



TASMANIA

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**TASMANIAN CIVIL AND ADMINISTRATIVE  
TRIBUNAL ACT 2020**

**No. 24 of 2020**

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# **TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 2020**

**No. 24 of 2020**

**An Act to establish the Tasmanian Civil and Administrative Tribunal, to enable the appointment of members and staff of the Tribunal, to provide for certain transitional matters related to the establishment of the Tribunal, and for related purposes**

**[Royal Assent 4 November 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:

## **PART 1 – PRELIMINARY**

### **1. Short title**

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

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## 2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

## 3. Interpretation

(1) In this Act, unless the contrary intention appears –

*Acting Deputy President* means an Acting Deputy President appointed under section 35(1);

*Acting President* means the Acting President appointed under section 21(1);

*code of conduct* means the code of conduct issued under section 68;

*Deputy President* means a Deputy President of the Tribunal appointed under section 26(2);

*Deputy Registrar* means a Deputy Registrar of the Tribunal appointed under section 53(3);

*Division Head* means –

- (a) a person appointed under section 60(3) to be the Division Head in relation to a Division of the Tribunal; and
- (b) a person acting as a Division Head under section 60(7);

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***Division of the Tribunal*** means a Division of the Tribunal that is established by section 59(1);

***Division Schedule***, in relation to a Division of the Tribunal, means the Schedule to this Act that is entitled with the name of the Division of the Tribunal;

***establishment day*** has the meaning it has in section 4(1);

***Magistrates Court*** means the Magistrates Court of Tasmania;

***member*** means a member of the Tribunal under section 11;

***members of the staff of the Tribunal*** means –

- (a) the registrars; and
- (b) the other persons whose services are made available to the Tribunal under section 56;

***officers of the Tribunal*** means –

- (a) the registrars; and
- (b) the members of the staff of the Tribunal, or other persons, who are, under section 57, designated to be officers of the Tribunal by the Registrar;

***ordinary member*** means –

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- (a) an ordinary member of the Tribunal appointed under section 44(1)(b); and
- (b) except in Subdivision 2 of Division 4 of Part 3, a supplementary ordinary member of the Tribunal appointed under section 48(1);

***President*** means the President of the Tribunal appointed under section 12(2);

***registrar*** means the Registrar or a Deputy Registrar;

***Registrar*** means the Registrar of the Tribunal appointed under section 53(1);

***relevant Act*** means an Act specified in Schedule 1 and any other Act that confers jurisdiction on the Tribunal;

***relevant Board or Tribunal*** means –

- (a) the Anti-Discrimination Tribunal established under the *Anti-Discrimination Act 1998*; and
- (b) the Asbestos Compensation Tribunal established under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; and

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- (c) the Forest Practices Tribunal established under the *Forest Practices Act 1985*; and
  - (d) the Guardianship and Administration Board established under the *Guardianship and Administration Act 1995*; and
  - (e) the Health Practitioners Tribunal established under the *Health Practitioners Tribunal Act 2010*; and
  - (f) the Mental Health Tribunal established under the *Mental Health Act 2013*; and
  - (g) the Motor Accidents Compensation Tribunal established under the *Motor Accidents (Liabilities and Compensation) Act 1973*; and
  - (h) the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*; and
  - (i) the Workers Rehabilitation and Compensation Tribunal established under the *Workers Rehabilitation and Compensation Act 1988*;

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***Rules Committee*** means the Rules Committee established under section 66(5);

***rules of the Tribunal*** means the rules of the Tribunal, made under section 67, that are in force under this Act;

***senior member*** means –

- (a) a senior member of the Tribunal appointed under section 44(1)(a); and
- (b) except in Subdivision 2 of Division 4 of Part 3, a supplementary senior member of the Tribunal appointed under section 48(1);

***sessional basis***, in relation to an appointment of a member, means the appointment of the member on the basis that the person is to act in the office during the periods, within the person’s term of appointment, determined from time to time by the President;

***Tribunal*** means the Tasmanian Civil and Administrative Tribunal established by section 8.

- (2) A reference in this Act (however expressed) to the performance and exercise by the Tribunal of its functions and powers in relation to other legislation includes a reference both to the Tribunal’s functions and powers under the

legislation and to its functions and powers under this Act in relation to the legislation.

#### **4. Meaning of establishment day**

- (1) For the purposes of this Act, the establishment day is –
  - (a) 1 July 2021; or
  - (b) if another day is fixed as the establishment day by a proclamation made under subsection (2), that day.
- (2) The Governor, by proclamation, may, before 1 July 2021, fix a day that is later than 1 July 2021 as the establishment day for the purposes of this Act.

#### **5. Reductions in remuneration and allowances**

A reference in Part 3 to a reduction in remuneration or allowances in relation to a person does not include a reference to such a reduction that is related to a reduction, over a particular period, in the number of hours of service of a person under this Act –

- (a) who is appointed on a sessional basis; or
- (b) if the basis on which the person is appointed is altered under a provision of this Act so that the person becomes appointed on a part-time basis or a sessional basis.

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**6. When person appointed for particular proceeding completes term of office**

For the purposes of this Act, a person who is appointed to an office in relation to a particular proceeding or proceedings in the Tribunal completes the term of office if –

- (a) the proceedings have been withdrawn or dismissed; or
- (b) the proceedings have been finally determined by the Tribunal, including, where required, by the giving of reasons for the determination and the determination of costs.

**7. Act binds Crown**

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

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**PART 2 – TASMANIAN CIVIL AND  
ADMINISTRATIVE TRIBUNAL**

**8. Establishment of Tribunal**

The Tasmanian Civil and Administrative Tribunal is established on the establishment day.

**9. Tribunal to operate throughout State**

- (1) The Tribunal is to facilitate access to its services throughout the State and may sit at any place (either within or outside the State).
- (2) Registries of the Tribunal are to be at the places determined by the President after consultation with the Minister.

**10. Main objectives of Tribunal**

- (1) The main objectives of the Tribunal in dealing with matters within its jurisdiction are –
  - (a) in the exercise of its jurisdiction, to promote the best principles of public administration, including –
    - (i) independence in decision-making; and
    - (ii) natural justice and procedural fairness; and
    - (iii) high-quality, consistent decision-making; and

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- (iv) transparency and accountability in the performance and exercise of statutory functions, powers and duties; and
- (b) to be accessible by being easy to find and easy to access, and to be responsive to parties, especially people with greater needs for assistance than others; and
- (c) to ensure that applications, referrals and appeals are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high-quality processes and the use of mediation, conciliation and alternative dispute resolution procedures wherever appropriate; and
- (d) to keep costs to parties involved in proceedings before the Tribunal to a minimum insofar as is just and appropriate; and
- (e) to use straightforward language and procedures (including, insofar as is reasonably practicable and appropriate, by using simple and standardised forms); and
- (f) to act with as little formality and technicality as possible, including by informing itself in the manner that the Tribunal thinks fit; and
- (g) to be flexible in the way in which the Tribunal conducts its business and to

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adjust its procedures to best fit the circumstances of a particular case or a particular jurisdiction.

- (2) In furtherance of the Tribunal's main objectives, the Tribunal should, in relation to the conferral and exercise of the Tribunal's jurisdiction, consult from time to time with the agencies, organisations or bodies that it thinks appropriate.

**PART 3 – MEMBERSHIP AND STAFF OF TRIBUNAL**

*Division 1 – Membership*

**11. Membership of Tribunal**

The members of the Tribunal are –

- (a) the President; and
- (b) each Deputy President; and
- (c) the senior members; and
- (d) the ordinary members.

*Division 2 – President of Tribunal*

*Subdivision 1 – President*

**12. President**

- (1) There is to be a President of the Tribunal.
- (2) The Governor is to appoint as the President of the Tribunal a person who is a magistrate or eligible for appointment as a magistrate.
- (3) The first term of appointment, of the first person appointed under subsection (2) as the President, is 7 years.
- (4) The Governor may extend for a period of 3 years the first term of appointment of the first person appointed as the President.

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- (5) The term of appointment, of a person appointed under subsection (2) as the President (other than the first term of appointment of the first person so appointed), is 5 years.
- (6) A person (including the first person so appointed) may be appointed under subsection (2) as the President as many times as may be and the term of any such appointment may be, but is not required to be, consecutive with a previous term of appointment as the President.
- (7) An appointment under subsection (2) must be in writing.
- (8) Before a person who is a magistrate is appointed to be the President or the term of appointment as the President of a person who is a magistrate is extended, the Minister must consult with the Chief Magistrate.

