

DRAFT CLAUSE NOTES

Tasmanian Civil and Administrative Tribunal Bill 2020

- Clause 1** **Short title**
Clause 1 cites the Act as the *Tasmanian Civil and Administrative Tribunal Act 2020*.
- Clause 2** **Commencement**
Clause 2 provides for the Act to commence on the day or days it receives the Royal Assent.
- Clause 3** **Interpretation**
Clause 3 provides definitions of certain terms used in the Act.
- Clause 4** **Meaning of establishment day**
Clause 4 sets out certain matters relating to the establishment day for the Tribunal. (Clause 8 provides that the Tribunal is established on the establishment day.)
- Clause 5** **Reductions in remuneration and allowances**
Part 3 of the Act contains provisions preventing the reduction in remuneration or allowances payable to members of the Tribunal, during the member's term of office.
Clause 5 provides that a reference in Part 3 to a reduction in remuneration or allowances does not include a reduction, in certain circumstances, for members of the Tribunal who are appointed on a sessional basis, or for members of the Tribunal who agree to certain alterations in their appointment.
- Clause 6** **When person appointed for particular proceeding completes term of office**
The Act permits people to be appointed as members of the Tribunal for the purposes of dealing with particular proceedings.
Clause 6 sets out when a person appointed for particular proceedings completes their term of office.
- Clause 7** **Act binds Crown**
Clause 7 provides that the Act binds the Crown.
- Clause 8** **Establishment of Tribunal**

Clause 8 provides that the Tribunal is established on the establishment day. (Clause 4 sets out certain matters relating to the establishment day for the Tribunal.)

Clause 9 Tribunal to operate throughout State

Clause 9 provides for Registries of the Tribunal, requires the Tribunal to facilitate access to its services throughout Tasmania, and permits the Tribunal to sit at any place within or outside Tasmania.

Clause 10 Main objectives of Tribunal

Clause 10 sets out the main objectives of the Tribunal in dealing with matters within its jurisdiction and provides that the Tribunal should consult on certain matters from time to time.

Clause 11 Membership of Tribunal

Clause 11 defines the members of the Tribunal.

Clause 12 President

Clause 12 establishes the position of President of the Tribunal, who will be either a magistrate or eligible for appointment as a magistrate.

Clause 12 also sets out qualifications for appointment as President, the President's term of office, and requirements for the Minister to consult with the Chief Magistrate in certain circumstances.

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

Clause 13 provides for certain matters relating to the terms and conditions of appointment of the President of the Tribunal, including the remuneration and allowances that the President is, or may be, entitled to.

Clause 14 President's functions generally

Clause 14 provides for certain functions of the President of the Tribunal, including functions before the establishment day.

Clause 15 When person ceases to be President

Clause 15 provides for circumstances in which a person ceases to be the President of the Tribunal.

Clause 16 Suspension of appointment as President

Clause 16 provides the circumstances in which the Governor may suspend the President of the Tribunal, and requires the Minister to cause a statement to be provided to each House of Parliament relating to the suspension.

- Clause 17** **Parliament may confirm or revoke suspension of President for misconduct or misbehaviour**
- Clause 17 permits Parliament to confirm or revoke a suspension of the President of the Tribunal.
- Clause 18** **Governor may revoke or vary suspension of President**
- Clause 18 permits the Governor to vary or revoke a suspension of the President of the Tribunal, requires the Minister to cause a statement to be provided to each House of Parliament relating to the variation or revocation, and permits Parliament to confirm or revoke the variation or revocation of suspension.
- Clause 19** **Revocation of appointment as President**
- Clause 19 provides for Parliament to revoke the appointment of the President of the Tribunal.
- Clause 20** **Payment of person suspended from office of President**
- Clause 20 provides for matters relating to the payment of the salary of a suspended President of the Tribunal.
- Clause 21** **Acting President**
- Clause 21 sets out certain matters relating to the appointment of an Acting President of the Tribunal.
- Clause 22** **When person ceases to be Acting President**
- Clause 22 provides for the circumstances in which a person ceases to be the Acting President of the Tribunal.
- Clause 23** **Revocation of appointment as Acting President**
- Clause 23 provides for the revocation of appointment of an Acting President of the Tribunal.
- Clause 24** **Appointment of magistrates as President or Acting President not to affect tenure, &c.**
- Clause 24 provides that the appointment of a magistrate as President of the Tribunal, or as Acting President of the Tribunal, does not affect certain benefits, rights and privileges of the magistrate.
- Clause 25** **Relationship of Act to Magistrates Court, &c.**
- The *Magistrates Court Act 1987* provides the Chief Magistrate with powers relating to other magistrates and the business of certain lower courts. It also

makes permanent full-time magistrates members of the Magistrates Rule Committee.

