

# TASMANIA

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## HEALTH PRACTITIONERS TRIBUNAL BILL 2010

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# HEALTH PRACTITIONERS TRIBUNAL BILL 2010

*(Brought in by the Minister for Health, the Honourable  
Michelle Anne O'Byrne)*

## A BILL FOR

### **An Act to establish the Health Practitioners Tribunal and for related purposes**

Be it enacted by His 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 *Health  
Practitioners Tribunal Act 2010*.

### 2. Commencement

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

### 3. Interpretation

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

“**applicant**” means a person who applies to  
the Tribunal under section 21;

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**“Chairperson”** means the Chairperson appointed under section 8(1) and includes the Deputy Chairperson, when he or she is acting as the Chairperson;

**“community member”** means a person appointed under section 13 to be a community member of the Tribunal for particular proceedings;

**“Deputy Chairperson”** means the Deputy Chairperson appointed under section 9;

**“function”** includes duty;

**“health profession”** has the same meaning as in the National Law;

**“member”** means –

- (a) the Chairperson; and
- (b) the Deputy Chairperson; and
- (c) a professional member; and
- (d) a community member;

**“National Board”** has the same meaning as in the National Law;

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

**“National Law proceedings”** means proceedings in relation to an application under section 21(1) or (2);

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**“notification”** has the same meaning as in the National Law;

**“participating jurisdiction”** has the same meaning as in the National Law;

**“professional member”** means a person appointed under section 11 to be a professional member of the Tribunal for particular proceedings;

**“referring Act”** means a law of Tasmania, other than the National Law, by or under which jurisdiction is conferred on the Tribunal;

**“registered health practitioner”** has the same meaning as in the National Law;

**“registrar”** means the person appointed to be the registrar of the Tribunal under section 48;

**“Secretary”** means the Secretary of the department that is responsible, to the Minister to whom the administration of the *Health Practitioner Regulation National Law (Tasmania) Act 2010* is assigned, in relation to the administration of that Act;

**“State or Territory Board”** has the same meaning as in the National Law;

**“student”** has the same meaning as in the National Law;

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**“Tribunal”** means the Health Practitioners Tribunal established under section 7.

- (2) For the purposes of this Act, proceedings relate to one of the health professions if –
- (a) the proceedings have begun by way of an application to the Tribunal under section 21(1) by the National Board for the health profession; or
  - (b) the proceedings have begun by way of an application to the Tribunal under section 21(2) in relation to a decision by the National Board for the health profession or a panel established under the National Law by that National Board.

**4. Application**

- (1) In the event of any inconsistency between this Act and the National Law, the National Law prevails to the extent of the inconsistency.
- (2) In the event of any inconsistency between this Act and a referring law, the referring law prevails to the extent of the inconsistency.

**5. When proceedings under this Act begin and end**

- (1) For the purposes of this Act, proceedings in relation to a matter are to be taken to begin when an application in relation to the matter is lodged with the Tribunal under section 21.



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- (2) For the purposes of this Act, proceedings in relation to a matter are to be taken to have concluded when the Tribunal has given the parties to the proceedings its final orders in relation to the matter.

**6. 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 – Establishment of Health Practitioners Tribunal

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**PART 2 – ESTABLISHMENT OF HEALTH  
PRACTITIONERS TRIBUNAL**

**7. Establishment of Health Practitioners Tribunal**

- (1) The Health Practitioners Tribunal is established.
- (2) The Tribunal is constituted by the Chairperson.
- (3) Despite subsection (2), if the Chairperson determines under Part 4 that the Tribunal is to be constituted in whole or in part by a person other than the Chairperson, the Tribunal is, after the determination, constituted in relation to those proceedings as so determined under that Part.

**PART 3 – MEMBERSHIP OF TRIBUNAL**

***Division 1 – Chairperson and Deputy Chairperson***

**8. Chairperson**

- (1) The Minister may appoint to be the Chairperson of the Tribunal a magistrate recommended by the Chief Magistrate.
- (2) Clauses 1 and 3 of Schedule 1 have effect in relation to the Chairperson.

**9. Deputy Chairperson**

- (1) The Minister may appoint to be the Deputy Chairperson of the Tribunal a magistrate recommended by the Chief Magistrate.
- (2) Clauses 2 and 3 of Schedule 1 have effect in relation to the Deputy Chairperson.
- (3) Subject to this Act, the Deputy Chairperson is to act as the Chairperson –
  - (a) whenever the Chairperson is absent from duty or from Tasmania or is unable to act as the Chairperson; and
  - (b) during a vacancy in the office of the Chairperson.
- (4) Subject to this Act, the Deputy Chairperson is to act as the Chairperson for particular proceedings, when directed to do so by the Chairperson.

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**10. Delegation**

The Chairperson may delegate to the Deputy Chairperson any of his or her functions under this Act or any other Act.

*Division 2 – Other members of Tribunal for National Law proceedings*

**11. Professional members of Tribunal**

- (1) The Chairperson may appoint a person to be a professional member of the Tribunal for proceedings in relation to which the Chairperson has determined that the Tribunal is to be constituted in accordance with section 18(1)(b) or (c).
- (2) A person may only be appointed to be a professional member of the Tribunal for proceedings if the person –
  - (a) is a registered health practitioner in respect of the health profession to which the proceedings relate; and
  - (b) is, in the opinion of the Chairperson, a person with suitable skill, knowledge or experience to assist in the proceedings; and
  - (c) is included in the list provided to the Chairperson by the National Board in accordance with a request under section 12; and

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- (d) is not a member of a National Board or a State or Territory Board.
- (3) Schedule 2 applies in relation to professional members.