**13. Terms and conditions, &c., of appointment as President**

- (1) A person appointed as the President holds office on the terms and conditions, not inconsistent with this Act, from time to time determined by the Governor.
- (2) A person appointed as the President is –
  - (a) if the President is not a magistrate, entitled to be paid the remuneration and allowances that a magistrate is entitled to be paid under the *Magistrates Court Act*

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*1987*, together with an amount equivalent to the additional component, if any, determined under subsection (3); or

- (b) if the President is a magistrate, entitled to be paid, in addition to his or her salary and allowances as a magistrate, an additional component, if any, determined under subsection (3).
- (3) The Governor may determine that the President's salary or allowances as a magistrate are to have an additional component because the magistrate holds office as the President.
- (4) An amount to which a person appointed as President is entitled under subsection (2) cannot be reduced during the person's term of office.

**14. President's functions generally**

- (1) The President has the functions conferred on the President under this Act or any other Act.
- (2) The functions of the President include –
  - (a) participating as a member of the Tribunal; and
  - (b) having primary responsibility for the administration of the Tribunal; and
  - (c) managing the business of the Tribunal, including by ensuring that the Tribunal operates efficiently and effectively and continually improves the way in which it

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- performs its functions and exercises its powers; and
- (d) providing leadership and guidance to the Tribunal and engendering cohesiveness and collaboration amongst the members and staff of the Tribunal; and
  - (e) giving directions about the practices and procedures to be followed by the Tribunal; and
  - (f) developing and implementing performance standards and setting benchmarks for the Tribunal; and
  - (g) being responsible for promoting the training, education and professional development of members of the Tribunal; and
  - (h) overseeing the proper use of the resources of the Tribunal; and
  - (i) providing advice about –
    - (i) the membership of the Tribunal; and
    - (ii) the operations and activities of the Tribunal.
- (3) Without limiting subsections (1) and (2), the President, or the Acting President, has, if appointed before the establishment day, the following functions before the establishment day:

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- (a) assigning functions and powers to any Registrar, Deputy Registrar or other member of staff appointed before the establishment day;
  - (b) performing functions that are necessary or convenient to facilitate the establishment of the Tribunal.
- (4) The President has the power to do all things necessary or convenient to be done in connection with, or incidental to, the performance of the President's functions.
- (5) In the performance and exercise of the President's functions and powers, the President is not subject to direction or control by the Minister.

**15. When person ceases to be President**

A person ceases to be the President if –

- (a) the person ceases to be a magistrate and he or she was a magistrate when he or she was appointed, or reappointed, as the President; or
- (b) the person resigns as the President by written notice to the Minister; or
- (c) the person completes a term of office as the President and is not appointed as the President for a term beginning immediately after the end of the term of office that is completed; or

- (d) the appointment of the person as the President is revoked under section 19(4);  
or
- (e) the person dies.

## **16. Suspension of appointment as President**

- (1) The Governor may suspend from office a person holding office as the President if the Governor is satisfied that the person –
  - (a) except by reason of temporary illness, is, by reason of disability or infirmity, incapable of performing the functions of the President; or
  - (b) has become bankrupt, applied to take, or has taken, advantage of any law relating to bankruptcy or insolvent debtors, compounded with his or her creditors, or made an assignment of his or her remuneration or estate for their benefit; or
  - (c) has been convicted in Tasmania of –
    - (i) a crime; or
    - (ii) an offence that is punishable by imprisonment for a term of 12 months or more –

or has been convicted of a crime, or of an offence, which would, if committed in Tasmania, be a crime, or be an offence

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punishable by imprisonment for a term of 12 months or more.

- (2) The Governor may suspend the President from office if the Governor is satisfied that the person has been charged with –
  - (a) a crime; or
  - (b) an offence that is punishable by imprisonment for a term of 12 months or more; or
  - (c) a crime, or an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.
- (3) The Governor may suspend the President from office if the Governor is satisfied that the person has engaged in –
  - (a) misconduct as a member of the Tribunal; or
  - (b) misbehaviour that brings the office into disrepute.
- (4) If the President was a magistrate when appointed as the President, the Minister must consult with the Chief Magistrate before the President is suspended under this section.
- (5) If a person has been suspended from office under subsection (1), (2) or (3), the Minister must cause a statement setting out the grounds for the suspension to be laid before each House of

Parliament during the first 7 sitting-days of that House following the suspension or a longer period allowed by resolution of the House of Parliament before which it is laid.

**17. Parliament may confirm or revoke suspension of President for misconduct or misbehaviour**

- (1) If a person has been suspended from office under section 16(3), a House of Parliament, within 30 sitting-days after the day on which a statement has been laid before the House under section 16(5) or a longer period allowed by resolution of the House of Parliament, may pass a resolution –
  - (a) confirming the suspension; or
  - (b) revoking the suspension.
- (2) If both Houses of Parliament pass a resolution under subsection (1)(b) revoking the suspension of a person from the office of President, the suspension of the person from the office of President is revoked on and from the day on which the resolution is passed by both the Houses.

**18. Governor may revoke or vary suspension of President**

- (1) The Governor may revoke or vary a suspension imposed under section 16(1), (2) or (3).
- (2) If the President was a magistrate when appointed or re-appointed as the President, the Minister

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must consult with the Chief Magistrate before the suspension of the President is revoked or varied under subsection (1).

- (3) If the Governor has, under subsection (1), revoked or varied a suspension, the Minister must cause a statement setting out the grounds for the revocation or variation to be laid before each House of Parliament within 7 sitting-days of that House following the revocation or variation or a longer period allowed by resolution of the House of Parliament before which it is laid.
- (4) If a suspension has been revoked or varied under subsection (1), a House of Parliament, within 30 sitting-days after the statement in relation to the revocation or variation is laid before the House under subsection (3) or a longer period allowed by resolution of the House of Parliament before which it is laid, may pass a resolution –
  - (a) confirming the revocation or variation of the suspension; or
  - (b) revoking the revocation or variation of the suspension.
- (5) If both Houses of Parliament pass a resolution under subsection (4) confirming the revocation or variation of the suspension, the suspension is varied or revoked, respectively, on and from the day on which the resolution is passed by both Houses.

## **19. Revocation of appointment as President**

- (1) The Governor may cause to be laid before both Houses of Parliament a statement requesting the Houses of Parliament to revoke the appointment of a person as the President on the grounds for suspension, referred to in section 16(1) or (3), that are specified in the statement, if –
  - (a) the Governor is satisfied that the person may be suspended from the office of President on the grounds, referred to in section 16(1) or (3), that are specified in the statement; and
  - (b) the Governor has suspended the person from office under section 16 on any grounds specified in the statement, whether or not they are the same grounds as the grounds to which the statement relates; and
  - (c) the statement required by section 16(5) to be laid before both Houses of Parliament in relation to the suspension of the person from the office of President has been laid before each House; and
  - (d) where the person has been suspended from office under section 16(3), the suspension has been confirmed under section 17(1)(a).
- (2) If the President was a magistrate when appointed as the President, the Minister must consult with the Chief Magistrate before a statement is laid

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before a House of Parliament under subsection (1).

- (3) A House of Parliament, after 10 sitting-days, or a longer period allowed by resolution of the House, after the day on which a statement in relation to a person has been laid before the House under subsection (1), may resolve –
- (a) to refuse the request specified in the statement and, if the suspension of the person from office has not been revoked, to revoke the suspension; or
  - (b) to revoke the appointment of the person as President.
- (4) If both Houses have resolved –
- (a) under subsection (3)(a) to revoke the suspension of a person from the office of President, the suspension of the person from the office of President is revoked; or
  - (b) under subsection (3)(b) to revoke the appointment of a person as President, the appointment of the person as President is revoked –

on and from the day on which the resolution is passed by both Houses.

**20. Payment of person suspended from office of President**

- (1) If a person is suspended from the office of President under section 16, the Governor is to specify in the instrument of suspension the proportion (which may be all, none or part) of the salary of the President to which the person is to be entitled in respect of the period of suspension.
- (2) If a person is suspended from the office of President under section 16, the person is not entitled, in respect of the period of the suspension, to any more of the salary of the President to which, but for the suspension, or any variation of the suspension, the person would be entitled under this Act, than the proportion of that salary that is specified in the instrument of suspension as so varied, if at all.
- (3) Despite subsection (2), if the suspension of a person from the office of President for a period under section 16 is revoked under section 17(2), section 18(1) or section 19(3)(a), the person is entitled to the amount of the salary in respect of the period to which, but for the suspension of the person from the office, the person would be entitled under this Part.
- (4) The reference in this section to salary does not include any salary that the person receives as a magistrate.

***Subdivision 2 – Acting President***

**21. Acting President**

- (1) The Governor may appoint a person as the Acting President for a term, of not more than 6 months, specified in the instrument of appointment, if –
  - (a) there is a vacancy in the office of President; or
  - (b) the President is absent from duty; or
  - (c) the President is, for any other reason, unable to perform or exercise the functions or powers of the President.
- (2) The Governor may only appoint a person as the Acting President under subsection (1) if the person is a Deputy President or a magistrate.
- (3) A person appointed as the Acting President is, for the term of his or her appointment as the Acting President, entitled to be paid additional remuneration and allowances to ensure that his or her remuneration and allowances equal the remuneration and allowances payable to the President in whose stead he or she is acting.
- (4) The Governor may extend for a period of 3 months the term of an appointment under this section.
- (5) An appointment under subsection (1), and an extension of a term of appointment under subsection (4), must be in writing.

