

CLAUSE NOTES

Health Practitioners Tribunal Bill 2010

- Clause 1** **Short Title**
- Clause 2** **Commencement**
- This clause provides that commencement is to be on a day or days to be proclaimed. The intention is to commence the Bill as soon as possible after the commencement of the *Health Practitioner Regulation National Law (Tasmania) Bill 2010*.
- Clause 3** **Interpretation**
- This clause defines a number of terms used in the Bill. Importantly, a reference to the National Law in the Bill (and in these clause notes) is a reference to the Health Practitioner Regulation National Law (Tasmania).
- Clause 4** **Application**
- This clause provides that the National Law or other referring Act take precedence in the event of an inconsistency.
- Clause 5** **When proceedings under this Act begin and end**
- This clause defines when proceedings under the Act are taken to begin or end.
- Clause 6** **Act binds the Crown**
- This clause provides that the Act binds the Crown in Right of Tasmania.
- Clause 7** **Establishment of Health Practitioners Tribunal**
- This clause formally establishes the Tribunal and provides that it initially constituted by the Chairperson.
- Clause 8** **Chairperson**
- This clause provides that the Chairperson of the Tribunal is to be a Magistrate who is appointed to be the Chairperson by the Minister for Justice.
- Clause 9** **Deputy Chairperson**
- This clause provides that the Deputy Chairperson of the Tribunal is to be a Magistrate who is appointed to be the Deputy Chairperson by the Minister for Justice. The Deputy Chairperson assumes the role of Chairperson in certain circumstances.

Clause 10

Delegation

This clause provides that the Chairperson may delegate functions to the Deputy Chairperson.

Clause 11

Professional members of Tribunal

This clause provides that the Chairperson may appoint professional members of the Tribunal. Professional members are to be registered in the profession to which the proceedings relate and have suitable skill, knowledge and experience.

Clause 12

List of potential professional members

This clause provides that the chairperson can request that the National Board provide a list of names of persons that the Chairperson could call upon to be professional members.

Clause 13

Appointment of community members

The Chairperson may determine that a community member be used in some proceedings. This clause determines eligibility to be a community member.

Clause 14

Disclosure of interest or National Law notification

This clause provides that a tribunal member must disclose any pecuniary or other interest in relation to proceedings. Where such an interest exists, the member cannot take part in the proceedings except with the agreement of all parties. A professional member who received notice from a national board that a notification has been made about them must advise the Chairperson.

Clause 15

Proceedings valid despite defective appointment or disqualification of member

This clause provides that proceedings of the Tribunal remain valid despite a defective appointment or disqualification of a member.

Clause 16

Jurisdiction of Tribunal in respect of matter referred under National law to Tribunal

This clause provides that:

- a reference to a 'referral' of a matter in the National Law is a reference to an 'application' in this tribunal Bill;
- the power to hear a matter that is referred under the National Law equates to a power to hear and determine an application under this tribunal Bill;

- if a person has made an application to the tribunal, then the tribunal has the powers from the National Law that it has to hear a matter referred to it; and
- the tribunal has the powers conferred on it by the National Law, this tribunal Bill, or another law.

Clause 17

Jurisdiction of Tribunal to hear and decide appeals against decisions under National Law

This clause provides that:

- a reference to an 'appeal' against a decision of a National Board in the National Law is a reference to a 'review' of a decision in this tribunal Bill;
- the power to hear and determine an appeal under the National Law equates to a power to hear and determine a review under this tribunal Bill;
- if a person has made an application to the tribunal, then the tribunal has the powers from the National Law that it has to hear an appeal; and
- the tribunal has the powers conferred on it by the National Law, this tribunal Bill, or another law.

Clause 18

Constitution of Tribunal for purposes of National Law

This clause provides that the Chairperson must determine how the Tribunal will be constituted for each application it receives under the National Law.

