

Legislative Council—No 26

As received from the House of Assembly and read a first time, 6 August 2014

South Australia

Statutes Amendment (SACAT) Bill 2014

A BILL FOR

An Act to amend the *Advance Care Directives Act 2013*; the *Aged and Infirm Persons' Property Act 1940*; the *Community Housing Providers (National Law) (South Australia) Act 2013*; the *Consent to Medical Treatment and Palliative Care Act 1995*; the *First Home and Housing Construction Grants Act 2000*; the *Freedom of Information Act 1991*; the *Guardianship and Administration Act 1993*; the *Intervention Orders (Prevention of Abuse) Act 2009*; the *Mental Health Act 2009*; the *Public Sector Act 2009*; the *Residential Parks Act 2007*; the *Residential Tenancies Act 1995*; the *Retirement Villages Act 1987*; the *South Australian Civil and Administrative Tribunal Act 2013* and the *South Australian Housing Trust Act 1995*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (SACAT) Act 2014*.

2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Advance Care Directives Act 2013*

4—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *binding provision* insert:

decision, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

(2) Section 3(1), definition of *Guardianship Board*—delete the definition

15 (3) Section 3(1)—after the definition of *impaired decision-making capacity* insert:

internal review means a review under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*;

(4) Section 3(1)—after the definition of *substitute decision-maker* insert:

20 *Tribunal* means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

5—Amendment of section 27—Substitute decision-maker may renounce appointment

Section 27(3)—delete "Guardianship Board" and substitute:

25 Tribunal

6—Amendment of section 31—Tribunal to be advised of wish for revocation

(1) Section 31—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

30 (2) Section 31—after subsection (5) insert:

(6) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, a review under this section will be taken to come within the Tribunal's original jurisdiction.

7—Amendment of section 32—Revoking advance care directives where person not competent

- (1) Section 32—delete "Guardianship Board" wherever occurring and substitute in each case:

5 Tribunal

- (2) Section 32(4)(b)—delete paragraph (b)

8—Amendment of section 45—Resolution of disputes by Public Advocate

- (1) Section 45—delete "Guardianship Board" wherever occurring and substitute in each case:

10 Tribunal

- (2) Section 45(10)—delete "*Guardianship and Administration Act 1993*" and substitute:
South Australian Civil and Administrative Tribunal Act 2013

9—Amendment of section 46—Public Advocate may refer matter to Tribunal

15 Section 46(1)—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

10—Insertion of section 46A

After section 46 insert:

20 **46A—Public Advocate may refer question of law to Supreme Court**

The Public Advocate may refer any question of law for the opinion of the Supreme Court.

11—Substitution of heading to Part 7 Division 3

Heading to Part 7 Division 3—delete the heading and substitute:

25 **Division 3—Resolution of disputes by Tribunal**

12—Amendment of section 47—Tribunal to give priority to wishes of person who gave advance care directive

- (1) Section 47—delete "Guardianship Board" first occurring and substitute:

Tribunal

- 30 (2) Section 47(b)—delete paragraph (b)

13—Amendment of section 48—Resolution of disputes by Tribunal

- (1) Section 48—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

(2) Section 48(2)—delete subsection (2) and substitute:

(2) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*—

- (a) a review contemplated by subsection (1)(a) will be taken to come within the Tribunal's review jurisdiction; and
- (b) a declaration or direction contemplated by subsection (1)(b) will be taken to come within the Tribunal's original jurisdiction.

(3) Section 48(6) and (7)—delete subsections (6) and (7) and substitute:

(6) Section 51 of the *South Australian Civil and Administrative Tribunal Act 2013* does not apply to, or in relation to, proceedings under this section.

(4) Section 48(9)—delete subsection (9)

14—Amendment of section 49—Tribunal may refer matter to Public Advocate

Section 49—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

15—Amendment of section 50—Failing to comply with direction of Tribunal

Section 50(1)—delete "Guardianship Board under this Division" and substitute:

Tribunal under section 48

16—Amendment of section 51—Orders of Tribunal in relation to substitute decision-makers

(1) Section 51—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

(2) Section 51(3) and (4)—delete subsections (3) and (4)

17—Substitution of heading to Part 7 Division 4

Heading to Part 7 Division 4—delete the heading and substitute:

Division 4—Urgent review by Supreme Court of substitute decision-maker's decision

5 18—Substitution of Part 7 Division 5

Part 7 Division 5—delete Division 5 and substitute:

Division 5—Reviews and appeals

53—Reviews and appeals

10 The following provisions operate in connection with the application of Part 5 of the *South Australian Civil and Administrative Tribunal Act 2013* in relation to this Act:

- 15 (a) a decision of the Tribunal not to authorise publication of a report of proceedings before the Tribunal may not be the subject of an application for internal review;
- 20 (b) subject to paragraph (a), an application for internal review may be made by—
 - (i) the applicant in proceedings before the Tribunal in the exercise of its original jurisdiction (within the meaning of the *South Australian Civil and Administrative Tribunal Act 2013*) for the purposes of this Act; or
 - (ii) a person to whom the proceedings relate (if not the applicant under paragraph (a)); or
 - 25 (iii) the Public Advocate; or
 - (iv) any person who presented evidence or material before, or made submissions to, the Tribunal in the relevant proceedings; or
 - (v) any other person who satisfies the Tribunal that he or she has a proper interest in the matter;
- 30 (c) the person to whom an application for internal review relates (if he or she is not the applicant) will be a party to those proceedings;
- 35 (d) the Tribunal may make an order for costs against a party to proceedings for internal review, but only if the Tribunal is satisfied that the institution of the proceedings, or the party's conduct in relation to the proceedings, was frivolous, vexatious or calculated to cause delay;
- 40 (e) an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* must be instituted within 14 days—

54A—Reasons for decisions

The Tribunal must, on request by a person who has a right of internal review of a decision of the Tribunal or who satisfies the Tribunal that he or she has a proper interest in the matter, furnish the person with a written statement of the Tribunal's reasons for the decision, but not—

- (a) if the request is made after the period for the review has expired; or
- (b) if a review has been instituted—after the review has been decided.

