal is sitting; or

(d) do anything that would, if the Appeal Tribunal were a court of record, constitute a contempt of that court.

Penalty:

Fine not exceeding 20 penalty units.

### **34. Obstructing Appeal Tribunal**

A person must not obstruct or improperly influence the conduct of a hearing of the Appeal Tribunal or attempt to do so.

Penalty:

Fine not exceeding 20 penalty units.

### **35. Confidential information not to be disclosed**

(1) In this section –

"**court**" includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

"**person to whom this section applies**" means a person who is or has been –

(a) a member of the Appeal Tribunal; or

(b) a member of the staff of the Appeal Tribunal;

"**produce**" includes permit access to.

(2) A person to whom this section applies is not required to give evidence to a court relating to a matter if the giving of the evidence was given in private under [section 18](#).

### **36. Allowances for witnesses**

A witness summoned to appear at a hearing of the Appeal Tribunal is entitled to be paid such allowances and expenses –

(a) as are prescribed; or

(b) in the absence of regulations, as the chairperson determines.

## **PART 6 - Miscellaneous**

### **37. Annual report**

The chairperson must, not later than 4 months after the end of each financial year, prepare and give to the Minister a report on the operations of the Appeal Tribunal during the financial year.

### **38. Delegation of powers by chairperson**

(1) The chairperson may delegate his or her functions or powers, other than this power of delegation, to another presiding member or another person performing duties on behalf of the Appeal Tribunal.

(2) A delegation may be made either generally or as otherwise provided by the instrument of delegation.

(3) Notwithstanding any delegation under this section, the chairperson may continue to perform or exercise all or any of the functions or powers delegated.

(4) A function or power performed or exercised by a delegate has the same effect as if performed or exercised by the chairperson.

### **39. Regulations**

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of [subsection \(1\)](#), regulations under this section may –

(a) make provision for or with respect to –

(i) the payment and collection of fees by any person in relation to any act, matter or thing done or arising under this Act; and

(ii) the remission of, or exemption from liability for, any such fees; and

(b) be of general or specially limited application; and

(c) authorize any act, matter or thing in relation to which the regulations may be made to be from time to time determined, applied or regulated by such person as is specified in the regulations, being the Appeal Tribunal, a member of the Appeal Tribunal or any other person performing duties under this Act.

### **40. Administration of Act**

Until provision is made in relation to this Act by order under [section 4 of the \*Administrative Arrangements Act 1990\*](#) –

(a) the administration of this Act is assigned to the Minister for Environment and Land Management; and

(b) the Department responsible to the Minister for Environment and Land Management in relation to the administration of this Act is the Department of Environment and Land Management.

## **SCHEDULE 1 - Objectives of the Resource Management and Planning System of Tasmania**

**1.** The objectives of the resource management and planning system of Tasmania are –

(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and

(b) to provide for the fair, orderly and sustainable use and development of air, land and water; and

(c) to encourage public involvement in resource management and planning; and

(d) to facilitate economic development in accordance with the objectives set out in [paragraphs \(a\), \(b\) and \(c\)](#); and

(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

**2.** In [clause 1\(a\)](#), "**sustainable development**" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

(a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

## **SCHEDULE 2 - Provisions with Respect to Membership of Appeal Tribunal**

### [Section 7](#)

#### **1. Period of appointment**

A member is appointed for a term of 5 years and, if otherwise qualified, is eligible for re-appointment from time to time.

#### **2. Provisions requiring devotion of whole of time to other duties**

Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his or her time to the duties of office under that Act, that provision does not operate to disqualify that person from holding that office and also the office of a member.

#### **3. Terms and conditions of appointment**

(1) Subject to [subclause \(2\)](#), a member is entitled to be paid such remuneration and allowances as the Governor may from time to time determine.

(2) A member who is a State Service officer or State Service employee is not entitled to remuneration under [subclause \(1\)](#), except with the approval of the Minister administering the [State Service Act 2000](#).

(3) A member holds office on such terms and conditions not provided for in this Act as are determined by the Governor.

#### **4. Disclosure of interests**

(1) If a member is, or is to be, a member of the Appeal Tribunal as constituted for the purposes of an appeal and the member has or acquires an interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions in relation to the appeal –

(a) the member must disclose the interest to the parties to the appeal; and

(b) except with the consent of all parties to the appeal, the member must not take part in the appeal or exercise any powers in relation to the appeal.

(2) If the chairperson becomes aware that a member who is, or is to be, a member of the Appeal Tribunal as constituted for the purposes of an appeal, has, in relation to the appeal, an interest of the kind mentioned in [subclause \(1\)](#) –

(a) if the chairperson considers that the member should not take part, or continue to take part, in the appeal, the chairperson must direct the member accordingly; or

(b) in any other case, the chairperson must cause the interest of the member to be disclosed to the parties to the appeal if the interest has not already been disclosed to them.

#### **5. Resignation**

A member may resign by signed notice given to the Governor.

#### **6. Termination of appointment**

(1) The Governor may terminate the appointment of a member if the member –

(a) becomes mentally or physically incapable of performing satisfactorily the duties of office; or

(b) is convicted in Tasmania, or elsewhere, of an offence punishable by imprisonment for 2 years or longer; or

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his or her creditors or makes an assignment of his or her remuneration or estate for their benefit; or

(d) contravenes [clause 4](#) or a direction given under that clause.

(2) A member must not be removed from office otherwise than in accordance with this clause.