



Misconduct Tribunals Act 1997

Reprinted as in force on 2 November 2009

Reprint No. 2B

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See 2009 Act No. 23 s 243

Information about this reprint

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- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

Dates shown on reprints

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If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

Replacement reprint date If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



Queensland

Misconduct Tribunals Act 1997

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Misconduct Tribunals Act 1997

[as amended by all amendments that commenced on or before 2 November 2009]

An Act to provide for the establishment and operation of misconduct tribunals, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Misconduct Tribunals Act 1997*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Main objects

The main objects of this Act are to provide for the establishment and operation of misconduct tribunals that—

- (a) act independently, and in a way that is—
 - (i) fair and impartial; and
 - (ii) effective and efficient; and
- (b) have jurisdiction to hear and decide—
 - (i) charges, of a disciplinary nature, of official misconduct against prescribed persons; and
 - (ii) appeals from particular decisions made in relation to charges, of a disciplinary nature, made against prescribed persons.

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4 Dictionary

The dictionary in the schedule defines particular words used in this Act.

4A Relationship with Industrial Relations Act 1999

The industrial court and the industrial relations commission do not have jurisdiction in relation to a matter that a tribunal, the Supreme Court or the District Court may decide under this Act even though it may be, or be about, or arise out of, an industrial matter within the meaning of the *Industrial Relations Act 1999*.

Part 2 Misconduct tribunals

Division 1 Misconduct tribunal panel and members

5 Appointment of misconduct tribunal panel members

- (1) The Governor in Council may, by gazette notice, appoint as many qualified persons as the Minister considers appropriate as members of a panel of misconduct tribunal members (the *tribunal panel*).
- (2) The Governor in Council is to appoint 1 tribunal member as the senior member of the tribunal panel (the *senior member*).
- (3) In this section—
qualified person means a person who is qualified, under section 6, for appointment as a tribunal member.

6 Qualifications of tribunal members

- (1) A person is qualified for appointment as a tribunal member if the person is—
 - (a) nominated for appointment by the Minister; and
 - (b) a barrister or solicitor of the Supreme Court of at least 5 years standing.
- (2) An ineligible person is not qualified for appointment as a tribunal member.
- (3) If a tribunal member becomes an ineligible person, the member can not continue as a tribunal member.

7 Nomination for appointment as tribunal member

- (1) The Minister may nominate a person for appointment as a tribunal member only after—
 - (a) advertising State-wide for applications; and
 - (b) consulting with the chairperson of the commission; and
 - (c) obtaining the bipartisan support of the parliamentary committee for the nomination.
- (2) Subsection (1)(a) does not apply to the nomination of a person for reappointment as a tribunal member.
- (3) In this section—

bipartisan support, of the parliamentary committee, means—

 - (a) support of the members of the parliamentary committee unanimously; or
 - (b) support of a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.

7A Report about person's criminal history

- (1) To help decide whether a person is suitable for nomination for appointment as a tribunal member, the Minister may ask the

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commissioner of the police service for a written report about the person's criminal history.

- (2) However, the Minister may make a request about a person under subsection (1) only if the person has given the Minister written consent for the request.
- (3) If asked by the Minister, the commissioner of the police service must give the Minister a written report about the criminal history of the person.
- (4) The duty imposed on the commissioner of the police service applies only to information in the commissioner's possession or to which the commissioner has access.
- (5) In having regard to the report, the Minister must consider the nature of any offence mentioned in the report and the relevance of the offence to the person's suitability for nomination for appointment as a tribunal member.
- (6) The Minister must destroy the report as soon as practicable after it is no longer needed for the purpose for which it was requested.
- (7) In this section—

criminal history, of a person, means every conviction of the person for an offence, in Queensland or elsewhere, whether before or after the commencement of this section.

8 Duration of appointment

- (1) A tribunal member may be appointed for a term not longer than 3 years.
- (2) Appointment as a tribunal member is on a part-time basis.
- (3) A tribunal member may be appointed for a further term, but the member must not serve as a tribunal member for more than 6 years in total.
- (4) A tribunal member may resign by signed notice of resignation given to the Minister.

9 Conditions of appointment

- (1) A tribunal member is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A tribunal member holds office on the conditions not provided in this Act decided by the Governor in Council.

9A Appointment of acting senior member

The Governor in Council is to appoint a tribunal member to act as the senior member—

- (a) for any period, or all periods, when the senior member is absent from duty or the State, or can not for another reason perform the duties of the office; or
- (b) for any period, or all periods, that the office is vacant because of the operation of section 19A(2)(b); or
- (c) for any period that the office is otherwise vacant.

10 Removal from office

The Governor in Council may, by written notice given to a tribunal member, remove the member from office if the member—

- (a) is incapable of properly discharging the functions of a tribunal member; or
- (b) is unfit to hold the office.