54B—Representation of person who is subject of proceedings

- (1) A person who is the subject of proceedings before the Tribunal is entitled to appear before the Tribunal by—
 - (a) the Public Advocate; or
 - (b) except in the case of an internal review—by a recognised advocate.
- (2) Subsection (1) applies in addition to section 56(1) of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (3) In this section—

recognised advocate means a person who is, by instrument in writing, recognised by the Tribunal as a person who is qualified to act as an advocate in proceedings before the Tribunal for the person to whom the proceedings relate.

20—Transitional provisions

- (1) In this section—

Guardianship Board means the Guardianship Board established under the *Guardianship and Administration Act 1993*;

principal Act means the *Advance Care Directives Act 2013*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

- (2) A right to make any application or referral, or to seek a review, under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Guardianship Board, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- (3) Any proceedings before the Guardianship Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.

- (4) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Guardianship Board, and draw any conclusions of fact from that evidence that appear proper; and
 - (b) adopt any findings or determinations of the Guardianship Board that may be relevant to proceedings before the Tribunal; and
 - (c) adopt or make any decision (including a decision in the nature of a permission), direction or order in relation to proceedings before the Guardianship Board before the relevant day (including so as to make a decision or give a permission, direction or order, in relation to proceedings fully heard before the relevant day); and
 - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (5) Nothing in this section affects a right to appeal to the Administrative and Disciplinary Division of the District Court against a decision, direction or order of the Guardianship Board made or given before the relevant day.

Part 3—Amendment of *Aged and Infirm Persons' Property Act 1940*

21—Amendment of section 30—Relationship between this Act and *Guardianship and Administration Act 1993*

Section 30—delete "Guardianship Board" wherever occurring and substitute in each case:

South Australian Civil and Administrative Tribunal

22—Transitional provision

- (1) In this section—
- Guardianship Board*** means the Guardianship Board established under the *Guardianship and Administration Act 1993*;
- principal Act*** means the *Aged and Infirm Persons' Property Act 1940*;
- relevant day*** means the day on which this Part comes into operation;
- Tribunal*** means the South Australian Civil and Administrative Tribunal.
- (2) A notice with respect to a protection order made before the relevant day that has not been forwarded to the Guardianship Board under section 30(1) of the principal Act by the relevant day will instead be forwarded to the Tribunal.

Part 4—Amendment of *Community Housing Providers (National Law) (South Australia) Act 2013*

23—Amendment of section 3—Interpretation

Section 3(2), definition of ***District Court***—delete the definition

24—Amendment of section 5—Meaning of certain terms in *Community Housing Providers (National Law)* for the purposes of this jurisdiction

Section 5(1), definition of *Appeal Tribunal*—delete the definition and substitute:

Appeal Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

25—Repeal of section 14

Section 14—delete the section

26—Amendment of section 25—Appeals

Section 25(1)—delete "District Court" and substitute:

Appeal Tribunal

27—Amendment of Schedule 2—Internal disputes

- (1) Schedule 2, clause 1, definition of *Appeal Tribunal*—delete the definition and substitute:

Appeal Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) Schedule 2, clause 2(3)(a)—delete "must" and substitute:

may

- (3) Schedule 2, clause 2(3)(a)(i)—delete subparagraph (i)

- (4) Schedule 2, clause 3—delete clause 3

- (5) Schedule 2, clause 4(1)—delete subclause (1)

- (6) Schedule 2, clauses 4(4) to (7)—delete subclauses (4) to (7) (inclusive)

- (7) Schedule 2, clause 4—after subclause (8) insert:

- (9) Section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* does not apply to or in relation to a decision of the Appeal Tribunal under this Schedule.

28—Amendment of Schedule 3—Repeal, related amendments and transitional provisions

- (1) Schedule 3, Part 4, clause 14(1)—after the definition of *transitional period* insert:

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

(2) Schedule 3, Part 4, clause 15—after subclause (14) insert:

(14a) Subclause (14) operates subject to the qualification that a right to make an application to the Housing Appeal Panel under Part 11 of the SACCH Act will be taken instead to be a right to make an application to the Tribunal and, accordingly, that Part will apply—

- (a) as if a reference to the Housing Appeal Panel (or to the *Appeal Panel*) were a reference to the Tribunal; and
- (b) as if an application to the Tribunal were to be made in the manner and form applying under the *South Australian Civil and Administrative Tribunal Act 2013* rather than under section 84(2) of the SACCH Act; and
- (c) as if section 84(9)(c)(i) did not apply (but rather as if the relevant sections of the *South Australian Civil and Administrative Tribunal Act 2013* applied instead); and
- (d) subject to any other necessary modifications or any directions of the President of the Tribunal.

(14b) In addition, any proceedings before the Housing Appeal Panel under Part 11 of the SACCH Act immediately before the commencement of this subclause will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal (subject to the same provisions that apply under subclause (14a)(a), (c) and (d)).