**12. Lists of potential professional members**

- (1) The Chairperson may from time to time request the National Board for a health profession to provide to the Chairperson a list of registered health practitioners who –
  - (a) are registered under the National Law in respect of the health profession; and
  - (b) are practising in Tasmania in respect of the health profession; and
  - (c) have, in the opinion of the National Board, suitable skill, knowledge and experience to enable the practitioners to assist in proceedings under this Act.
- (2) If the Chairperson is of the opinion that no person included in a list of the kind referred to in subsection (1) or in this subsection is suitable for proceedings for which the Tribunal is to be constituted, the Chairperson is to request the National Board to provide to the Chairperson a list of registered health practitioners who –
  - (a) are registered under the National Law in respect of the health profession; and

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- (b) are practising in respect of the health profession in any participating jurisdiction; and
- (c) have, in the opinion of the National Board, suitable skill, knowledge and experience to enable the practitioners to assist in proceedings under this Act.

**13. Community members of Tribunal**

- (1) The Chairperson may appoint a person to be the community member of the Tribunal for proceedings in relation to which the Chairperson has determined that the Tribunal is to be constituted in accordance with section 18(1)(c).
- (2) A person may only be appointed to be a community member of the Tribunal for proceedings if the person –
  - (a) has at no time been a registered health practitioner or been registered in respect of a health profession; and
  - (b) is not a member of a National Board or a State or Territory Board; and
  - (c) is specified on a list prepared under subsection (3).
- (3) The Minister must prepare from time to time a list of persons who are suitable to be appointed under this section to be community members of the Tribunal for proceedings that are National Law proceedings.

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- (4) Schedule 2 applies in relation to community members.

**14. Disclosure of interest or National Law notification**

- (1) Subsection (2) applies to a member in relation to proceedings under this Act if –
- (a) the Tribunal is to be, for the proceedings, constituted in whole or in part by the member; and
  - (b) the member has or acquires a pecuniary or other interest that could conflict with the proper exercise or performance by the member of the powers or functions of a member for the proceedings.
- (2) If this subsection applies to a member in relation to proceedings under this Act, the member must not take part in the proceedings or exercise or perform any powers or functions in relation to the proceedings, except with the agreement of all the parties to the proceedings.
- (3) A professional member must notify the Chairperson as soon as practicable after the member receives under the National Law notice of a notification about the member.

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**15. Act or proceedings valid despite defective appointment, &c.**

An act or proceeding of the Tribunal or of a person acting under the direction of the Tribunal is valid even if –

- (a) the appointment of a member was defective; or
- (b) a person appointed as a member was disqualified from acting as, or incapable of being, such a member.



**PART 4 – CONSTITUTION OF TRIBUNAL**

*Division 1 – National Law proceedings*

**16. Jurisdiction of Tribunal in respect of matter referred under National Law to Tribunal**

- (1) A reference in the National Law to a referral of a matter to the responsible tribunal is, for a referral of a matter in accordance with that Law to the Tribunal, a reference to an application to the Tribunal for a decision in relation to the matter.
- (2) The jurisdiction, conferred by the National Law on the Tribunal as the responsible tribunal, to hear and decide a matter referred to the Tribunal is to be taken to be jurisdiction conferred on the Tribunal to hear and decide the matter under this Act.
- (3) The Tribunal may exercise the jurisdiction, conferred by the National Law on the Tribunal as the responsible tribunal, to hear and decide a matter referred to the Tribunal in accordance with that Law if a person has, under section 21(1), applied to the Tribunal for a decision in relation to the matter.
- (4) In exercising the jurisdiction, conferred by the National Law on the Tribunal as the responsible tribunal, to hear and decide a matter referred to the Tribunal under that Law, the Tribunal may exercise the powers, and perform the functions, conferred on the Tribunal by this Act or the National Law.

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Part 4 – Constitution of Tribunal

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

- (1) A reference in the National Law to an appeal against a decision is, for an appeal in accordance with that Law to the Tribunal, a reference to a review of the decision as provided under this Act.
- (2) The jurisdiction, conferred by the National Law on the Tribunal as the responsible tribunal, to hear and decide an appeal against a decision is to be taken to be jurisdiction conferred on the Tribunal to hear and decide under this Act a review of a decision.
- (3) The Tribunal may exercise the jurisdiction, conferred by the National Law on the Tribunal as the responsible tribunal, to hear and decide an appeal against a decision if a person has, under section 21(2), applied to the Tribunal for a review of the decision.
- (4) In exercising the jurisdiction, conferred by the National Law on the Tribunal as the responsible tribunal, to hear and decide an appeal against a decision, the Tribunal may exercise the powers, and perform the functions, conferred on the Tribunal by this Act or the National Law.

