

# The Environment and Planning Review Tribunal Act

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With the present environmental issues affecting the islands, Mr Brincat discusses the impact the Environment and Planning Review Tribunal Act would have on the decisions taken by the Planning Authority, as well as the Environment Resources Authority.

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The Environment and Planning Review Tribunal Act<sup>1</sup> (chapter 551 of the Laws of Malta, hereinafter referred to as ‘the Act’) is a product of the Maltese Twelfth Legislature (2013-2017) promulgated by Legal Notice 111 of 2016<sup>2</sup> and has only been amended once through Legal Notice 394 of 2018<sup>3</sup>. The Act also parents, as of 5 December 2018, two pieces of subsidiary legislation<sup>4 5</sup>. The focus of this paper shall be on the articles of the parent act, as amended by the 2018 Legal Notice. It shall not delve into the original edition of the Act, the reason behind its amending, or the provisions of its subsidiary legislation.

The Act was aimed at establishing ‘*a tribunal for the purpose of reviewing decisions of the Planning Authority and of the Environment and Resources Authority*’, at providing for the Tribunal’s conduct during its proceedings, and at providing for appeals from the Tribunal’s decisions<sup>6</sup>. The Act also works in tandem with, and frequently makes reference to the Code of Organization and Civil Procedure (cap. 12), the Cultural Heritage Act (cap. 445), the Environment Protection Act (cap. 549), and the Development Planning Act (cap. 552).

The Tribunal set up by the Act must be independent and impartial<sup>7</sup>. The Tribunal consists of various panels, to be convened by the Prime Minister. These panels of experts do not just involve experts who are ‘well versed in development planning and environmental matters’ but also of legal experts who can ensure that the Tribunal, in reviewing decisions by the abovementioned authorities, functions not only in conformity with the provisions of the Act, but also of the other aforementioned laws. The Chairperson of each panel is appointed by the President on the advice of the Prime Minister<sup>8</sup>. The Prime Minister also gets to appoint the Tribunal’s Secretary<sup>9</sup>, who

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<sup>1</sup> Environment and Planning Review Tribunal Act, Chapter 551 of the Laws of Malta;

<sup>2</sup> Government of Malta, ‘*Environment and Planning Review Tribunal Act (Cap. 551) – Commencement Notice*’ Government Gazette of Malta No. 19,552 (Valletta, 01 April 2016);

<sup>3</sup> Government of Malta, ‘*Exemption from Tax of the Environment and Planning Appeals Tribunal Regulations*’ Government Gazette of Malta No. 20,093 (Valletta, 23 November 2018);

<sup>4</sup> Environment and Planning Appeals (Fees) Regulations, S.L. 551.01;

<sup>5</sup> Environment and Planning Appeals (Procedure) Regulations, S.L. 551.02;

<sup>6</sup> Long title, Environment and Planning Review Tribunal Act, Chapter 551 of the Laws of Malta;

<sup>7</sup> *Ibid.*, article 3;

<sup>8</sup> *Ibid.*, article 4;

<sup>9</sup> *Ibid.*, article 5;

will be in charge of administrative duties and of the Registry<sup>10</sup>, as well as with the legal and judicial representation of the Tribunal<sup>11</sup>. The Tribunal is to hold sittings at regular intervals, or as indicated by the Prime Minister, and such sittings need to be open to the public<sup>12</sup>. An appointee to the Tribunal must take an oath before the Attorney General<sup>13</sup>. One may note that the Prime Minister enjoys significant powers insofar as the Act is concerned<sup>14</sup>.

The Tribunal is to operate not only within statutory provisions, but also within the general principles of law and the principles of natural justice. In fact, the Act lays down many of these principles as the principles of good administrative behaviour and due process<sup>15</sup>. It is interesting to note that the Tribunal's jurisdiction mirrors the jurisdiction assumed by the Planning Authority (PA) and the Environment and Resources Authority (ERA). Any matter that may be the subject-matter of a decision by any of these authorities, is reviewable by the Tribunal<sup>16</sup>.

Any of the decisions that the Tribunal churns out, in regard of any decisions taken by the aforementioned authorities, are subject to the parties' right of appeal within thirty days<sup>17</sup>. The parties to a case before the Tribunal may be represented by an agent<sup>18</sup>. The parties may summon witnesses<sup>19</sup>, experts<sup>20</sup>, and may request access to the respective Authority's files<sup>21</sup>. An appeal to a decision may also be lodged by a third party to the case<sup>22</sup>.

With regard to decisions by the Planning Authority, the Tribunal may suspend ongoing development projects that might have been approved by the Authority but are the subject-matter of an action before the Tribunal<sup>23</sup>. These enforcement decisions may also be appealed<sup>24</sup>. The Tribunal is empowered to impose fines on witnesses who fail to appear without justifi-

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<sup>10</sup> Ibid., article 7;

<sup>11</sup> Ibid., article 54;

<sup>12</sup> Ibid., article 6;

<sup>13</sup> Ibid., article 8;

<sup>14</sup> Ibid., article 10;

<sup>15</sup> Ibid., article 9;

<sup>16</sup> Ibid., article 11;

<sup>17</sup> Ibid., article 13;

<sup>18</sup> Ibid., article 18;

<sup>19</sup> Ibid., article 17;

<sup>20</sup> Ibid., article 30;

<sup>21</sup> Ibid., article 19;

<sup>22</sup> Ibid., article 22;

<sup>23</sup> Ibid., article 33;

<sup>24</sup> Ibid., article 36;

cation<sup>25</sup>, or on parties who launch ‘frivolous or vexations’ appeals<sup>26</sup>. The Tribunal may also charge fees for onsite inspections<sup>27</sup>, as well as other penalties, fees, and contributions<sup>28</sup> that are not fines in the legal sense. With regard to decisions by the Environment and Resources Authority, most of the same procedural principles apply.

The Environment and Planning Review Tribunal has filled in a vacuum that used to be felt for a long time whenever a controversial decision was handed down by the former Malta Environment and Planning Authority (MEPA), before its split into the Planning Authority and the Environment and Resources Authority. Although controversial decisions by these respective authorities will not cease, there is now a great legal and judicial mechanism by which they can be appealed by an action before the Tribunal. Parties to such cases may also rest assured that constitutional, administrative, and procedural principles that are characteristic of other court actions, are also applied wholly here.

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<sup>25</sup> Ibid., article 29;

<sup>26</sup> Ibid., article 43;

<sup>27</sup> Ibid., article 44;

<sup>28</sup> Ibid., article 45;