Clause 25 provides that the Chief Magistrate is not to do certain things in relation to the Tribunal, or in relation to a President or Acting President of the Tribunal who is a magistrate. It also provides that the President of the Tribunal is not a member of the Magistrates Rule Committee, and permits a magistrate who is the President or Acting President to attend or engage in certain activities.

Clause 26 Appointment of Deputy Presidents

Clause 26 provides for certain matters relating to the appointment of a Deputy President of the Tribunal.

Clause 27 Terms and conditions of appointment as Deputy President

Clause 27 provides for certain matters relating to the terms and conditions of appointment of a Deputy President of the Tribunal.

Clause 28 Deputy President's functions generally

Clause 28 provides for certain functions of a Deputy President of the Tribunal.

Clause 29 When person ceases to be Deputy President

Clause 29 provides for the circumstances in which a person ceases to be a Deputy President of the Tribunal.

Clause 30 Suspension of appointment as Deputy President

Clause 30 provides the circumstances in which the Governor may suspend a Deputy President of the Tribunal, and requires the Minister to cause a statement to be provided to each House of Parliament relating to the suspension.

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

Clause 31 permits Parliament to confirm or revoke a suspension of a Deputy President of the Tribunal.

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

Clause 32 permits the Governor to vary or revoke a suspension of a Deputy President of the Tribunal, requires the Minister to cause a statement to be provided to each House of Parliament relating to the variation or revocation, and permits Parliament to confirm or revoke the variation or revocation of suspension.

Clause 33 Revocation of appointment as Deputy President

Clause 33 provides for Parliament to revoke the appointment of a Deputy President of the Tribunal.

Clause 34 Payment of person suspended from office of Deputy President

Clause 34 provides for matters relating to the payment of the salary of a suspended Deputy President of the Tribunal.

Clause 35 Acting Deputy Presidents

Clause 35 sets out certain matters relating to the appointment of an Acting Deputy President of the Tribunal.

Clause 36 Terms and conditions of appointment as Acting Deputy President

Clause 36 provides for certain matters relating to the terms and conditions of appointment of an Acting Deputy President of the Tribunal.

Clause 37 When person ceases to be Acting Deputy President

Clause 37 provides for the circumstances in which a person ceases to be an Acting Deputy President of the Tribunal.

Clause 38 Revocation of appointment as Acting Deputy President

Clause 38 provides for the circumstances in which the appointment of an Acting Deputy President of the Tribunal can be revoked.

Clause 39 Supplementary Deputy Presidents

Clause 39 provides for certain matters relating to the appointment of a supplementary Deputy President of the Tribunal.

A supplementary Deputy President can be appointed for a specified period, or in relation to particular proceedings.

It is expected that a supplementary Deputy President would generally be appointed in order to assist the Tribunal with a backlog of matters, or to deal with matters where the involvement of another Deputy President would result in a conflict of interest.

Clause 40 Terms and conditions of appointment as supplementary Deputy President

Clause 40 provides for certain matters relating to the terms and conditions of appointment of a supplementary Deputy President of the Tribunal.

Clause 41 When person ceases to be supplementary Deputy President

Clause 41 provides for the circumstances in which a person ceases to be a supplementary Deputy President of the Tribunal.

Clause 42 Revocation of appointment as supplementary Deputy President

Clause 42 provides for the revocation of appointment of a supplementary Deputy President of the Tribunal.

Clause 43 Selection and assessment panel

Clause 43 permits the Minister to appoint a panel to recommend selection criteria for senior and ordinary members of the Tribunal, and to assess candidates and provide advice on appointment to positions.

Clause 44 Appointment of senior members and ordinary members

Clause 44 provides for certain matters relating to the appointment of senior and ordinary members of the Tribunal.

Clause 45 Terms and conditions of appointment as senior member or ordinary member

Clause 45 provides for certain matters relating to the terms and conditions of appointment of a senior member and an ordinary member of the Tribunal.

Clause 46 When senior member or ordinary member ceases to hold office

Clause 46 provides for the circumstances in which a person ceases to be a senior member or an ordinary member of the Tribunal.

Clause 47 Revocation or suspension from office of senior member or ordinary member

Clause 47 provides the circumstances in which the Governor may revoke the appointment of a senior member or ordinary member of the Tribunal.

Clause 47 also sets out certain matters relating to the suspension from office of a senior member or an ordinary member of the Tribunal.

Clause 48 Supplementary members

Clause 48 provides for certain matters relating to the appointment of a supplementary senior member or ordinary member of the Tribunal.

Supplementary senior and ordinary members can be appointed for a specified period, or in relation to particular proceedings.

It is expected that a supplementary senior or ordinary member would generally be appointed in order to assist the Tribunal with a backlog of matters, or to deal with matters where the involvement of another member would result in a conflict of interest.