**18. Constitution of Tribunal for purposes of National Law**

- (1) The Chairperson, as soon as practicable after National Law proceedings begin, must determine

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that the Tribunal is to be constituted for the proceedings by –

- (a) the Chairperson or the Deputy Chairperson; or
  - (b) the Chairperson (or the Deputy Chairperson) and 2 professional members; or
  - (c) the Chairperson (or the Deputy Chairperson), one professional member and one community member.
- (2) The Chairperson must determine that the Tribunal is to be constituted, for the purposes of National Law proceedings, in accordance with subsection (1)(b) or (c), if a party to the proceedings requests that the proceedings be heard and decided other than by the Chairperson or Deputy Chairperson acting alone.

***Division 2 – Proceedings other than National Law proceedings***

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

- (1) The Tribunal may exercise the jurisdiction conferred on it by a referring Act to hear and decide a review of a decision if a person has applied under section 21(4) to the Tribunal for a review of the decision.
- (2) In exercising the jurisdiction conferred on the Tribunal by a referring Act to hear and decide a

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review of a decision, the Tribunal may exercise the powers, and perform the functions, conferred on the Tribunal by this Act or the referring Act.

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

The Chairperson, as soon as practicable after proceedings in relation to an application under section 21(4) begin, must determine whether the Tribunal is, for the purposes of the proceedings, to be constituted by the Chairperson or by the Deputy Chairperson.

**PART 5 – PROCEDURE OF TRIBUNAL**

*Division 1 – Preliminary procedure*

**21. Applications**

- (1) A National Board which is required under the National Law to refer a matter about a registered health practitioner or student to the responsible tribunal may apply to the Tribunal for a decision in relation to the matter.
- (2) A person who is the subject of a decision referred to in section 199(1) of the National Law and who may, under that Law, appeal to the responsible tribunal, may apply to the Tribunal for a review of the decision.
- (3) Except with the approval of the Tribunal, an application may only be made under subsection (2) in relation to a decision referred to in section 199(1) of the National Law within 28 days after –
  - (a) the decision is made; or
  - (b) reasons for the decision are given to a person under the National Law –whichever is the later.
- (4) A person who is the subject of a decision against which an application for a review of a decision may be made to the Tribunal under a referring Act may apply to the Tribunal for a review of the decision.

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- (5) Except with the approval of the Tribunal or as otherwise provided by the referring Act, an application may only be made under subsection (4) against a decision under a referring Act within 28 days after –
- (a) the decision is made; or
  - (b) reasons for the decision are given to a person under the referring Act –
- whichever is the later.
- (6) An application under this section must be –
- (a) in a form approved by the Chairperson of the Tribunal; and
  - (b) lodged with the registrar; and
  - (c) accompanied by any documents or further information that the Chairperson requires; and
  - (d) accompanied by any documents or further information that are required by the referring Act or the National Law, as the case may be, to be provided to the Tribunal; and
  - (e) accompanied by the prescribed fee, if any; and
  - (f) made in a manner approved by the Chairperson.
- (7) An applicant must serve a copy of an application under this section –

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- (a) on each other party to the proceedings in respect of the application; and
- (b) on any other person entitled to notice of the application under the referring Act or the National Law; and
- (c) on any person that the Tribunal or the registrar directs be given notice of the proceedings in relation to the application.

**22. Withdrawal of application**

- (1) An applicant may, if the Tribunal gives leave to do so, withdraw an application before the Tribunal determines the application.
- (2) An applicant who withdraws an application may not make a further application in relation to the facts or circumstances to which the application relates, except with the leave of the Tribunal.
- (3) If the Tribunal gives leave to withdraw an application under subsection (1), it may make an order for costs against the applicant.
- (4) An order under subsection (3) may be made on the application of a party to the proceedings or on the Tribunal's own initiative.

**23. Summary dismissal of proceedings**

- (1) At any time, the Tribunal may make an order summarily dismissing or striking out all, or any part, of proceedings that, in its opinion –
  - (a) are frivolous, vexatious, misconceived or lacking in substance; or
  - (b) are otherwise an abuse of process.
- (2) If the Tribunal makes an order under subsection (1) it may make an order for costs in respect of the proceedings or part of the proceedings dismissed or struck out.
- (3) An order under subsection (1) or (2) may be made on the application of a party to the proceedings or on the Tribunal’s own initiative.

**24. Parties to proceedings**

- (1) The parties to National Law proceedings are the persons who are, in accordance with the National Law, parties to the proceedings.
- (2) If an application is made to the Tribunal under section 21(4), the parties to proceedings in respect of the application are –
  - (a) the persons who are, in accordance with the referring Act, the parties to the proceedings; or



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- (b) if the referring Act does not specify the persons who are the parties to the proceedings, the following persons:
  - (i) the applicant;
  - (ii) the person who made the decision in respect of which the application is made;
  - (iii) if the Secretary is joined as a party to the proceedings under subsection (3), the Secretary.
- (3) The Secretary may, by notice to the Tribunal, become a party to proceedings other than National Law proceedings.

**25. Representation**

- (1) A party to proceedings is entitled to be represented in those proceedings by a legal practitioner or any other person.
- (2) The Secretary may be represented, in proceedings to which the Secretary becomes a party, by a legal practitioner or any other person appointed by the Secretary.

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

- (1) Subject to subsection (2), the beginning of proceedings for review of a decision does not

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affect the operation of the decision or prevent the taking of action to implement the decision.