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- (6) A person may be appointed under subsection (1) to be the Acting President as many times as the Governor thinks fit.
- (7) A person appointed as the Acting President –
- (a) has all the functions and powers of the President; and
  - (b) is taken to be the President of the Tribunal for the purposes of this Act (other than the provisions of Subdivision 1 of Division 2, apart from section 14) and any relevant Act.
- (8) The Minister must consult with the Chief Magistrate before a person who is a magistrate is appointed as the Acting President.

**22. When person ceases to be Acting President**

A person ceases to be the Acting President if –

- (a) the person ceases to be a Deputy President or a magistrate; or
- (b) the person resigns as the Acting President by written notice to the Minister; or
- (c) the person completes a term of office as the Acting President (which may be a term that is extended under section 21(4)) and is not appointed as the Acting President for a term beginning immediately after the end of the term of office that is completed; or

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- (d) the appointment of the person as the Acting President is revoked under section 23(1); or
- (e) the person dies.

**23. Revocation of appointment as Acting President**

- (1) The Governor may at any time revoke an appointment under section 21(1).
- (2) A revocation under subsection (1) must be in writing.
- (3) The Minister must consult with the Chief Magistrate before the appointment of an Acting President who is a magistrate is revoked under subsection (1).

*Subdivision 3 – Miscellaneous*

**24. Appointment of magistrate as President or Acting President not to affect tenure, &c.**

- (1) The appointment of a person, who is a magistrate, as the President under section 12(2) or as the Acting President under section 21, does not affect –
  - (a) the person’s tenure of office or status as a magistrate; or
  - (b) subject to section 13, the payment of the person’s salary or allowances as a magistrate; or

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- (c) despite any other Act, including the *Magistrates Court Act 1987*, the ability of the person to do anything in the person's capacity as a magistrate, including constituting the Magistrates Court or exercising the jurisdiction of the Magistrates Court; or
  - (d) any other right or privilege that the person has as a magistrate.
- (2) Service in the office of the President, or service as the Acting President, is taken, for all purposes, in relation to a person who is a magistrate and who was, when a magistrate, appointed to serve in the office of the President or Acting President, to constitute service as a magistrate.

**25. Relationship of Act to Magistrates Court, &c.**

- (1) Despite the *Magistrates Court Act 1987* or any other Act, the Chief Magistrate –
- (a) may not assign to a Division of the Magistrates Court a magistrate who is the President or the Acting President; and
  - (b) may not arrange the business of the Tribunal; and
  - (c) may not issue practice directions in relation to the Tribunal; and

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- (d) may not direct, or impose a requirement on, a member of the Tribunal or a member of the staff of the Tribunal; and
  - (e) may not require a magistrate who is the President, or who is serving as the Acting President, to perform the functions, or exercise the powers, of a magistrate, and may not delegate to such a person any functions or powers of a magistrate; and
  - (f) may not otherwise perform or exercise, in relation to a magistrate who is the President, or who is serving as the Acting President, a function or power under an Act if the performance or exercise may interfere with the President's, or Acting President's, ability to appropriately perform or exercise a function or power under this Act or a function or power of the Tribunal under another Act.
- (2) Nothing in this section prevents a magistrate who is the President, or who is serving as the Acting President, from attending any training or professional development provided to magistrates generally, or from engaging, with the magistrate's agreement, in other activities engaged in by magistrates generally.
- (3) Despite the *Magistrates Court Act 1987*, the President is not a member of the Magistrates Rule Committee under that Act.

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***Division 3 – Deputy Presidents of Tribunal***

***Subdivision 1 – Deputy Presidents***

**26. Appointment of Deputy Presidents**

- (1) There is to be at least one Deputy President of the Tribunal.
- (2) The Governor may appoint a person as a Deputy President of the Tribunal.
- (3) The Governor may only appoint a person under subsection (2) as a Deputy President if the person is an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner.
- (4) The appointment of a person under subsection (2) must be in writing.
- (5) The appointment of a person as a Deputy President under subsection (2) –
  - (a) is to be specified in the instrument of appointment to be –
    - (i) an appointment for a term of 5 years; or
    - (ii) an appointment in relation to a particular proceeding or particular proceedings; and
  - (b) is to be specified in the instrument of appointment to be –

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- (i) on a full-time basis; or
  - (ii) on a part-time basis; or
  - (iii) on a sessional basis.
- (6) A person may be appointed as a Deputy President as many times as may be and the term of any such appointment may be, but is not required to be, consecutive with a previous term of appointment as a Deputy President.
- (7) The Minister, by notice in writing to a person who is a Deputy President, may, at the request of the President and the person, alter the basis, referred to in subsection (5)(b), on which the Deputy President is appointed so that the person becomes appointed on a full-time basis, a part-time basis or a sessional basis.

**27. Terms and conditions of appointment as Deputy President**

- (1) A person appointed as a Deputy President holds office on the terms and conditions, not inconsistent with this Act, from time to time determined by the Governor.
- (2) A person appointed as a Deputy President is entitled to be paid the remuneration and allowances that the Governor determines from time to time to be payable to that Deputy President.
- (3) Any remuneration and allowances that are, during a person's term of office as Deputy

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President, determined under subsection (2) to be payable to the person as Deputy President, cannot, subject to section 5, be reduced during the person's term of office.

**28. Deputy President's functions generally**

- (1) A Deputy President has the functions conferred on a Deputy President under this Act or any other Act.
- (2) The functions of a Deputy President include –
  - (a) participating as a member of the Tribunal; and
  - (b) assisting the President to manage the business of the Tribunal; and
  - (c) assisting the President to manage the members of the Tribunal, including in connection with the training, education and professional development of members of the Tribunal; and
  - (d) other functions assigned by the President.
- (3) A Deputy President has the power to do all things necessary or convenient to be done in connection with, or incidental to, the performance of a Deputy President's functions.
- (4) A Deputy President is subject to the direction of the President in performing or exercising the functions or powers of a Deputy President, other than in adjudicating in the Tribunal.

**29. When person ceases to be Deputy President**

A person ceases to be a Deputy President if –

- (a) the person ceases to be an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner; or
- (b) the person resigns as a Deputy President by written notice to the Minister; or
- (c) the person completes a term of office as a Deputy President and is not appointed again to the office for a term beginning immediately after the end of the term of office that is completed; or
- (d) the appointment of the person as a Deputy President is revoked under section 33(3); or
- (e) the person dies.

**30. Suspension of appointment as Deputy President**

- (1) The Governor may suspend from office a person holding office as a Deputy President if the Governor is satisfied that the person –
  - (a) except by reason of temporary illness, is, by reason of disability or infirmity, incapable of performing the functions of a Deputy President; or
  - (b) has become bankrupt, applied to take, or has taken, advantage of any law relating to bankruptcy or insolvent debtors,

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compounded with his or her creditors, or made an assignment of his or her remuneration or estate for their benefit; or

(c) has been convicted in Tasmania of –

(i) a crime; or

(ii) an offence that is punishable by imprisonment for a term of 12 months or more –

or has been convicted of a crime, or of an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.

(2) The Governor may suspend a Deputy President from office if the Governor is satisfied that the person has been charged with –

(a) a crime; or

(b) an offence that is punishable by imprisonment for a term of 12 months or more; or

(c) a crime, or an offence, which would, if committed in Tasmania, be a crime, or be an offence punishable by imprisonment for a term of 12 months or more.

(3) The Governor may suspend a Deputy President from office if the Governor is satisfied that the person has –

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- (a) engaged in misconduct as a member of the Tribunal; or
  - (b) engaged in misbehaviour that brings the office into disrepute; or
  - (c) breached the code of conduct and the President has recommended the revocation of the appointment.
- (4) The Minister must consult with the President before a Deputy President is suspended under this section.
- (5) If a person has been suspended from office under subsection (1), (2) or (3), the Minister must cause a statement setting out the grounds for the suspension to be laid before each House of Parliament during the first 7 sitting-days of that House following the suspension or a longer period allowed by resolution of the House of Parliament before which it is laid.

**31. Parliament may confirm or revoke suspension of Deputy President for misconduct or misbehaviour**

- (1) If a person has been suspended from office under section 30(3), a House of Parliament, within 30 sitting-days after the day on which a statement has been laid before the House under section 30(5) or a longer period allowed by resolution of the House of Parliament, may pass a resolution –
- (a) confirming the suspension; or

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(b) revoking the suspension.

- (2) If both Houses of Parliament pass a resolution under subsection (1)(b) revoking the suspension of a person from the office of Deputy President, the suspension of the person from the office of Deputy President is revoked on and from the day on which the resolution is passed by both the Houses.

