

TASMANIA

TASMANIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL AMENDMENT BILL 2020

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Part 4 repealed
6. Part 6 substituted
 - PART 6 – Constitution of Tribunal
 64. Constitution of Tribunal
 65. Alteration of constitution of Tribunal and provision for separate dealing with aspects of matters
 66. Relationship with relevant Act
 67. Who presides at proceedings of Tribunal
 68. Decision if 2 or more members constitute Tribunal
 69. Determination of questions of law
 70. Validity of acts of Tribunal
 71. Disclosure of interest by members of Tribunal
 72. Delegation
 - PART 7 – Jurisdiction of Tribunal
 - Division 1 – Jurisdiction*
 73. Jurisdiction of Tribunal
 - Division 2 – Original jurisdiction*
 74. Original jurisdiction
 - Division 3 – Review jurisdiction*
 75. Decisions within review jurisdiction
 76. Decision-maker must assist Tribunal
 77. Effect of review proceedings on decision being reviewed

- 78. Decision on review
- 79. Tribunal may invite decision-maker to reconsider decision
- PART 8 – Diversity Proceedings
- 80. Interpretation
- 81. Transfer of applications involving federal diversity jurisdiction to Magistrates Court
- 82. Magistrates Court proceedings, jurisdiction, powers and functions, &c.
- 83. Modifications of certain functions, powers and procedures, &c.
- 84. Compulsory conferences
- 85. References to Tribunal in other Acts or regulations
- 86. Relationship of this Part to this Act and other laws
- 87. Enforcement, variation or revocation of purported orders
- PART 9 – Principles, powers and procedures
- Division 1 – Principles governing hearings*
- 88. Principles governing hearings
- Division 2 – Evidentiary powers*
- 89. Power to require person to give evidence or to produce evidentiary material
- 90. Entry and inspection of property
- 91. Expert reports
- Division 3 – Procedures*
- 92. Practice and procedure generally
- 93. Directions for conduct of proceedings
- 94. Consolidating and splitting proceedings
- 95. More appropriate forum
- 96. Dismissing proceedings on withdrawal or for want of prosecution
- 97. Frivolous, vexatious or improper proceedings
- 98. Proceedings being conducted to cause disadvantage
- Division 4 – Conferences, mediation and settlement*
- 99. Conferences
- 100. Procedure for compulsory conferences
- 101. Mediation
- 102. Settlement at mediation
- 103. Settling of proceedings
- Division 5 – Parties*
- 104. Parties
- 105. Person may be joined as party
- 106. Intervening
- Division 6 – Representation*

- 107. Representation
- Division 7 – Costs*
- 108. Costs
- 109. Costs of proceedings
- 110. Costs – related matters
- 111. Security as to costs, &c.
- Division 8 – Other procedural and related provisions*
- 112. Sittings
- 113. Hearings in public
- 114. Preserving subject matter of proceedings
- 115. Interlocutory orders
- 116. Conditional, alternative and ancillary orders and directions
- 117. Relief from time limits
- 118. Electronic hearings and proceedings without hearings
- 119. Completion of part-heard matters
- 120. Other claims of privilege
- PART 10 – Appeals
- 121. Appeals against Tribunal in its review jurisdiction
- 122. Procedure on appeals
- 123. Determination of appeal
- 124. Effect of review on decision
- PART 11 – Miscellaneous
- 125. Protections and immunities
- 126. Protection from liability for torts
- 127. Protection for compliance with Act
- 128. Alternative orders and relief
- 129. Power to cure irregularities
- 130. Correcting mistakes
- 131. Tribunal may review its decision if person was absent
- 132. Tribunal may authorise person to take evidence
- 133. Miscellaneous provisions relating to legal process and service
- 134. Proof of decisions and orders of Tribunal
- 135. Enforcement of decisions and orders of Tribunal
- 136. Accessibility of evidence
- 137. Annual report
- 138. Disrupting proceedings of Tribunal
- 139. Confidentiality
- 140. Use of facilities, &c.
- 141. Interim rules may be made by President or Acting President

- 142. Rules Committee
- 143. Rules
- 144. Code of conduct
- 145. Appointments and other matters to facilitate establishment of Tribunal
- 146. Regulations
- 147. Administration of Act
- PART 12 – Transitional Provisions
- Division 1 – Abolition of Boards and Tribunals and Transition of Certain Members*
- 148. Interpretation of Part 12
- 149. Abolition of existing Boards and Tribunals
- 150. Current members of relevant Board or Tribunal cease to hold office
- 151. Current members to hold office as members of Tribunal
- 152. Remuneration of current member of a relevant Board or Tribunal
- Division 2 – Proceedings of former relevant Board or Tribunal*
- 153. Proceedings that were on foot on establishment day
- 154. Pending court proceedings in relation to relevant Board or Tribunal may be completed
- 155. Certain unexercised rights continue
- 156. Allocation of transitional proceedings to Divisions of Tribunal
- 157. Saving of orders of relevant Board or Tribunal
- 158. Expiration of time periods
- 159. General savings

7. Repeal of Act

**TASMANIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL AMENDMENT BILL 2020**

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

**An Act to amend the *Tasmanian Civil and Administrative
Tribunal Act 2020***

Be it enacted by Her 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:

1. Short title

This Act may be cited as the *Tasmanian Civil
and Administrative Tribunal Amendment Act
2020*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Principal Act

In this Act, the *Tasmanian Civil and
Administrative Tribunal Act 2020** is referred to
as the Principal Act.

*No. 24 of 2020

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 4

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *Acting President* in subsection (1):

applicant means –

- (a) in the context of the Tribunal’s review jurisdiction, the person who –
- (i) applies to the Tribunal for a review; or
 - (ii) otherwise brings a matter before the Tribunal; or
 - (iii) requests, requires, or otherwise seeks that a matter be referred to, or otherwise brought before, the Tribunal; and
- (b) in any other context, the person who –

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 4

- (i) brings a matter before the Tribunal; or
- (ii) requests, requires, or otherwise seeks that a matter be referred to, or otherwise brought before, the Tribunal –

but unless and to the extent that the rules otherwise provide, does not include a person who is required by this Act or a relevant Act to refer a matter to the Tribunal, or otherwise bring a matter before the Tribunal, as sought by another person;

- (b) by omitting the definition of *code of conduct* from subsection (1) and substituting the following definitions:

code of conduct means the code of conduct issued under section 144;

decision of the Tribunal includes a direction, determination or order of the Tribunal but, in prescribed circumstances, does not include an interlocutory direction, determination or order;

decision-maker – see section 75(3);

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 4

- (c) by inserting the following definitions after the definition of *establishment day* in subsection (1):

evidentiary material includes any document, object or substance of evidentiary value in proceedings before the Tribunal and includes any other document, object or substance that should, in the opinion of the Tribunal, be produced for the purpose of enabling the Tribunal to determine whether or not it has evidentiary value;

legally qualified member means –

- (a) the President; or
 - (b) a magistrate who is a member of the Tribunal; or
 - (c) another member of the Tribunal who is an Australian lawyer of at least 5 years' standing as an Australian legal practitioner;
- (d) by inserting the following definitions after the definition of *members of the staff of the Tribunal* in subsection (1):

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 4

Mental Health stream means the stream referred to in Part 4 of Schedule 3;

monetary order means an order of the Tribunal requiring the payment of money and includes –

- (a) an order made for the payment of a fine or other pecuniary penalty; and
 - (b) an order as to the payment of any costs; and
 - (c) an order for the payment of compensation for breach of an Act;
- (e) by inserting the following definition after the definition of *ordinary member* in subsection (1):

original jurisdiction of the Tribunal –
see Division 2 of Part 7;

- (f) by inserting the following definition after the definition of *relevant Board or Tribunal* in subsection (1):

reviewable decision – see
section 75(2);

- (g) by omitting “under section 66(5)” from the definition of *Rules Committee* in

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 5

subsection (1) and substituting “under section 142”;

(h) by omitting “section 67” from the definition of *rules of the Tribunal* in subsection (1) and substituting “section 143”;

(i) by inserting the following subsection after subsection (2):

(3) If under a relevant Act a person’s failure or omission to do something is reviewable under this Act as a decision –

(a) this Act applies as if that person had made that decision; and

(b) any provision of the relevant Act as to when the decision is taken to have been made has effect.

5. Part 4 repealed

Part 4 of the Principal Act is repealed.

6. Part 6 substituted

Part 6 of the Principal Act is repealed and the following Parts are substituted:

PART 6 – CONSTITUTION OF TRIBUNAL

64. Constitution of Tribunal

- (1) Subject to this Part, the President may determine, in relation to a particular matter or matters, or particular classes of matters, which member or members of the Tribunal will constitute the Tribunal.
- (2) The Tribunal is not to be constituted by more than 5 members.
- (3) A person is not to be a sitting member of the Tribunal, or perform any function as a member of the Tribunal, in relation to a matter in the review jurisdiction of the Tribunal if the person was –
 - (a) the decision-maker in relation to that matter; or
 - (b) a member of a body that was the decision-maker in relation to that matter.
- (4) The Tribunal may be constituted by –
 - (a) a registrar for the purpose of adjourning proceedings; or
 - (b) a registrar, or other member of the staff of the Tribunal, for any other purpose that is –

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (i) specified by this Act or a relevant Act; or
 - (ii) prescribed by the rules of the Tribunal; or
 - (iii) determined by the President.
- (5) If a registrar or other member of the staff of the Tribunal exercises the jurisdiction of the Tribunal, the registrar or other member of the staff may, and must if the Tribunal or the President so directs, refer the matter to the Tribunal for determination by the Tribunal.

65. Alteration of constitution of Tribunal and provision for separate dealing with aspects of matters

- (1) The President may, as he or she considers fit, do either or both of the following:
- (a) alter who is to constitute the Tribunal for the purpose of dealing with a matter, or anything relating to a matter, after the Tribunal has begun to deal with the matter;
 - (b) provide that different aspects of the same matter may be dealt

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

with by different members of the
Tribunal.

- (2) If the President alters the constitution of the Tribunal under subsection (1)(a), the Tribunal as constituted after the alteration may have regard to –
 - (a) any record of the proceedings of the Tribunal in relation to the matter before the alteration; and
 - (b) any evidence taken in the proceedings before the alteration.
- (3) If the President provides under subsection (1)(b) that different aspects of the same matter may be dealt with by different members of the Tribunal, the members of the Tribunal may, during or after dealing with the different aspects of a matter, come together and have regard to any evidence taken by the respective members of the Tribunal for the purposes of the proceedings of the Tribunal.
- (4) The Tribunal may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.
- (5) The Tribunal may, if it considers it appropriate to do so, organise its business and regulate proceedings before the Tribunal in such a way that 2 or more

proceedings in respect of the same matter are heard together.