- (2) Subsection (1) does not apply in relation to proceedings if –
  - (a) the referring Act to which the proceedings relate provides otherwise; or
  - (b) the Tribunal makes an order under subsection (3).
- (3) The Tribunal may make an order staying the operation of a decision to which an application under this Act relates.
- (4) The Tribunal may make an order under subsection (3) on the application of a party to the proceedings or on the Tribunal's own initiative.
- (5) The Tribunal may make an order under subsection (3) whether or not it has given any person whose interests may be affected by the order the opportunity to be heard.
- (6) In making an order under subsection (3), the Tribunal –
  - (a) may require any undertaking as to costs that it considers appropriate; and
  - (b) may make provision for the lifting of the order if conditions specified in the order are met or are not met.
- (7) The Tribunal may assess any costs referred to in subsection (6)(a).

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

- (1) If an application is made under section 21(2) or (4) for a review of a decision and the applicant has been given, by the person who made the decision, a statement of reasons for the decision, the applicant must provide the statement to the Tribunal.
- (2) If the Tribunal considers that there are documents that –
  - (a) are in the possession of a party to the proceedings; and
  - (b) may be relevant to the proceedings –the Tribunal may order the party to lodge a copy of each document with the Tribunal within the time specified in the notice.
- (3) This section applies despite any rule of law relating to privilege or the public interest in relation to the production of documents.

***Division 2 – Nature of proceedings***

**28. Review to consist of fresh hearing**

- (1) The purpose of a review by the Tribunal of a decision is to produce the correct and preferable result in respect of the matter to which the decision relates.

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- (2) The Tribunal must hear and decide a review of a decision by way of a fresh hearing on the merits of the matter to which the decision relates.

**29. How Tribunal to deal with referred matter**

- (1) The purpose of a decision of the Tribunal in relation to a matter referred to the Tribunal in accordance with section 21(1) is to produce the correct and preferable result in respect of the matter.
- (2) The Tribunal must hear and decide, by way of a hearing on the merits of the matter, a matter that is referred to the Tribunal in accordance with section 21(1).

**30. Hearing to be open to public**

- (1) Except as provided by this section, a hearing of the Tribunal is to be open to the public.
- (2) During any hearing in proceedings the Tribunal may, on the application of a party to the proceedings or on the Tribunal's own initiative, do either or both of the following, if it considers that there are compelling grounds to do so:
  - (a) make an order excluding any person from the hearing;
  - (b) make an order prohibiting the reporting or other disclosure of all or any part of the proceedings or prohibiting the

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reporting or other disclosure of particular information in respect of the proceedings.

- (3) Without limiting the grounds that may be relevant for the purposes of subsection (2), the Tribunal may exercise its power under that subsection if –
- (a) it is dealing with privileged information or information that has been communicated to the National Board or the Tribunal in confidence; or
  - (b) it is dealing with information concerning the personal affairs, finances or business arrangements of a person; or
  - (c) the disclosure of the information may be unfairly prejudicial to the reputation of a person.
- (4) Nothing in this section is to be taken to prevent the Tribunal from –
- (a) meeting in private for the purpose of preparing for any proceedings or any stage of any proceedings; or
  - (b) meeting in private for the purposes of reaching a finding on any matter in the course of any proceedings.
- (5) A person must not fail to comply with an order under subsection (2)(a).

Penalty: Fine not exceeding 25 penalty units.

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- (6) A person must not fail to comply with an order under subsection (2)(b).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

*Division 3 – Decisions and orders in proceedings*

**31. Powers of Tribunal to decide applications**

- (1) The Tribunal is to determine an application made to the Tribunal under section 21(1) by making a decision in accordance with section 196 or 197, as the case may be, of the National Law.
- (2) The Tribunal is to determine an application made to the Tribunal under section 21(2) by making a decision in accordance with section 202 of the National Law.
- (3) The Tribunal is to determine an application made to the Tribunal under section 21(4) for a review of a decision under a referring Act by making a decision in accordance with the referring Act.
- (4) If the referring Act to which an application under section 21(4) in respect of a decision relates does not set out how the Tribunal may decide the

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application, the Tribunal may determine the matter by –

- (a) affirming the decision; or
  - (b) varying the decision; or
  - (c) setting aside the decision and making another decision in substitution for it; or
  - (d) setting aside the decision and remitting the matter for reconsideration, by the person who made the decision, in accordance with any directions or recommendations of the Tribunal.
- (5) Subject to subsection (6), a decision of a person or body that is affirmed or varied by the Tribunal or a decision made by the Tribunal in substitution for a decision of a person or body –
- (a) is taken to be a decision of the person or body; and
  - (b) subject to any contrary order by the Tribunal, has, or is taken to have had, effect from the time at which the decision affirmed or varied, or for which the decision is substituted, had effect.
- (6) Subsection (5)(a) does not apply for the purposes of an appeal to the Supreme Court.

### **32. Decision-making by Tribunal**

- (1) If the Tribunal is constituted by 2 members for the purposes of proceedings and the opinions of those members on a question before them are equally divided, the question must be decided according to the opinion of the presiding member.
- (2) The Tribunal must make an order as to its decision in relation to proceedings as soon as practicable after the end of the hearing, or hearings, in respect of the proceedings.