Division 2 Establishment and composition of tribunals

11 Senior member to establish misconduct tribunal

- (1) The senior member may establish a misconduct tribunal to hear a particular matter within the jurisdiction of misconduct tribunals.

14 Tribunal's original jurisdiction exclusive

- (1) A charge, of a disciplinary nature, of official misconduct made against a prescribed person may be heard and decided only by a misconduct tribunal.
- (2) Subsection (1) applies to the exclusion of authority given by law to any other person or tribunal to hear and decide, at first instance, disciplinary charges made against the prescribed person.
- (3) A decision of a misconduct tribunal exercising original jurisdiction is binding on and must be given effect by all persons concerned.
- (4) Subsection (3) applies subject to section 37.

14A Tribunal hearing in relation to a prescribed person whose employment or appointment has ended

To remove any doubt, it is declared that a misconduct tribunal may hear and decide, or continue to hear and decide, a charge under section 14(1) against a prescribed person defined in the *Crime and Misconduct Act 2001*, section 50(5), definition *prescribed person*, paragraph (a)(ii) or (b)(ii), despite the person's employment or appointment having ended—

- (a) before or during the tribunal's hearing; or
- (b) after the hearing and before the tribunal makes its decision.

Division 2 Appeals against decisions on charges of other misconduct against prescribed persons

15 What is a *reviewable decision*

- (1) A *reviewable decision* is—

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- (a) a decision made in relation to a disciplinary charge of misconduct made against a prescribed person, other than a decision made by a court or a misconduct tribunal; or
 - (b) a finding mentioned in the *Police Service Administration Act 1990*, section 7.4(2A)(b) or 7A.5(1)(b), that a prescribed person is guilty of misconduct.
- (2) In this section—

decision, made in relation to a disciplinary charge of misconduct, if a disciplinary declaration is made, includes the disciplinary declaration.

Note—

A reviewable decision may also involve a failure to make a disciplinary declaration.

disciplinary declaration means a disciplinary declaration made under—

- (a) the *Public Service Act 2008*, section 188A; or
- (b) the *Police Service Administration Act 1990*, section 7A.2(2).

prescribed person, in relation to a prescribed person mentioned in the *Crime and Misconduct Act 2001*, section 50(5), definition *prescribed person*, paragraphs (a)(ii) and (b)(ii), means—

- (a) a prescribed person against whom a disciplinary declaration has been made; or
- (b) in relation to an appeal started by the commission under section 18—
 - (i) a prescribed person mentioned in paragraph (a); or
 - (ii) a prescribed person against whom a disciplinary declaration has not been made if a ground of appeal states that a disciplinary declaration should have been made.

16 Jurisdiction—appellate

A misconduct tribunal has jurisdiction (*appellate jurisdiction*) to hear and decide an appeal against a reviewable decision.

Part 4 Proceedings

Division 1 Starting proceedings

17 Proceedings—original jurisdiction

The commission or a principal officer for a unit of public administration may start a proceeding against a prescribed person in a misconduct tribunal's original jurisdiction by—

- (a) filing a written charge of official misconduct with the director; and
- (b) giving to the prescribed person a copy of the charge.

18 Proceedings—appellate jurisdiction

(1) The commission or a prescribed person against whom a reviewable decision has been made may start a proceeding in a misconduct tribunal's appellate jurisdiction—

- (a) by filing a notice of appeal with the director—
 - (i) identifying the decision to which the appeal relates; and
 - (ii) stating clearly the grounds for the appeal; and
- (b) by giving a copy of the notice to each other party to the appeal.

(2) The notice of appeal must be filed with the director—

- (a) if the appeal relates to a reviewable decision notice of which must be given to the commission or prescribed

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person under the *Police Service Administration Act 1990*, section 7.4, 7A.4 or 7A.5—within 14 days after the day on which the notice was given; or

- (b) otherwise—within 14 days after the day on which the reviewable decision was announced.
- (3) The parties to an appeal are—
- (a) the prescribed person; and
 - (b) the person who made the reviewable decision; and
 - (c) if the appeal is started by the commission—the commission.

Division 2 Procedures of misconduct tribunals

19 Procedure following start of proceeding

- (1) The director must ask the senior member to establish a misconduct tribunal to hear and decide the matter as soon as practicable after—
- (a) a proceeding is started; and
 - (b) if the proceeding is started in the tribunal's original jurisdiction—the director receives written notice that a copy of the charge made against the relevant prescribed person has been given to the person.
- (2) If the hearing relates to a proceeding in a misconduct tribunal's original jurisdiction, the commission or principal officer for the unit of public administration that started the proceeding must give to the prescribed person a copy of the brief of evidence, including copies of any witness statements, to be presented at the hearing—
- (a) as soon as practicable after the charge is filed; or
 - (b) in accordance with directions of the misconduct tribunal established for the hearing.