Clause 49 Terms and conditions of appointment as supplementary member

Clause 49 provides for the terms and conditions of appointment of a supplementary senior member and ordinary member of the Tribunal.

Clause 50 When supplementary member ceases to hold office

Clause 50 provides for the circumstances in which a person ceases to be a supplementary senior member or ordinary member of the Tribunal.

Clause 51 Effect of State Service employment or appointment

Clause 51 permits people to hold certain offices as members of the Tribunal in conjunction with State Service appointment, provides for the non-application of the *State Service Act 2000* to such persons in certain circumstances, and provides for certain matters relating to remuneration and allowances for such persons.

Clause 52 Engagement in other work by members

Clause 52 requires members of the Tribunal to advise of other employment or work and to not engage in such employment or work in certain circumstances.

Clause 53 Registrars

Clause 53 provides for certain matters relating to the appointment of both the Registrar of the Tribunal and the Deputy Registrars of the Tribunal.

Clause 54 Functions of registrars

Clause 54 provides for the functions of the Registrar of the Tribunal and the Deputy Registrars of the Tribunal.

Clause 55 Delegation

Clause 55 provides for the Registrar of the Tribunal and the Deputy Registrars of the Tribunal to delegate functions.

Clause 56 Other staff of Tribunal

Clause 56 provides for State Service officers and employees to be made available to the Tribunal and sets out circumstances in which they are subject to the direction of the President of the Tribunal.

Clause 57 Staff may be designated to be officers of Tribunal

The Registrar of the Tribunal and the Deputy Registrars of the Tribunal are officers of the Tribunal by virtue of the definition of 'officers of the Tribunal' in clause 3.

Clause 57 allows the Registrar of the Tribunal to designate certain other people to be officers of the Tribunal.

The powers of officers of the Tribunal will be set out in a forthcoming Bill.

Clause 58 Jurisdiction of Tribunal

Clause 58 provides that the Tribunal has the jurisdiction conferred on it by or under the Act or any other Act.

Schedules 1, 2 and 3 of the Act set out sources of the Tribunal's jurisdiction.

Clause 59 Divisions of Tribunal

Clause 59 establishes the Protective Division and the General Division of the Tribunal and provides for the membership of Divisions of the Tribunal and certain other matters.

Clause 60 Division Heads

Clause 60 provides for certain matters relating to Division Heads of the Tribunal, including the appointment and removal of a Division Head.

Clause 61 Functions and powers of Division Heads and delegation

Clause 61 sets out certain functions and powers of a Division Head of the Tribunal.

Clause 62 Assignment of members to Divisions of Tribunal and streams

Clause 62 provides for the President to assign and vary the assignment of members to Divisions of the Tribunal.

Clause 63 Streams of Divisions of Tribunal

Clause 63 sets out certain matters relating to streams of the Divisions of the Tribunal.

Clause 64 Confidentiality

A number of Acts providing the Tribunal with jurisdiction contain provisions relating to confidentiality of information.

Clause 64 provides that certain information can be obtained by, and provided to, certain members and staff of the Tribunal, and members and staff of a relevant Board or Tribunal (as defined in clause 3).

Clause 64 permits sharing of information and will allow staff of a relevant Board or Tribunal to assist the staff of another relevant Board or Tribunal prior to the establishment day.

Clause 65 Use of facilities, &c.

Clause 65 permits the President, Acting President or the Registrar of the Tribunal to give directions to staff of a relevant Board or Tribunal relating to facilities, equipment or use of services of staff.

Clause 65 will help to ensure the efficient and effective use of resources at 38 Barrack Street, Hobart, prior to the establishment day.

Clause 66 Persons and bodies who may make rules of Tribunal

Clause 66 sets out who may make rules of the Tribunal and provides for certain matters relating to a Rules Committee.

Clause 67 Rules

Clause 67 sets out certain subject matters for the rules of the Tribunal.

Clause 68 Codes of conduct

Clause 68 provides for the President to prepare and issue a code of conduct.

Clause 69 Appointments and other matters to facilitate establishment of Tribunal

Clause 69 sets out certain matters relating to the appointment of people, under the Act, prior to the establishment day.

Clause 69 also provides that the President, or an Acting President, of the Tribunal is taken to be the Division Head of a Division until another Division Head is assigned.

Clause 70 Regulations

Clause 70 provides regulation-making powers in relation to the Tribunal.

Clause 71 Administration of Act

Clause 71 provides for the administration of the Act until provision is made for the administration under the *Administrative Arrangements Act 1990*.

Schedule 1 Relevant Acts

Schedule 1 lists certain relevant Acts. Clause 3 defines 'relevant Act'.

Schedule 2 General Division

Schedule 2 sets out certain matters relating to the General Division of the Tribunal.

Schedule 3 Protective Division

Schedule 3 sets out certain matters relating to the Protective Division of the Tribunal.