66. Relationship with relevant Act

If a provision of this Part and the provisions of a relevant Act deal with the manner in which the Tribunal is to be constituted for the purposes of proceedings or any other business under a relevant Act, the provision of the relevant Act applies to the extent of the inconsistency.

67. Who presides at proceedings of Tribunal

- (1) If, for dealing with a particular matter, the Tribunal is constituted by 2 or more members, the most senior of them is to preside at the proceedings of the Tribunal.
- (2) The seniority of members of the Tribunal depends on which of the offices held takes precedence and, if that does not determine a member's seniority, the matter is to be resolved by the President.
- (3) The order of precedence of offices is as follows:
 - (a) President;
 - (b) Deputy President;

- (c) senior member;
- (d) ordinary member.

68. Decision if 2 or more members constitute Tribunal

If the Tribunal is constituted by 2 or more members, a question they are required to decide is resolved, unless section 69 applies, according to the opinion of the majority of them but, if their opinions on the question are equally divided, the question is to be resolved according to the opinion of the presiding member.

69. Determination of questions of law

The member of the Tribunal constituting the Tribunal or, if the Tribunal is constituted by 2 or more members, the presiding member, may refer a question of law to a judge of the Supreme Court.

70. Validity of acts of Tribunal

An act or proceeding of the Tribunal is not invalid by reason only of a vacancy in the membership of, or a defect in the appointment of a person to, the Tribunal or a panel from which members of the Tribunal are drawn, or a defect in the

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

appointment of any other person to act on
behalf of the Tribunal.

**71. Disclosure of interest by members of
Tribunal**

If the Tribunal is constituted of, or includes, a member who has a pecuniary or other interest that could conflict with the proper performance of the member's functions in proceedings before the Tribunal, the member –

- (a) must disclose the interest to the parties to the proceedings; and
- (b) must disclose the interest to the President or, if the President is the member with the interest, make a record of the interest and declare whether he or she will withdraw from the proceedings; and
- (c) must not take part in the proceedings or exercise powers affecting the proceedings –
 - (i) if the President directs the member to withdraw from the proceedings or has declared that he or she will withdraw from the proceedings; or

- (ii) if a party to the proceedings does not consent to the member hearing and determining, or participating in the hearing and determination of, the proceedings.

72. Delegation

- (1) The President of the Tribunal may delegate a function or power of the President under this or any other Act –
 - (a) to another member of the Tribunal; or
 - (b) to a member of the staff of the Tribunal; or
 - (c) to the person (being either a member of the Tribunal or a member of the staff of the Tribunal) for the time being performing particular duties or holding or acting in a particular position.
- (2) A delegation under subsection (1) –
 - (a) must be made by instrument in writing; and
 - (b) may be conditional; and

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (c) does not derogate from the ability of the President to act in any matter; and
- (d) is revocable at will by the President.

consultation draft

PART 7 – JURISDICTION OF TRIBUNAL
Division 1 – Jurisdiction

73. Jurisdiction of Tribunal

- (1) The Tribunal has the jurisdiction conferred on it by or under this or any other Act.
- (2) Without limiting subsection (1), if a provision of an Act enables an application, referral or appeal to be made to the Tribunal, or a claim to be brought before the Tribunal, the Act will be taken to confer jurisdiction on the Tribunal to deal with the matter concerned.
- (3) A matter in which the Tribunal has jurisdiction comes within –
 - (a) its original jurisdiction; or
 - (b) its review jurisdiction.

Division 2 – Original jurisdiction

74. Original jurisdiction

- (1) Subject to subsection (2), if a relevant Act confers on the Tribunal jurisdiction to deal with a matter that does not involve a reviewable decision within the meaning of section 75, the matter comes within the Tribunal's original jurisdiction.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (2) Subject to subsections (3) and (4), the Tribunal will, in its original jurisdiction, depending on the nature of the matter –
- (a) act as the original decision-maker in the matter and accordingly apply those principles which, according to law, are to be applied to bodies that make such decisions pursuant to statute; or
 - (b) resolve a dispute between parties to the relevant proceedings; or
 - (c) adopt any other course of action that the Tribunal considers appropriate to deal with the matter.
- (3) In exercising its original jurisdiction, the Tribunal is to deal with a matter in accordance with this Act and the relevant Act.
- (4) The relevant Act may modify the operation of this Act in relation to a matter that comes within the Tribunal's original jurisdiction.

Division 3 – Review jurisdiction

75. Decisions within review jurisdiction

- (1) If the matter that a relevant Act confers on the Tribunal jurisdiction to deal with a

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

matter that expressly or necessarily involves a review of a decision (a **reviewable decision**), the matter comes within the Tribunal's review jurisdiction.

(2) For the purposes of subsection (1) and the other sections of this Part, and subject to the provisions of a relevant Act, a reviewable decision is –

- (a) a decision made by the Crown or an agency or instrumentality of the Crown; or
- (b) a decision made by a prescribed person or body; or
- (c) a prescribed decision or class of decisions –

but does not include a decision made by a person or body or a decision, or class of decisions, excluded by the regulations.

(3) For the purposes of this Act –

- (a) unless paragraph (b) applies, the **decision-maker** for a reviewable decision is the person or body that made or is taken to have made the reviewable decision; and
- (b) the rules may provide –

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

(i) that the decision-maker for a reviewable decision, instead of being the person or body under paragraph (a), is to be a person or body that is assigned by the rules as being a suitable entity to act as the decision-maker for the purposes of this Act or specified provisions of this Act; or

(ii) that a reference to the decision-maker for a reviewable decision in this Act, or specified provisions of this Act, will be taken to include a reference to a person or body that is designated by the rules as being a suitable entity to act jointly with the person or body under paragraph (a) for the purposes of this Act (or specified provisions of this Act) –

and rules made under this paragraph will then have effect in accordance with their terms.

(4) Subject to subsections (5), (6) and (7), the Tribunal, in exercising its review

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

jurisdiction, is to examine the decision of the decision-maker by way of rehearing.

- (5) On a rehearing, the Tribunal must reach the correct or preferable decision but in doing so must have regard to, and give appropriate weight to, the decision of the original decision-maker.
- (6) A procedure on a rehearing is to include –
 - (a) an examination of the evidence or material before the decision-maker, unless any such evidence or material is to be excluded under another provision of this Act or under any other law; and
 - (b) a consideration of any further evidence or material that the Tribunal decides, in the circumstances of the particular case, to admit for the purposes of rehearing the matter.
- (7) In exercising its review jurisdiction, the Tribunal is to deal with a matter in accordance with this Act and the relevant Act.
- (8) The relevant Act may modify the operation of this Act in relation to a matter that comes within the Tribunal's review jurisdiction.

76. Decision-maker must assist Tribunal

- (1) In proceedings for the review of a reviewable decision, the decision-maker for the reviewable decision must use his or her best endeavours to help the Tribunal so that it can make its decision on the review.
- (2) Without limiting subsection (1), the decision-maker must provide the following to the Tribunal within a reasonable period and in any event within the time prescribed by the regulations:
 - (a) a written statement of the reasons for the decision;
 - (b) any document or thing in the decision-maker's possession or control that may be relevant to the Tribunal's review of the decision.
- (3) The decision-maker must, in providing any document or thing under subsection (2), take reasonable steps to identify the documents or things that were taken into account in making the relevant decision.
- (4) If the Tribunal considers that there are additional documents or things in the decision-maker's possession or control that may be relevant to the Tribunal's

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

review of the reviewable decision, the Tribunal may, by written notice, require the decision-maker to provide the documents or things.

- (5) If the Tribunal considers that the statement of reasons given under subsection (2)(a) is not adequate, the Tribunal may, by written notice, require the decision-maker to give the Tribunal an additional statement containing further particulars specified in the notice.
- (6) The decision-maker must comply with a notice given under subsection (4) or (5) within the period stated in the notice.
- (7) A requirement under this section that the decision-maker give the Tribunal information or a document or thing applies despite any provision in another Act prohibiting or restricting the disclosure of the information or the information contained in the document or thing.
- (8) The Tribunal may examine any document or thing provided under this section and draw any conclusions of fact that it considers proper.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

77. Effect of review proceedings on decision being reviewed

- (1) The commencement of proceedings for the review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision unless –
 - (a) the relevant Act states otherwise; or
 - (b) an order is made under subsection (2).
- (2) On or after the commencement of proceedings for the review of a decision, the Tribunal or the decision-maker may, on application or on its own initiative, make an order staying or varying the operation or the implementation of the whole or a part of the reviewable decision pending the determination of the matter, or until such time (whether before or after the determination of the matter) as the Tribunal or the decision-maker may specify, if the Tribunal, or the decision-maker, is satisfied that it is just and reasonable in the circumstances to make the order.
- (3) An order by the Tribunal or the decision-maker under this section –

- (a) is subject to the conditions, if any, that are specified in the order; and
- (b) may be varied or revoked –
 - (i) in any case – by further order of the Tribunal; or
 - (ii) if the order was made by the decision-maker – by further order by the decision-maker or the Tribunal.

78. Decision on review

- (1) The Tribunal, on a review under this Division, may –
 - (a) affirm the decision that is being reviewed; or
 - (b) vary the decision that is being reviewed; or
 - (c) set aside the decision being reviewed and –
 - (i) substitute its own decision; or
 - (ii) send the matter back to the decision-maker for reconsideration in accordance with any

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

directions or
recommendations that the
Tribunal considers
appropriate –

and, in any case, may make any order
that the Tribunal considers appropriate.

- (2) The reference in subsection (1) to an
order includes a reference to –
- (a) an interim order pending the
reconsideration and determination
of the matter by the decision-
maker; and
 - (b) any ancillary or consequential
order –

that the Tribunal considers appropriate.

- (3) The fact that a decision is made on
reconsideration under
subsection (1)(c)(ii) does not prevent the
decision from being open to review by
the Tribunal.
- (4) The decision-maker's decision as
affirmed or varied by the Tribunal or a
decision that the Tribunal substitutes for
the decision-maker's decision –
- (a) is to be regarded as, and given
effect as, a decision of the
decision-maker; and

- (b) unless the relevant Act states otherwise or the Tribunal orders otherwise, is to be regarded as having effect from the time when the decision reviewed would have, or would have had, effect.
- (5) Without limiting subsection (4)(a), the decision-maker has power to do anything necessary to implement the Tribunal's decision.
- (6) Despite subsection (4)(a), the decision as affirmed, varied or substituted is not again open to review before the Tribunal as a decision of the decision-maker, but may be subject to appeal under this Act.

