

## CLAUSE NOTES

### *Tasmanian Civil and Administrative Tribunal (Miscellaneous Amendments) Bill 2023*

#### PART 1 – PRELIMINARY

**Clause 1      Short title**

Specifies the name of the proposed Act.

**Clause 2      Commencement**

Provides for most of the provisions in the Act to commence upon Royal Assent.

Provides for Part 5 of the Act to commence later, when it is proclaimed. Part 5 makes changes to the *Property Agents and Land Transactions Act 2016* that will confer jurisdiction for dealing with property agents matters on the Tasmanian Civil and Administrative Tribunal (TASCAT).

#### PART 2 – ANTI-DISCRIMINATION ACT 1998 AMENDED

**Clause 3      Principal Act**

Provides that the Principal Act being amended in Part 2 is the *Anti-Discrimination Act 1998*.

**Clause 4      Section 13 amended (Functions of Tribunal)**

Provides that when the Anti-Discrimination Commissioner decides to not accept a complaint, that decision can be reviewed by TASCAT.

Deciding to not accept a complaint is different in law to deciding to reject a complaint. Section 13 of the *Anti-Discrimination Act 1998* currently enables TASCAT to review a decision of the Commissioner relating to exemptions, withdrawals, rejections and dismissals of complaints, but not decisions to not accept complaints.

This means that a decision to not accept a complaint can currently only be reviewed by the Supreme Court of Tasmania. The amendment will change that to allow TASCAT to review these decisions as well.

**Clause 5      Section 65 amended (Review of rejected or not accepted complaints)**

Section 65 of the *Anti-Discrimination Act 1998* sets out the notification and application process where the Anti-Discrimination Commissioner rejects a complaint, and the complainant wants that decision to be reviewed.

This clause provides for a decision to not accept a complaint to also be subject to this process.

- Clause 6**                      **Section 72 amended (Review of rejection or dismissal)**
- Section 72 of the *Anti-Discrimination Act 1998* sets out what TASCAT can do after it has reviewed a decision by the Anti-Discrimination Commissioner.
- This clause provides for not accepting a complaint to be included in the types of decisions that this section covers.
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- Clause 7**                      **Section 98A amended (Application to Tribunal to withdraw complaint from inquiry or review)**
- Removes subsections (1), (2) and (3) of section 98A of the *Anti-Discrimination Act 1998* so that only the provisions within subsection (4) remain.
- Subsections (1), (2) and (3) are unnecessary because section 88 of the *Tasmanian Civil and Administrative Tribunal Act 2020* (the TASCAT Act) contains similar, broader provisions that enable TASCAT to deal with the withdrawal, dismissal or striking out of all or part of proceedings.
- Sub-section (4) is being retained because it allows the Tribunal to conduct an inquiry, or for the Anti-Discrimination Commissioner to investigate a complaint, if they are satisfied that the complaint was not withdrawn voluntarily or that it is in the public interest to do so.
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- Clause 8**                      **Section 109 amended (Regulations)**
- Provides for the power given to the Governor to make regulations under the Principal Act to be extended to cover the review of complaints that have not been accepted by the Anti-Discrimination Commissioner.

## PART 3 – CRIMINAL JUSTICE (MENTAL IMPAIRMENT) ACT 1999 AMENDED

### Clause 9      **Principal Act**

Provides that the Principal Act being amended in Part 3 is the *Criminal Justice (Mental Impairment) Act 1999*.

### Clause 10      **Section 37 amended (Review of persons detained under forensic orders)**

Provides that a supervision order may be reviewed by TASCAT even while the order is suspended.

Under section 37 of the Principal Act, supervision orders are reviewed by TASCAT within 12 months after the order is made and at least once in each period of 12 months afterwards.

When a person is admitted to an approved hospital, a secure mental health unit or sentenced to a term of imprisonment, supervision orders relating to that person are suspended. The amendment clarifies that suspended supervision orders may still be reviewed by TASCAT.

## PART 4 – HEALTH PRACTITIONERS TRIBUNAL ACT 2010 AMENDED

### Clause 11      **Principal Act**

Provides that the Principal Act being amended in Part 4 is the *Health Practitioners Tribunal Act 2010*.

### Clause 12      **Section 11 amended (Professional members of Tribunal)**

Removes sub-section (c) from section 11(2) of the Principal Act. This removes the requirement that a person designated as a professional member for TASCAT proceedings in health practitioner matters must be included on a list of persons provided by the National Board.

The provision of such a list will no longer be required when section 12 of the Principal Act is repealed under clause 13 of this Bill.

The other requirements for appointing professional members, relating to being a registered health practitioner, having suitable skill, knowledge or experience, and not being a member of a National Board or a State or Territory Board, will continue to apply under section 11(2) of the Principal Act.

### Clause 13      **Section 12 repealed**

Removes section 12 of the Principal Act. This section currently provides for the President of TASCAT to request the National Board to provide lists of professional members who are suitable for TASCAT proceedings in health practitioner matters.