The options for constituting the Tribunal are:

- the Chairperson or Deputy Chairperson acting alone;
- the Chairperson or Deputy Chairperson acting with two professional members; or
- the Chairperson or Deputy Chairperson acting with one professional member and one community member.

If either party requests, the Tribunal must be constituted under either option (b) or option (c).

Clause 19

Jurisdiction of Tribunal to hear and decide a review of decision under Act other than National Law

This clause provides that the Tribunal has the power to review a decision made pursuant to an Act other than the National Law, if that Act confers the power on the Tribunal.

Clause 20 **Constitution of Tribunal for matter other than referral or appeal under National Law**

This clause provides that the Tribunal is constituted by the Chairperson or Deputy Chairperson alone in a review of a decision made under an Act other than the National Law if that Act confers power on the Tribunal to review a decision.

Clause 21 **Applications**

This clause provides the mechanism for parties who wish to make an application to the Tribunal to do so. It provides that an application for a review of a decision from another body is to be made within 28 days from the date of a decision.

Clause 22 **Withdrawal of application**

This clause provides that an applicant to proceedings may withdraw an application, with leave of the Tribunal. The Tribunal has jurisdiction to make an appropriate order as to costs in relation to withdrawn proceedings.

Clause 23 **Summary dismissal of proceedings**

This clause enables the Tribunal to summarily dispose of proceedings on certain grounds. The Tribunal has the power to make an appropriate order as to costs in relation to summary dismissal.

Clause 24 **Parties to proceedings**

This clause determines who the parties to particular proceedings are. It provides that the Secretary of the Department of Health and Human Services may become a party to proceedings.

Clause 25 **Representation**

This clause provides that a party to any proceedings before the Tribunal is entitled to be legally represented.

Clause 26 **Effect of original decision pending review**

This clause provides that an application made to the Tribunal for a review of a decision does not affect the operation of the decision, unless the Tribunal makes a specific order staying the original decision. The Tribunal has powers in relation to costs where a stay of the decision is sought.

Clause 27 **Reasons for decision to be lodged by applicant**

This clause provides that the applicant for a review of a decision is to lodge a copy of the original decision at the time of making its application. The Tribunal may order a party to proceedings to lodge a copy of any information that the Tribunal believes is relevant to proceedings and in

possession of the party.

Clause 28 Review is to consist of fresh hearing

This clause provides that a review of a decision by the Tribunal is to be hearing *de novo*.

Clause 29 How Tribunal to deal with referred matter

This clause provides that a matter referred to the Tribunal is to be heard on its merits.

Clause 30 Hearing to be open to public

This clause provides that, unless the Tribunal orders otherwise, a hearing is to be conducted so that it is open to the public.

Clause 31 Powers of Tribunal to decide applications

This clause provides the nature of decisions that can be made by the Tribunal in relation to an application made to it.

Clause 32 Decision-making by Tribunal

This clause provides that the Tribunal is to make an order as to its decision as soon as practicable after the end of a hearing. In the event that the Tribunal is tied in relation to a decision, the presiding member is to have the casting vote.

Clause 33 Orders

This clause provides that orders of the Tribunal are to be reduced to writing, given to each of the parties and followed by reasons. An order of the Tribunal comes into effect immediately or at a time specified in the order.

Clause 34 Enforcement of orders

This clause provides that an order of the Tribunal is capable of filing in the Supreme Court and enforceable as if it were an order of that Court.

Clause 35 Correction of mistakes in orders

This clause provides that the Tribunal is able to amend an error made in an order.

Clause 36 General powers of Tribunal

This clause provides that the Tribunal has a number of general powers, including:

- requiring a party to produce documents;

- requiring any person appearing before it to give evidence on oath or affirmation;
- require any person appearing before it to answer questions;
- determine proceedings in the absence of a person;
- adjourn any proceedings from time to time and place to place.

Clause 37 Conduct of proceedings

This clause provides that the Tribunal is to conduct proceedings with as little formality as possible, that it is not bound by the rules of evidence, but that it must observe the rules of procedural fairness.