79. Tribunal may invite decision-maker to reconsider decision

- (1) At any stage of proceedings for the review of a reviewable decision, the Tribunal may invite the decision-maker to reconsider the decision.
- (2) On being invited by the Tribunal to reconsider the reviewable decision, the decision-maker may –
 - (a) affirm the decision; or
 - (b) vary the decision; or

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (c) set aside the decision and substitute a new decision.
- (3) If the decision-maker varies the decision or sets it aside and substitutes a new decision, unless the proceedings for a review are withdrawn, the proceedings will then be taken to be for –
 - (a) the review of the decision as varied; or
 - (b) the review of the substituted decision.
- (4) The Tribunal may specify a period within which the decision-maker should act under this section and, if the decision-maker does not take action within that period, then the Tribunal may resume its proceedings under this Division in the manner it considers fit.

PART 8 – DIVERSITY PROCEEDINGS

80. Interpretation

- (1) In this Part –

federal diversity jurisdiction means jurisdiction of the kind referred to in section 75(iii) or (iv) of the Constitution of the Commonwealth;

rules of the Court means the rules of the Court made under the *Magistrates Court (Civil Division) Act 1992*;

transferred proceedings – see section 81.

- (2) For the purposes of this Part, a reference to the making of an application, or an application made, to the Tribunal is taken to include the referral of a matter to, or otherwise bringing of a matter before, the Tribunal.

81. Transfer of applications involving federal diversity jurisdiction to Magistrates Court

- (1) If a person has standing to make an application to the Tribunal in the exercise of its original jurisdiction under section 74 or its review jurisdiction under section 75, the application may be determined by the Magistrates Court in accordance with this Part instead of the Tribunal.
- (2) If, following an application made to the Tribunal in the manner and form required under this Act for the kind of application concerned, the Tribunal considers that –
- (a) it does not have, or there is some doubt as to whether it has, jurisdiction to determine the

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

application because its determination may involve the exercise of federal diversity jurisdiction; and

- (b) the Tribunal would otherwise have had jurisdiction enabling it to determine the application –

the Tribunal may order that proceedings on the application be transferred to the Magistrates Court.

- (3) Proceedings transferred to the Magistrates Court under subsection (2) are *transferred proceedings*.

- (4) If proceedings are transferred to the Magistrates Court under this Part –

(a) the application made to the Tribunal will be taken to be duly made as an application to the Court; and

(b) the proceedings may be continued and completed as if steps taken in the proceedings prior to the transfer had been taken in the Court.

- (5) The fee payable in respect of the application is the relevant fee (if any) payable to the Tribunal under this Act.

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

- (6) A party to the transferred proceedings is not required to pay any fees in relation to the transfer of the proceedings to the Magistrates Court unless the Court determines that additional fees are payable under the *Magistrates Court (Civil Division) Act 1992* because of a substantial alteration in the nature of the claims in the proceedings.
- (7) An order made by the Tribunal under subsection (2) may not be the subject of review or appeal under Part 10 of this Act.
- (8) The Magistrates Court may remit the transferred proceedings to the Tribunal for determination if the Court is satisfied that the Tribunal has jurisdiction to determine the matter.
- (9) If the Magistrates Court remits the transferred proceedings to the Tribunal, the Court may make the orders, if any, that it considers appropriate to facilitate the determination of the proceedings by the Tribunal.
- (10) The Tribunal must determine transferred proceedings that are remitted to it in accordance with any orders made by the Magistrates Court.

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

82. Magistrates Court proceedings, jurisdiction, powers and functions, &c.

- (1) Transferred proceedings are taken to have been commenced in the Magistrates Court on the day on which the application to which the proceedings relate was first made to the Tribunal.
- (2) Subsection (1) applies despite any limitation period under the *Limitation Act 1974* or any relevant Act that applies to the application concerned, if the application was lodged with the Tribunal before the expiry of the period.
- (3) The Magistrates Court has, and may exercise, all of the jurisdiction, powers and functions in relation to the transferred proceedings that the Tribunal would have if it could exercise federal diversity jurisdiction, including jurisdiction, powers and functions conferred or imposed on the Tribunal by or under this Act or a relevant Act.
- (4) The practices and procedures that apply to the Tribunal under this Act (including the rules) or a relevant Act will apply to the Magistrates Court in respect of the transferred proceedings unless, and to such extent as, the Court determines otherwise.

- (5) The Magistrates Court may make the orders, including in relation to the Tribunal, that it considers appropriate to facilitate its determination of the transferred proceedings.

83. Modifications of certain functions, powers and procedures, &c.

Despite section 82, the following provisions apply in relation to transferred proceedings:

- (a) the Magistrates Court is to be constituted as provided by or under the *Magistrates Court (Civil Division) Act 1992* instead of as provided by or under this Act or a relevant Act;
- (b) subject to the provisions of a relevant Act and the rules of the Court, a party to the proceedings is entitled to be represented by a legal practitioner or, with leave of the Magistrates Court, by another person, but only in the circumstances that the Tribunal would be permitted to allow if the proceedings were before the Tribunal;
- (c) the law applicable to reviews of, or appeals against, decisions of the Magistrates Court applies to

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

decisions of the Court in the transferred proceedings instead of Part 10 of this Act, but the Court may make an order staying the operation of the relevant decision, including the decision of a relevant decision-maker, until the proceedings are finally decided, on the conditions, if any, specified in the order;

(d) the Magistrates Court may award costs in the proceedings only in the circumstances that the Tribunal would be permitted to award them, and the costs are to be assessed in the same way as they would be, if the proceedings were before the Tribunal;

(e) the Magistrates Court may make orders giving effect to any settlement reached by the parties even if that settlement was reached before the commencement of this Part or before proceedings were transferred to the Court under this Part.

84. Compulsory conferences

(1) Subject to the provisions of a relevant Act, the Magistrates Court may, if the

Court considers it is appropriate, require the parties to transferred proceedings to attend a compulsory conference.

- (2) The Magistrates Court may give the directions to the Tribunal. in relation to the procedures and conduct of the conference, that the Court considers appropriate.

85. References to Tribunal in other Acts or regulations

To avoid doubt, but subject to the regulations –

- (a) a reference to the Tribunal in a provision, of an Act or regulations under an Act, that confers or imposes a function on the Tribunal is to be read as including a reference to the Magistrates Court, if the function is conferred or imposed on the Court because of the operation of this Part; and
- (b) a reference to proceedings in the Tribunal in a provision referred to in paragraph (a) is to be read as including a reference to proceedings in the Magistrates Court.

86. Relationship of this Part to this Act and other laws

The provisions of this Part prevail to the extent of any inconsistency between those provisions and any other provisions of the relevant Act.

87. Enforcement, variation or revocation of purported orders

- (1) The amount specified in a purported monetary order made by the Tribunal may be recovered in the appropriate court, within the meaning of section 135, by the person in favour of whom the order was made as if it were a debt.
- (2) A person must not contravene or fail to comply with the terms of a purported order of the Tribunal, other than a purported monetary order.

Penalty: Fine not exceeding 60 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (3) If a person seeks a variation or revocation of a purported order or purported monetary order –
 - (a) the person may apply to the Tribunal; and

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (b) the Tribunal must order that proceedings on the application be transferred to the Magistrates Court –

and such proceedings will be transferred proceedings for the purposes of this Part.

- (4) No act undertaken, or purportedly undertaken, in good faith, by a person pursuant to, or for the purposes of enforcing, a purported order or a purported monetary order gives rise to any liability against the person or the Crown.
- (5) In this section, a reference to a purported order or a purported monetary order is a reference to an order –
 - (a) purportedly made by the Tribunal, whether before or after the commencement of this Part, that is invalid because determination of the application that gave rise to the order involved the exercise of federal diversity jurisdiction; and
 - (b) that, on the commencement of this Part, is to be made by the Magistrates Court.

**PART 9 – PRINCIPLES, POWERS AND
PROCEDURES**

Division 1 – Principles governing hearings

88. Principles governing hearings

- (1) On the hearing of any proceedings, but subject to the provisions of a relevant Act –
 - (a) the procedure of the Tribunal is, subject to this Act, to be conducted with the minimum of formality; and
 - (b) the Tribunal –
 - (i) is not bound by the rules of evidence; and
 - (ii) may adopt, as in its discretion it considers appropriate, any findings, decision or judgment of a court or other tribunal, insofar as may be relevant to the proceedings before the Tribunal; and
 - (iii) may otherwise inform itself as it considers fit; and
 - (c) the Tribunal must act according to equity, good conscience and

the substantial merits of the case
and without regard to legal
technicalities and forms.

- (2) Nothing in this Act affects any rule or principle of law relating to –
 - (a) legal professional privilege; or
 - (b) “without prejudice” privilege; or
 - (c) public interest immunity.
- (3) This section does not limit the operation of section 120.

Division 2 – Evidentiary powers

89. Power to require person to give evidence or to produce evidentiary material

- (1) The Tribunal may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Tribunal at a specified time and place to give evidence, or to produce evidentiary material, or both.
- (2) A summons to produce evidentiary material may, instead of providing for production of the material before the Tribunal, provide for production of the material to an officer of the Tribunal or to any person nominated in the summons.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

(3) The Tribunal may –

- (a) retain any document, object or substance produced before it (whether in response to a summons or otherwise) for the reasonable period that it considers fit and make copies of any document; and
- (b) require a person called to give evidence, whether in response to a summons or otherwise to make an oath or affirmation (which may be administered by any member or officer of the Tribunal) to answer truthfully questions put by any member of the Tribunal or any person appearing before the Tribunal; and
- (c) require any person called to give evidence, whether in response to a summons or otherwise, to answer any questions, put by any member of the Tribunal or any person appearing before the Tribunal, that are determined by the Tribunal to be relevant to the proceedings before the Tribunal.

(4) A person must not –

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

- (a) refuse or fail to make an oath or affirmation when required to do so under this section; or
- (b) refuse or fail without reasonable excuse to produce evidentiary material that the person is required by the Tribunal to produce; or
- (c) refuse or fail without reasonable excuse to appear before the Tribunal in response to a summons; or
- (d) refuse or fail without reasonable excuse to give evidence before the Tribunal or otherwise refuse or fail, without reasonable excuse, to answer any question put in proceedings before the Tribunal or otherwise required under this Act; or
- (e) give false or misleading evidence to the Tribunal.

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding one year.

- (5) A summons under this section may be issued on behalf of the Tribunal by –
 - (a) any member of the Tribunal; or

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (b) a registrar; or
- (c) any other officer authorised under the rules or by the President of the Tribunal to issue such summonses.

90. Entry and inspection of property

- (1) A member of the Tribunal may enter any land or building and carry out on or in the land or building any inspection that the Tribunal considers relevant to any proceedings before the Tribunal.
- (2) A member of the Tribunal may authorise an officer of the Tribunal to enter any land or building and carry out on or in the land or building an inspection that the member of the Tribunal considers relevant to any proceedings before the Tribunal, including for the purposes of preparing expert evidence for the purposes of proceedings before the Tribunal.
- (3) A person must not obstruct a member of the Tribunal, or an officer of the Tribunal authorised by the Tribunal, in the exercise of a power of entry or inspection under this section.