**32. Governor may revoke or vary suspension of person from office of Deputy President**

- (1) The Governor may revoke or vary a suspension imposed under section 30(1), (2) or (3).
- (2) If the Deputy President who has been suspended was a magistrate when appointed as a Deputy President, the Minister must consult with the Chief Magistrate before the suspension of the Deputy President is revoked or varied under subsection (1).
- (3) If the Governor has, under subsection (1), revoked or varied a suspension, the Minister must cause a statement setting out the grounds for the revocation or variation to be laid before each House of Parliament within 7 sitting-days of that House following the revocation or variation or a longer period allowed by resolution of the House of Parliament before which it is laid.
- (4) If a suspension has been revoked or varied under subsection (1), a House of Parliament, within 30 sitting-days after the statement in relation to the

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revocation or variation is laid before the House under subsection (3) or a longer period allowed by resolution of the House of Parliament before which it is laid, may pass a resolution –

- (a) confirming the revocation or variation of the suspension; or
  - (b) revoking the revocation or variation of the suspension.
- (5) If both Houses of Parliament pass a resolution under subsection (4)(a) confirming the revocation or variation of the suspension, the suspension is varied or revoked, respectively, on and from the day on which the resolution is passed by both Houses.

**33. Revocation of appointment as Deputy President**

- (1) The Governor may cause to be laid before both Houses of Parliament a statement requesting the Houses of Parliament to revoke the appointment of a person as a Deputy President on the grounds for suspension, referred to in section 30(1) or (3), that are specified in the statement, if –
- (a) the Governor is satisfied that the person may be suspended from the office of Deputy President on the grounds, referred to in section 30(1) or (3), that are specified in the statement; and
  - (b) the Governor has suspended the person from office under section 30 on any grounds specified in the statement,

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- whether or not they are the same grounds as the grounds to which the statement relates; and
- (c) the statement required by section 30(5) to be laid before both Houses of Parliament in relation to the suspension of the person from the office of Deputy President has been laid before each House; and
  - (d) where the person has been suspended from office under section 30(3), the suspension has been confirmed under section 31(1)(a).
- (2) A House of Parliament, after 10 sitting-days, or a longer period allowed by resolution of the House, after the day on which a statement in relation to a person has been laid before the House under subsection (1), may resolve –
- (a) to refuse the request specified in the statement and, if the suspension of the person from office has not been revoked, to revoke the suspension; or
  - (b) to revoke the appointment of the person as a Deputy President.
- (3) If both Houses have resolved –
- (a) under subsection (2)(a) to revoke the suspension of a person from the office of Deputy President, the suspension of the person from the office of Deputy President is revoked; or

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- (b) under subsection (2)(b) to revoke the appointment of a person as a Deputy President, the appointment of the person as a Deputy President is revoked –

on and from the day on which the resolution is passed by both Houses.

**34. Payment of person suspended from office of Deputy President**

- (1) If a person is suspended from the office of Deputy President under section 30, the Governor is to specify in the instrument of suspension the proportion (which may be all, none or part) of the salary of a Deputy President to which the person is to be entitled in respect of the period of suspension.
- (2) If a person is suspended from the office of Deputy President under section 30, the person is not entitled, in respect of the period of the suspension, to any more of the salary of the Deputy President to which, but for the suspension, or any variation of the suspension, the person would be entitled under this Act, than the proportion of that salary that is specified in the instrument of suspension as so varied, if at all.
- (3) Despite subsection (2), if the suspension of a person from the office of Deputy President for a period under section 30 is revoked under section 31(2), section 32(1) or section 33(2)(a), the person is entitled to the amount of the salary in respect of the period to which, but for the

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suspension of the person from the office, the person would be entitled under this Part.

***Subdivision 2 – Acting Deputy Presidents***

**35. Acting Deputy Presidents**

- (1) The Minister may appoint a person as an Acting Deputy President if –
  - (a) there is a vacancy in an office of Deputy President; or
  - (b) a Deputy President is absent or for any other reason is unable to perform the duties of office.
- (2) The Minister may only appoint a person as an Acting Deputy President if the person is an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner.
- (3) An appointment under this section must be in writing.
- (4) The appointment of a person as an Acting Deputy President is to be –
  - (a) for a term, of not more than 6 months, specified in the instrument of appointment; and
  - (b) specified in the instrument of appointment to be –
    - (i) on a full-time basis; or

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- (ii) on a part-time basis; or
  - (iii) on a sessional basis.
- (5) The Minister must consult with the President before making an appointment under subsection (1).
- (6) A person appointed as an Acting Deputy President –
- (a) has all the functions and powers of a Deputy President; and
  - (b) is taken to be a Deputy President for the purposes of this Act (other than the provisions of Subdivision 1 of Division 2, apart from section 14) and any relevant Act.
- (7) The Minister, by notice in writing to a person who is appointed as an Acting Deputy President, may, at the request of the President and the person, alter the basis, referred to in subsection (4)(b), on which the person is appointed so that the person becomes appointed on a full-time basis, a part-time basis or a sessional basis.

**36. Terms and conditions of appointment as Acting Deputy President**

- (1) A person appointed as an Acting Deputy President is, for the term of the appointment, entitled to be paid the salary and allowances

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determined by the Minister after consultation with the President.

- (2) Any remuneration and allowances that are, before or during a person's term of office as an Acting Deputy President, determined under subsection (1) to be payable to the person as Acting Deputy President, cannot, subject to section 5, be reduced during the person's term of office as an Acting Deputy President.
- (3) A person appointed as an Acting Deputy President may be appointed under section 35 as an Acting Deputy President for a further term that is continuous on one or more of the person's previous appointments as an Acting Deputy President –
  - (a) by the Minister, if the total period of continuous appointments is not more than 6 months; or
  - (b) by the Governor, if the total period of continuous appointments is more than 6 months.
- (4) Nothing in subsection (3) is to be taken to prevent a person being appointed under section 35, as many times as may be, for a period, if the period is not within 2 months of the end of one or more of the person's previous appointments as an Acting Deputy President.

**37. When person ceases to be Acting Deputy President**

A person appointed under section 35(1) as an Acting Deputy President ceases to be an Acting Deputy President if –

- (a) the person ceases to be an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner; or
- (b) the person resigns his or her office as Acting Deputy President by written notice to the Minister; or
- (c) the person completes a term of office as an Acting Deputy President and is not appointed again to the office for a term beginning immediately after the end of the term of office that is completed; or
- (d) the appointment is revoked under section 38(1); or
- (e) the person dies.

**38. Revocation of appointment as Acting Deputy President**

- (1) The Governor may at any time revoke the appointment under section 35(1) of a person as an Acting Deputy President.
- (2) A revocation under subsection (1) must be in writing.
- (3) The Minister must consult with the President before the appointment of a person as an Acting

Deputy President is revoked under subsection (1).

***Subdivision 3 – Supplementary Deputy Presidents***

**39. Supplementary Deputy Presidents**

- (1) The Minister, on the request of the President, may appoint a person as a supplementary Deputy President of the Tribunal.
- (2) The Minister may appoint a person under subsection (1) –
  - (a) even though there is no vacancy in an office of Deputy President; and
  - (b) whether or not there is more than one Deputy President; and
  - (c) even though a person is acting under section 35 as a Deputy President.
- (3) The Minister may only appoint a person under subsection (1) as a supplementary Deputy President if the person is an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner.
- (4) An appointment under subsection (1) must be in writing.
- (5) The appointment of a person as a supplementary Deputy President –
  - (a) is to be specified in the instrument of appointment to be –

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- (i) an appointment for a term, of not more than 2 years, specified in the instrument of appointment; or
    - (ii) an appointment in relation to a particular proceeding or particular proceedings; and
  - (b) is to be specified in the instrument of appointment to be –
    - (i) on a full-time basis; or
    - (ii) on a part-time basis; or
    - (iii) on a sessional basis.
- (6) A person appointed as a supplementary Deputy President –
  - (a) may act as a Deputy President in relation to the proceedings, or for the term, for which he or she is appointed; and
  - (b) when acting under the appointment, is to be taken to be a Deputy President for the purposes of this Act (other than the provisions of Subdivision 1, apart from section 28) and any relevant Act.
- (7) If a person is appointed as a supplementary Deputy President for a term, the Minister may, in writing, after consultation with, or at the request of, the President of the Tribunal, extend the term for which the person is appointed as a supplementary Deputy President for a further 12-month period.

- (8) The Minister may appoint a person under subsection (1) as many times as may be, and the period of any such appointment may be, but is not required to be, consecutive with a previous period of appointment as a Deputy President, an Acting Deputy President under section 35 or a supplementary Deputy President.
- (9) The Minister, by notice in writing to a person who is appointed as a supplementary Deputy President, may, at the request of the person, alter the basis, referred to in subsection (5)(b), on which the person is appointed so that the person becomes appointed on a full-time basis, a part-time basis or a sessional basis.