19A Disclosure of interests

- (1) If a tribunal member becomes aware that the member has a conflict of interest in a proceeding before a tribunal constituted by the member, the member must disclose the issue giving rise to the conflict—
 - (a) if the member is the senior member—
 - (i) to the person appointed under section 9A(b) to act as the senior member during a vacancy in the office of senior member; and
 - (ii) to the parties to the proceeding; or
 - (b) otherwise—to the senior member and the parties to the proceeding.
- (2) After making the disclosure—
 - (a) the member must disqualify himself or herself from the proceeding; and
 - (b) if the member is the senior member, the member is taken to have vacated the member's office as senior member for the remainder of the proceeding.
- (3) If the disqualified member is not the senior member, the senior member must, under section 11, choose a member other than the disqualified member to reconstitute the tribunal.
- (4) If the disqualified member is the senior member, the acting senior member must, under section 11, choose a member other than the disqualified member to reconstitute the tribunal.
- (5) The tribunal as reconstituted must continue and finish the proceeding and, for that purpose, may have regard to any record relating to the proceeding made by the tribunal as previously constituted.

20 Misconduct tribunal's powers

- (1) A misconduct tribunal may give the orders about a proceeding it considers appropriate.

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- (2) A misconduct tribunal may order a person to do 1 or more of the following—
 - (a) attend a hearing until excused;
 - (b) give evidence, on oath or affirmation;
 - (c) give to the tribunal, in the way the tribunal orders—
 - (i) a stated document or class of document; or
 - (ii) a stated thing; or
 - (iii) specified information.
- (3) Without limiting the ways the tribunal may order a document, thing or information to be given, the tribunal may order that the document, thing or information be given to the tribunal at a stated reasonable place and time.
- (4) A person to whom a tribunal order applies must comply with the order, unless the person has a reasonable excuse.
- (5) It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document—
 - (a) might tend to incriminate the person; or
 - (b) would disclose a communication to which legal professional privilege attaches.
- (6) The tribunal may enforce its order by filing a copy of it in a registry of the Supreme Court.
- (7) On filing, the order is enforceable as if it were an order of the Supreme Court.
- (8) The tribunal may give leave to amend a written charge of official misconduct if satisfied—
 - (a) the amendment is of a minor nature; and
 - (b) giving leave to make the amendment would not be unfair to the prescribed person.

21 Representation before tribunal

A party to a proceeding before a misconduct tribunal may appear in person or be represented by a lawyer or someone else.

22 Misconduct tribunal may keep documents etc.

- (1) If a document or thing is given to a misconduct tribunal, the tribunal—
 - (a) may keep the document or thing for the period it considers is reasonably necessary; and
 - (b) must allow a person who, if the document or thing were not in the tribunal's possession, would have a right to inspect it, to inspect it at all reasonable times and places; and
 - (c) for a document—may copy or take extracts from the document.
- (2) While the tribunal keeps a document or thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time and place the tribunal decides.

23 Conduct of proceeding

- (1) When conducting a hearing in a proceeding, a misconduct tribunal must—
 - (a) observe natural justice; and
 - (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.
- (2) In conducting the hearing, the tribunal—
 - (a) is not bound by the rules of evidence; and
 - (b) may inform itself of any thing in the way it considers appropriate; and

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- (c) may decide the procedures to be followed for the proceeding.
- (3) However, the tribunal must comply with this division and any procedural rules.
- (4) If the tribunal is exercising appellate jurisdiction, the appeal is by way of rehearing on the evidence (*original evidence*) given in the proceeding before the original decision-maker (*original proceeding*).
- (5) However, the tribunal may give leave to adduce fresh, additional or substituted evidence (*new evidence*) if the tribunal is satisfied—
 - (a) the person seeking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the original proceeding; or
 - (b) in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.
- (6) If the tribunal gives leave under subsection (5), the appeal is—
 - (a) by way of rehearing on the original evidence; and
 - (b) on the new evidence adduced.
- (7) A person nominated by the tribunal for the purpose may administer an oath or affirmation, or take a statutory declaration, required by the tribunal.
- (8) The tribunal may conduct a proceeding in the absence of the prescribed person who is the subject of the charge if—
 - (a) for a proceeding in original jurisdiction—it is satisfied the prescribed person has been—
 - (i) given a copy of the charge; and
 - (ii) notified of the date, time and place of the proceeding; and
 - (iii) given the opportunity to be present or to be legally represented at the proceeding; and

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- (b) for a proceeding in appellate jurisdiction—it is satisfied the prescribed person has been—
 - (i) notified of the date, time and place of the proceeding; and
 - (ii) given the opportunity to be present or to be legally represented at the proceeding.