### **33. Orders**

- (1) An order of the Tribunal must be in writing.
- (2) The Tribunal must give a copy of any order it makes in proceedings to –
  - (a) each party to the proceedings; and
  - (b) each other person entitled to notice of the proceedings or of the order under this Act, the National Law or the referring Act.
- (3) The Tribunal must give reasons for making an order in proceedings, other than an order that has effect only for the duration of the proceedings or a shorter period.
- (4) The Tribunal must give under subsection (3) its reasons for making an order, within 60 days, or a



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later period determined by the Tribunal, after making the order.

- (5) If the Tribunal gives orally reasons for making an order in proceedings, a party to the proceedings may, within 14 days after the order is made, request the Tribunal to give its reasons in writing.
- (6) The Tribunal must, within 45 days after receiving a request under subsection (5), comply with the request.
- (7) The Tribunal may extend the period referred to in subsection (6), but only if the Tribunal gives, to the person who requested the reasons for an order be given in writing, reasons for the extension.
- (8) If the Tribunal gives written reasons for making an order, it must include in those reasons its findings on material questions of fact.
- (9) An order of the Tribunal comes into effect immediately after it is made or at a later time, if any, specified in the order.

**34. Enforcement of orders**

- (1) An order of the Tribunal may, on the application of a party to the proceedings in which it is made, be filed in a court of competent jurisdiction.
- (2) An order of the Tribunal filed in a court under subsection (1) may be enforced as if it were an order of that court.

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**35. Correction of mistakes in orders**

- (1) The Tribunal may correct an order made by it if the order contains –
  - (a) a clerical mistake; or
  - (b) an error arising from an accidental slip or omission; or
  - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or
  - (d) a defect of form.
- (2) A correction of an order may be made on the application of a party to the proceedings or on the Tribunal’s own initiative.

***Division 4 – Procedure generally***

**36. General powers of Tribunal**

The Tribunal may –

- (a) require any person appearing before it to produce any document; and
- (b) require any person appearing before it to give evidence on oath or affirmation; and
- (c) require any person appearing before it to answer questions; and

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- (d) proceed with and determine any proceedings even though a person who has been summoned to appear does not appear in the proceedings; and
- (e) adjourn any proceedings from time to time and from place to place.

**37. Conduct of proceedings**

- (1) Except as otherwise provided by this Act or a referring Act, the Tribunal may determine its own procedure.
- (2) The Tribunal –
  - (a) must conduct its proceedings with as little formality, and as quickly, as a proper consideration of the matter before the Tribunal permits; and
  - (b) is not bound by the rules of evidence but may inform itself on any matter in any way it considers appropriate; and
  - (c) must observe the rules of procedural fairness.
- (3) The Chairperson, or the Deputy Chairperson, by whom the Tribunal is to be constituted in whole or in part for a particular proceedings is to preside over the proceedings.

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**38. Practice directions**

- (1) The Chairperson may –
  - (a) issue practice directions in relation to the practice and procedure of the Tribunal; and
  - (b) vary or revoke a practice direction issued under paragraph (a); and
  - (c) publish, in the manner the Chairperson thinks fit, practice directions issued under paragraph (a).
- (2) The practice and procedure of the Tribunal is to be in accordance with the practice directions from time to time in force, unless the provisions of any Act or the provisions of any rules or other statutory instruments made under an Act provide otherwise.

**39. Determinations**

- (1) At any time after proceedings begin, the Tribunal may –
  - (a) determine any question of law or procedure that has arisen or that is expected to arise later in the proceedings; and
  - (b) determine any other question that it considers necessary or convenient to determine in order to ensure that the remainder of the proceedings will be

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conducted fairly and as quickly as possible; and

- (c) give the directions, consistent with the practice directions issued under section 38, that it thinks fit for the purposes of resolving an issue or matter that it considers necessary or convenient to resolve for the remainder of the proceedings.
- (2) A question of law arising during proceedings may only be decided by the Chairperson, or the Deputy Chairperson, by whom the Tribunal is constituted in whole or in part for the proceedings.

**40. Costs**

- (1) Except as provided under this Act, the National Law or a referring Act, each party to proceedings under this Act must bear the party's own costs in the proceedings.
- (2) The Tribunal may order a party to proceedings to pay all the costs, or a part of the costs specified in the order, of another party to the proceedings if the Tribunal considers that it is in the interests of justice to do so.
- (3) In deciding whether to award costs in proceedings, the Tribunal is to take into account –

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- (a) whether a party to the proceedings has behaved in a way that has unnecessarily disadvantaged another party to the proceedings; and
  - (b) the nature and complexity of the proceedings; and
  - (c) the relative strengths of the claims made by the parties in the proceedings; and
  - (d) if the proceedings are for review of a decision –
    - (i) whether the applicant was accorded procedural fairness by the person who made the decision; and
    - (ii) whether the applicant genuinely attempted to enable, and assist, to make the decision, the person who made the decision; and
  - (e) the financial circumstances of the parties to the proceedings; and
  - (f) any other matter the Tribunal thinks relevant.
- (4) If the Tribunal considers that a representative of a party to proceedings, rather than the party, is responsible for behaviour, referred to in subsection (3)(a), that has unnecessarily disadvantaged another party to the proceedings, the Tribunal may order the representative to pay to the other party an amount specified in the

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order, as compensation for the unnecessary costs incurred by the other party as a result of the behaviour.