Penalty: Fine not exceeding 15 penalty units or imprisonment for a term not exceeding 6 months.

91. Expert reports

- (1) The Tribunal may refer any question arising in any proceedings for investigation and report by an expert in the relevant field.
- (2) The Tribunal must seek submissions from the parties to the proceedings before making a referral under this section.
- (3) A person to whom a question is referred under this section becomes an officer of the Tribunal and may exercise the powers of the Tribunal that the Tribunal delegates to the person.
- (4) The Tribunal may adopt a report obtained under this section in whole or in part, or may reject the report.
- (5) Any action taken under subsection (4) does not prevent the Tribunal from making a further referral to an expert.
- (6) The Tribunal may order a party to pay or contribute to the costs of an expert's investigation and report under this section.

Division 3 – Procedures

92. Practice and procedure generally

- (1) The Tribunal is to take measures that are reasonably practicable –
 - (a) to ensure that the parties to any proceedings have a reasonable opportunity to understand the nature of the matter under consideration; and
 - (b) to ensure that the parties to any proceedings understand the nature of any assertions made in the proceedings and the legal implications of those assertions; and
 - (c) to explain to the parties, if requested to do so, any aspect of the procedure of the Tribunal or any decision or ruling made by the Tribunal; and
 - (d) to ensure that the parties have the opportunity in any proceedings to be heard or otherwise have their submissions received.
- (2) The Tribunal –
 - (a) is to take all practicable steps to ensure that all relevant material is

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

disclosed to the Tribunal so as to enable it to determine all the relevant facts in issue in any proceedings; and

- (b) may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument; and
 - (c) may limit the time available for presenting the respective cases of parties before it at a hearing to an extent that it considers would not impede the fair and adequate presentation of the cases; and
 - (d) may require a document to be served outside the State; and
 - (e) may adjourn any proceedings at any time and to any place, including for the purpose of enabling the parties to negotiate a settlement or for the purpose of reconsideration of a decision by the decision-maker; and
 - (f) may proceed to hear and determine proceedings in the absence of a party.
- (3) To the extent that the practice or procedure of the Tribunal is not prescribed by or under this Act or a

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

relevant Act, the practice or procedure is to be as the Tribunal determines.

93. Directions for conduct of proceedings

- (1) The Tribunal may give directions at any time in any proceedings and do whatever is necessary for the expeditious and fair conduct of the proceedings.
- (2) The Tribunal may give directions on its own initiative or at the request of a party.
- (3) A directions hearing may be held for the purposes of this section before any other hearing in any proceedings.
- (4) The Tribunal may give a direction requiring a party to produce a document or other material, or to provide information, to the Tribunal or another party.

94. Consolidating and splitting proceedings

- (1) The Tribunal may direct that 2 or more proceedings that concern the same or related facts or circumstances –
 - (a) be consolidated into one proceeding; or
 - (b) remain as separate proceedings but be heard and determined together.

- (2) If proceedings are consolidated, evidence given in the consolidated proceedings is admissible in relation to matters involved in either of the proceedings that were consolidated.
- (3) The Tribunal may direct –
 - (a) that any aspect of any proceedings be heard and determined separately; or
 - (b) that proceedings commenced by 2 or more persons jointly be split into separate proceedings.

95. More appropriate forum

The Tribunal may, at any time, make an order striking out all, or any part, of any proceedings if it considers that the matter, or any aspect of it, would be more appropriately dealt with by another tribunal, a court or any other person.

96. Dismissing proceedings on withdrawal or for want of prosecution

- (1) The applicant in any proceedings may withdraw, or agree to the withdrawal of, the proceedings or a part of the proceedings.
- (2) Unless otherwise provided by the rules, an applicant may only act under

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

subsection (1) with the leave of the Tribunal.

- (3) The Tribunal may make an order dismissing or striking out all, or any part, of any proceedings, if the applicant withdraws or agrees to the withdrawal of the proceedings or that part of it.
- (4) At any time, the Tribunal may make an order dismissing or striking out all, or any part, of any proceedings for want of prosecution.
- (5) The Tribunal's power to make an order under subsection (4) is exercisable only by –
 - (a) a legally qualified member of the Tribunal; or
 - (b) a registrar who is authorised in writing by the President of the Tribunal to make such an order, whether generally or in relation to particular classes of matters or otherwise.
- (6) The Tribunal may make an order under this section on the application of a party or on its own initiative.

97. Frivolous, vexatious or improper proceedings

- (1) This section applies if the Tribunal believes that a proceeding –
 - (a) is frivolous, vexatious, misconceived or lacking in substance or involves a trivial matter or amount; or
 - (b) is being used for an improper purpose; or
 - (c) is otherwise an abuse of process.
- (2) If this section applies, the Tribunal may order that the proceeding be dismissed or struck out and may make any related or ancillary order.
- (3) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.
- (4) If a proceeding is dismissed or struck out under this section, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of the President or a Deputy President.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

98. Proceedings being conducted to cause disadvantage

(1) This section applies if the Tribunal believes that a party to any proceedings is conducting the proceedings in a way that unnecessarily disadvantages another party to the proceedings by conduct such as –

- (a) failing to comply with an order or direction of the Tribunal without reasonable cause; or
- (b) failing to comply with this Act or a relevant Act; or
- (c) asking for an adjournment, the need for which is attributable to a failure described in paragraph (a) or (b); or
- (d) attempting to deceive another party or the Tribunal; or
- (e) vexatiously conducting the proceedings; or
- (f) failing to attend any hearing in the proceedings.

(2) If this section applies, the Tribunal may –

- (a) if the party causing the disadvantage is the applicant,

order that the proceedings be dismissed or struck out; or

(b) if the party causing the disadvantage is not the applicant –

(i) determine the proceedings in favour of the applicant and make any appropriate orders; or

(ii) order that the party causing the disadvantage be struck out of the proceedings.

(3) The Tribunal may act under subsection (2) on the application of a party or on its own initiative.

(4) If any proceedings are dismissed or struck out under this section, another proceeding of the same kind in relation to the same matter cannot be commenced before the Tribunal without the leave of the President or a Deputy President.

Division 4 – Conferences, mediation and settlement

99. Conferences

(1) The Tribunal may, at an initial directions hearing or at any other time, require

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

parties to any proceedings to attend a compulsory conference.

- (2) The Tribunal must, if so required by the rules or a relevant Act, require parties to attend a compulsory conference.
- (3) Despite subsection (2) and any provision of a relevant Act that requires or permits a conference to be held, the Tribunal may dispense with a conference if it is of the opinion that –
 - (a) no useful purpose would be served by a conference between the parties; or
 - (b) there is another reason that justifies dispensing with the conference.
- (4) The purpose of a compulsory conference is to identify and clarify the issues in the proceedings and to promote the resolution of the matters by a settlement between the parties.
- (5) A registrar, or any other member of the staff of the Tribunal who is authorised to do so by the Registrar, is expressly authorised to constitute the Tribunal for the purposes of a compulsory conference.

100. Procedure for compulsory conferences

- (1) A compulsory conference may, at the discretion of the member of the Tribunal presiding at the conference, be adjourned or reconvened from time to time.
- (2) Unless the member of the Tribunal presiding at the conference directs otherwise, a compulsory conference is to be held in private.
- (3) Subject to this section and except to the extent to which the rules may specify the procedure for a compulsory conference, the member of the Tribunal presiding at a compulsory conference may determine the procedure for the conference.
- (4) The member of the Tribunal presiding at a compulsory conference may do any one or more of the following:
 - (a) if that member is not the President or a Deputy President – refer any question of law to the President or a Deputy President for determination;
 - (b) require a party to the proceedings to provide particulars of the party's case;
 - (c) determine who, apart from the parties to the proceedings and

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

their representatives, may be present at the conference;

- (d) subject to subsection (7), record any settlement reached at a conference and make any determination or order (including an order under, or for the purposes of, a relevant Act) that is necessary to give effect to a settlement;
- (e) on his or her own initiative, close the conference at any time if, in his or her opinion, settlement cannot be reached;
- (f) advise the Tribunal if the conference does not reach a settlement within a reasonable time;
- (g) permit a party to withdraw from the proceedings, and make any consequential order that is appropriate in the circumstances;
- (h) determine a matter against any party who obstructs or delays the conference, fails to attend the conference or fails to comply with a rule or order of the Tribunal and, in so doing, make any order as the member of the

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

Tribunal considers fit, including
an order as to costs;

- (i) do other things for which the
rules of the Tribunal provide.
- (5) If a question of law is referred to a
member of the Tribunal under
subsection (4)(a), the member may refer
the question to the Supreme Court for
decision by a single judge of the
Supreme Court.
- (6) Evidence of anything said or done in the
course of a compulsory conference is
inadmissible in proceedings before the
Tribunal, except by consent of all parties
to the proceedings.
- (7) The member of the Tribunal presiding at
a compulsory conference –
 - (a) must not accept a settlement that
appears to be inconsistent with a
relevant Act, but he or she may
adjourn the proceedings to enable
the parties to explore the
possibility of varying the
settlement to comply with a
relevant Act; and
 - (b) may decline to accept a
settlement on the basis that the
settlement may materially
prejudice any person who was not
represented at the conference but

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

who has a direct or material
interest in the matter.

- (8) If the member of the Tribunal presiding at a conference is unable to continue with the conference, another member of the Tribunal may be appointed to continue and complete the conference.
- (9) The member of the Tribunal who presided at the conference is disqualified from sitting as a member of the Tribunal for the purpose of hearing and determining the matter, unless all parties to the proceedings agree to the member's continued participation.
- (10) The rules may set out circumstances where the outcome of any proceedings under this section, including details of a settlement, are to be available to members of the public.

101. Mediation

- (1) The Tribunal may, at an initial directions hearing or at any other time, refer the matter, or any aspect of the matter, for mediation by a person specified as a mediator by the Tribunal.
- (2) The person specified as a mediator must be a person who has been approved by the President of the Tribunal to act as a mediator.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (3) The referral may be made with or without the consent of the parties.
- (4) The purpose of a mediation is to achieve the resolution of the matters by a settlement between the parties.
- (5) The rules may specify any of the following:
 - (a) how notice of the mediation is to be given;
 - (b) how the mediation is to be conducted;
 - (c) the fees to be paid by a party to the mediation.
- (6) Unless the mediator directs otherwise, the mediation is to be held in private.
- (7) Subject to this section and except to the extent to which the rules may specify the procedure for a mediation, the mediator may determine the procedure for the mediation.
- (8) Evidence of anything said or done in the course of a mediation under this section or section 102 is inadmissible in proceedings before the Tribunal, except by consent of all parties to the proceedings.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (9) If the mediator is a member of the Tribunal, the member cannot take any further part in dealing with the proceedings after the mediation, unless all parties to the proceedings agree to the member's continued participation.
- (10) The rules may set out circumstances where the outcome of any mediation under this Act, including details of a settlement, is to be available to members of the public.