**40. Terms and conditions of appointment as supplementary Deputy President**

- (1) A person appointed as a supplementary Deputy President holds office on the terms and conditions, not inconsistent with this Act, from time to time determined by the Minister.
- (2) A person appointed as a supplementary Deputy President is, for the term of the appointment, entitled to be paid any remuneration or allowances determined by the Minister after consultation with the President.
- (3) Any remuneration and allowances that are, during a person's term of office as a supplementary Deputy President, determined under subsection (2) to be payable to the person as a supplementary Deputy President, cannot, subject to section 5, be reduced during the

person's term of office as a supplementary Deputy President.

**41. When person ceases to be supplementary Deputy President**

A person ceases to be a supplementary Deputy President of the Tribunal if –

- (a) the person ceases to be an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner; or
- (b) the person resigns as a supplementary Deputy President by written notice to the Minister; or
- (c) the person completes a term of office as a supplementary Deputy President and is not appointed again to the office for a term beginning immediately after the end of the term of office that is completed; or
- (d) the appointment of the person as a supplementary Deputy President is revoked under section 42(1); or
- (e) the person dies.

**42. Revocation of appointment as supplementary Deputy President**

- (1) The Governor may at any time revoke the appointment under section 39(1) of a person as a supplementary Deputy President.

- (2) A revocation under subsection (1) must be in writing.
- (3) The Minister must consult with the President of the Tribunal before the appointment of a person as a supplementary Deputy President is revoked under subsection (1).

***Division 4 – Other members***

***Subdivision 1 – Selection and assessment panel***

**43. Selection and assessment panel**

The Minister may from time to time appoint a panel of persons who, at the request of the Minister –

- (a) are, after consultation with the President, to recommend the selection criteria for the senior members, supplementary senior members, ordinary members and supplementary ordinary members; and
- (b) are to assess a candidate, or candidates, for appointment as a senior member or ordinary member of the Tribunal and, as appropriate, to provide advice to the Minister for the purposes of section 44(1).

***Subdivision 2 – Senior members and ordinary members***

**44. Appointment of senior members and ordinary members**

- (1) The Governor may appoint a person as –
  - (a) a senior member of the Tribunal; or
  - (b) an ordinary member of the Tribunal.
- (2) The Governor may only appoint a person as a senior member of the Tribunal, or an ordinary member of the Tribunal, if the person –
  - (a) is an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner; or
  - (b) has, in the Governor's opinion, extensive knowledge, expertise or experience relating to a type of matter in relation to which functions or powers may be performed or exercised by the Tribunal and, where the Governor thinks it required, holds a particular qualification or an authority to engage in a profession that relates to that type of matter.
- (3) The members are to be appointed under subsection (1) having regard to –
  - (a) any selection criteria applying under section 43(a); and
  - (b) any advice provided under section 43(b); and

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- (c) the range of knowledge, expertise and experience required within the membership of the Tribunal.
- (4) The Minister must consult with the President before a person is appointed under subsection (1).
- (5) The appointment of a senior member or ordinary member under subsection (1) is to be –
  - (a) specified in the instrument of appointment to be for a term of 5 years; and
  - (b) specified in the instrument of appointment to be –
    - (i) on a full-time basis; or
    - (ii) on a part-time basis; or
    - (iii) on a sessional basis.
- (6) A person appointed as a senior member or ordinary member may be appointed as such a member as many times as may be and the term of any such appointment may be, but is not required to be, consecutive with a previous term of appointment as such a member.
- (7) A person may be appointed as a senior member or ordinary member for a term beginning immediately after the end of a previous term of such an appointment without the advice of a panel established under section 43 being required to be sought.

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- (8) The Minister, by notice in writing to a person who is appointed under subsection (1) as a senior member or an ordinary member, may, at the request of the person, alter the basis, referred to in subsection (5)(b), on which the person is appointed so that the person becomes appointed as a senior member or an ordinary member, respectively, on a full-time basis, a part-time basis or a sessional basis.
- (9) The Minister must consult with the President about the basis of an appointment referred to in subsection (5)(b) or a proposed alteration under subsection (8) of the basis of an appointment.

**45. Terms and conditions of appointment as senior member or ordinary member**

- (1) A person appointed as a senior member or ordinary member holds office on the terms and conditions, not inconsistent with this Act, specified in his or her instrument of appointment.
- (2) The Minister must consult with the President from time to time about the terms and conditions to be included, in accordance with subsection (1), in instruments of appointment of persons under section 44(1).
- (3) A person appointed as a senior member or ordinary member is, for the term of the appointment, entitled to be paid the remuneration and allowances that are specified in the person's instrument of appointment, as amended from time to time.

- (4) An amount to which a person appointed as a senior member or ordinary member is entitled under subsection (3) cannot, subject to section 5, be reduced during the person's term of office.

**46. When senior member or ordinary member ceases to hold office**

A person ceases to be a senior member or an ordinary member if –

- (a) where the person was appointed –
- (i) on the basis that the person satisfied the requirement of section 44(2)(a) – the person ceases to be an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner; or
  - (ii) on the basis that the person held a particular qualification or an authority to engage in a profession – if the person ceases to hold that qualification or authority; or
- (b) the person resigns by written notice to the Minister; or
- (c) the person completes a term of office as such a member and is not appointed again to the office for a term beginning immediately after the end of the term of office that is completed; or

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- (d) the appointment of the person as a senior member or an ordinary member is revoked under section 47(1); or
- (e) the person dies.

**47. Revocation or suspension from office of senior member or ordinary member**

- (1) The Governor may revoke the appointment of a senior member or ordinary member for –
  - (a) mental or physical incapacity to satisfactorily perform or exercise the functions or powers of a member; or
  - (b) neglect of duty as a member; or
  - (c) misconduct as a member of the Tribunal, or misbehaviour that brings the Tribunal into disrepute; or
  - (d) breach of a code of conduct, but only on the recommendation of the President.
- (2) The Minister must consult with the President before the appointment of a senior member or ordinary member is revoked under subsection (1).
- (3) The President may, on his or her own initiative or at the request of the Minister, suspend from office a senior member or ordinary member if it appears that there may be grounds for the revocation of the appointment of the member.

- (4) If a senior member, or ordinary member, who is appointed on a full-time or part-time basis is suspended under subsection (3), the member remains entitled to the member's usual remuneration and allowances during the period of suspension.
- (5) The Minister may revoke a suspension under subsection (3).
- (6) A suspension under subsection (3), and a revocation of such a suspension under subsection (5), must be in writing.

***Subdivision 3 – Supplementary members***

**48. Supplementary members**

- (1) The Minister, at the request or with the agreement of the President, may appoint a person as a supplementary senior member, or a supplementary ordinary member, of the Tribunal.
- (2) The Minister may only appoint a person under subsection (1) if the person –
  - (a) is an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner; or
  - (b) has, in the Minister's opinion, extensive knowledge, expertise or experience relating to a type of matter in relation to which functions or powers may be performed or exercised by the Tribunal,

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and, where the Minister thinks it required, holds a particular qualification or an authority to engage in a profession that relates to that type of matter.

- (3) In appointing a person under subsection (1) as a supplementary senior member or a supplementary ordinary member, the Minister must have regard to –
- (a) any selection criteria applying under section 43(a), whether in relation to a supplementary senior member or a supplementary ordinary member, or both; and
  - (b) any advice provided under section 43(b); and
  - (c) the range of knowledge, expertise and experience required within the membership of the Tribunal.
- (4) An appointment under subsection (1) must be in writing.
- (5) The appointment of a person under subsection (1) –
- (a) is to be specified in the instrument of appointment to be –
    - (i) an appointment for a term, of not more than 2 years, specified in the instrument of appointment; or

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- (ii) an appointment in relation to a particular proceeding or particular proceedings; and
  - (b) is to be specified in the instrument to be –
    - (i) on a full-time basis; or
    - (ii) on a part-time basis; or
    - (iii) on a sessional basis.
- (6) The Minister, by notice in writing to a person who is appointed under subsection (1) as a supplementary senior member or as a supplementary ordinary member, may, at the request of the person, alter the basis, referred to in subsection (5)(b), on which the person is appointed so that the person becomes appointed on a full-time basis, a part-time basis or a sessional basis.
- (7) A person who is appointed under subsection (1) as a supplementary senior member or a supplementary ordinary member –
  - (a) may act as a member of the Tribunal in relation to the particular proceeding, or particular proceedings, or for the term, for which the person is appointed; and
  - (b) when acting under the appointment is taken to be a senior member, or an ordinary member, respectively, for the purposes of this Act and any relevant Act.

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- (8) The Minister, after consultation with the President, may extend for a further 6 months the term of appointment of a person appointed under subsection (1).
- (9) A person appointed as a supplementary senior member, or supplementary ordinary member, may be appointed as such a member as many times as may be and the term of any such appointment may be, but is not required to be, consecutive with a previous term of appointment as such a member.