- (5) The Tribunal may not make an order under subsection (4) against a representative of a party to proceedings unless the representative has been given a reasonable opportunity to be heard before the order is made.
- (6) If an order is made under subsection (4) against a representative of a party to proceedings –
  - (a) the representative may not require the party to pay to the representative an amount, in addition to the amount that the party would otherwise be required to pay the representative, so as to reimburse the representative for the amount paid as a consequence of the order; and
  - (b) a party to the proceedings is not required to pay to a representative an amount, in addition to the amount that the party would otherwise be required to pay the representative, that the representative requires the party to pay so as to reimburse the representative for the amount paid as a consequence of the order.
- (7) Costs that may be ordered under this Act, the National Law or a referring Act may be ordered at any stage during proceedings or after the proceedings conclude.

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**41. Vacancies in Tribunal during proceedings**

- (1) Proceedings for which the Tribunal is constituted in whole or in part by the Chairperson or Deputy Chairperson, other than by virtue of section 7(2), are terminated if the Chairperson or Deputy Chairperson, respectively, vacates his or her office before the conclusion of the proceedings.
- (2) Proceedings for which the Tribunal is constituted by more than one member remain on foot despite that one of the members (other than the Chairperson or Deputy Chairperson) vacates his or her office for any reason before the conclusion of the proceedings.
- (3) Proceedings for which the Tribunal is constituted by more than one member are terminated if more than one of the members vacates his or her office for any reason before the conclusion of the proceeding.
- (4) If proceedings of the Tribunal are terminated under subsection (1) or (3), the Tribunal must be reconstituted in accordance with Part 4.

***Division 5 – Evidence***

**42. Summonses and orders to produce**

- (1) The Chairperson or Deputy Chairperson may issue a summons to a person to attend the Tribunal to give evidence and produce any documents that are referred to in the summons.



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- (2) A summons may be issued under subsection (1) at the request of a party to the proceedings or on the Tribunal's own initiative.
- (3) A person who attends the Tribunal in answer to a summons under subsection (1) is entitled to be paid the prescribed fees and allowances or, if no fees and allowances are prescribed, the fees and allowances (if any) determined by the Tribunal.
- (4) The fees and allowances are to be paid –
  - (a) if the person was summoned at the request of a party to the proceedings, by that party; or
  - (b) if the person was summoned on the initiative of the Tribunal, by the parties to the proceedings in the proportion determined by the Tribunal.
- (5) On the application of a party to proceedings, the Tribunal may order a person –
  - (a) who is not a party to the proceedings; and
  - (b) who has, or is likely to have, in the person's possession a document that is relevant to the proceedings –

to produce the document to the Tribunal or the party within the time specified in the order.

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**43. Evidence**

- (1) The Tribunal must allow a party to proceedings a reasonable opportunity –
  - (a) to call or give evidence; and
  - (b) to examine, cross-examine or re-examine witnesses; and
  - (c) to make submissions to the Tribunal.
- (2) Despite subsection (1), the Tribunal may refuse to allow a party to proceedings to call evidence on a matter if the Tribunal considers that there is already sufficient evidence of that matter before the Tribunal.
- (3) Evidence in proceedings –
  - (a) may be given orally or in writing; and
  - (b) if the Tribunal requires, must be given on oath or by affidavit.
- (4) A member may administer or cause to be administered an oath, or take or cause to be taken an affirmation, for the purpose of taking and receiving evidence during proceedings.

**44. Authorisation of person to take evidence**

- (1) The Tribunal may authorise, in writing, a person (whether or not a member) to take evidence on behalf of the Tribunal for the purposes of any proceedings.

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- (2) The Tribunal's power under subsection (1) to authorise the taking of evidence is exercisable only by the Chairperson or the Deputy Chairperson constituting in whole or in part the Tribunal for the proceedings.
- (3) A person may take evidence under this section outside Tasmania if authorised to do so by the Tribunal.
- (4) The Tribunal may give directions as to the taking of evidence under this section.
- (5) If a person other than a member is authorised to take evidence –
  - (a) the person has all the powers of a member in relation to the taking of evidence; and
  - (b) section 53(2)(b) applies as if the person were the Tribunal.
- (6) Evidence taken under this section –
  - (a) is to be taken to be evidence given to the Tribunal; and
  - (b) in the case of evidence taken outside Tasmania, is to be taken to have been given in Tasmania.

**45. Use of experts**

- (1) The Tribunal may call in the assistance of an expert to advise the Tribunal in respect of any

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matter arising in a proceeding before the Tribunal.

- (2) The parties to proceedings before the Tribunal –
  - (a) are responsible for the costs of the advice provided to the Tribunal by an expert called in by the Tribunal; and
  - (b) are to pay the costs in the proportions determined by the Tribunal.
- (3) The Tribunal is not bound by the advice provided by an expert called in by the Tribunal.

**46. Rule against self-incrimination does not apply**

- (1) A person is not excused from answering a question or producing a document in proceedings on the ground that the answer or document might tend to incriminate the person.
- (2) If the person claims, before answering a question or producing a document, that the answer or document might tend to incriminate the person, the answer or document is not admissible in evidence in any criminal proceedings in relation to an offence alleged to have been committed by the person, other than in proceedings in respect of the falsity of the answer or the document.