(14c) The Tribunal may—

- (a) receive in evidence any transcript of evidence in proceedings before the Housing Appeal Panel, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of the Housing Appeal Panel that may be relevant to proceedings before the Tribunal; and
- (c) adopt or make any decision, direction or order in relation to proceedings before the Housing Appeal Panel before the commencement of this subclause (including so as to make a decision, direction or order in relation to proceedings fully heard by the Housing Appeal Panel before the commencement of this subclause); and
- (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of subclause (14b).

(3) Schedule 3, Part 4, clause 16—after subclause (6) insert:

(6a) To avoid doubt, subclause (6) operates subject to the qualification that clause 14 of Schedule 1 of the SACCH Act will apply subject to clause 15(14a) to (14c) (inclusive) of this Schedule.

29—Transitional provisions

- (1) In this section—

Appeal Panel means the Housing Appeal Panel established under the *South Australian Housing Trust Act 1995*;

5 *principal Act* means the *Community Housing Providers (National Law) (South Australia) Act 2013*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- 10 (2) A decision, direction or order of the Appeal Panel under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- 15 (3) A right to make any application or to seek a review under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Appeal Panel, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- 20 (4) Any proceedings before the Appeal Panel under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.
- (5) The Tribunal may—
- 25 (a) receive in evidence any transcript of evidence in proceedings before the Appeal Panel, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of the Appeal Panel that may be relevant to proceedings before the Tribunal; and
- 30 (c) adopt or make any decision, direction or order in relation to proceedings before the Appeal Panel before the relevant day (including so as to make a decision, direction or order in relation to proceedings fully heard before the relevant day); and
- (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- 35 (6) Nothing in this section affects a right to appeal to the Supreme Court against a decision of the Appeal Panel made or given before the relevant day (as the right existed under section 14(4) of the principal Act before its amendment by this Act).

Part 5—Amendment of *Consent to Medical Treatment and Palliative Care Act 1995*

30—Amendment of section 4—Interpretation

- (1) Section 4—after the definition of *child* insert:

decision, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

- (2) Section 4, definition of *Guardianship Board*—delete the definition

- (3) Section 4—after the definition of *impaired decision-making capacity* insert:

internal review means a review under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*;

- (4) Section 4, definition of *Public Advocate*—delete the definition and substitute:

Public Advocate means the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*;

- (5) Section 4—after the definition of *terminal phase* insert:

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

31—Amendment of section 14—Interpretation

- (1) Section 14(1), definition of *person responsible*, (e)—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

- (2) Section 14(1), definition of *person responsible*, (e)(iii)—delete "Board" and substitute:

Tribunal

32—Substitution of heading to Part 3A

Heading to Part 3A—delete the heading and substitute:

Part 3A—Dispute resolution, reviews and appeals

33—Amendment of section 18A—Interpretation

Section 18A, definition of eligible person, (d)—after "Public Advocate" insert:

or Tribunal (as the case requires)

34—Amendment of section 18C—Resolution of disputes by Public Advocate

- (1) Section 18C—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

- (2) Section 18C(8)—delete "*Guardianship and Administration Act 1993*" and substitute:
South Australian Civil and Administrative Tribunal Act 2013

35—Amendment of section 18D—Public Advocate may refer matter to Tribunal

- 5 Section 18D(1)—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

36—Insertion of section 18DA

After section 18D insert:

10 **18DA—Public Advocate may refer question of law to Supreme Court**

The Public Advocate may refer any question of law for the opinion of the Supreme Court.

37—Substitution of heading to Part 3A Division 3

- 15 Heading to Part 3A Division 3—delete the heading and substitute:

Division 3—Resolution of disputes by Tribunal

38—Amendment of section 18E—Resolution of disputes by Tribunal

- (1) Section 18E—delete "Guardianship Board" wherever occurring and substitute in each case:

20 Tribunal

- (2) Section 18E(2) and (3)—delete subsections (2) and (3)

- (3) Section 18E(7)—delete subsection (7) and substitute:

25 (7) Section 51 of the *South Australian Civil and Administrative Tribunal Act 2013* does not apply to, or in relation to, proceedings under this section.

- (4) Section 18E(10)—delete subsection (10) and substitute:

(10) Subject to this Act, the Tribunal may conduct a review under this section in such manner as it thinks fit.

39—Amendment of section 18F—Tribunal may refer matter to Public Advocate

- 30 Section 18F—delete "Guardianship Board" wherever occurring and substitute in each case:

Tribunal

40—Amendment of section 18G—Failing to comply with direction of Tribunal

- 35 Section 18G(1)—delete "Guardianship Board under this Division" and substitute:

Tribunal under section 18E

41—Substitution of Part 3A Division 4

Part 3A Division 4—delete Division 4 and substitute:

Division 4—Reviews and appeals

18H—Reviews and appeals

5 The following provisions operate in connection with the application
of Part 5 of the *South Australian Civil and Administrative Tribunal
Act 2013* in relation to this Act:

- 10 (a) a decision of the Tribunal not to authorise publication of a
report of proceedings before the Tribunal may not be the
subject of an application for internal review;
- 15 (b) subject to paragraph (a), an application for internal review
may be made by—
- (i) the applicant in proceedings before the Tribunal in
the exercise of its original jurisdiction (within the
20 meaning of the *South Australian Civil and
Administrative Tribunal Act 2013*) for the purposes
of this Act; or
- (ii) a person to whom the proceedings relate (if not the
applicant under paragraph (a)); or
- 25 (iii) the Public Advocate; or
- (iv) any person who presented evidence or material
before, or made submissions to, the Tribunal in the
relevant proceedings; or
- (v) any other person who satisfies the Tribunal that he
or she has a proper interest in the matter;
- 30 (c) the person to whom an application for internal review relates
(if he or she is not the applicant) will be a party to those
proceedings;
- (d) the Tribunal may make an order for costs against a party to
proceedings for internal review, but only if the Tribunal is
35 satisfied that the institution of the proceedings, or the party's
conduct in relation to the proceedings, was frivolous,
vexatious or calculated to cause delay;
- (e) an appeal under section 71 of the *South Australian Civil and
Administrative Tribunal Act 2013* must be instituted within
14 days—
- (i) after the making of the decision to which the appeal
relates; or
- 40 (ii) after being furnished with the reasons for that
decision,

whichever is the later (but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that period (even if the time for instituting the appeal has expired));

- (f) no order for costs may be made against an applicant in an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* if he or she is the person to whom the decision appealed against relates.

42—Insertion of Part 3B

Before Part 4 insert:

Part 3B—Special provisions relating to Tribunal

18I—Tribunal must give notice of proceedings

- (1) The Tribunal must give the following persons reasonable notice of the time and place of the hearings of proceedings before the Tribunal:
- (a) the applicant;
 - (b) the person to whom the proceedings relate;
 - (c) the Public Advocate;
 - (d) such other persons as the Tribunal considers have a proper interest in the matter.
- (2) Despite subsection (1)—
- (a) the Tribunal is not obliged to give notice of proceedings to a person if the person's whereabouts cannot, after reasonable enquiries, be ascertained; and
 - (b) the Tribunal may, if satisfied that urgent action is required in proceedings before the Tribunal, make an order (or any other decision) as a matter of urgency without complying with subsection (1), with effect for a period not exceeding 21 days as directed by the Tribunal.

18J—Reasons for decisions

The Tribunal must, on request by a person who has a right of internal review of a decision of the Tribunal or who satisfies the Tribunal that he or she has a proper interest in the matter, furnish the person with a written statement of the Tribunal's reasons for the decision, but not—

- (a) if the request is made after the period for the review has expired; or
- (b) if a review has been instituted—after the review has been decided.

18K—Representation of person who is subject of proceedings

(1) A person who is the subject of proceedings before the Tribunal is entitled to appear before the Tribunal by—

(a) the Public Advocate; or

(b) except in the case of an internal review—by a recognised advocate.

(2) Subsection (1) applies in addition to section 56(1) of the *South Australian Civil and Administrative Tribunal Act 2013*.

(3) In this section—

recognised advocate means a person who is, by instrument in writing, recognised by the Tribunal as a person who is qualified to act as an advocate in proceedings before the Tribunal for the person to whom the proceedings relate.

43—Transitional provisions

(1) In this section—

Guardianship Board means the Guardianship Board established under the *Guardianship and Administration Act 1993*;

principal Act means the *Consent to Medical Treatment and Palliative Care Act 1995*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

(2) A right to make any application or referral, or to seek a review, under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Guardianship Board, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

(3) Any proceedings before the Guardianship Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.

(4) The Tribunal may—

(a) receive in evidence any transcript of evidence in proceedings before the Guardianship Board, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations of the Guardianship Board that may be relevant to proceedings before the Tribunal; and

(c) adopt or make any decision (including a decision in the nature of a declaration), direction or order in relation to proceedings before the Guardianship Board before the relevant day (including so as to make a decision or declaration, or a direction or order, in relation to proceedings fully heard before the relevant day); and

- (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (5) Nothing in this section affects a right to appeal to the Administrative and Disciplinary Division of the District Court against a decision, direction or order of the Guardianship Board made or given before the relevant day.

Part 6—Amendment of *First Home and Housing Construction Grants Act 2000*

44—Substitution of heading to Part 2 Division 6

Heading to Part 2 Division 6—delete the heading and substitute:

Division 6—Objections and reviews

45—Insertion of section 27A

After section 27 insert:

27A—Objection not to stay proceedings based on relevant decision

- (1) Although a decision is subject to an objection, the Commissioner may act on the basis that the decision is correct until the objection is decided.
- (2) When an objection is decided, the Commissioner must take any necessary action to give effect to that decision.

46—Substitution of section 28

Section 28—delete the section and substitute:

28—Reviews

- (1) An objector who is dissatisfied with the Treasurer's decision on the objection may seek a review of the decision by the South Australian Civil and Administrative Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (2) A review must be commenced within 60 days after the notice of the decision on the objection is given (or such longer period as the South Australian Civil and Administrative Tribunal may allow).

47—Repeal of sections 29 and 30

Sections 29 and 30—delete the sections

48—Transitional provisions

- (1) In this section—

principal Act means the *First Home and Housing Construction Grants Act 2000*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

(2) A right of appeal under section 28 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the Magistrates Court.

5 (3) Nothing in this section affects any proceedings before the Magistrates Court commenced before the relevant day.

