

LEGISLATIVE COUNCIL

Civil and Administrative Tribunal Amendment Bill 2013

First print

Proposed amendments

- No. 1 Page 2, clause 2 (2), line 7. Omit “Schedule 2 commences”. Insert instead “Schedules 2 and 3 commence”.
- No. 2 Page 13, Schedule 1 [25], proposed section 28. Insert after line 3:
- (3) The jurisdiction of the Tribunal for the purposes of the *Anti-Discrimination Act 1977* (other than in connection with its administrative review jurisdiction) is concurrent with that of the Industrial Relations Commission and is exercisable subject to the provisions of Part 1A of Chapter 4 of the *Industrial Relations Act 1996*.
- No. 3 Page 88. Insert after line 10:

**Schedule 3 Amendment of Industrial Relations Act 1996
No 17**

Chapter 4 Industrial Relations Commission

Insert after Part 1:

**Part 1A Special occupational and equal opportunity
functions of Commission**

146E Definitions

In this Part:

administrative review jurisdiction of the Civil and Administrative Tribunal has the same meaning as in the *Civil and Administrative Tribunal Act 2013*.

equal opportunity functions means such functions as are conferred or imposed on the Civil and Administrative Tribunal (other than in connection with its administrative review jurisdiction) by or under the *Anti-Discrimination Act 1977* that, but for this Part, would have been exercisable only by the Tribunal.

transferred occupational functions means such functions that, but for this Part, would have been conferred or imposed on the Civil and Administrative Tribunal (other than in connection with its

administrative review jurisdiction) by or under any of the following legislation:

Health Practitioner Regulation National Law (NSW) (but only in its application to health practitioners other than medical practitioners, nurses and midwives)

Occupational Licensing National Law (NSW)

Veterinary Practice Act 2003

146F Commission has jurisdiction to exercise transferred occupational functions instead of NCAT

- (1) The Commission is taken to have the jurisdiction to exercise the transferred occupational functions instead of the Civil and Administrative Tribunal.
- (2) Subject to this Part and the regulations, the following provisions apply to references in transferred occupational function provisions:
 - (a) a reference to the Civil and Administrative Tribunal is to be read as reference to the Commission,
 - (b) a reference to the President of the Civil and Administrative Tribunal, a Division Head of a Division of the Tribunal or a List Manager for a Division List for a Division of the Tribunal is to be read as a reference to the President of the Commission,
 - (c) a reference to any other member of the Civil and Administrative Tribunal is to be read as a reference to a member of the Commission,
 - (d) a reference to a registrar of the Civil and Administrative Tribunal is to be read as a reference to the Industrial Registrar,
 - (e) a reference to the Occupational Division of the Civil and Administrative Tribunal in connection with the transferred occupational functions is to be read as a reference to the Commission,
 - (f) subject to paragraph (g), a reference to the *Civil and Administrative Tribunal Act 2013* is to be read as a reference to this Act,
 - (g) a reference to any other provision of the *Civil and Administrative Tribunal Act 2013* is to be read as reference to a corresponding or substantially corresponding provision of this Act (if any).
- (3) The provisions of Division 3 of Part 2 of the *Civil and Administrative Tribunal Act 2013* are taken to apply (with such modifications are necessary or as may be prescribed by the regulations) in relation to the transferred occupational functions as if the transferred occupational functions were being transferred from an existing tribunal (within the meaning of that Part) to the Commission instead of to the Civil and Administrative Tribunal.
- (4) The regulations may make provision for or with respect to:
 - (a) the updating of references in transferred occupational function provisions to the Civil and Administrative Tribunal, its members, its registrars or other members of staff and its functions, and
 - (b) matters of a savings or transitional nature consequent on the transfer of the transferred occupational functions from the Civil and Administrative Tribunal to the Commission.
- (5) In this section:
transferred occupational function provision means:

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- (a) a provision of an Act or statutory rule that confers or imposes a function that is one of the transferred occupational functions, and
 - (b) a provision of Division 3 of Part 2 of the *Civil and Administrative Tribunal Act 2013* (as applied by subsection (3)).