102. Settlement at mediation

- (1) If the mediator in relation to a matter or an aspect of a matter is a member of the Tribunal and a settlement is reached at the mediation, the mediator may –
 - (a) reduce the terms of the settlement to writing; and
 - (b) make any determination or order, including an order under, or for the purposes of, a relevant Act, necessary to give effect to the settlement.
- (2) If a settlement is not reached at the mediation in relation to a matter or an aspect of a matter or the mediator is not a member of the Tribunal, the mediator is to report on the outcome of the mediation to the Tribunal as constituted when it

referred under section 101 the matter, or aspect of the matter, for mediation.

- (3) Any settlement under this section –
- (a) must not be inconsistent with a relevant Act; and
 - (b) may be rejected by the Tribunal on the basis that the settlement may materially prejudice any person who has not participated in the mediation but who has a direct or material interest in the matter.

103. Settling of proceedings

- (1) The Tribunal may itself attempt to achieve a negotiated settlement of a matter before the Tribunal.
- (2) If the parties agree in writing to settle a matter before the Tribunal, the Tribunal may make any determination or order, including an order under, or for the purposes of, a relevant Act, necessary to give effect to the settlement.
- (3) A settlement under this section must not be inconsistent with a relevant Act.
- (4) The Tribunal may reject a settlement under subsection (2) on the basis that –

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (a) the settlement may materially prejudice any person who is not a party to the settlement but who has a direct or material interest in the matter; or
- (b) the terms of the settlement are inappropriate.

Division 5 – Parties

104. Parties

- (1) A person is a party to proceedings before the Tribunal if the person is –
 - (a) the applicant; or
 - (b) in the case of any disciplinary proceedings or any proceedings constituted by any inquiry into a person – the person who is the subject of the proceedings; or
 - (c) in the case of proceedings involving the review of a decision – the decision-maker; or
 - (d) without limiting paragraph (a), (b) or (c) –
 - (i) a respondent to an application before the Tribunal; or

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (ii) a person against whom a claim is made by proceedings brought before the Tribunal; or
 - (iii) a party to a dispute before the Tribunal; or
 - (e) a person joined in the proceedings by order of the Tribunal; or
 - (f) a person lawfully intervening in the proceedings; or
 - (g) a person specified by another provision of this Act or a relevant Act to be a party to the proceedings.
- (2) Subsection (1) applies subject to any provision or exclusion made by the rules of the Tribunal.
- (3) In any proceedings where a decision-maker is a party, the official description, rather than the personal name, of the decision-maker is to be used so far as is practicable.

105. Person may be joined as party

- (1) The Tribunal may order that a person be joined as a party to proceedings before

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

the Tribunal if the Tribunal considers that –

- (a) the person should be bound by, or have the benefit of, a decision of the Tribunal in the proceedings; or
 - (b) the person's interests are affected by the proceedings; or
 - (c) for any other reason it is desirable that the person be joined as a party.
- (2) The Tribunal may make an order under this section –
- (a) on the application of any person or on its own initiative; and
 - (b) without notice to the person to whom the order relates.

106. Intervening

- (1) The Attorney-General may, on behalf of the State, intervene in any proceedings before the Tribunal at any time.
- (2) The Tribunal may give leave at any time for any other person to intervene in proceedings before the Tribunal on conditions, if any, that the Tribunal considers fit.

Division 6 – Representation

107. Representation

- (1) A party to proceedings before the Tribunal is, subject to the provisions of a relevant Act, entitled to appear –
 - (a) personally; or
 - (b) by an Australian legal practitioner; or
 - (c) with the leave of the Tribunal and subject to the rules – by another representative.
- (2) Unless otherwise determined by the Tribunal, a person appearing before the Tribunal may be assisted by another person as a friend.
- (3) A person may not act as a representative referred to in subsection (1)(c) in proceedings before the Tribunal if –
 - (a) the person is an Australian legal practitioner whose practising certificate has been suspended; or
 - (b) the person has been removed from the local roll, within the meaning of the *Legal Profession Act 2007*.

Division 7 – Costs

108. Costs

- (1) Unless otherwise specified in this Act, a relevant Act or an order of the Tribunal under this section, parties bear their own costs in any proceedings before the Tribunal.
- (2) Unless otherwise specified in a relevant Act, the Tribunal may make an order for the payment by a party of all or any of the costs of another party, or of a person required to appear before the Tribunal or to produce evidential material, if the Tribunal considers that it is appropriate to do so after taking into account –
 - (a) the main objectives of the Tribunal that are relevant to simplifying proceedings and issues before the Tribunal and to keeping costs to parties in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and
 - (b) the need to ensure that proceedings are fair and that parties are not disadvantaged by proceedings that have little or no merit; and

- (c) any provision made by the rules;
and
 - (d) any other matter considered
relevant by the Tribunal.
- (3) Subsection (2) does not apply in relation to proceedings in the Mental Health stream.
- (4) Without limiting subsection (2), if the Tribunal dismisses or strikes out any proceedings in any prescribed circumstances, the Tribunal should also make an order for costs against the party against whom the action is directed, unless the Tribunal is of the opinion that there is a good reasons for not making an order in the circumstances of the particular case.
- (5) If the Tribunal makes an order for the payment of costs and does not fix the amount of costs, that amount is to be assessed and settled in accordance with the rules.

109. Costs of proceedings

- (1) In this section –

costs of proceedings means costs of, or incidental to, any proceedings of the Tribunal, other than the costs of a party.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (2) The Tribunal may order that all or any of the costs of proceedings be paid by a party.
- (3) Subsection (2) does not apply in relation to proceedings in the Mental Health stream.
- (4) If the matter that is the subject of the proceeding comes within the Tribunal's review jurisdiction, the Tribunal cannot make an order under this section against a party unless –
 - (a) the party brought or conducted the proceedings frivolously or vexatiously; or
 - (b) the Tribunal is acting in prescribed circumstances.

110. Costs – related matters

- (1) The power of the Tribunal to make an order for the payment by a party of the costs of another party includes the power to make an order for the payment of an amount to compensate the other party for any expenses or loss resulting from any proceedings or matter.
- (2) Without limiting anything else that may be considered in making an order for the payment by a party of the costs of another party, if the matter that is the

subject of any proceedings comes within the Tribunal's review jurisdiction, the Tribunal is to have regard to –

- (a) whether the party genuinely attempted to enable and assist the decision-maker to make a decision on its merits; or
 - (b) if the party was the decision-maker – whether the party genuinely attempted to make a decision on its merits.
- (3) The rules may deal with the effect of certain offers to settle, and the response, if any, to the offer, on the making of an order for the payment by a party of the costs of another party.
- (4) The Tribunal may order that the representative of a party, rather than the party, in the representative's own capacity compensate that or any other party for costs incurred because the representative acted in, or delayed, any proceedings in a way that resulted in unnecessary costs.

111. Security as to costs, &c.

- (1) The Tribunal may order a party to proceedings before the Tribunal to give security for the payment of costs or to give an undertaking as to the payment of

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

other monetary amounts that may be awarded against the party.

- (2) Subsection (1) does not apply in relation to proceedings in the Mental Health stream.
- (3) The security referred to in subsection (1) is to be of the amount, and given at the time and in the manner and form, that the Tribunal directs.
- (4) The Tribunal may reduce or increase the amount of security ordered under subsection (1) to be given and may vary the time at which, or the manner or form in which, the security is to be given.
- (5) If security, or further security, or an undertaking, is not given in accordance with an order under this section, the Tribunal may order that the proceedings be dismissed with costs or that a determination with costs be made against the party.
- (6) The provisions of this section relating to security, or the giving of an undertaking, do not affect the operation of any provision made by or under a relevant Act or by the rules for or in relation to the giving of security, the giving of an undertaking or the imposition of costs.
- (7) A member of the Tribunal may not make an order under this section unless the

member is, or with the concurrence of a person who is, one of the following members:

- (a) the President;
- (b) a Deputy President;
- (c) a senior member, or an ordinary member, who is a legally qualified member.

Division 8 – Other procedural and related provisions

112. Sittings

The Tribunal will sit at the times and places as the President of the Tribunal directs, which may include at different places at the same time.

113. Hearings in public

- (1) Subject to this or any other Act, proceedings before the Tribunal, other than mediation proceedings or conferences, must be heard in public.
- (2) The Tribunal may give a direction under subsection (3) if it is satisfied that it is desirable to do so –
 - (a) in the interest of justice; or

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (b) by reason of the confidential nature of the evidence to be given before the Tribunal; or
 - (c) in order to expedite proceedings of the Tribunal; or
 - (d) for any other reason that the Tribunal considers sufficient.
- (3) The Tribunal may give directions –
- (a) requiring that a hearing, or part of a hearing, be held in private; or
 - (b) prohibiting or restricting the publication of the name and address of a witness appearing before the Tribunal; or
 - (c) prohibiting or restricting the publication of evidence given before the Tribunal or of the contents of any document produced to the Tribunal; or
 - (d) prohibiting or restricting the disclosure, to some or all of the parties to proceedings before the Tribunal, of evidence given before the Tribunal or of the contents of any document produced to the Tribunal; or

- (e) excluding any person from the hearing before the Tribunal of any part of the proceedings.
- (4) A person must comply with a direction of the Tribunal under subsection (3).

Penalty: Fine not exceeding 30 penalty units.

114. Preserving subject matter of proceedings

- (1) The Tribunal may, on the terms that appear to it to be just, make an order that may be necessary –
 - (a) to preserve the subject matter of proceedings; or
 - (b) to otherwise protect the interests of a party –
until questions arising in the proceedings have been finally determined.
- (2) The Tribunal's power to make an order under subsection (1) is exercisable by –
 - (a) the President, or a Deputy President, of the Tribunal; or
 - (b) any other member of the Tribunal who –
 - (i) is a legally qualified member; and

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (ii) is authorised by the President to make orders under this section.
- (3) The Tribunal may make the order on the application of a party or on its own initiative.
- (4) An order may be made under this section whether or not a person whose interests may be affected –
 - (a) is a party; or
 - (b) has been given an opportunity to be heard.
- (5) An order may be made under this section –
 - (a) for a specified period; or
 - (b) until a specified event or stage in the proceedings.
- (6) In making an order under this section, the Tribunal –
 - (a) may require an undertaking as to costs or damages that it considers appropriate; and
 - (b) may provide for the revocation of the order if specified conditions are met.

- (7) The Tribunal may assess any costs or damages referred to in subsection (6)(a) and any amount so assessed is recoverable as a debt in a court of competent jurisdiction.
- (8) The rules may place conditions on the Tribunal's power to make an order under this section.
- (9) The Tribunal's power under this section is in addition to, and does not limit, any power of the Tribunal under a relevant Act to make an order in the nature of an injunction or interim injunction.