Part 7—Amendment of *Freedom of Information Act 1991*

49—Amendment of section 4—Interpretation

(1) Section 4(1), definition of *District Court*—delete the definition

10 (2) Section 4(1), after the definition of *restricted document* insert:

SACAT means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

50—Amendment of section 14A—Extension of time limit

15 Section 14A(4)(c)—delete "and appeal"

51—Amendment of section 23—Notices of determination

Section 23(2)(b)(ii)—delete "and appeal"

52—Amendment of section 25—Documents affecting inter-governmental or local governmental relations

20 (1) Section 25(3)(c)(ii)—delete "and appeal"

(2) Section 25(3)(d)—delete "or appeal"

53—Amendment of section 26—Documents affecting personal affairs

(1) Section 26(3)(c)(ii)—delete "and appeal"

(2) Section 26(3)(d)—delete "or appeal"

54—Amendment of section 27—Documents affecting business affairs

(1) Section 27(3)(c)(ii)—delete "and appeal"

(2) Section 27(3)(d)—delete "or appeal"

55—Amendment of section 28—Documents affecting the conduct of research

(1) Section 28(3)(c)(ii)—delete "and appeal"

30 (2) Section 28(3)(d)—delete "or appeal"

56—Amendment of section 36—Notices of determination

Section 36(2)(b)(iv)—delete "and appeal"

57—Substitution of heading to Part 5

Heading to Part 5—delete the heading and substitute:

Part 5—External review

58—Substitution of heading to Part 5 Division 1

5 Heading to Part 5 Division 1—delete the heading and substitute:

Division 1—Reviews by Ombudsman or Police Ombudsman

59—Substitution of heading to Part 5 Division 2

Heading to Part 5 Division 2—delete the heading and substitute:

Division 2—Reviews by SACAT

10 **60—Amendment of section 40—Reviews by SACAT**

(1) Section 40(1)—delete subsection (1) and substitute:

(1) An agency that is aggrieved by a determination made on a review under Division 1 may, with the permission of SACAT, apply for a review under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* of the determination by SACAT.

(1a) However, the review may only be as to a question of law and that question must be referred to a Presidential member of the Tribunal under section 26 of the *South Australian Civil and Administrative Tribunal Act 2013*.

20 (2) Section 40—delete "the District Court" wherever occurring and substitute in each case:

SACAT

(3) Section 40—delete "the Court" wherever occurring and substitute in each case:

SACAT

25 (4) Section 40(2)—delete "appeal against the determination to" and substitute:

apply for a review under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* of the determination by

(5) Section 40(4)—delete subsection (4) and substitute:

(4) Where an application for review is made under Division 1, a review by SACAT under this Division cannot be commenced until that application is decided and the commencement of a review by SACAT bars any right to apply for a review under Division 1.

(6) Section 40(5)(b) and (c)—delete paragraphs (b) and (c) and substitute:

(b) in the case of a review by SACAT of a determination of an agency following an internal review or a determination made on a review under Division 1—the applicant for the internal review or review under Division 1;

- (c) in the case of a review by SACAT of a determination that has not been the subject of an internal review or a review under Division 1—the applicant for the determination.

- (7) Section 40(7)—delete "appeal" wherever occurring and substitute in each case:
5 review

61—Amendment of section 41—Consideration of restricted documents

- (1) Section 41—delete "the District Court" wherever occurring and substitute in each case:

SACAT

- 10 (2) Section 41—delete "appeal" wherever occurring and substitute in each case:
review

- (3) Section 41(3)—delete "the Court" and substitute:

SACAT

62—Amendment of section 42—Disciplinary actions

- 15 (1) Section 42—delete "the District Court" and substitute:

SACAT

- (2) Section 42—delete "the Court" and substitute:

SACAT

63—Transitional provisions

- 20 (1) In this section—

principal Act means the *Freedom of Information Act 1991*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

- 25 (2) A right of appeal under Part 5 Division 2 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the District Court.

- (3) Nothing in this section affects any proceedings before the District Court commenced before the relevant day.

Part 8—Amendment of *Guardianship and Administration Act 1993*

64—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *advance care directive* insert:

decision, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

- (2) Section 3(1)—after the definition of *health professional* insert:

internal review means a review under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*;

- (3) Section 3(1), definition of *person to whom the proceedings relate*—delete "Board" and substitute:

Tribunal

- (4) Section 3(1), definition of *recognised advocate*—delete "Board" wherever occurring and substitute in each case:

Tribunal

- (5) Section 3(1)—after the definition of *substitute decision-maker* insert:

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

- (6) Section 3(3)—delete "Board" wherever occurring and substitute in each case:

Tribunal

- (7) Section 3(4)—delete "Board" wherever occurring and substitute in each case:

Tribunal

65—Amendment of section 5—Principles to be observed

Section 5—delete "Board" and substitute:

Tribunal

66—Repeal of Part 2 Divisions 1 and 2

Part 2 Divisions 1 and 2—delete the Divisions

67—Amendment of section 28—Investigations by Public Advocate

Section 28—delete "Board" wherever occurring and substitute in each case:

Tribunal

68—Amendment of section 29—Guardianship orders

Section 29—delete "Board" wherever occurring and substitute in each case:

Tribunal

69—Amendment of section 30—Variation or revocation of guardianship order

Section 30—delete "Board" and substitute:

Tribunal

70—Amendment of section 31—Powers of guardian

Section 31—delete "Board" and substitute:

Tribunal

71—Amendment of section 31A—Guardian to give effect to advance care directive

Section 31A(2)—delete "Board" and substitute:

Tribunal

5 **72—Amendment of section 32—Special powers to place and detain etc protected persons**

(1) Section 32—delete "Board" wherever occurring and substitute in each case:

Tribunal

(2) Section 32(1)(a)—before "according" insert:

10 (whether or not the person or place is a person with whom, or the place in which, the person usually resides)

(3) Section 32—after subsection (3) insert:

15 (3a) For the purposes of subsection (3)(b), a ward (however described) of a hospital or other facility that is an approved treatment centre under the *Mental Health Act 2009* will not be taken to be a part of an approved treatment centre unless the whole of the ward is set aside for the treatment of persons with a mental illness.