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**47. Other privileges**

- (1) Except as provided by section 46, a person is excused from answering a question or producing a document in proceedings if the person could not be compelled to answer the question or produce the document in proceedings in the Supreme Court.
- (2) The Tribunal may require a person to produce a document to it for the purpose of determining whether or not it is a document that the Tribunal has power to compel the person to produce.

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**PART 6 – MISCELLANEOUS**

**48. Registrar**

(1) In this section –

**“Secretary”** means the Secretary of the Department that is responsible, to the Minister to whom the administration of this Act is assigned, in relation to the administration of this Act.

- (2) The Secretary may appoint a State Service officer or State Service employee to be the registrar of the Health Practitioners Tribunal.
- (3) The registrar may hold that office in conjunction with State Service employment.
- (4) The registrar has and may exercise the functions or powers imposed or conferred on the registrar under this Act or any other Act.

**49. Judicial notice**

All courts must take judicial notice of –

- (a) the signature of a person who is, or was, a member; and
- (b) the fact that a person referred to in paragraph (a) is or was a member.

**50. Records of hearings**

The Tribunal is to keep a record, which may be an electronic record, of each hearing in proceedings before the Tribunal, other than any meeting of the Tribunal that is held in private.

**51. Publication of decisions of Tribunal**

The Tribunal may, as it thinks fit, publish in the manner it thinks fit, or refuse to publish, a decision of the Tribunal in respect of proceedings under this Act.

**52. Appeal to Supreme Court**

A party to proceedings under this Act may appeal to the Supreme Court, on a question of law, against a decision of the Tribunal in relation to the proceedings.

**53. Offences**

- (1) A person who has been served with a summons to attend the Tribunal must not, without reasonable excuse, fail to –
  - (a) attend as required by the summons until he or she has been excused or released from attendance by the Tribunal; or

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- (b) produce any document referred to in the summons that is in the person's possession.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person appearing as a witness before the Tribunal must not, without reasonable excuse –
  - (a) refuse to be sworn in or make an affirmation; or
  - (b) refuse to answer a question that the person is required by the Tribunal to answer.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person must not knowingly give false or misleading information to the Tribunal.

Penalty: Fine not exceeding 50 penalty units.

- (4) A person must not fail to comply with an order of the Tribunal.

Penalty: Fine not exceeding 50 penalty units.

- (5) Subsection (4) does not apply to a person if the person has not been given a copy of this section and a copy of the order has not been served on the person.

- (6) A person must not –
  - (a) insult a member while that member is performing functions as member; or



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- (b) insult, obstruct or hinder a person attending a hearing before the Tribunal;  
or
- (c) misbehave at a hearing before the Tribunal; or
- (d) interrupt a hearing before the Tribunal;  
or
- (e) obstruct or hinder a person from complying with an order of the Tribunal or a summons issued by the Tribunal; or
- (f) do any other act that would, if the Tribunal were the Supreme Court, constitute contempt of that Court.

Penalty: Fine not exceeding 50 penalty units.

**54. Secrecy**

- (1) This section applies to any person who –
  - (a) is or has been a member; or
  - (b) is or has been a State Service officer, or a State Service employee, who is engaged to provide services to the Tribunal.
- (2) Except as permitted by this section, a person to whom this section applies must not directly or indirectly make a record of, or disclose to any person, any information about the affairs of a person acquired in the performance of functions

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under or in connection with this Act, the National Law or a referring Act.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person to whom this section applies may record or disclose information referred to in subsection (2) –
- (a) with the written consent of the person to whom the information relates; or
  - (b) in connection with the performance of functions under this Act, the National Law or a referring Act.
- (4) A person to whom this section applies may disclose any information referred to in subsection (2) to a member of the police force for the purposes of reporting a suspected offence or assisting in the investigation of a suspected offence.
- (5) Nothing in this section applies to the recording or disclosure of –
- (a) information that consists of anything said or done at a hearing of the Tribunal, except if an order is made under section 30(2)(b) in relation to the information; or
  - (b) any decision or order of the Tribunal or the reasons for any such decision or order.

## **PART 7 – CONCLUDING PROVISIONS**

### **55. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may prescribe the fees payable for an application under section 21(2) or (4).
- (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.

### **56. 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.

### **57. Consequential amendment**

The legislation specified in Schedule 3 is amended as specified in that Schedule.

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**SCHEDULE 1 – CHAIRPERSON AND DEPUTY  
CHAIRPERSON**

Sections 8 and 9

**1. Chairperson**

- (1) The Chairperson is appointed for the period of not more than 5 years specified in his or her instrument of appointment.
- (2) A person may be re-appointed as the Chairperson.
- (3) The appointment of a magistrate as Chairperson does not affect –
  - (a) his or her tenure of office or status as a magistrate; or
  - (b) the payment of his or her salary or allowances as a magistrate; or
  - (c) any other rights or privileges that he or she has as a magistrate.
- (4) Service in the office of Chairperson is to be taken for all purposes to be service in the office of a magistrate.
- (5) Nothing in this Act prevents a magistrate appointed as Chairperson from constituting the Magistrates Court for the purpose of the exercise by that Court of any of its functions.
- (6) The Chairperson is entitled to the payment of –

- (a) the allowances; and
  - (b) the expenses –
- if any, that the Minister determines.