115. Interlocutory orders

The Tribunal has power, in relation to matters within its jurisdiction, to make interlocutory orders.

116. Conditional, alternative and ancillary orders and directions

- (1) The Tribunal may make orders and give directions on conditions that the Tribunal considers appropriate.
- (2) The Tribunal may make orders in the alternative so that a particular order takes effect, or does not take effect, according to whether stipulated conditions are complied with.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (3) The Tribunal may, when making an ancillary order, provide that a decision of the Tribunal is to be implemented by a person who is not a party to the relevant proceedings.

117. Relief from time limits

- (1) The rules may provide for the Tribunal to extend or abridge a time limit for doing anything in connection with any proceedings, or the commencement of any proceedings, even though the limit is imposed under this Act or a relevant Act.
- (2) The extension –
- (a) may be authorised even though the time for complying has passed; and
 - (b) may be given on conditions specified by the Tribunal.

118. Electronic hearings and proceedings without hearings

- (1) If the Tribunal considers it appropriate, it may allow –
- (a) the parties and their representatives; and
 - (b) any witnesses, or one or more of them –

to participate in any proceedings by means of telephone, video link or any other system or method of communication.

- (2) If the Tribunal considers it appropriate, it may conduct all or part of any proceedings entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing or any other part of the proceedings.
- (3) If the Tribunal acts under this section, the Tribunal is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceedings to the same extent as if the proceedings had been heard before the Tribunal with the attendance in person of all persons involved in the proceedings.

119. Completion of part-heard matters

A person who ceases to hold office as a member of the Tribunal, other than on account of having his or her appointment revoked or being removed from office, may continue to act in the relevant office for the purpose of completing the hearing and determining proceedings part-heard by the person at the time when he or she ceased to hold that office.

120. Other claims of privilege

- (1) A person is excused from answering a question or producing a document or other material in any proceedings if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.
- (2) The Tribunal may require a person to produce a document or other material to it for the purpose of determining whether or not it is a document or material that the Tribunal has power to compel the person to produce.

PART 10 – APPEALS

121. Appeals against Tribunal in its review jurisdiction

- (1) A person who is a party to proceedings of the Tribunal in its review jurisdiction may appeal to the Supreme Court against a determination made in the proceedings.
- (2) A person may appeal to the Supreme Court if the person is aggrieved by any determination of the Tribunal made otherwise than in proceedings.
- (3) An appeal may be brought –

- (a) on a question of law, as of right;
or
- (b) on any other question, with the
leave of the Supreme Court.

122. Procedure on appeals

- (1) An appeal under section 121 in relation to a determination is to be instituted in accordance with the rules in force under the *Supreme Court Civil Procedure Act 1932* –
 - (a) within 30 days after the day on which the determination is made;
or
 - (b) if, within the period referred to in paragraph (a), the person instituting the appeal gives to the Tribunal a written request for a statement of reasons for the determination – within 30 days after the day on which the person is given that statement of reasons.
- (2) Despite subsection (1), the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within the period referred to in that subsection, even if the time for instituting the appeal has expired.

123. Determination of appeal

- (1) The Supreme Court may, on an appeal under this Part –
 - (a) affirm the decision appealed against; or
 - (b) vary the decision appealed against; or
 - (c) set aside the decision appealed against and, if it considers fit, return the matter to the Tribunal for reconsideration in accordance with any directions that the Court considers appropriate.
- (2) The Supreme Court may, on an appeal under this Part, make any interim, ancillary or consequential order that the Court considers appropriate.

124. Effect of review on decision

- (1) The commencement of proceedings under this Part does not affect the operation of a decision to which the proceedings relate or prevent the taking of action to implement such a decision.
- (2) However, the Supreme Court may, on the conditions, if any, that are specified in the order, make an order staying the operation of a relevant decision,

including a decision of a relevant decision-maker, until the proceedings are finally decided.

- (3) The Supreme Court may act under subsection (2) on application or on its own initiative.
- (4) The Tribunal's power to act under subsection (2) is exercisable only by a legally qualified member of the Tribunal.

PART 11 – MISCELLANEOUS

125. Protections and immunities

- (1) A member of the Tribunal has, in the performance and exercise of the functions and powers of a member of the Tribunal, the same protection and immunities as a judge of the Supreme Court.
- (2) A member of the staff of the Tribunal incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.
- (3) A person representing a party to proceedings before the Tribunal has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (4) A party to proceedings before the Tribunal has the same protection and immunity as a party to proceedings in the Supreme Court.
- (5) A person who appears as a witness before the Tribunal or produces books, papers or documents to the Tribunal has the same protection as a witness in proceedings before the Supreme Court.
- (6) A person who –
 - (a) is taking evidence on behalf of the Tribunal; or
 - (b) is specified as a mediator by the Tribunal under section 101 and who is carrying out mediation under this Act; or
 - (c) is an expert acting for, or providing advice to, the Tribunal –

has, in doing so, the same protections, privileges and immunities as a member of the Tribunal.

126. Protection from liability for torts

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function

under this Act or a relevant Act as a member of the Tribunal, a member of the staff of the Tribunal or an officer of the Tribunal.

- (2) The Crown is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act or a relevant Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

127. Protection for compliance with Act

- (1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.
- (2) In particular, if a person produces a document or other material as required under this Act, no civil liability attaches to the person for producing the document or material, whether the liability would arise under a contract or otherwise.

128. Alternative orders and relief

Although a particular form of order or relief is sought by an applicant in proceedings before the Tribunal, the Tribunal may make any other form of order or grant any other form of relief that it considers more appropriate in the circumstances of the case.

129. Power to cure irregularities

- (1) If in proceedings before the Tribunal or on appeal from the Tribunal to the Supreme Court it appears to the Tribunal or the Court –
 - (a) that some irregularity has occurred affecting the proceedings or any matter to which the proceedings relate; and
 - (b) that it would be conducive to the expeditious resolution of the questions of substance at issue between the parties if the powers conferred by this section were exercised –

the Tribunal or the Court may cure the irregularity by ordering that, subject to the fulfilment of the conditions, if any, that are stipulated by the Tribunal or the Court, a requirement of this Act, or of

any other Act or law, be dispensed with to the extent necessary for the purpose.

- (2) An order under this section does not affect the rights or liabilities of persons who are not parties to the proceedings.

130. Correcting mistakes

- (1) The Tribunal may correct a decision given by the Tribunal, or a statement of the reasons it has given for its decision, to the extent necessary to rectify –
- (a) a clerical mistake; or
 - (b) an error arising from an accidental slip or omission; or
 - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the decision; or
 - (d) a defect of form.
- (2) The correction may be made –
- (a) on a party's application made in accordance with the rules; or
 - (b) on the Tribunal's own initiative.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

131. Tribunal may review its decision if person was absent

(1) In this section –

relevant hearing, in relation to a decision of the Tribunal, means a hearing at which the decision was made or which preceded the making of the decision (including a compulsory conference) but does not include mediation.

(2) A person in respect of whom the Tribunal makes a decision may apply to the Tribunal for a review of the decision, if the person did not appear and was not represented at a relevant hearing.

(3) An application under subsection (2) must be made within the time limits specified by, and otherwise in accordance with, the rules.

(4) The rules may limit the number of applications that may be made under this section in respect of the same matter without leave of the Tribunal.

(5) If, on hearing the application, the Tribunal is satisfied that the applicant had a reasonable excuse for not attending or being represented at the relevant hearing, the Tribunal is to review the decision and may revoke or vary it, if the

Tribunal considers it appropriate to do so.

- (6) For the hearing of the application, the Tribunal is to be constituted, if practicable, by the members by whom it was constituted when it made the decision.
- (7) A review under this section –
 - (a) is part of the original proceedings; and
 - (b) is not a review of a decision for the purposes of section 75.

132. Tribunal may authorise person to take evidence

- (1) The Tribunal may authorise, in writing, a person, whether or not the person is a member of the Tribunal, to take evidence on behalf of the Tribunal for the purposes of any proceedings.
- (2) The Tribunal's power under subsection (1) to authorise the taking of evidence is exercisable only by the President or a Deputy President.
- (3) The Tribunal may authorise evidence to be taken under this section outside Tasmania.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (4) The Tribunal may give directions as to the taking of evidence under this section.
- (5) If a person other than a member of the Tribunal is authorised under this section to take evidence, the person has all the powers of a member of the Tribunal in relation to the taking of evidence.
- (6) Evidence take under this section –
 - (a) is to be regarded as having been given to the Tribunal; and
 - (b) if taken outside Tasmania, is to be regarded as having been given in Tasmania.

133. Miscellaneous provisions relating to legal process and service

- (1) Any process of the Tribunal may be issued, served or executed on a Sunday as well as any other day.
- (2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.
- (3) If it is not practicable to serve any process, notice or other document relating to any proceedings in the manner otherwise prescribed or contemplated by law, the Tribunal may, by order –
 - (a) provide for service –

- (i) by post; or
 - (ii) in any other way, including by substituted service, authorised by the regulations; or
- (b) make any other provision that may be necessary or desirable for service.
- (4) Any process, notice or other document served in accordance with an order under subsection (3) is, despite any other law, taken to have been duly served.
- (5) A registrar is expressly authorised to make an order under subsection (3).

134. Proof of decisions and orders of Tribunal

An apparently genuine document purporting –

- (a) to be a copy of a decision or order of the Tribunal; and
- (b) to be certified as such by a registrar –

is to be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of a decision or order of the Tribunal.

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

135. Enforcement of decisions and orders of Tribunal

- (1) If the Tribunal makes a monetary order, the amount specified in the order may be recovered in the appropriate court, by a person recognised by the regulations for the purposes of this subsection, as if it were a debt due and payable to the person.
- (2) A person must not contravene or fail to comply with an order of the Tribunal, other than a monetary order.

Penalty: Fine not exceeding 60 penalty units or imprisonment for a term not exceeding one year.

- (3) In this section –

appropriate court means –

- (a) in relation to an order of the Tribunal that is a monetary order for an amount that does not exceed the amount that represents the jurisdiction limit of the Magistrates Court for a monetary claim founded on contract – the Magistrates Court;
- (b) in any other case – the Supreme Court.