(4) Section 32—after subsection (7) insert:

20 (7a) For the purposes of this section, a reference to residing in a specified place includes a reference to residing in the place on a temporary basis.

Note—

For example, a person may temporarily reside in a hospital or rehabilitation facility.

25 **73—Amendment of section 33—Applications under this Division**

Section 33—delete "Board" wherever occurring and substitute in each case:

Tribunal

74—Amendment of section 35—Administration orders

Section 35—delete "Board" wherever occurring and substitute in each case:

30 Tribunal

75—Amendment of section 36—Variation or revocation of administration order

Section 36—delete "Board" and substitute:

Tribunal

35 **76—Amendment of section 37—Applications under this Division**

Section 37—delete "Board" wherever occurring and substitute in each case:

Tribunal

77—Amendment of section 38—Copy of order must be forwarded to Public Trustee

Section 38—delete "Board" and substitute:

Tribunal

5 **78—Amendment of section 39—Powers and duties of administrator**

Section 39—delete "Board" wherever occurring and substitute in each case:

Tribunal

79—Amendment of section 40—Administrator's access to wills and other records

10 Section 40(3)—delete "Board" and substitute:

Tribunal

80—Amendment of section 41—Power of administrator to continue to act after death etc of protected person

Section 41(3)—delete "Board" wherever occurring and substitute in each case:

15 Tribunal

81—Amendment of section 42—Power of administrator to avoid dispositions and contracts of protected person

Section 42(3)—delete "Board" wherever occurring and substitute in each case:

Tribunal

20 **82—Amendment of section 44—Reporting requirements for private administrators**

Section 44—delete "Board" wherever occurring and substitute in each case:

Tribunal

83—Amendment of section 45—Reporting by Public Trustee

25 Section 45—delete "Board" wherever occurring and substitute in each case:

Tribunal

84—Amendment of section 46—Remuneration of professional administrators

Section 46—delete "Board" wherever occurring and substitute in each case:

Tribunal

30 **85—Amendment of section 49—Withdrawal of applications**

Section 49—delete "Board" and substitute:

Tribunal

86—Amendment of section 50—Criteria for determining suitability for appointment

Section 50(1)—delete "Board" wherever occurring and substitute in each case:

Tribunal

5 **87—Repeal of section 53**

Section 53—delete the section

88—Amendment of section 54—Termination of appointment

Section 54—delete "Board" wherever occurring and substitute in each case:

Tribunal

10 **89—Amendment of section 55—Tribunal must give statement of appeal rights**

Section 55—delete "Board" wherever occurring and substitute in each case:

Tribunal

90—Amendment of section 56—Restriction of testamentary capacity of protected person

15 Section 56—delete "Board" wherever occurring and substitute in each case:

Tribunal

91—Amendment of section 57—Review of Tribunal's orders

(1) Section 57—delete "Board" wherever occurring and substitute in each case:

Tribunal

20 (2) Section 57—after subsection (4) insert:

(5) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, a review under this section will be taken to come within the Tribunal's original jurisdiction.

92—Amendment of section 61—Prescribed treatment not to be carried out without Tribunal's consent

25 Section 61—delete "Board" wherever occurring and substitute in each case:

Tribunal

93—Amendment of section 63—Tribunal's consent must be in writing

Section 63—delete "Board" wherever occurring and substitute in each case:

30 Tribunal

94—Substitution of Part 6

Part 6—delete Part 6 and substitute:

Part 6—Reviews and appeals

64—Review and appeals

5 The following provisions operate in connection with the application
of Part 5 of the *South Australian Civil and Administrative Tribunal
Act 2013* in relation to this Act:

- 10 (a) a decision of the Tribunal not to authorise publication of a
report of proceedings before the Tribunal may not be the
subject of an application for internal review;
- 15 (b) subject to paragraph (a), an application for internal review
may be made by—
 - 15 (i) the applicant in proceedings before the Tribunal in
the exercise of its original jurisdiction (within the
meaning of the *South Australian Civil and
Administrative Tribunal Act 2013*) for the purposes
of this Act; or
 - 20 (ii) a person to whom the proceedings relate (if not the
applicant under paragraph (a)); or
 - 20 (iii) the Public Advocate; or
 - 25 (iv) any person who presented evidence or material
before, or made submissions to, the Tribunal in the
relevant proceedings; or
 - 25 (v) any other person who satisfies the Tribunal that he
or she has a proper interest in the matter;
- 30 (c) except in the case of a decision for or affirming the
detention of a person or relating to the giving of consent to a
sterilisation or a termination of pregnancy, an application for
internal review may only be made with the permission of the
Tribunal;
- 35 (d) an application for internal review of a decision of the
Tribunal to consent to termination of pregnancy must be
instituted within 2 working days after the making of the
decision;
- 35 (e) the person to whom an application for internal review relates
(if he or she is not the applicant) will be a party to those
proceedings;
- 40 (f) the Tribunal must hear and determine an internal review as
expeditiously as is reasonably practicable and must give
priority to hearing and determining internal reviews of
decisions relating to an application for consent to
termination of pregnancy or relating to the detention of any
person;

5 (g) the Tribunal may make an order for costs against a party to proceedings for internal review, but only if the Tribunal is satisfied that the institution of the proceedings, or the party's conduct in relation to the proceedings, was frivolous, vexatious or calculated to cause delay;

(h) subject to paragraph (i), an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* must be instituted within 14 days—

10 (i) after the making of the decision to which the appeal relates; or

(ii) after being furnished with the reasons for that decision,

15 whichever is the later (but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that period (even if the time for instituting the appeal has expired));

20 (i) a decision of the Tribunal in relation to an application for consent to a termination of pregnancy may not be instituted under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013*;

25 (j) no order for costs may be made against an applicant in an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* if he or she is the person to whom the decision appealed against relates.

