

TRANSITION INFORMATION

Mental Health Stream

The following is a brief summary of the changes to the legislation and where current legislative operations are maintained or preserved in the new *Tasmanian Civil and Administrative Tribunal Act 2020*.

- 1.1 The statutory reforms to implement the Tasmanian Civil and Administrative Tribunal have resulted in some changes to the *Mental Health Act 2013* and related legislation but had minimal effect upon the existing day to day processes under relevant legislation within the Mental Health Stream.
- 1.2 Section 152 to Section 160 of the *Tasmanian Civil and Administrative Tribunal Act 2020* contain the provisions which preserve certain processes and rights that accrued prior to the commencement date of the TASCAT. Those requirements have been considered and implemented by the Mental Health Stream in its processes.
- 1.3 It is important to note that Section 7A of the *Tasmanian Civil and Administrative Tribunal Act 2020* operates to override any provision of the *Tasmanian Civil and Administrative Tribunal Act 2020* which is inconsistent with the provisions of a 'relevant Act'. The *Mental Health Act 2013* and other statutes within the jurisdiction of the Mental Health Stream are 'relevant Acts.'
- 1.4 It is also important to note that Section 59(7) of the *Tasmanian Civil and Administrative Tribunal Act 2020* operates to override any provision of the *Tasmanian Civil and Administrative Tribunal Act 2020* which is inconsistent with provisions contained in Schedule 3 of the *Tasmanian Civil and Administrative Tribunal Act 2020*.
- 1.5 A number of provisions in the *Mental Health Act 2013* have been repealed. The table below provides details about where the equivalent power can be found in the *Tasmanian Civil and Administrative Tribunal Act 2020*:

Mental Health Act 2013 provision repealed	Equivalent provision in <i>Tasmanian Civil and Administrative Tribunal Act 2020</i>
s167 – establishment of the Mental Health Tribunal	s8 – establishment of the Tasmanian Civil and Administrative Tribunal s11 – membership of the Tribunal Sch 3, Part 5, Clause 3 – composition of Tribunal in relation to Mental Health Stream
s169 (1) – power to do all things necessary to perform functions	s14 – President's functions generally s28 – Deputy President's functions generally (both have a power to do all things necessary to perform their functions)

s170 and s171 – sitting in divisions and acting by majority	s59 – Divisions of the Tribunal s62 – assignment of members to Divisions of the Tribunal Schedule 3, Part 5, clause 3 – Composition of Tribunal in relation to Mental Health Stream
s172(1) – general power to adjourn	s83(3)(f) – power to adjourn
s173 – questions of law	s117
s174 – appeals from determinations	Part 10 – Appeals to the Supreme Court
s175 – appeals procedure	s137 – appeals procedure s138 – determination of appeal
s176 – registrar and staff	s53 and s56
s178 – annual report	s143
s199 (2) and (3) – judicial notice of signature of President, Deputy President and Registrar and copy of determination is evidence of the determination	s127 – proof of decisions and orders of Tribunal
s216 contravention of Tribunal determinations	s126 – enforcement of decisions and orders of Tribunal
Schedule 3 – membership of the Tribunal	Part 3 – membership and staff of Tribunal Schedule 3, Part 5, Clause 3 – composition of Tribunal in relation to Mental Health Stream
Sch 4, Part 2, Clause 1 – President determines sitting times and places	s80 - sittings
Sch 4, Part 2, Clause 5 – informality and expedition	s10 (1)(f) – to act with as little formality and technicality as possible
Sch 4, Part 2, Clause 6(1)(2) and (3) - evidence	s79 – principles governing proceedings s83 – practice and procedure generally
Sch 4, Part 2, Clause 6(5) – witness has the same protections as a Supreme Court witness	s140 – protection and immunities
Sch 4, Part 2, Clause 7(4)(5)(6) – making arrangements for the representation of a patient	s98 – representation
Sch 4, Part 3 – practice directions	s93 – practice directions
Sch 4, Part 4, Clause 1 – general powers (summons, production of documents, requiring any person to answer questions, determine proceedings in the absence of a person who has been summonsed, adjourn any proceedings)	s104 – power to require a person to give evidence or to produce s83(3)(f) – power to adjourn
Sch 4, Part 4, Clause 5 – contempt of Tribunal	S128 – disrupting proceedings of the Tribunal
Sch 4, Part 5 – votes and decisions	S68 – decisions of 2 or more members constitute Tribunal S83 – practice and procedure generally