The National Board is not required to provide such a list in other Australian states and territories and has indicated this is unnecessary.

TASCAT is able to appoint suitably skilled, knowledgeable, experienced and registered professional members for health practitioner matters without needing to refer to a list provided by the National Board.

## **PART 5 – PROPERTY AGENTS AND LAND TRANSACTIONS ACT 2016 AMENDED**

### **Clause 14      Principal Act**

Provides that the Principal Act being amended in Part 5 is the *Property Agents and Land Transactions Act 2016*.

### **Clause 15      Section 3 amended (Interpretation)**

Replaces the existing definition of 'Tribunal', which refers to the Property Agents Tribunal that was established in accordance with section 104 of the Principal Act, with a new definition that means the Tasmanian Civil and Administrative Tribunal.

This reflects that TASCAT will assume the functions and powers of the current Property Agents Tribunal.

### **Clause 16      Section 4 amended (Application of Act)**

Provides that the name of the organisation in section 4(1) of the Principal Act is to change from 'the Australian Society of Certified Practising Accountants' to 'CPA Australia'. This is a minor, consequential amendment to reflect the current name of the relevant organisation.

**Clause 17            Section 12 amended (Funds of Board)**

Removes the reference in section 12 of the Principal Act to money being used by the Property Agents Board to pay costs incurred by the Tribunal (that is, the Property Agents Tribunal).

Once TASCAT assumes the functions and powers of the Property Agents Tribunal, it will exercise those functions and powers in accordance with its own funding arrangements. The Board will not pay costs incurred by TASCAT.

**Clause 18            Section 14 amended (Annual report)**

Section 14 of the Principal Act currently requires the Property Agents Board to include, in its annual report to the Minister, any report that the Property Agents Tribunal made to the Board in the relevant period.

This clause removes that requirement, as TASCAT is independent of the Board and will not report to the Board.

**Clause 19            Section 100 amended (Powers of Board after investigation)**

Replaces the current sub-section 100(c) with a new sub-section. This sub-section currently allows the Board to refer a conduct complaint to the Property Agents Tribunal. The Board is the applicant in all matters which it refers to the Tribunal, but this was not clear in legislation.

The proposed sub-section makes it clear that where a complaint is referred to TASCAT, the Board is the applicant (rather than the person who may have originally made the complaint).

**Clause 20            Section 102 amended (Procedure if offence suspected)**

Section 102 of the Principal Act currently requires both the Property Agents Board and the Property Agents Tribunal to refer a matter to the Commissioner of Police if there is evidence that indicates a person has committed a criminal offence.

This clause removes the word 'Tribunal' where it appears in this section, as it is unnecessary for TASCAT to have this obligation. The Board's processes for investigating complaints will identify any alleged criminal behaviour that may require a referral to Tasmania Police, and this will occur before any complaint is referred to TASCAT.

**Clause 21            Part 7, Division 5 repealed**

Provides that all of Part 7 of Division 5 is repealed.

The provisions in Part 7 relate to the establishment, responsibilities, powers and procedures of the Property Agents Tribunal. These provisions will no longer be

required when TASCAT assumes the functions and powers of the Property Agents Tribunal.

**Clause 22      Section 110 amended (Determination by Tribunal)**

Amends section 110 of the Principal Act to provide that the maximum fine which can be issued by TASCAT under that section is 750 penalty units, and that any fines so issued are to be paid to the Property Agents Board. This is in line with similar provisions in the *Legal Profession Act 2007*.

**Clause 23      Section 111 amended (Costs and expenses of hearings)**

Amends section 111 of the Principal Act to allow TASCAT to make costs orders in relation to any proceedings before the Tribunal (not just hearings). Under the amended provisions, TASCAT will still be able to make a costs order against the Property Agents Board or against any other party to proceedings.

This clause also provides that certain provisions in the TASCAT Act will not apply to proceedings under the Principal Act. This is to ensure that there is clarity for the Tribunal when applying these costs provisions.

**Clause 24      Section 113 repealed**

Provides for the repeal of section 113 of the Principal Act. This section will no longer be required when TASCAT assumes the functions and powers of the Property Agents Tribunal, as section 140 of the TASCAT Act provides appropriate immunities and protections.

**Clause 25      Section 116 amended (Right to appeal decisions of Board)**

Removes subsection (5) of section 116 of the Principal Act. Repealing this provision means that section 78 of the TASCAT Act will apply instead. This is preferred because the TASCAT Act provision is much broader, allowing for a greater range of orders to be made upon determination of an appeal or review.

**Clause 26      Section 117 repealed**

Provides for the repeal of section 117 of the Principal Act. Repealing this provision means that section 136(1) of the TASCAT Act will apply instead, so appeals from a decision of TASCAT will be heard by the Supreme Court of Tasmania. The Supreme Court is a more appropriate court to review TASCAT's decisions than the Magistrates Court.