65—Representation on reviews or appeals

30 (1) In every review or appeal, or application for permission for review or appeal, under Part 5 of the *South Australian Civil and Administrative Tribunal Act 2013*, the person to whom the proceedings relate is entitled to be represented by counsel in accordance with this section.

(2) If a person chooses to be represented by counsel pursuant to this section, he or she is entitled to be represented by a legal practitioner provided pursuant to a scheme established by the Minister for the purposes of this section, being a legal practitioner—

35 (a) chosen by the person himself or herself; or

(b) in default of the person making a choice, chosen by such person or authority as the scheme contemplates.

40 (3) A legal practitioner (not being an employee of the Crown or a statutory authority) who represents a person pursuant to this section is entitled to receive fees for his or her services from the Minister, in accordance with a prescribed scale, and cannot demand or receive from any other person any further fee for those services.

- (4) Nothing in this section derogates from the right of the person to whom the proceedings relate to engage counsel at his or her own expense, or to appear personally or by a representative pursuant to any other provision of this Act.

Part 6A—Special provisions relating to Tribunal

66—Tribunal must give notice of proceedings

- (1) Tribunal must give the following persons reasonable notice of the time and place of the hearings of proceedings before the Tribunal:
- (a) the applicant;
 - (b) the person to whom the proceedings relate;
 - (c) the Public Advocate;
 - (d) such other persons as the Tribunal considers have a proper interest in the matter.
- (2) Despite subsection (1)—
- (a) the Tribunal is not obliged to give notice of proceedings to a person if the person's whereabouts cannot, after reasonable enquiries, be ascertained; and
 - (b) the Tribunal may, if satisfied that urgent action is required in proceedings before the Tribunal, make an order (or any other decision) as a matter of urgency without complying with subsection (1), with effect for a period not exceeding 21 days as directed by the Tribunal.

67—Reasons for decisions

The Tribunal must, on request by a person who has a right of internal review of a decision of the Tribunal or who satisfies the Tribunal that he or she has a proper interest in the matter, furnish the person with a written statement of the Tribunal's reasons for the decision, but not—

- (a) if the request is made after the period for the review has expired; or
- (b) if a review has been instituted—after the review has been decided.

68—Representation of person who is subject of proceedings

- (1) A person who is the subject of proceedings before the Tribunal is entitled to appear before the Tribunal by—
- (a) the Public Advocate; or
 - (b) except in the case of an internal review—by a recognised advocate.
- (2) Subsection (1) applies in addition to section 56(1) of the *South Australian Civil and Administrative Tribunal Act 2013*.

69—Tribunal may require reports

- 5
- (1) The Tribunal may require a person who is the subject of proceedings before the Tribunal to submit to the Tribunal within a specified time a psychiatric or psychological report as to his or her mental capacity or a medical report as to his or her health or any aspect of it.
- 10
- (2) If a person refuses or fails to comply with a requirement made under subsection (1) or is incapable of complying with such a request, the Public Advocate, a person authorised by the Minister for the purpose or a member of the police force may enter any place where the person is reasonably believed to be and apprehend the person, using only such force as is reasonably necessary for the purpose, and take the person to a psychiatrist, psychologist or medical practitioner nominated by the Tribunal for examination and assessment, the cost of which will be borne by the Tribunal.
- 15
- (3) The powers under subsection (2) cannot be exercised except on the authority of a warrant issued by a legally qualified member of the Tribunal (within the meaning of the *South Australian Civil and Administrative Tribunal Act 2013*).
- 20
- (4) A warrant cannot be issued under subsection (3) unless the person issuing it is satisfied, on information given on oath—
- (a) that reasonable grounds exist for suspecting that the person to whom the warrant relates has a mental incapacity; and
- (b) that a warrant is reasonably required in the circumstances.
- 25
- (5) The person executing a warrant under this section may be accompanied by such assistants as he or she considers necessary or desirable in the circumstances.
- (6) A person must not hinder or obstruct a person executing a warrant under this section, or a person accompanying that person.
- Maximum penalty: \$10 000.

95—Amendment of section 74—Tribunal may give advice, direction or approval

Section 74—delete "Board" wherever occurring and substitute in each case:

Tribunal

96—Substitution of section 82

Section 82—delete the section and substitute:

82—Service of notices

A notice required to be given to any person under this Act may be—

- 40
- (a) given to the person personally; or
- (b) posted to the person at the person's last known principal place of residence or business; or

- (c) transmitted to the person by fax or email to a fax number or email address provided by the person for the purpose of service of the notice; or
- (d) given to the person in such other manner as may be permitted by order of the Tribunal.

97—Repeal of section 84

Section 84—delete the section

98—Transitional provisions

- (1) In this section—

Guardianship Board means the Guardianship Board under the principal Act;

principal Act means the *Guardianship and Administration Act 1993*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

- (2) A direction of the Guardianship Board under section 28(1) of the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a direction of the Tribunal (with a report of any investigation completed on or after the relevant day being furnished to the Tribunal rather than the Guardianship Board).

- (3) An order of the Guardianship Board under Part 3 Division 2 or Division 3 of the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be an order of the Tribunal.