24 Hearings open to public unless tribunal otherwise orders

- (1) A misconduct tribunal hearing is open to the public unless the misconduct tribunal orders, before or during the hearing, that it be closed to the public.
- (2) The tribunal may order the hearing be closed to the public only if it considers an open hearing would be unfair to a person or contrary to the public interest, having regard to—
 - (a) the subject matter of the hearing; or
 - (b) the nature of the evidence expected to be given.
- (3) The tribunal may order the hearing be closed to the public while it considers whether to make an order under subsection (2).
- (4) If the tribunal orders the hearing to be closed to the public, it may make an order—
 - (a) deciding who may be present at the hearing; or
 - (b) prohibiting the publication of any of the following matters, if it considers publication of the matter would be unfair to a person or contrary to the public interest—
 - (i) the fact a person has given, or may give, evidence before the tribunal;
 - (ii) information that may help to identify a person who has given, or may give, evidence before the tribunal;
 - (iii) evidence given before the tribunal;
 - (iv) the contents of, or a summary of, a record produced to the tribunal.

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- (5) A person must not contravene an order under subsection (4).
Maximum penalty—100 penalty units or 1 year's imprisonment.
- (6) In this section—
hearing includes part of a hearing.

Division 3 Misconduct tribunal decisions

25 Misconduct tribunal decisions—original jurisdiction

- (1AA) This section applies to a prescribed person defined in the *Crime and Misconduct Act 2001*, section 50(5), definition *prescribed person*, paragraph (a)(i) or (b)(i).
- (1) A misconduct tribunal exercising original jurisdiction may, if it finds the charge proved, order that the prescribed person—
 - (a) be dismissed; or
 - (b) be reduced in rank or salary level; or
 - (c) forfeit, or have deferred, a salary increment or increase to which the prescribed person would ordinarily be entitled; or
 - (d) be fined an amount decided by the misconduct tribunal to be deducted from—
 - (i) the person's periodic salary payment in an amount not more than an amount equal to the value of 2 penalty units per payment; or
 - (ii) the person's monetary entitlements, other than superannuation entitlements, on termination of the person's service.
- (2) In deciding the amount for subsection (1)(d)(ii), a tribunal may have regard to the value of any gain to the prescribed person from the person's official misconduct.
- (3) The tribunal may publish its reasons for decision.

25A Misconduct tribunal decisions for prescribed persons whose employment or appointment has ended

- (1) This section applies to a prescribed person defined in the *Crime and Misconduct Act 2001*, section 50(5), definition *prescribed person*, paragraph (a)(ii) or (b)(ii).
- (2) A misconduct tribunal exercising original jurisdiction may, if it finds the charge proved, make a disciplinary declaration and may not take any other disciplinary action.
- (3) The tribunal may only make a disciplinary declaration if the order the misconduct tribunal would have made under section 25(1) if the prescribed person's employment or appointment had not ended would have been that the prescribed person—
 - (a) be dismissed; or
 - (b) be reduced in rank.
- (4) A disciplinary declaration made under this section does not affect the way in which the prescribed person's employment or appointment ended or the benefits, rights and liabilities arising because the employment ended.
- (5) The tribunal may publish its reasons for decision.
- (6) In this section—

disciplinary declaration means a declaration of—

 - (a) the disciplinary finding against the prescribed person; and
 - (b) the order the misconduct tribunal would have made under section 25(1) if the prescribed person's employment or appointment had not ended.

26 Misconduct tribunal decisions—appellate jurisdiction

- (1) A misconduct tribunal exercising appellate jurisdiction may make the following orders—
 - (a) confirm the decision appealed against;
 - (b) set aside the decision and substitute another decision;

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- (c) set aside the decision and return the matter to the original decision-maker with the directions the tribunal considers appropriate.
- (2) In substituting another decision, the misconduct tribunal may impose any punishment provided for on a finding of the charge being proved even though the original decision-maker's power to impose the punishment may have been restricted.
- (3) The decision of the tribunal is final and conclusive, and is binding on, and must be given effect by, all persons concerned.
- (4) No action may be taken to enforce a penalty or fine mentioned in a disciplinary declaration made under subsection (1) or (2).
- (5) The tribunal may only make a disciplinary declaration under subsection (1) or (2) if the order the tribunal would have made if the prescribed person's employment or appointment had not ended would have been that the prescribed person—
 - (a) be dismissed; or
 - (b) be reduced in rank.
- (6) A disciplinary declaration made under subsection (1) or (2) does not affect the way in which the prescribed person's employment or appointment ended or the benefits, rights and liabilities arising because the employment ended.
- (7) In this section—

decision—

- (a) for a decision appealed against, if the decision involved the making of a disciplinary declaration, includes the disciplinary declaration; or
- (b) for a decision substituted on appeal, if the decision involves a disciplinary declaration, includes the disciplinary declaration.

disciplinary declaration means—

- (a) for a decision appealed against, a disciplinary declaration as defined under section 15(2); or

-
- (b) for a decision substituted on appeal, a declaration of—
 - (i) the disciplinary finding against the prescribed person; and
 - (ii) the punishment that would have been imposed by the misconduct tribunal under subsection (1) if the prescribed person's employment or appointment had not ended.

punishment, for subsection (2), if the decision appealed against included the making of, or the failure to make, a disciplinary declaration, means the making of a disciplinary declaration.