**49. Terms and conditions of appointment as supplementary member**

- (1) A person appointed under section 48(1) holds office on the terms and conditions, not inconsistent with this Act, specified in his or her instrument of appointment.
- (2) The Minister must consult with the President from time to time about the terms and conditions to be included in instruments of appointment of persons under section 48(1).
- (3) A person appointed under section 48(1) is, for the term of the appointment, entitled to be paid the remuneration or allowances that are specified in the person's instrument of appointment, as amended from time to time.
- (4) An amount to which a person appointed as a supplementary senior member or supplementary ordinary member is entitled under subsection (3)

cannot, subject to section 5, be reduced during the person's term of office.

**50. When supplementary member ceases to hold office**

- (1) A person appointed under section 48(1) ceases to be a supplementary senior member or a supplementary ordinary member if –
  - (a) where the person was appointed –
    - (i) on the basis that the person satisfied the requirement of section 48(2)(a) – the person ceases to be an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner; or
    - (ii) on the basis that the person held a particular qualification or an authority to engage in a profession – the person ceases to hold that qualification or authority; or
  - (b) the person resigns by written notice to the Minister; or
  - (c) the person completes a term of office as such a member and is not appointed again to the office for a term beginning immediately after the end of the term of office that is completed; or

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- (d) the appointment of the person as a supplementary senior member or a supplementary ordinary member is revoked under subsection (2); or
  - (e) the person dies.
- (2) The Governor may at any time revoke the appointment of a person under section 48(1).
  - (3) The Minister must, before the appointment of a person under section 48(1) is revoked under subsection (2), consult with the President.

***Subdivision 4 – Miscellaneous***

**51. Effect of State Service employment or appointment**

- (1) A person may hold the office of senior member, ordinary member, supplementary senior member or supplementary ordinary member, in conjunction with State Service employment.
- (2) However, the *State Service Act 2000* does not apply to such a person in his or her capacity as a member.
- (3) A senior member, ordinary member, supplementary senior member or supplementary ordinary member is not, despite any other provision of this Act, entitled under this Act to any remuneration or allowances in relation to his or her appointment or service as such a member, except with the approval of the Minister administering the *State Service Act 2000*.

**52. Engagement in other work by members**

(1) The President –

- (a) must advise the Minister of the nature of any paid employment or professional work undertaken outside the President's duties as President or a member of the Tribunal; and
- (b) must not engage in any such employment or work if the Minister informs the member that, in the Minister's opinion, to do so would or may conflict with the proper performance of the President's duties as President or a member of the Tribunal.

(2) A Deputy President, senior member or ordinary member –

- (a) must advise the President of the nature of any paid employment or professional work undertaken outside the member's duties as a member of the Tribunal; and
- (b) must not engage in any such employment or work if the President informs the member that, in the President's opinion, to do so would or may conflict with the proper performance of the member's duties of office.

***Division 5 – Registrars and other members of staff of  
Tribunal***

**53. Registrars**

- (1) The Secretary of the Department must appoint a State Service officer, or State Service employee, to be the Registrar of the Tribunal.
- (2) The Registrar of the Tribunal is to be the principal registrar of the Tribunal.
- (3) The Secretary of the Department must appoint at least one person who is a State Service officer, or State Service employee, to be a Deputy Registrar of the Tribunal.
- (4) The Secretary of the Department must consult with the President of the Tribunal before making an appointment under this section.
- (5) The office of the Registrar or of a Deputy Registrar is to be held in conjunction with employment in the State Service.

**54. Functions of registrars**

- (1) The functions of the Registrar are –
  - (a) the functions prescribed for the purposes of this section; and
  - (b) other functions assigned to the Registrar by the President or under the rules of the Tribunal.

- (2) The functions of a Deputy Registrar are –
- (a) the functions prescribed for the purposes of this section; and
  - (b) other functions assigned to the Deputy Registrar by the President or the Registrar or under the rules of the Tribunal.
- (3) A registrar is, in the performance of any function or the exercise of any power, subject to the direction of the President.

### **55. Delegation**

A registrar may delegate a function of the registrar under this Act –

- (a) to a particular person or committee; or
- (b) to persons from time to time performing particular duties or holding or acting in particular positions.

### **56. Other staff of Tribunal**

- (1) The President may make arrangements with the Secretary of the Department for the services of State Service officers or State Service employees, who are employed in the Department, to be made available to the Tribunal to enable the Tribunal to perform and exercise the functions and powers of the Tribunal.

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- (2) A State Service officer or State Service employee whose services are made available to the Tribunal under subsection (1) may serve the Tribunal in conjunction with State Service employment, but when so serving is subject to the direction of the President in relation to matters relating to this Act or a relevant Act.

**57. Staff may be designated to be officers of Tribunal**

The Registrar may, by instrument in writing, designate –

- (a) a member of the staff of the Tribunal, or persons within a class of members of the staff of the Tribunal, to be officers of the Tribunal; or
- (b) persons from time to time performing particular duties, or holding or acting in particular positions, to be officers of the Tribunal.

**PART 4 – JURISDICTION OF TRIBUNAL**

**58. 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.

## **PART 5 – DIVISIONS OF TRIBUNAL**

### **59. Divisions of Tribunal**

- (1) The following Divisions of the Tribunal are established:
  - (a) the General Division;
  - (b) the Protective Division.
- (2) The functions and powers of the Tribunal, in relation to an Act, that are, in –
  - (a) the Division Schedule for the Division of the Tribunal; or
  - (b) an instrument in writing under subsection (3) –

allocated to a Division of the Tribunal, are to be performed and exercised in that Division and, if those functions and powers are, in the Division Schedule or in such an instrument, allocated to a stream of the Division of the Tribunal, are to be performed and exercised in that stream of the Division.

- (3) The President may, by instrument in writing, allocate to a Division of the Tribunal, and to a stream of a Division of the Tribunal, the functions and powers of the Tribunal in relation to an Act that is not referred to in a Division Schedule and that are, immediately before the establishment day, functions or powers conferred on a relevant Board or Tribunal.

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- (4) A Division of the Tribunal is composed of the members assigned to the Division by or under this Act.
- (5) A stream of a Division of the Tribunal is composed of the members assigned to the stream by or under this Act.
- (6) The Division Schedule for a Division of the Tribunal may include provisions about the following matters:
  - (a) the qualifications for the appointment of a Division Head of the Division;
  - (b) the qualifications for the assignment of members to the Division or a stream of the Division;
  - (c) the allocation to the Division of functions and powers of the Tribunal in relation to an Act specified in the Division Schedule and an instrument under such an Act;
  - (d) the allocation to a stream of the Division of functions and powers of the Tribunal in relation to an Act specified in the Division Schedule and an instrument under such an Act;
  - (e) special requirements for the constitution of the Tribunal when performing or exercising functions or powers of the Tribunal allocated to the Division or to a stream of the Division;

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- (f) special requirements in relation to the powers of, and the practice and procedure to be followed by, the Tribunal in relation to proceedings in the Division or in a stream of the Division;
  - (g) special requirements regarding appeals from decisions made by the Tribunal in the Division or in a stream of the Division.
- (7) The provisions of a Division Schedule for a Division of the Tribunal prevail to the extent of any inconsistency between those provisions and any other provision of this Act.

**60. Division Heads**

- (1) The President is assigned to each Division of the Tribunal and each stream of a Division of the Tribunal.
- (2) A Division Head –
  - (a) is assigned to the Division of the Tribunal in respect of which he or she is appointed as the Division Head; and
  - (b) is assigned to each stream of that Division of the Tribunal.
- (3) The Governor is to appoint the President or a Deputy President to be the Division Head in relation to a Division of the Tribunal.

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- (4) The Governor may appoint the President or a Deputy President to be the Division Head in relation to a Division of the Tribunal –
- (a) in the instrument appointing under this Act the President or Deputy President; or
  - (b) in another instrument under this subsection.
- (5) The Governor, in writing, may remove a Division Head from the office of Division Head.
- (6) A Division Head ceases to hold office as a Division Head if he or she –
- (a) ceases to hold office as the President or a Deputy President; or
  - (b) is removed from the office under subsection (5).
- (7) If there is a vacancy in the office of a Division Head, or a Division Head is absent from duty, the Minister may appoint the President, or a Deputy President, to act as the Division Head during the vacancy or absence.

**61. Functions and powers of Division Heads and delegation**

- (1) The functions and powers of a Division Head of a Division of the Tribunal are –
- (a) to direct (subject to this Act, the regulations, the rules and any direction of

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the President) the business of the Tribunal in that Division; and

(b) to perform and exercise the other functions and powers that may be conferred or imposed on the Division Head by or under this Act or any other Act.

