

## CLAUSE NOTES

### *Health Practitioners Tribunal Amendment Bill 2015*

**Clause 1: Short Title**

This clause provides that the legislation will be cited as the Health Practitioners Tribunal Amendment Act 2015.

**Clause 2: Commencement**

This clause provides for the amendments proposed by the Bill to commence on the day on which the Bill receives the Royal Assent.

**Clause 3: Principal Act**

This clause provides that the Principal Act to which the amendments apply is the *Health Practitioners Tribunal Act 2010*.

**Clause 4: Section 8 amended (Chairperson)**

This clause removes subsection (1) of section 8 and replaces it with a new subsection in relation to the appointment of the Chairperson of the Health Practitioners Tribunal (HPT).

Section 8(1) currently provides that the Minister for Justice may appoint a Magistrate (recommended by the Chief Magistrate) to be the Chairperson of the HPT.

The amendment made by this clause introduces an additional category of persons who may be appointed to the Chairperson's role – that is, Australian lawyers of not less than 5 years' standing as an Australian legal practitioner. The amended section 8(1) will provide that the Minister for Justice may appoint to the Chairperson role:

- A Magistrate recommended by the Chief Magistrate OR
- An Australian lawyer of not less than 5 years' standing as an Australian legal practitioner.

The terms "Australian lawyer" and "Australian legal practitioner" are defined in the *Legal Profession Act 2007*.

**Clause 5: Section 9 amended (Deputy Chairperson)**

This clause removes subsection (1) of section 9 and replaces it with a new subsection in relation to the appointment of the Deputy Chairperson of the HPT.

As with the Chairperson, the Deputy Chairperson role is currently limited to Magistrates (section 9(1)). The amendment proposed by this clause will add legal practitioners as another category of persons eligible for appointment to the Deputy Chairperson position. The amended section 9(1) will provide that the Minister for Justice may appoint to the Deputy Chairperson role:

- A Magistrate recommended by the Chief Magistrate OR
- An Australian lawyer of not less than 5 years' standing as an Australian legal practitioner.

The definitions of "Australian lawyer" and "Australian legal practitioner" are defined in the *Legal Profession Act 2007*.

## **Clause 6: Schedule I amended (Chairperson and Deputy Chairperson)**

This clause makes amendments to various clauses in Schedule I of the Act relating to the terms of appointment of the Chairperson and Deputy Chairperson of the HPT.

Clause 1(4) of Schedule I provides that service in the office of Chairperson is to be taken for all purposes to be service in the office of a Magistrate. The amendments clarify that this is only where the person appointed to the Chairperson position is a Magistrate. Clause 1(4) will not apply where the Chairperson has been appointed on the basis of being an Australian lawyer.

Clause 2(4) of Schedule I provides that service in the office of Deputy Chairperson is to be taken for all purposes to be service in the office of a Magistrate. It is to be amended in the same way as clause 1(4) to clarify that this does not apply in cases where the Deputy Chairperson is appointed on the basis of being an Australian lawyer.

Clause 3 of Schedule I sets out the circumstances in which the Chairperson or Deputy Chairperson ceases to hold office as follows:

- Where the appointment is revoked by the Minister for reasons such as:
  - absence without good reason;
  - conviction of a crime or offence punishable by imprisonment for a term of more than 12 months; or
  - inability to competently perform duties.
- Where he or she ceases to be a Magistrate.

The amendments modify this clause to take account of the new category of persons that can be appointed to the Chairperson and Deputy Chairperson positions. Under the amendments, the Chairperson or Deputy Chairperson will automatically vacate

office if he or she ceases to be an Australian lawyer, for example, if he or she is struck off the roll of lawyers.

**Clause 7:**

**Repeal of Act**

This is a standard provision to repeal the Bill after the amendments have been incorporated into the principal Act.