27 Misconduct tribunal may refer matter for investigation

- (1) A misconduct tribunal exercising original or appellate jurisdiction may, by order, refer a matter for investigation, or further investigation, with a view to the taking of a criminal proceeding or for another purpose.
- (2) The matter may be referred to—
 - (a) the commission; or
 - (b) the principal officer for the unit of public administration in which the prescribed person is employed.
- (3) The tribunal may adjourn its proceeding until the investigations are completed.

28 Misconduct tribunal's power to suspend punishment

- (1) This section applies if punishment, other than the making of a disciplinary declaration, has been imposed on a prescribed person by—
 - (a) a misconduct tribunal exercising original or appellate jurisdiction; or
 - (b) the decision-maker of a reviewable decision.

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- (2) A misconduct tribunal may order that punishment imposed on the prescribed person be suspended if the tribunal considers it is appropriate to do so in the circumstances.
- (3) The tribunal must state an operational period for the period of suspension and the suspension may be given on conditions.
- (4) If the prescribed person is found to have committed an act of misconduct or official misconduct or to have contravened a condition during the operational period, on the finding—
 - (a) the suspension on the punishment is revoked; and
 - (b) the punishment imposed has immediate effect.
- (5) If the prescribed person is not found to commit an act of misconduct or official misconduct or contravene a condition during the operational period, the punishment imposed on the person is taken to have been satisfied.
- (6) Subsection (4) does not limit the person's liability to punishment for the further act of misconduct or official misconduct.

Division 4 Protection of persons associated with misconduct tribunals

29 Protection of members, legal representatives and witnesses

- (1) A tribunal member has, in the performance of the member's duties for a misconduct tribunal, the same protection and immunity as a Supreme Court judge.
- (2) A lawyer or other person appearing before a misconduct tribunal has the same protection and immunity as a barrister appearing in a proceeding in the Supreme Court.
- (3) A person required to attend or appearing before a misconduct tribunal as a witness has the same protection as a witness in a proceeding in the Supreme Court.

30 Disclosure to tribunal not breach of confidence etc.

- (1) A person is not liable, civilly, criminally or under an administrative process, for—
 - (a) giving information to a tribunal for a hearing; or
 - (b) producing a document or thing to a tribunal for a hearing.
- (2) Without limiting subsection (1)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the disclosed information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the disclosed information under an Act, oath, rule of law or practice—the person—
 - (i) does not contravene the Act, oath, rule of law or practice for making the disclosure; and
 - (ii) is not liable to disciplinary action for making the disclosure.

Division 5 Contempt of misconduct tribunal

31 Contempt of misconduct tribunal

A person is in contempt of a misconduct tribunal if the person—

- (a) insults the tribunal or a tribunal member acting as a tribunal member; or
- (b) deliberately interrupts the tribunal's hearing; or
- (c) creates or continues or joins in creating or continuing, a disturbance in or near a place where the tribunal is conducting a hearing; or
- (d) does anything that would be contempt of court if the tribunal were a judge acting judicially.

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32 Punishment of contempt

- (1) A contempt of a misconduct tribunal may be punished under this section.
- (2) The tribunal, or the senior member, may certify the contempt in writing to the Supreme Court (the *court*).
- (3) For subsection (2), it is enough for the certifier of the contempt to be satisfied there is evidence of contempt.
- (4) If the tribunal or senior member certifies a person's contempt of the tribunal to the court, the court must inquire into the alleged contempt.
- (5) The court must hear—
 - (a) witnesses and evidence that may be produced against or for the person charged with the contempt; and
 - (b) any statement given by the person in defence.
- (6) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to a proceeding in the court.
- (7) The Rules of the Supreme Court apply, with all necessary changes, to the court's investigation, hearing and power to punish.
- (8) The tribunal's or senior member's certificate of contempt is evidence of the matters contained in the certificate.
- (9) The person is not excused from attending before the tribunal in obedience to the order of the tribunal or a court merely because the person is punished or liable to punishment under this section for contempt of a misconduct tribunal.

33 Conduct that is contempt and offence

- (1) If conduct of an offender is both contempt of a misconduct tribunal and an offence, the offender may be proceeded against for the contempt or for the offence, but the offender is not liable to be punished twice for the same conduct.

(2) In this section—

offender means a person guilty, or alleged to be guilty, of contempt of the tribunal.

Division 6 Miscellaneous

34 Allowance to witnesses

A witness who appears at a misconduct tribunal hearing is entitled to be paid the allowance prescribed under a regulation for attendance at the hearing or, if no allowance is prescribed, the reasonable allowance decided by the member constituting the tribunal.

35 Costs

- (1) Each party to a hearing must bear the party's own costs of the hearing.
- (2) However, a misconduct tribunal may make an order about the payment of a party's costs if in particular circumstances it is satisfied it is appropriate to do so.