Clause 38 Practice directions

This clause provides that the Chairperson may issue practice directions in relation to the practice and procedures of the Tribunal. Those directions may be varied or revoked.

Clause 39 Determination

This clause provides that the Tribunal may determine questions of law or other questions as and when they arise in proceedings.

Clause 40 Costs

This clause provides the Tribunal with an inherent jurisdiction as to costs. The Tribunal is conducted on the basic promise that each party will ordinarily bear its own costs. The Tribunal also has the power to award costs against a party's representatives if the Tribunal believes that such an order is appropriate.

Clause 41 Vacancies in Tribunal during proceedings

This clause provides that if, during proceedings, the Chairperson or Deputy Chairperson vacates his or her office; or more than one member of a three member panel vacate their office, then the proceedings are terminated and the Tribunal must be reconstituted. However, if only one member of a three member panel (not being the Chairperson or Deputy Chairperson) vacate, then the proceedings continue.

Clause 42 Summons and orders to produce

This clause provides that the Tribunal may issue a summons to a person to attend to give evidence, or produce documents, or to both attend and produce documents. A person is entitled to be paid reasonable costs for complying with a summons.

Clause 43 Evidence

This clause provides that the Tribunal must allow all parties to call evidence that it seeks to call. It provides that the evidence may be given orally or in writing. A member of the Tribunal is vested with power to administer an oath or cause an affirmation to be taken. The Tribunal may refuse to allow a party to call evidence if the Tribunal has already made a determination in favour of the matter that the evidence would seek to establish.

Clause 44 Authorisation of person to take evidence

This clause provides that the Tribunal may authorise another person to take evidence on behalf of the Tribunal.

Clause 45 Use of experts

This clause provides that the Tribunal has the power to call in the assistance of experts. If it avails of this power, the Tribunal can order that the parties pay the reasonable costs of the experts.

Clause 46 Rule against self-incrimination does not apply

This clause provides that a person cannot refuse to answer a question or provide a document on the basis that the answer may incriminate the person. Instead, the person must answer the question or produce the document, but that answer or document cannot be used against the person in criminal proceedings; except to the extent that the criminal proceedings relating to the falsity of the answer or document.

Clause 47 Other privileges

This clause provides that privileges that exist in the Supreme Court (except the privilege against self-incrimination) apply equally in the Tribunal.

Clause 48 Register

This clause provides that a State Service employee may be appointed Registrar of the Tribunal.

Clause 49 Judicial notice

This clause provides that Courts must take judicial notice of members of the Tribunal.

Clause 50 Records of hearings

This clause provides that the Tribunal is to keep a record of proceedings before it.

Clause 51 Publication of decisions of Tribunal

This clause provides that the Tribunal may publish its decisions as it thinks fit.

Clause 52 Appeal to the Supreme Court

This clause provides that a party may appeal a decision of the Tribunal to the Supreme Court on a question of law.

Clause 53 Offences

This clause sets out a number of offences and the penalties associated with each.

Clause 54 Secrecy

This clause provides that members of the Tribunal are to keep in secret, information that they obtain as a result of being a member.

Clause 55 Regulations

This clause provides that the Governor may make regulations for the purposes of the Act.

Clause 56 Administration of Act

This clause provides that the Act is to be administered by the Minister for Justice and the department responsible is the Department of Justice.

Clause 57 Consequential amendment

This clause provides that Schedule 3 lists amendments made to other legislation, consequent upon commencement of this Bill.

Schedule 1 Chairperson and Deputy Chairperson

This schedule provides matters relevant to the positions of Chairperson and Deputy Chairperson.

Schedule 2 Professional and Community Members

This schedule provides matters relevant to the appointment of professional and community members.

Schedule 3 Consequential amendment

This schedule provides that the Health Practitioner Regulation National Law (Tasmania) is amended consequentially so that the Tribunal becomes the responsible Tribunal under that law.