136. Accessibility of evidence

- (1) Subject to this section and any relevant Act, the Tribunal may, on application by any member of the public, allow the applicant to inspect or obtain a copy of –
 - (a) any process relating to proceedings and forming part of the Tribunal's records; or
 - (b) a transcript of evidence taken by the Tribunal in any proceedings; or
 - (c) any documentary or other material produced or provided to the Tribunal in any proceedings; or
 - (d) any decision or order given or made by the Tribunal; or
 - (e) any other material of a prescribed kind.
- (2) A member of the public may inspect or obtain a copy of the following material only with the permission of the Tribunal:
 - (a) material that was produced or provided to the Tribunal in a hearing (or part of a hearing) held in private;

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (b) material the disclosure of which would be contrary to a direction or order of the Tribunal given under another provision of this or any other Act;
 - (c) material of a class prescribed by the regulations.
- (3) The Tribunal may permit inspection or copying of material referred to in subsection (1) or (2) subject to any condition that it considers appropriate, including a condition limiting the publication or use of the material.
- (4) A decision by the Tribunal on an application under this section is administrative and is final and not subject to any form of review.
- (5) The Tribunal may charge a fee, fixed by regulation, for inspection or copying of material under this section.

137. Annual report

- (1) The President of the Tribunal must, on or before 31 October in each year, make a report to the Attorney-General on the administration and operation of the Tribunal during the previous financial year.

- (2) The Attorney-General must, within 12 sitting-days after receiving a report under this section, cause copies of the report to be laid before both Houses of Parliament.

138. Disrupting proceedings of Tribunal

- (1) A person must not –
- (a) wilfully interrupt any proceedings of the Tribunal; or
 - (b) use offensive language, or behave in a disorderly or offensive manner, towards the Tribunal, members of the Tribunal or officers of the Tribunal or at a place where proceedings of the Tribunal are being conducted.

Penalty: Fine not exceeding 30 penalty units or imprisonment for a term not exceeding 3 months.

- (2) Nothing in this section derogates from the operation of another provision of this Act.
- (3) In this section –

offensive includes threatening, abusive or insulting.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

139. Confidentiality

(1) Despite the provisions of any other Act, if information may be obtained by, or provided to, a person under an Act under which a relevant Board or Tribunal is established or under which a relevant Board or Tribunal has functions or powers, the information may be obtained by or provided to a person who is –

(a) the President, the Acting President or a Deputy President;
or

(b) the Registrar, a Deputy Registrar or a member of the staff of the Tribunal; or

(c) a member of the staff of the relevant Board or Tribunal or of another relevant Board or Tribunal –

as if the person were a person by whom such information may be obtained, or to whom such information may be provided, under that Act.

(2) This section only applies to information obtained or provided under this section before the establishment day.

140. Use of facilities, &c.

- (1) This section only applies before the establishment day.
- (2) The Secretary of the Department may direct that members of, and members of the staff of, any relevant Board or Tribunal are to be located in premises that are to be used for the purposes of the Tribunal.
- (3) The President, the Acting President or the Registrar may give, to members of the staff of any relevant Board or Tribunal who are, or are to be, located in premises that are to be used for the purposes of the Tribunal, directions that are necessary or convenient to ensure the efficient and effective –
 - (a) administration and use of the premises and any facilities and equipment at the premises; and
 - (b) use of the services of those members of staff.

141. Interim rules may be made by President or Acting President

- (1) The President or the Acting President may, before the establishment day, make, under section 143, rules of the Tribunal,

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

including rules that amend or revoke any such rules.

- (2) Rules made by the President, or the Acting President, in accordance with subsection (1) may only be specified to come into force on a day, after the rules are made, that is before the establishment day.
- (3) The President, or the Acting President, before making, under subsection (1), a provision of the rules of the Tribunal that is to apply only in relation to a stream of a Division of the Tribunal (rather than to all Divisions of the Tribunal or to all streams of all Divisions of the Tribunal) is to consult with each of the relevant persons in relation to the stream of the Division of the Tribunal.
- (4) For the purposes of subsection (3), the relevant persons in relation to a stream of the Division of the Tribunal are each person whom the President or Acting President considers to be the head (however described) of a relevant Board or Tribunal referred to in an Act that is specified, in the Division Schedule in relation to the Division of the Tribunal, to be an Act in relation to which the stream of the Tribunal has functions or powers.

142. Rules Committee

- (1) There is to be, after the establishment day, a Rules Committee.
- (2) The Rules Committee is to be composed of the following:
 - (a) the President;
 - (b) each Division Head or a member nominated by the Division Head;
 - (c) such other members as may be appointed by the President from time to time.
- (3) Rules may, after the establishment day, be made under section 143 by the Rules Committee.
- (4) The rules that may be made under section 143 include rules that amend or revoke rules made under that subsection or section 141(1).
- (5) The quorum for a meeting of the Rules Committee is a majority of the members of the Committee from time to time.
- (6) The procedures of the Rules Committee are to be as determined by the President from time to time.
- (7) The rules made by the Rules Committee may, in accordance with section 143(4), only prescribe a rule for a particular

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

Division of the Tribunal that is not a rule applying to Divisions generally, if the Division Head in relation to the Division, or a member nominated by the Division Head, is present at the meeting at which the rule is made.

143. Rules

- (1) A person or body who is authorised under section 141 or 142 may make rules of the Tribunal.
- (2) The rules of the Tribunal may –
 - (a) regulate the business of the Tribunal and the duties of the various members and staff of the Tribunal; and
 - (b) authorise the registrars and other members of the staff of the Tribunal to exercise powers with respect to proceedings before the Tribunal and provide for the internal review of specified classes of decisions in specified circumstances; and
 - (c) regulate the practice and procedure of the Tribunal; and
 - (d) provide for the provision of written statements of reasons for decisions of the Tribunal at first

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

instance for the purposes of an internal review of the decision by the Tribunal; and

- (e) impose obligations, on persons seeking to commence proceedings before the Tribunal, to take any step, including to give a notification (orally or in writing) to another person or to provide any specified information; and
- (f) provide for the service of applications, referrals and appeals and other documents; and
- (g) impose obligations on parties to proceedings before the Tribunal to disclose to each other, before or in connection with the hearing of the proceedings, the contents of expert reports or other material of relevance to the proceedings; and
- (h) regulate –
 - (i) the referral of a matter to mediation, conciliation or alternative dispute resolution; and
 - (ii) the conduct of mediations, conciliation or alternative dispute resolution; and

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (iii) the referral of questions for investigation and report by an expert or referee; and
 - (i) regulate the form in which evidence may be taken; and
 - (j) restrict or prohibit certain classes of persons from appearing as representatives in proceedings before the Tribunal; and
 - (k) provide for the Tribunal to waive any procedural requirement; and
 - (l) regulate costs and provide for the assessment and settling of costs; and
 - (m) provide for witness fees; and
 - (n) provide for other matters relating to the management, conduct or settlement of proceedings before the Tribunal; and
 - (o) deal with any other matters necessary or expedient for the effective and efficient operation of the Tribunal.
- (3) The rules of the Tribunal may include rules in respect of any jurisdiction conferred on the Tribunal by a relevant Act.

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

- (4) The rules of the Tribunal may prescribe different rules for –
 - (a) each of the Divisions of the Tribunal; and
 - (b) different streams in the same Division of the Tribunal; and
 - (c) different classes of matters.
- (5) The rules of the Tribunal take effect from the date of publication in the *Gazette* or a later date specified in the rules.
- (6) The rules of the Tribunal must be consistent with the regulations, this Act and any relevant Act.
- (7) Rules made under section 67 of this Act, as in force immediately before the day on which this section is inserted in this Act by the *Tasmanian Civil and Administrative Tribunal Amendment Act 2021*, are to be taken on and from the establishment day to have been made under this section.

144. Code of conduct

- (1) The President may prepare and issue a code of conduct that is to apply to members of the Tribunal.
- (2) A code of conduct made under section 68 of this Act, as in force immediately

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

before the day on which this section is inserted in this Act by the *Tasmanian Civil and Administrative Tribunal Amendment Act 2021*, is to be taken, on and from the establishment day, to have been made under this section.

145. Appointments and other matters to facilitate establishment of Tribunal

- (1) A person may be appointed to any office or other position under this Act before the establishment day.
- (2) Without limiting subsection (1), the following appointments may be made before the establishment day:
 - (a) appointment as the President, a Deputy President or as any other kind of member;
 - (b) appointment as the Registrar, a Deputy Registrar or other member of the staff of the Tribunal.
- (3) A person may be appointed under section 21(1) as the Acting President for a term beginning before the establishment day.
- (4) The requirements of section 21(2) do not apply to an appointment under section 21(1) of a person as the Acting

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

President that is made in accordance with subsection (3).

- (5) If, before the establishment day, a person who is appointed as the Acting President in accordance with subsection (3) has not ceased to be the Acting President, the appointment of the person ceases on the establishment day.
- (6) The requirements of section 53(4) do not apply in relation to the appointment, before the establishment day, of the Registrar or a Deputy Registrar.
- (7) An appointment made before the establishment day has effect, from the day specified in the instrument of appointment, as if the Tribunal had been established.
- (8) A person who is appointed as the President, in accordance with subsection (1), or who is, in accordance with subsection (3), appointed under section 21(1) as the Acting President, is taken to be assigned to be the Division Head of a Division of the Tribunal under this Act until another person is assigned to be the Division Head of the Division of the Tribunal.
- (9) The requirements of clause 2 of Part 2 of Schedule 2, and clause 2 of Part 2 of Schedule 3, do not apply in relation to a

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

person who is a Division Head in accordance with subsection (8).

- (10) A person who is a member of a relevant Board or Tribunal is not to be taken under any Act as being disqualified from holding the office of such a member, or liable to any sanction or punishment, by reason only that the person also holds an office under this Act.
- (11) A person who was appointed under section 69 of this Act, as in force immediately before the commencement of this provision, is taken to have been appointed under this section.

146. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) provide for information to be included in registers to be kept for the purposes of this Act; and
 - (b) prescribe matters relevant to the practice or procedures of the Tribunal; and
 - (c) prescribe, and provide for the payment of, fees in relation to

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 6

proceedings before the Tribunal;
and

- (d) prescribe penalties not exceeding 50 penalty units for contravention of, or non-compliance with, any regulation; and
 - (e) make provisions of a savings or transitional nature consequent on the vesting of jurisdiction on the Tribunal under another Act.
- (3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by a person or body specified in the regulations.
- (5) Without limiting the generality of subsection (2), a regulation under subsection (2)(e) may –
- (a) operate in addition to any savings or transitional provision enacted under another Act in connection with the vesting of jurisdiction in the Tribunal; and
 - (b) operate so as to modify the operation or effect of another Act

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

insofar as may be expedient in connection with the transfer of jurisdiction to the Tribunal from another entity; and

- (c) take effect from the day on which jurisdiction is vested in the Tribunal under another Act (including so as to provide for the retrospective operation of the regulation).

147. 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 Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

PART 12 – TRANSITIONAL PROVISIONS

***Division 1 – Abolition of Boards and Tribunals and
Transition of Certain Members***

148. Interpretation of Part 12

In this Part –

current member of a relevant Board or Tribunal means a person who, immediately before the establishment day, held office as –

- (a) the head of the relevant Board or Tribunal (however described); or
- (b) a deputy head of the relevant Board or Tribunal (however described); or
- (c) a member of the relevant Board or Tribunal (however described).