36 Tribunal to keep record of proceeding

- (1) A misconduct tribunal must keep a record of its proceeding.
- (2) The record may be kept in the way the misconduct tribunal considers appropriate.

Part 5 Appeals

37 Appeal from misconduct tribunal in original jurisdiction

- (1) The following persons may appeal against a decision of a misconduct tribunal exercising original jurisdiction—

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- (a) the prescribed person in relation to whom the decision was made;
 - (b) the principal officer for the unit of public administration in which the prescribed person is or was employed;
 - (c) the commission, whether or not the commission was a party to the proceeding before the tribunal.
- (2) The appeal may be made to the Supreme Court—
- (a) without leave—on 1 or more of the following grounds—
 - (i) denial of natural justice;
 - (ii) error of law;
 - (iii) for an appeal against a decision other than under section 25A—manifestly excessive or inadequate level of penalty;
 - (iv) for an appeal against a decision under section 25A—
 - (A) manifestly excessive or inadequate level of penalty stated in the order stated in a disciplinary declaration made under the section; or
 - (B) a failure to make a disciplinary declaration under the section; or
 - (b) with the leave of a Supreme Court judge—on 1 or both of the following grounds—
 - (i) error of fact;
 - (ii) the decision can not be supported having regard to—
 - (A) the evidence and the proceeding before the misconduct tribunal; and
 - (B) any evidence that may be given in the appeal.
- (3) The appeal must be started within 28 days after the day on which the tribunal's decision is announced.

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- (4) The appeal must be decided on the evidence and proceedings before the tribunal, unless the court—
 - (a) if leave is given under subsection (2)(b)—orders the matter be heard afresh, completely or partly; or
 - (b) in any case—otherwise orders.
 - (5) The court may, on application by a party or its own initiative, transfer the appeal to the District Court at any time after the appeal is started.
 - (6) If an order is made under subsection (5)—
 - (a) the appeal must be continued and disposed of in the District Court; and
 - (b) a District Court judge may exercise any of the powers under this section that would have been exercisable by a Supreme Court judge if the order had not been made.
 - (7) An appeal may be under the Rules of the Supreme Court or, in so far as the rules do not provide, as directed by a Supreme Court judge.
 - (8) If an appeal is allowed other than on the ground under subsection (2)(a)(iii) or (iv), the court may, by order—
 - (a) set aside the decision and substitute another decision; or
 - (b) set aside the decision and remit the matter to any misconduct tribunal with the directions the court considers appropriate.
 - (9) If an appeal on the ground under subsection (2)(a)(iii) is allowed, the court may set aside the penalty order and substitute another penalty the misconduct tribunal was authorised to order and the court considers should have been ordered by the tribunal.
 - (10) If an appeal on the ground under subsection (2)(a)(iv) is allowed, the court may—
 - (a) set aside a disciplinary declaration and substitute another disciplinary declaration; or

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- (b) if there was a failure to make a disciplinary declaration, make a disciplinary declaration;
that the misconduct tribunal was authorised to make and the court considers should have been made by the tribunal.
- (11) No action may be taken to enforce a penalty or fine mentioned in a disciplinary declaration made under subsection (10).
- (12) The court may only make a disciplinary declaration under subsection (10) if the order the court would have made if the prescribed person's employment or appointment had not ended would have been that the prescribed person—
 - (a) be dismissed; or
 - (b) be reduced in rank.
- (13) A disciplinary declaration made under subsection (10) does not affect the way in which the prescribed person's employment or appointment ended or the benefits, rights and liabilities arising because the employment ended.

Part 6 General

38 Parliamentary committee

- (1) The parliamentary committee may conduct a review of misconduct tribunals when it reviews the activities of the commission under the *Crime and Misconduct Act 2001*.
- (2) However, the parliamentary committee is not authorised to inquire into a particular proceeding before a misconduct tribunal.

39 Annual report

- (1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the senior member must prepare and give to the parliamentary

committee and the Minister a written report about the operation of misconduct tribunals during the year.

- (2) The Minister must table the report in the Legislative Assembly within 14 sitting days after receiving the report.

41 Authentication of documents

A document requiring authentication by a misconduct tribunal is sufficiently authenticated if it is signed by the member constituting the tribunal or the senior member.

42 Judicial notice of certain signatures

Judicial notice must be taken of the signature of a tribunal member if it appears on a document issued by a misconduct tribunal.

43 Application of Criminal Code

It is declared that—

- (a) a proceeding before a misconduct tribunal is a judicial proceeding under the Criminal Code, chapter 16; and
- (b) a person constituting a misconduct tribunal is the holder of a judicial office for the Criminal Code, chapter 16; and
- (c) a misconduct tribunal is a tribunal for the Criminal Code, chapter 16.