**Clause 27      Schedule 2 repealed**

Provides for the repeal of Schedule 2 of the Principal Act. This schedule relates to the meetings and membership of the Property Agents Tribunal. These provisions will no longer be required when TASCAT assumes the functions and

powers of the Property Agents Tribunal, as TASCAT has its own relevant provisions under the TASCAT Act.

## **PART 6 – TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 2020 AMENDED**

### **Clause 28      Principal Act**

Provides that the Principal Act being amended in Part 6 is the *Tasmanian Civil and Administrative Tribunal Act 2020*.

### **Clause 29      Section 3 amended (Interpretation)**

This clause inserts the definition of the new “stream” of proceedings being added to TASCAT under clause 32 of the Bill, being the Occupational and Disciplinary stream. This clause also removes the definition of the Health Practitioners stream of TASCAT, as health practitioner matters will be allocated to the new Occupational and Disciplinary stream.

### **Clause 30      Section 44 amended (Appointment of senior members and ordinary members)**

Amends section 44 of the Principal Act to provide that senior and ordinary members of TASCAT may be appointed for a period of “up to” 5 years, instead of for a fixed period of 5 years. This will allow TASCAT to regularise appointment timeframes and reduce the need to conduct multiple appointment processes.

### **Clause 31      Schedule 1 amended (Relevant Acts)**

Provides that the *Property Agents and Land Transactions Act 2016* is a ‘relevant Act’ for the purposes of the Principal Act. A relevant Act is an Act that confers original or review jurisdiction on TASCAT.

### **Clause 32      Schedule 2 amended (General Division)**

Subclause (a) of this clause provides that matters under the *Property Agents and Land Transactions Act 2016* are to be dealt with in the General Division of TASCAT.

Subclause (b) of this clause removes the existing Part 5 of Schedule 2 to the TASCAT Act, which deals with the Health Practitioners stream, and substitutes a new Part dealing with the Occupational and Disciplinary stream. Both health practitioners matters and property agents matters will be allocated to this new stream. This subclause identifies the relevant Acts, regulations and instruments in relation to which TASCAT will exercise its functions and powers in the Occupational and Disciplinary stream and sets out requirements for composition of the Tribunal for proceedings in this stream.

Subclause (c) of this clause makes changes to Part 8 of Schedule 2 to the TASCAT Act, which deals with the Resource and Planning stream. It removes specific provisions relating to timing that currently only apply in that stream so that section 115 of the TASCAT Act applies instead. This will allow TASCAT to extend or abridge time limits at its discretion, based on the particular circumstances of the matter, and make the Resource and Planning stream consistent with other TASCAT streams.

## **PART 7 – WATER MANAGEMENT ACT 1999 AMENDED**

### **Clause 33      Principal Act**

Provides that the Principal Act being amended in Part 7 is the *Water Management Act 1999*.

### **Clause 34      Section 278 amended (Form of appeal to Appeal Tribunal)**

Removes the mandatory requirement for a compulsory conference or alternative dispute resolution (ADR) process when certain appeals are made to TASCAT under the Principal Act.

These appeals generally relate to procedural fairness (a question of law) and are usually not suitable for mediation. TASCAT retains discretion under sections 99 and 102 of the TASCAT Act to send these matters to mediation if it is appropriate in the circumstances.

## **PART 8 – WORKERS REHABILITATION AND COMPENSATION ACT 1988 AMENDED**

### **Clause 35      Principal Act**

Provides that the Principal Act being amended in Part 8 is the *Workers Rehabilitation and Compensation Act 1988*.

### **Clause 36      Section 42H amended (Representation during conciliation process)**

Removes sub-sections (4), (5) and (6) from section 42H of the Principal Act. Removing these provisions means that section 98 of the TASCAT Act will apply instead. This is preferred because the TASCAT Act provisions are broader and allow a party to proceedings to be represented by an Australian legal practitioner (including during the conciliation process), or by another representative (with leave of the Tribunal and subject to the Tribunal Rules).

### **Clause 37      Section 47 repealed**

Removes section 47 of the Principal Act. Repealing this section means that section 98 of the TASCAT Act will apply instead. This is preferred because the TASCAT Act provisions are broader and allow a party to proceedings to be



represented by an Australian legal practitioner, or by another representative (with leave of the Tribunal and subject to the Tribunal Rules).

**Clause 38      Section 159 repealed**

Removes section 159 of the Principal Act. Repealing this provision means that section 125 of the TASCAT Act will apply instead. This is preferred because the TASCAT Act provisions are broader and allow for electronic service of notices, orders or other documents (if the person or body being served has consented).

**PART 9 – REPEAL OF ACT**

**Clause 39      Repeal of Act**

This is a standard provision for amending legislation, repealing the amending Act one year after all amendments have been incorporated into the principal Acts.