(2) The Division Head of a Division of the Tribunal may, in writing –

(a) delegate to a Deputy President a function or power of the Division Head, other than this power of delegation; and

(b) delegate to a registrar or any other member of the staff of the Tribunal a function or power, of the Division Head, that is prescribed by the regulations or the rules, other than this power of delegation.

**62. Assignment of members to Divisions of Tribunal and streams**

(1) Subject to this Act, the President –

(a) is to assign each member (other than the President or a Division Head), including each Deputy President, to one or more Divisions of the Tribunal; and

(b) may assign a member who is a Division Head to one or more Divisions of the

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Tribunal in respect of which the member  
is not a Division Head –

and may vary any such assignment at any time.

- (2) An assignment under subsection (1) of a member to a Division of the Tribunal –
  - (a) is to be in writing; and
  - (b) is to be made in accordance with any applicable provisions of the Division Schedule for the Division or of this Act and any relevant Act; and
  - (c) is subject to any limitations specified in the member’s instrument of appointment or assignment.
- (3) An assignment under subsection (1) of a member to a Division of the Tribunal may be limited to participation in proceedings that are in one or more streams of the Division.
- (4) If a person is appointed as a member in relation to proceedings that are within a Division of the Tribunal, the member is to be taken to be assigned under subsection (1) to the Division of the Tribunal.

### **63. Streams of Divisions of Tribunal**

- (1) Each stream that is specified in a Division Schedule to be a stream of the Division of the Tribunal is a stream of the Division of the Tribunal for the purposes of this Act.

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- (2) The President may assign a Deputy President to one or more streams of a Division of the Tribunal to which the Deputy President is assigned.
- (3) The Division Head of a Division of the Tribunal may assign to a stream of the Division of the Tribunal a senior member, or an ordinary member, of the Tribunal who is assigned to the Division of the Tribunal, and may vary at any time the assignment of the member to a stream.
- (4) An assignment of a member to a stream of a Division of the Tribunal –
  - (a) is to be made in accordance with any applicable provisions of the Division Schedule for the Division of the Tribunal or of this Act and any relevant Act; and
  - (b) is subject to any limitations specified in the member's instrument of appointment or assignment.
- (5) If a senior member or an ordinary member is appointed as such a member in relation to particular matters, or proceedings, that are within a stream of a Division of the Tribunal, the member is to be taken to be assigned to the stream.

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**PART 6 – MISCELLANEOUS**

**64. 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.

**65. Use of facilities, &c.**

(1) This section only applies before the establishment day.

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- (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.

**66. Persons and bodies who may make rules of Tribunal**

- (1) The President or an Acting President may, before the establishment day, make, under section 67(1), rules of the Tribunal, including rules that amend or revoke any such rules.
- (2) Rules made by the President, or an 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.

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- (3) The President, or an 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.
- (5) There is to be, after the establishment day, a Rules Committee.
- (6) 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.
- (7) Rules may, after the establishment day, be made by the Rules Committee.

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- (8) The rules that may be made under subsection (7) include rules that amend or revoke rules made under that subsection or subsection (1).
- (9) The quorum for a meeting of the Rules Committee is a majority of the members of the Committee from time to time.
- (10) The procedures of the Rules Committee are to be as determined by the President from time to time.
- (11) The rules made by the Rules Committee may, in accordance with section 67(4), only prescribe a rule for a particular 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.

**67. Rules**

- (1) A person or body who is authorised under section 66 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

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- 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 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 the referral of a matter to mediation, conciliation or alternative dispute resolution, the conduct of mediations, conciliation or alternative dispute resolution or the referral of

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- 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.
- (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.

**68. Codes of conduct**

The President may prepare and issue a code of conduct that is to apply to members of the Tribunal.

**69. 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.

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- (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 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 a 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 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 to any sanction or punishment, by reason only that the person also holds an office under this Act.

## **70. 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 proceedings before the Tribunal; and
  - (d) prescribe penalties not exceeding 50 penalty units for contravention of, or non-compliance with, any regulations; and
  - (e) make provisions of a savings or transitional nature consequent on the

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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 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).

**71. 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.

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**SCHEDULE 1 – RELEVANT ACTS**

Section 3

1. *The Agricultural and Veterinary Chemicals (Control of Use) Act 1995.*
2. *The Anti-Discrimination Act 1998.*
3. *The Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011.*
4. *The Biosecurity Act 2019.*
5. *The Building Act 2016.*
6. *The Criminal Justice (Mental Impairment) Act 1999.*
7. *The Disability Services Act 2011.*
8. *The Environmental Management and Pollution Control Act 1994.*
9. *The Fire Service Act 1979.*
10. *The Forest Practices Act 1985.*
11. *The Gas Act 2000.*

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12. *The Gas Industry Act 2019.*
13. *The Gas Pipelines Act 2000.*
14. *The Guardianship and Administration Act 1995.*
15. *The Health Practitioner Regulation National Law (Tasmania).*
16. *The Health Practitioners Tribunal Act 2010.*
17. *The Historic Cultural Heritage Act 1995.*
18. *The Inland Fisheries Act 1995.*
19. *The Land Use Planning and Approvals Act 1993.*
20. *The Launceston Flood Risk Management Act 2015.*
21. *The Living Marine Resources Management Act 1995.*
22. *The Local Government Act 1993.*
23. *The Local Government (Highways) Act 1982.*
24. *The Marine Farming Planning Act 1995.*

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25. *The Mental Health Act 2013.*
26. *The Motor Accidents (Liabilities and Compensation) Act 1973.*
27. *The National Parks and Reserves Management Act 2002.*
28. *The Neighbourhood Disputes About Plants Act 2017.*
29. *The Pharmacy Control Act 2001.*
30. *The Powers of Attorney Act 2000.*
31. *The Public Health Act 1997.*
32. *The Resource Management and Planning Appeal Tribunal Act 1993.*
33. *The Strata Titles Act 1998.*
34. *The Theatre Royal Precinct Redevelopment Act 2016.*
35. *The Threatened Species Protection Act 1995.*
36. *The Urban Drainage Act 2013.*

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- 37.** *The Water and Sewerage Industry Act 2008.*
- 38.** *The Water Management Act 1999.*
- 39.** *The Wills Act 2008.*
- 40.** *The Workers' (Occupational Diseases) Relief Fund Act 1954.*
- 41.** *The Workers Rehabilitation and Compensation Act 1988.*

**SCHEDULE 2 – GENERAL DIVISION**

Section 3 and section 59

**PART 1 – INTERPRETATION**

**1. Definitions**

In this Schedule –

*Division Head* means the Division Head of the Division;

*Forestry stream function or power* means a function or power allocated to the Forestry stream under clause 2(5) of Part 4 of this Schedule;

*health practitioner* has the same meaning as in the *Health Practitioner Regulation National Law (Tasmania) Act 2010* and includes a student within the meaning of that Law;

*Health Practitioners stream function or power* means a function or power allocated to the Health Practitioners stream under clause 2(2) of Part 4 of this Schedule;

*National Law* means the Health Practitioner Regulation National Law (Tasmania);

*the Division* means the General Division of the Tribunal.

## **PART 2 – COMPOSITION OF DIVISION**

### **1. Division members**

The Division is to be composed of the following members:

- (a) the Division Head;
- (b) the other members that may be assigned to the Division by or under this Act.

### **2. Appointment of Division Head**

The Minister may not recommend the appointment of a person as the Division Head unless the Minister has consulted, in relation to the appointment, with each Minister to whom the administration of an Act referred to in Part 3 of this Schedule is assigned.

## **PART 3 – FUNCTIONS AND POWERS OF DIVISION**

### **1. Functions and powers allocated to Division**

- (1) The functions and powers of the Tribunal in relation to the following Acts (or specified provisions of such Acts) are allocated to the Division:
  - (a) the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*;
  - (b) the *Anti-Discrimination Act 1998*;

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- (c) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*;
- (d) the *Biosecurity Act 2019*;
- (e) the *Building Act 2016*;
- (f) the *Environmental Management and Pollution Control Act 1994*;
- (g) the *Fire Service Act 1979*;
- (h) the *Forest Practices Act 1985*;
- (i) the *Gas Act 2000*;
- (j) the *Gas Industry Act 2019*;
- (k) the *Gas Pipelines Act 2000*;
- (l) the *Health Practitioner Regulation National Law (Tasmania)*;
- (m) the *Health Practitioners Tribunal Act 2010*;
- (n) the *Historic Cultural Heritage Act 1995*;
- (o) the *Inland Fisheries Act 1995*;
- (p) the *Land Use Planning and Approvals Act 1993*;
- (q) the *Launceston Flood Risk Management Act 2015*;
- (r) the *Living Marine Resources Management Act 1995*;

- (s) the *Local Government Act 1993*;
- (t) the *Local Government (Highways) Act 1982*;
- (u) the *Marine Farming Planning Act 1995*;
- (v) the *Motor Accidents (Liabilities and Compensation) Act 1973*;
- (w) the *National Parks and Reserves Management Act 2002*;
- (x) the *Neighbourhood Disputes About Plants Act 2017*;
- (y) the *Pharmacy Control Act 2001*;
- (z) the *Public Health Act 1997*;
- (za) the *Resource Management and Planning Appeal Tribunal Act 1993*;
- (zb) the *Strata Titles Act 1998*;
- (zc) the *Theatre Royal Precinct Redevelopment Act 2016*;
- (zd) the *Threatened Species Protection Act 1995*;
- (ze) the *Urban Drainage Act 2013*;
- (zf) the *Water and Sewerage Industry Act 2008*;
- (zg) the *Water Management Act 1999*;

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- (zh) the *Workers' (Occupational Diseases) Relief Fund Act 1954*;
  - (zi) the *Workers Rehabilitation and Compensation Act 1988*.
- (2) Subclause (1) extends to functions and powers conferred or imposed on the Tribunal by regulations or instruments made under an Act specified in that subclause.