44 Confidentiality

- (1) This section applies to a person who—
- (a) is or has been—
 - (i) a tribunal member; or
 - (ii) a former registrar or former registrar staff member;
- or

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- (iii) the director or another staff member of the registry under the *Commercial and Consumer Tribunal Act 2003*; and
 - (b) in that capacity acquired information about another person's affairs or has access to, or custody of, a document about another person's affairs or a thing belonging to someone else.
- (2) A person to whom this section applies must not disclose the information, or give access to the document or thing, to anyone else.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (3) However, a person may disclose the information or give access to the document or thing to someone else—
- (a) to the extent necessary to perform the person's functions under or in relation to this Act; or
 - (b) if the disclosure or giving of access is otherwise required or permitted by law.
- (4) In this section—

former registrar means a person appointed as the registrar of misconduct tribunals under the repealed section 40.

former registrar staff member means a person employed as a member of the registrar's staff under the repealed section 40.

repealed section 40 means section 40 as in force before its repeal by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

45 Rule-making power

The senior member may make rules, not inconsistent with this Act, about the practice and procedure of misconduct tribunals.

46 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 7 Transitional provisions

Division 1 Provisions for Misconduct Tribunals Act 1997

47 Existing proceedings

- (1) A matter started in the original or appellate jurisdiction of a misconduct tribunal constituted under the *Criminal Justice Act 1989*, but unheard, is taken to have been started in the original or appellate jurisdiction of a misconduct tribunal under this Act.
- (2) A matter started in the original or appellate jurisdiction of a misconduct tribunal constituted under the *Criminal Justice Act 1989* and partly heard may be dealt with as if this Act had not been enacted.

Division 2 Provisions for Crime and Misconduct and Other Legislation Amendment Act 2006

48 Existing members of tribunal

- (1) This section applies to a person who was a member or the senior member of the tribunal panel immediately before the commencement of the *Crime and Misconduct and Other Legislation Amendment Act 2006*, section 38.

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- (2) On the commencement, the person continues to hold office as a member or the senior member of the tribunal panel according to the terms of the member's appointment.

Division 3 Provisions for the Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009

49 Original jurisdiction unaffected

- (1) This section applies to—
 - (a) a prescribed person; and
 - (b) a misconduct tribunal proceeding that has not been finalised before the commencement of this section.
- (2) The *Crime and Misconduct Act 2001*, section 50(5), definition *prescribed person*, as in force before its amendment by the *Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009*, continues to apply.
- (3) Section 25, as in force before its amendment by the *Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009*, continues to apply.

Schedule Dictionary

section 4

appellate jurisdiction see section 16.

commission means the Crime and Misconduct Commission.

conviction—

- (a) means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded; and
- (b) includes a conviction—
 - (i) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
 - (ii) that is not revived as prescribed by section 11 of that Act.

director means the director of the registry under the *Commercial and Consumer Tribunal Act 2003*.

ineligible person means any of the following—

- (a) a person with a conviction, including a summary conviction, for an indictable offence;
- (b) a person who is an insolvent under administration as defined under the Corporations Act, section 9;
- (c) a person holding judicial appointment;
- (d) a member of the Legislative Assembly or the Executive Council;
- (e) the parliamentary commissioner under the *Crime and Misconduct Act 2001*;
- (f) the public interest monitor or a deputy public interest monitor appointed under the *Crime and Misconduct Act 2001* or the *Police Powers and Responsibilities Act 2000*;

- (g) a person who, under the *Crime and Misconduct Act 2001*, is—
 - (i) a commissioner; or
 - (ii) an assistant commissioner; or
 - (iii) a senior officer; or
 - (iv) employed under section 254; or
 - (v) seconded under section 255;
- (h) the director of public prosecutions;
- (i) a member of the police service under the *Police Service Administration Act 1990*;
- (j) a person who, within the 5 years before the person's eligibility for appointment is being considered, has been a member of the police service under the *Police Service Administration Act 1990*;
- (k) a public service employee;
- (l) a person who holds an appointment on the staff of a Minister;
- (m) a local government councillor;
- (n) a local government employee.

official misconduct see section 12.

original jurisdiction see section 13.

parliamentary committee means the Parliamentary Crime and Misconduct Committee of the Legislative Assembly.

prescribed person means a prescribed person under the *Crime and Misconduct Act 2001*, section 50.

principal officer, for a particular unit of public administration, means the chief executive officer (however described) of the unit.

punishment includes sanction and penalty.

reviewable decision see section 15.

senior member, of the tribunal panel, see section 5(2).

tribunal member means an individual who is appointed as a member of a panel of misconduct tribunal members under section 5.

unit of public administration has the meaning given under the *Crime and Misconduct Act 2001*.