146G Commission has concurrent jurisdiction to exercise equal opportunity functions

- (1) Both the Commission and the Civil and Administrative Tribunal are taken to have concurrent jurisdiction with respect to the equal opportunity functions.
- (2) Subject to this Part and the regulations, the following provisions apply to references in provisions of the *Anti-Discrimination Act 1977* that confer or impose any of the equal opportunity functions when those functions are exercised by the Commission:
 - (a) a reference to the Civil and Administrative Tribunal is to be read as reference to the Commission,
 - (b) a reference to the President of the Civil and Administrative Tribunal, a Division Head of a Division of the Tribunal or a List Manager for a Division List for a Division of the Tribunal is to be read as a reference to the President of the Commission,
 - (c) a reference to any other member of the Civil and Administrative Tribunal is to be read as a reference to a member of the Commission,
 - (d) a reference to a registrar of the Civil and Administrative Tribunal is to be read as a reference to the Industrial Registrar,
 - (e) subject to paragraph (f), a reference to the *Civil and Administrative Tribunal Act 2013* is to be read as a reference to this Act,
 - (f) a reference to any other provision of the *Civil and Administrative Tribunal Act 2013* is to be read as reference to a corresponding or substantially corresponding provision of this Act (if any).
- (3) A person cannot make an application:
 - (a) to the Commission for the exercise of any of the equal opportunity functions if the person has already applied to the Civil and Administrative Tribunal for the exercise of the same function in respect of the same (or substantially the same) matter, or
 - (b) to the Civil and Administrative Tribunal for the exercise of any of the equal opportunity functions if the person has already applied to the Commission for the exercise of the same function in respect of the same (or substantially the same) matter.
- (4) However, subsection (3) does not prevent a person from making an application to the Commission or Civil and Administrative Tribunal for the exercise of any of the equal opportunity functions if the earlier application for the exercise of the same function has been withdrawn with the approval of the body in which the application was made.

146H Constitution of Commission

- (1) The Commission, when exercising any of the equal opportunity functions or transferred occupational functions, is to be constituted by 1 member who is a judicial member or an Australian lawyer of at least 7 years' standing.
- (2) The President is to enter into arrangements with such professional associations and regulatory bodies having functions under legislation

referred to in the definition of *transferred occupational functions* in section 146E as the President considers appropriate for the purpose of obtaining assistance from suitably qualified professionals and community members when the Commission is exercising any of the transferred occupational functions in disciplinary proceedings against a person.

- (3) The President is to ensure that the Commission, when exercising any of the transferred occupational functions in disciplinary proceedings against a person, is assisted by 2 persons selected in accordance with arrangements entered into for the purposes of subsection (2).
- (4) If the Commission is being assisted in proceedings by persons selected as provided by subsection (2):
 - (a) the Commission cannot make a decision in the proceedings unless at least one of the persons concurs in the decision, and
 - (b) the persons assisting have the same protection and immunities as a member of the Commission with respect to their assistance.

146I Appeals against decisions of Commission

- (1) Each of the following decisions made by the Commission in exercise of any of the transferred occupational functions (a *profession decision*) is appealable under this section:
 - (a) a decision for the purposes of the *Health Practitioner Regulation National Law (NSW)*,
 - (b) a decision for the purposes of the *Veterinary Practice Act 2003*.
- (2) A party to proceedings in which a profession decision is made may appeal against the decision in accordance with this section to the Supreme Court.
- (3) An appeal to the Supreme Court under this section may be made as of right on any question of law, or with the leave of the Court, on any other grounds.
- (4) Despite subsections (2) and (3), an appeal does not lie to the Supreme Court under this section against any of the following decisions except by leave of the Court:
 - (a) an interlocutory decision of the Commission,
 - (b) a decision made with the consent of the parties,
 - (c) a decision as to costs.
- (5) The Supreme Court may:
 - (a) decide to deal with the appeal by way of a new hearing if it considers that the grounds for the appeal warrant a new hearing, and
 - (b) permit such fresh evidence, or evidence in addition to or in substitution for the evidence received by the Commission, to be given in the new hearing as it considers appropriate in the circumstances.
- (6) In determining an appeal under this section, the Supreme Court may make such orders as it considers appropriate in light of its decision on the appeal, including (but not limited to) orders that provide for any one or more of the following:
 - (a) the decision under appeal to be confirmed, affirmed or varied,
 - (b) the decision under appeal to be quashed or set aside,
 - (c) the decision under appeal to be quashed or set aside and for another decision to be substituted for it,

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- (d) the whole or any part of the case to be reconsidered by the Tribunal at first instance, either with or without further evidence, in accordance with the directions of the Court.
 - (7) Subject to any interlocutory order made by the Supreme Court, an appeal under this section does not affect the operation of the decision under appeal or prevent the taking of action to implement the decision.
 - (8) This section does not limit the application of Part 7 or Chapter 7A in relation to appeals against any decisions of the Commission other than profession decisions.

146J Effect of Part

Except as provided by section 146I (8), this Part has effect despite anything to the contrary in:

- (a) any other provisions of this Act (including Part 7 and Chapter 7A), or
- (b) any other Act or law (including provisions relating to practice and procedure or constitution requirements).

No. 4 Long title. Insert “to amend the *Industrial Relations Act 1996* to confer certain jurisdiction on the Commission concerning certain occupational and equal opportunity matters;” after “*Administrative Decisions Tribunal Act 1997*;”.