## **2. Deputy Chairperson**

- (1) The Deputy Chairperson is appointed for the period of not more than 5 years specified in his or her instrument of appointment.
- (2) A person may be re-appointed as the Deputy Chairperson.
- (3) The appointment of a magistrate as Deputy Chairperson does not affect –
  - (a) his or her tenure of office or status as a magistrate; or
  - (b) the payment of his or her salary or allowances as a magistrate; or
  - (c) any other rights or privileges that he or she has as a magistrate.
- (4) Service in the office of Deputy Chairperson is to be taken for all purposes to be service in the office of a magistrate.
- (5) Nothing in this Act prevents a magistrate appointed as Deputy Chairperson from constituting the Magistrates Court for the purpose of the exercise by that Court of any of its functions.

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- (6) The Deputy Chairperson is entitled to the payment of –
- (a) the allowances; and
  - (b) the expenses –
- if any, that the Minister determines.

**3. Vacation of office of Chairperson or Deputy Chairperson**

- (1) The Chairperson or Deputy Chairperson vacates his or her office as such if –
- (a) his or her appointment is revoked under subclause (2); or
  - (b) he or she ceases to be a magistrate.
- (2) The Minister may, by notice in writing to a person, revoke the appointment of the person as Chairperson or Deputy Chairperson.
- (3) The Minister may only revoke the appointment of a person as Chairperson or Deputy Chairperson if –
- (a) the person is, without good reason, absent from a hearing in proceedings in respect of which the Tribunal is constituted in whole or in part by the person; or
  - (b) the person is convicted, in Tasmania or elsewhere, of –

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- (i) a crime; or
- (ii) an offence punishable by imprisonment for a term of more than 12 months; or
- (c) the Minister is satisfied that the person is unable to competently perform the duties of a member.

**SCHEDULE 2 – PROFESSIONAL AND COMMUNITY  
MEMBERS**

Sections 11 and 13

**1. Remuneration of professional and community members**

- (1) A professional member, or a community member, is entitled to be paid the remuneration, including travelling and subsistence allowances, that the Minister determines.
- (2) A professional member, or a community member, who is a State Service employee or State Service officer is not entitled to remuneration under subclause (1) except with the approval of the Minister administering the *State Service Act 2000*.

**2. Holding of other office not a disqualification**

A holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.



**3. When persons cease to be professional members**

- (1) A person who is appointed as a professional member for proceedings holds office as a member until –
  - (a) the proceedings are concluded; or
  - (b) the person vacates his or her office as a member.
- (2) A person appointed as a professional member for proceedings may, by notice in writing to the Chairperson, resign his or her office as a member.
- (3) A professional member for proceedings vacates his or her office as a member if –
  - (a) he or she dies; or
  - (b) he or she resigns; or
  - (c) his or her appointment is revoked under subclause (4); or
  - (d) he or she becomes a member of a National Board or a State or Territory Board; or
  - (e) he or she ceases to be a registered health practitioner in respect of the health profession to which the proceedings relate; or
  - (f) his or her registration as a health practitioner in respect of the health

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profession to which the proceedings  
relate is suspended.

- (4) The Chairperson may, by notice in writing to a person, revoke the appointment of the person as a professional member for proceedings if –
- (a) the person is, without good reason or without the approval of the Chairperson, absent from a hearing in the proceedings;  
or
  - (b) the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors or makes an assignment of the member's remuneration or estate for their benefit;  
or
  - (c) the person is convicted, in Tasmania or elsewhere, of –
    - (i) a crime; or
    - (ii) an offence punishable by imprisonment for a term of more than 12 months; or
  - (d) the Chairperson is satisfied that the grounds for a notification about the member that has been received by the member under the National Law are such that the member ought not continue as a member; or

- (e) the Chairperson is satisfied that the member is unable to competently perform the duties of a member.

**4. When persons cease to be community members**

- (1) A person who is appointed as a community member for proceedings holds office as a member until –
  - (a) the proceedings are concluded; or
  - (b) the person vacates his or her office as a member.
- (2) A person appointed as a community member for proceedings may, by notice in writing to the Chairperson, resign his or her office as a member.
- (3) A community member for proceedings vacates his or her office as a member if –
  - (a) he or she dies; or
  - (b) he or she resigns; or
  - (c) his or her appointment is revoked under subclause (4); or
  - (d) he or she becomes a member of a National Board or a State or Territory Board; or
  - (e) he or she becomes a registered health practitioner.

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- (4) The Chairperson may, by notice in writing to a person, revoke the appointment of the person as a community member for proceedings if –
- (a) the person is, without good reason or without the approval of the Chairperson, absent from a hearing in the proceedings; or
  - (b) the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
  - (c) the person is convicted, in Tasmania or elsewhere, of –
    - (i) a crime; or
    - (ii) an offence punishable by imprisonment for a term of more than 12 months; or
  - (d) the Chairperson is satisfied that the member is unable to competently perform the duties of a member.

**SCHEDULE 3 – CONSEQUENTIAL AMENDMENT**

Section 57

***Health Practitioner Regulation National Law (Tasmania) Act***  
**2010**

1. Section 6 is repealed and the following section is substituted:

**6. Responsible tribunal for Health Practitioner Regulation  
National Law**

The Health Practitioners Tribunal established by the *Health Practitioners Tribunal Act 2010* is a responsible tribunal for the purposes of the Health Practitioner Regulation National Law.