Endnotes

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 November 2009. Future amendments of the Misconduct Tribunals Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	8 December 1997	22 December 1997
1A	1999 Act No. 19	30 April 1999	28 May 1999
1B	2001 Act No. 34	7 June 2001	17 August 2001
1C	2001 Act No. 69	1 January 2002	11 January 2002

Reprint No.	Amendments included	Effective	Notes
1D	2006 Act No. 41	11 August 2006	R1D withdrawn, see R2
2	—	11 August 2006	
2A	2009 Act No. 24	26 June 2009	
2B	2009 Act No. 25	2 November 2009	

5 List of legislation

Misconduct Tribunals Act 1997 No. 59

date of assent 5 November 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 1997 (1997 SL No. 417)

amending legislation—

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Police Service Administration and Misconduct Tribunals Amendment Act 2001 No. 34 pts 1, 3

date of assent 7 June 2001

commenced on date of assent

Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

Crime and Misconduct and Other Legislation Amendment Act 2006 No. 41 pts 1, 3

date of assent 11 August 2006

commenced on date of assent (see s 2)

Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 9 pt 25

date of assent 26 June 2009
commenced on date of assent

Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pts 1, 8, s 83 sch

date of assent 11 August 2009
ss 1–2 commenced on date of assent
s 83 sch amdt commenced 2 November 2009 (2009 SL No. 241) (amdt could not be given effect)
remaining provisions commenced 2 November 2009 (2009 SL No. 241)

6 List of annotations

Dictionary

s 4 amd 2006 No. 41 s 37

Relationship with Industrial Relations Act 1999

s 4A ins 2001 No. 34 s 5

Appointment of misconduct tribunal panel members

s 5 sub 2006 No. 41 s 38

Qualifications of tribunal members

s 6 amd 2006 No. 41 s 39

Nomination for appointment as tribunal member

s 7 amd 2006 No. 41 s 40

Report about person’s criminal history

s 7A ins 2006 No. 41 s 41

Appointment of acting senior member

s 9A ins 2006 No. 41 s 42

Senior member to establish misconduct tribunal

s 11 amd 2009 No. 24 s 1564

What is “official misconduct”

s 12 amd 2001 No. 69 s 378 sch 1

Tribunal hearing in relation to a prescribed person whose employment or appointment has ended

s 14A ins 2009 No. 25 s 68

What is a “reviewable decision”

s 15 amd 2009 No. 25 s 69

Proceedings—original jurisdiction

s 17 amd 2009 No. 24 s 1564

Proceedings—appellate jurisdiction

s 18 amd 2009 No. 24 s 1564; 2009 No. 25 s 70

Procedure following start of proceeding

s 19 amd 2009 No. 24 s 1564

Disclosure of interests

s 19A ins 2006 No. 41 s 43

Misconduct tribunal decisions—original jurisdiction

s 25 amd 2009 No. 25 s 71

Misconduct tribunal decisions for prescribed persons whose employment or appointment has ended

s 25A ins 2009 No. 25 s 72

Misconduct tribunal decisions—appellate jurisdiction

s 26 amd 2009 No. 25 s 73

Misconduct tribunal’s power to suspend punishment

s 28 amd 2009 No. 25 s 74

Appeal from misconduct tribunal in original jurisdiction

s 37 amd 1999 No. 19 s 3 sch; 2009 No. 25 s 75

Parliamentary committee

s 38 amd 2001 No. 69 s 378 sch 1

Annual report

s 39 amd 2006 No. 41 s 44

Registrar and tribunal staff

s 40 om 2009 No. 24 s 1565
amd 2009 No. 25 s 83 sch (amdt could not be given effect)

Confidentiality

s 44 amd 2009 No. 24 s 1566

PART 7—TRANSITIONAL PROVISIONS

pt hdg sub 2006 No. 41 s 45

Division 1—Provisions for Misconduct Tribunals Act 1997

div hdg ins 2006 No. 41 s 45

Division 2—Provisions for Crime and Misconduct and Other Legislation Amendment Act 2006

div hdg ins 2006 No. 41 s 46

Existing members of tribunal

s 48 prev s 48 om R1 (see RA s 40)
pres s 48 ins 2006 No. 41 s 46

Division 3—Provisions for the Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009

div 3 (s 49) ins 2009 No. 25 s 76

SCHEDULE—DICTIONARY

- (prev sch 2) renum 2006 No. 41 s 47(3)
- def “**commission**” sub 2001 No. 69 s 378 sch 1
- def “**conviction**” ins 2006 No. 41 s 47(1)
- def “**director**” ins 2009 No. 24 s 1567(2)
- def “**ineligible person**” ins 2006 No. 41 s 47(1)
- def “**parliamentary committee**” sub 2001 No. 69 s 378 sch 1
- def “**prescribed person**” sub 2001 No. 69 s 378 sch 1
- def “**principal officer**” sub 2001 No. 69 s 378 sch 1
- def “**registrar**” om 2009 No. 24 s 1567(1)
- def “**senior member**” amd 2006 No. 41 s 47(2)
- def “**tribunal member**” ins 2006 No. 41 s 47(1)
- def “**unit of public administration**” sub 2001 No. 69 s 378 sch 1

SCHEDULE 1—AMENDMENTS

- om R1 (see RA s 40)

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