149. Abolition of existing Boards and Tribunals

Each relevant Board or Tribunal is abolished on the establishment day.

150. Current members of relevant Board or Tribunal cease to hold office

- (1) A current member of a relevant Board or Tribunal ceases to hold office as such on the establishment day.
- (2) If a person ceases to hold an office by virtue of subsection (1), the person is not entitled to any remuneration or compensation because of the loss of that office.

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (3) Subsection (2) applies despite anything in a relevant Act concerning the circumstances or processes for the removal of the person from, or the vacation of the office of, a person from an office under the relevant Act.

151. Current members to hold office as members of Tribunal

- (1) A current member of a relevant Board or Tribunal referred to in column 1 of the following table becomes, on the establishment day, a member of the Tribunal of the type specified opposite in column 2 of the table.

Column 1 – Member of Board or Tribunal	Column 2 – Tribunal member
1. President of Mental Health Tribunal	Deputy President
2. Deputy President of Mental Health Tribunal	Senior member
3. Member of Mental Health Tribunal	Ordinary member
4. President of Guardianship and Administration Board	Deputy President

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

Column 1 – Member of Board or Tribunal	Column 2 – Tribunal member
5. Deputy President of Guardianship and Administration Board	Senior member
6. Member of Guardianship and Administration Board	Ordinary member
7. Chairperson of Resource Management and Planning Appeal Tribunal	Deputy President
8. Deputy Chairperson of Resource Management and Planning Appeal Tribunal	Senior member
9. Member of Resource Management and Planning Appeal Tribunal	Ordinary member
10. Chief Commissioner of the Asbestos Compensation Tribunal	Deputy President
11. Commissioner of the Asbestos Compensation Tribunal	Deputy President
12. Part time member of Asbestos Compensation Tribunal	Ordinary member

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

Column 1 – Member of Board or Tribunal	Column 2 – Tribunal member
13. Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal	Deputy President
14. Commissioner of the Workers Rehabilitation and Compensation Tribunal	Deputy President
15. Part-time Commissioner of Workers Rehabilitation and Compensation Tribunal	Ordinary member
16. Chairperson of Anti-Discrimination Tribunal	Deputy President
17. Member of Anti-Discrimination Tribunal	Ordinary member
18. Chairperson of Health Practitioners Tribunal	Deputy President
19. Deputy Chairperson of Health Practitioners Tribunal	Deputy President
20. Professional member, or community member, of Health Practitioners Tribunal	Ordinary member
21. Chairman of Motor Accidents Compensation Tribunal	Deputy President

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

Column 1 – Member of Board or Tribunal	Column 2 – Tribunal member
22. Member of Motor Accidents Compensation Tribunal	Ordinary member
23. Chief Chairperson of Forest Practices Tribunal	Senior member
24. Deputy Chief Chairperson of Forest Practices Tribunal	Ordinary member
25. Member of Forest Practices Tribunal	Ordinary member

(2) If a person is a current member of a relevant Board or Tribunal who would, in accordance with the table in subsection (1), become –

(a) both a Deputy President and another member – the person becomes, on the establishment day, a Deputy President; or

(b) both a senior member and an ordinary member and paragraph (a) does not apply – the person becomes, on the establishment day, a senior member only.

(3) If a current member of a relevant Board or Tribunal was, immediately before the establishment day, a person who is

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

appointed as a current member on the basis that he or she was to perform and exercise the functions and powers of a current member only during the periods, within the person's term of appointment to that office, determined from time to time by another person, the person is taken to be appointed as a member of the Tribunal on a sessional basis.

- (4) A current member of a relevant Board or Tribunal who, in accordance with subsection (1), becomes a member of the Tribunal and who was appointed under the relevant Act for a period is taken to have been appointed to the office until the day on which his or her appointment as a current member of a relevant Board or Tribunal would have, but for the abolition of the Board or Tribunal by this Act, expired.
- (5) Nothing in this section is to be taken to prevent a person ceasing to hold office under this Act in the circumstances in which a member of the Tribunal ceases to hold office under this Act.

152. Remuneration of current member of a relevant Board or Tribunal

- (1) The remuneration, as a member of the Tribunal, of a current member of a relevant Board or Tribunal is to be, for

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

the period for which the person holds office as a member of the Tribunal before the person is reappointed, if at all, as a member of the Tribunal –

- (a) the same as the remuneration to which the person was entitled, immediately before the establishment day, as a current member of the Board or Tribunal of which the person was a member; or
 - (b) if the person was, immediately before the establishment day, a member of more than one Board or Tribunal under a relevant Act – the same as the highest remuneration, for any one of those offices, to which the person was entitled immediately before the establishment day.
- (2) Nothing in this section is to be taken to prevent section 5 applying in relation to a person.
- (3) Nothing in this section is to be taken to prevent the application to a person of a determination of the Governor as to the salary, remuneration or allowances of the person, under a provision of this Act that applies to the person, if the determination does not reduce the salary, remuneration or allowances of the person during the

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

term of office as a member of the
Tribunal that the person began under this
Part.

***Division 2 – Proceedings of former relevant Board or
Tribunal***

**153. Proceedings that were on foot on
establishment day**

- (1) This section applies in relation to proceedings before a relevant Board or Tribunal that –
 - (a) were instituted or commenced before the establishment day; and
 - (b) have not been finally determined before that day by the relevant Board or Tribunal.
- (2) If proceedings, before a relevant Board or Tribunal, to which this section applies, had not been heard before the establishment day by the relevant Board or Tribunal, the proceedings are to be taken, on and from the establishment day, to have been instituted or commenced before the Tribunal established under this Act and may be heard and determined instead by that Tribunal.
- (3) If a relevant Board or Tribunal had, before the establishment day, begun to

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

hear, but had not determined, proceedings, before the relevant Board or Tribunal, to which this section applies, the person or persons constituting the Board or Tribunal for those proceedings –

(a) are to continue, on and from the establishment day, to hear and determine the matter to which the proceedings relate, sitting as the Tribunal established under this Act; and

(b) the Tribunal may have regard to any record of the proceedings before the relevant Board or Tribunal, including a record of any evidence taken in the proceedings before the relevant Board or Tribunal.

(4) For the purposes of subsections (2) and (3), in relation to proceedings to which those subsections relate –

(a) the Tribunal established by this Act has and may perform and exercise all the functions and powers that the relevant Board or Tribunal, to which the proceedings related before the establishment day, had immediately before that day; and

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (b) the provisions of any Act or instrument of a legislative character that would have applied to or in respect of the proceedings, had this Act not commenced on the establishment day, continue to apply.

154. Pending court proceedings in relation to relevant Board or Tribunal may be completed

- (1) This section applies in relation to proceedings, in a court on an appeal against, or for the review of, a decision of a relevant Board or Tribunal, that –
 - (a) were instituted or commenced before the establishment day; and
 - (b) have not been finally determined before that day by the court.
- (2) A court, in proceedings to which this section applies, may, on and from the establishment day, continue to deal with the proceedings until they are concluded.
- (3) For the purposes of proceedings, in a court, referred to in subsection (2) –
 - (a) the court continues to have, and may perform and exercise, all the functions and powers that the court had in relation to the

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

proceedings immediately before the establishment day; and

- (b) the provisions of any Act or instrument of a legislative character that would have applied to or in respect of the proceedings, had this Act not commenced on the establishment day, continue to apply.
- (4) Without limiting subsection (3), if the powers of the court immediately before the establishment day included the power to remit the proceedings to be heard and determined again by a Board or Tribunal in existence immediately before the establishment day, the court may, in determining the proceeding –
- (a) remit the proceedings to the Tribunal established by this Act; and
 - (b) make the other orders that it considers appropriate to facilitate the remitting of the proceedings to the Tribunal established by this Act.

155. Certain unexercised rights continue

- (1) If a person had, immediately before the establishment day, a right (including a right exercisable only with leave) –

*Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019*

s. 6

- (a) to apply to a relevant Board or Tribunal to make a decision at first instance concerning a matter; or
- (b) to apply to a relevant Board or Tribunal for a review of a decision of another person or body; or
- (c) to appeal to a relevant Board or Tribunal against a decision of another person or body –

but had not, before that day, exercised that right, the person may apply or appeal to the Tribunal established under this Act for the performance and exercise of the same functions and powers that could have been performed or exercised by the relevant Board or Tribunal if that Board or Tribunal had not been abolished.

(2) For the purposes of subsection (1) –

- (a) the Tribunal established by this Act has and may perform and exercise all the functions and powers that the relevant Board or Tribunal would have had in relation to the application or appeal if the application or appeal had been made before the establishment day, including any functions or powers relating to

the granting of leave to apply or appeal; and

- (b) the provisions of any Act or instrument of a legislative character, including provisions concerning the time within which to apply or appeal, that would have applied to or in respect of the proceedings, had this Act not commenced on the establishment day, continue to apply.

156. Allocation of transitional proceedings to Divisions of Tribunal

Unless the regulations provide otherwise, the function of determining proceedings, in relation to a relevant Act, that –

- (a) are permitted or required to be determined by the Tribunal under this Part instead of a relevant Board or Tribunal that has been abolished under section 149; or
- (b) are remitted by a court under this Part to the Tribunal for reconsideration or redetermination –

is allocated to the Division specified in relation to the relevant Act under Schedule 2 or Schedule 3.

157. Saving of orders of relevant Board or Tribunal

An order made by a relevant Board or Tribunal before the establishment day, including an order that would have come into effect on or after the establishment day, is, subject to this Part, taken on and from that day to be an order made, by the Tribunal established by this Act, under the provision, of the relevant Act, under which the order was made, or the provision of this Act that corresponds to that provision, as the case may be.

158. Expiration of time periods

If, for any purpose, time had commenced to run under a provision of a relevant Act in relation to a relevant Board or Tribunal before the establishment day, the time expires for the corresponding purpose under that Act (as amended by this Act), or this Act, as the case may be, at the time at which it would have expired if the Board or Tribunal had not been abolished under section 149.

159. General savings

- (1) If anything done, initiated or commenced under a relevant Act in relation to a relevant Board or Tribunal before the establishment day and still has effect, or

Tasmanian Civil and Administrative Tribunal Amendment Act
2020
Act No. of 2019

s. 7

is not completed, before that day could have been done, initiated or commenced under the relevant Act (as amended by this Act) or this Act, if this Act had been in force when the thing was done, initiated or commenced –

- (a) the thing done continues to have effect; or
 - (b) the thing initiated or commenced may be completed as if it had been done, initiated or commenced under the relevant Act, as amended by this Act, or this Act.
- (2) This section applies subject to any express provision of this Act in relation to the matter to which this section applies.

7. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.