**PART 4 – STREAMS**

**1. Streams of Division**

- (1) There is a stream of the Division to be known as the Anti-Discrimination stream.
- (2) There is a stream of the Division to be known as the Health Practitioners stream.
- (3) There is a stream of the Division to be known as the Personal Compensation stream.
- (4) There is a stream of the Division to be known as the Resource and Planning stream.
- (5) There is a stream of the Division to be known as the Forestry stream.

**2. Functions and powers allocated to streams**

- (1) The functions and powers of the Tribunal in relation to the *Anti-Discrimination Act 1998*, including functions and powers conferred or imposed on the Tribunal by regulations or

instruments made under that Act, are allocated to the Anti-Discrimination stream.

- (2) The functions and powers of the Tribunal in relation to the following Acts, including functions and powers conferred or imposed on the Tribunal by regulations or instruments made under those Acts, are allocated to the Health Practitioners stream:
  - (a) the *Health Practitioner Regulation National Law (Tasmania)*;
  - (b) the *Health Practitioners Tribunal Act 2010*;
  - (c) the *Pharmacy Control Act 2001*.
- (3) The functions and powers of the Tribunal in relation to the following Acts, including functions and powers conferred or imposed on the Tribunal by regulations or instruments made under those Acts, are allocated to the Personal Compensation stream:
  - (a) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*;
  - (b) the *Motor Accidents (Liabilities and Compensation) Act 1973*;
  - (c) the *Workers' (Occupational Diseases) Relief Fund Act 1954*;
  - (d) the *Workers Rehabilitation and Compensation Act 1988*.

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- (4) The functions and powers of the Tribunal in relation to the following Acts, including functions and powers conferred or imposed on the Tribunal by regulations or instruments made under those Acts, are allocated to the Resource and Planning stream:
- (a) the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*;
  - (b) the *Biosecurity Act 2019*;
  - (c) the *Building Act 2016*;
  - (d) the *Environmental Management and Pollution Control Act 1994*;
  - (e) the *Fire Service Act 1979*;
  - (f) the *Gas Act 2000*;
  - (g) the *Gas Industry Act 2019*;
  - (h) the *Gas Pipelines Act 2000*;
  - (i) the *Historic Cultural Heritage Act 1995*;
  - (j) the *Inland Fisheries Act 1995*;
  - (k) the *Land Use Planning and Approvals Act 1993*;
  - (l) the *Launceston Flood Risk Management Act 2015*;
  - (m) the *Living Marine Resources Management Act 1995*;
  - (n) the *Local Government Act 1993*;

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- (o) the *Local Government (Highways) Act 1982*;
  - (p) the *Marine Farming Planning Act 1995*;
  - (q) the *National Parks and Reserves Management Act 2002*;
  - (r) the *Neighbourhood Disputes About Plants Act 2017*;
  - (s) the *Public Health Act 1997*;
  - (t) the *Resource Management and Planning Appeal Tribunal Act 1993*;
  - (u) the *Strata Titles Act 1998*;
  - (v) the *Theatre Royal Precinct Redevelopment Act 2016*;
  - (w) the *Threatened Species Protection Act 1995*;
  - (x) the *Urban Drainage Act 2013*;
  - (y) the *Water and Sewerage Industry Act 2008*;
  - (z) the *Water Management Act 1999*.
- (5) The functions and powers of the Tribunal in relation to the *Forest Practices Act 1985*, including functions and powers conferred or imposed on the Tribunal by regulations or instruments made under that Act, are allocated to the Forestry stream.

**3. Composition of Tribunal in relation to stream**

If proceedings relate to the functions or powers of the Tribunal allocated to a stream in this Division, the Tribunal is not to be constituted, in whole or in part, in relation to the proceedings by a person or persons other than –

- (a) the President; or
- (b) a person or persons who is or are Deputy Presidents of the Division; or
- (c) a senior member, or ordinary member, who is assigned to the stream.

**4. Appointment of members in Health Practitioners stream**

- (1) A person must be appointed as a senior member, or ordinary member, of the Tribunal and be assigned to participate in particular proceedings to which a Health Practitioners stream function or power relates, if the person has been selected for participation in those proceedings in accordance with any applicable procedures specified by or under the National Law.
- (2) A person must be appointed as a senior member, or ordinary member, of the Tribunal and be assigned to participate in a particular class of proceedings to which a Health Practitioners stream function or power relates, if the person has been selected for participation in that class of proceedings in accordance with any applicable

procedures specified by or under the National Law.

**5. Composition of Tribunal for health practitioner matters**

The Tribunal, when exercising a Health Practitioners stream function or power in proceedings, is to be constituted in accordance with any applicable requirements specified by or under the National Law for the constitution of the Tribunal in proceedings of the kind concerned.

**6. Composition of Tribunal for forestry matters**

The Tribunal, when exercising a Forestry stream function or power in proceedings, is to be constituted in accordance with any applicable requirements of section 34 of the *Forest Practices Act 1985* for the constitution of the Tribunal in proceedings of the kind concerned.

**SCHEDULE 3 – PROTECTIVE DIVISION**

Section 3 and section 59

**PART 1 – INTERPRETATION**

**1. Definitions**

In this Schedule –

*Division function or power* means a function or power of the Tribunal that is allocated to the Division by this Schedule;

*Division Head* means the Division Head of the Division;

*the Division* means the Protective Division of the Tribunal.

**PART 2 – COMPOSITION OF DIVISION**

**1. Division members**

The Division is to be composed of the following members:

- (a) the Division Head;
- (b) the other members that may be assigned to the Division by or under this Act.

**2. Appointment of Division Head**

The Minister may not recommend the appointment of a person as the Division Head

unless the Minister has consulted, in relation to the appointment, with the Ministers to whom the administration of the *Guardianship and Administration Act 1995* and the *Mental Health Act 2013* are assigned.

## **PART 3 – FUNCTIONS AND POWERS OF DIVISION**

### **1. Functions and powers allocated to Division**

- (1) The functions and powers of the Tribunal in relation to the following Acts are allocated to the Division:
  - (a) the *Criminal Justice (Mental Impairment) Act 1999*;
  - (b) the *Disability Services Act 2011*;
  - (c) the *Guardianship and Administration Act 1995*;
  - (d) the *Mental Health Act 2013*;
  - (e) the *Powers of Attorney Act 2000*;
  - (f) the *Wills Act 2008*.
- (2) Subclause (1) extends to functions and powers conferred or imposed on the Tribunal by regulations or instruments made under an Act specified in that subclause.

**PART 4 – STREAMS**

**1. Streams of Division**

- (1) There is a stream of the Division to be known as the Guardianship stream.
- (2) There is a stream of the Division to be known as the Mental Health stream.

**2. Functions and powers allocated to streams**

- (1) The functions and powers of the Tribunal in relation to the following Acts, including functions and powers conferred or imposed on the Tribunal by regulations or instruments made under any of the following Acts, are allocated to the Guardianship stream:
  - (a) the *Disability Services Act 2011*;
  - (b) the *Guardianship and Administration Act 1995*;
  - (c) the *Powers of Attorney Act 2000*;
  - (d) the *Wills Act 2008*.
- (2) The functions and powers of the Tribunal in relation to the following Acts, including functions and powers conferred or imposed on the Tribunal by regulations or instruments made under any of the following Acts, are allocated to the Mental Health stream:

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- (a) the *Criminal Justice (Mental Impairment) Act 1999*;
- (b) the *Mental Health Act 2013*.

**3. Composition of Tribunal in relation to stream**

If proceedings relate to the functions or powers of the Tribunal allocated to a stream of the Division of the Tribunal, the Tribunal is not to be constituted, in whole or in part, in relation to the proceedings by a person or persons other than –

- (a) the President; or
- (b) a person or persons who is or are assigned to be Deputy Presidents of the Division; or
- (c) a senior member, or ordinary member, who is assigned to the stream.

*[Second reading presentation speech made in:–  
House of Assembly on 27 August 2020  
Legislative Council on 14 October 2020]*