- (4) A direction or determination of the Guardianship Board under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a direction or determination of the Tribunal.

- (5) A right to make any application or referral, or to seek a review, with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Guardianship Board, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

- (6) Any proceedings before the Guardianship Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before that Tribunal.

- (7) The Tribunal may—

- (a) receive in evidence any transcript of evidence in proceedings before the Guardianship Board, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of the Guardianship Board that may be relevant to proceedings before the Tribunal; and

(c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Guardianship Board before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

(8) Nothing in this section affects a right to appeal to the Administrative and Disciplinary Division of the District Court (as constituted in the manner contemplated by the principal Act before its amendment by this Act) against a decision, direction or order of the Guardianship Board made or given before the relevant day.

(9) The Guardianship Board is dissolved by force of this subsection.

(10) A member of the Guardianship Board holding office when subsection (9) comes into operation will cease to hold office at that time and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this subsection at the same time (and no right of action will arise against a Minister or the State on account of that termination).

Part 9—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

99—Amendment of section 25—Tenancy order

Section 25(5)(e)—delete "Residential Tenancies Tribunal" and substitute:

South Australian Civil and Administrative Tribunal

Part 10—Amendment of *Mental Health Act 2009*

100—Amendment of section 3—Interpretation

(1) Section 3, definition of *Board*—delete the definition

(2) Section 3—after the definition of *consent* insert:

decision, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

(3) Section 3—after the definition of *inpatient treatment order* insert:

internal review means a review under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*;

(4) Section 3—after the definition of *treatment centre* insert:

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

101—Amendment of section 7—Guiding principles

Section 7(1)—delete "Board" and substitute:

Tribunal

102—Amendment of section 11—Chief Psychiatrist to be notified of level 1 orders or their variation or revocation

(1) Section 11(1)—delete "the Board and the Chief Psychiatrist are each" and substitute:
the Chief Psychiatrist is

(2) Section 11(2)—delete subsection (2) and substitute:

(2) The Chief Psychiatrist must, within 1 business day, by written notice sent or given to the Tribunal, ensure that the Tribunal is given a copy of a notice received under subsection (1).

103—Amendment of section 15—Tribunal to review level 1 orders

(1) Section 15—delete "Board" wherever occurring and substitute in each case:
Tribunal

(2) Section 15—after subsection (3) insert:

(4) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, a review under this section will be taken to come within the Tribunal's original jurisdiction.

104—Amendment of section 16—Level 2 community treatment orders

(1) Section 16—delete "Board" wherever occurring and substitute in each case:
Tribunal

(2) Section 16(6)—delete "The Registrar" and substitute:

A registrar

(3) Section 16(6)—delete "the Registrar" and substitute:
the registrar

105—Amendment of section 17—Chief Psychiatrist to be notified of level 2 orders or their variation or revocation

(1) Section 17—delete "The Registrar" and substitute:

A registrar

(2) Section 17—delete "Board" wherever occurring and substitute in each case:
Tribunal

106—Amendment of section 22—Chief Psychiatrist to be notified of level 1 orders or their revocation

(1) Section 22(1)—delete "the Board and the Chief Psychiatrist are each" and substitute:
the Chief Psychiatrist is

(2) Section 22(2)—delete subsection (2) and substitute:

(2) The Chief Psychiatrist must, within 1 business day, by written notice sent or given to the Tribunal, ensure that the Tribunal is given a copy of a notice received under subsection (1).

107—Amendment of section 26—Notices and reports relating to level 2 orders

(1) Section 26(1)—delete "the Board and the Chief Psychiatrist are each" and substitute:

the Chief Psychiatrist is

(2) Section 26(2)—delete subsection (2) and substitute:

(2) The Chief Psychiatrist must, within 1 business day, by written notice sent or given to the Tribunal, ensure that the Tribunal is given a copy of a notice received under subsection (1).

(3) Section 26(5)—delete "Board" and substitute:

Chief Psychiatrist

108—Amendment of section 29—Level 3 inpatient treatment orders

Section 29—delete "Board" wherever occurring and substitute in each case:

Tribunal

109—Amendment of section 30—Chief Psychiatrist to be notified of level 3 orders or their variation or revocation

(1) Section 30—delete "The Registrar" and substitute:

A registrar

(2) Section 30—delete "Board" wherever occurring and substitute in each case:

Tribunal

110—Amendment of section 42—ECT

Section 42—delete "Board" wherever occurring and substitute in each case:

Tribunal

111—Amendment of section 43—Neurosurgery for mental illness

Section 43—delete "Board" wherever occurring and substitute in each case:

Tribunal

112—Amendment of section 46—Copies of Tribunal's orders, decisions and statements of rights to be given

(1) Section 46(1)—delete "The Registrar of the Board must ensure that a patient is given, as soon as practicable after the making by the Board" and substitute:

A registrar of the Tribunal must ensure that a patient is given, as soon as practicable after the making by the Tribunal

(2) Section 46—delete "the Registrar of the Board" wherever occurring and substitute in each case:

the registrar

113—Amendment of section 48—Patients' right to communicate with others outside treatment centre

Section 48(3)(b)—delete "Board" and substitute:

Tribunal

5 **114—Amendment of section 70—Transfer from South Australian treatment centres**

Section 70(4)(b)—delete "Board" and substitute:

Tribunal

115—Repeal of heading to Part 11 Division 1

10 Heading to Part 11 Division 1—delete the heading

116—Amendment of section 79—Reviews of treatment orders and other matters

(1) Section 79—delete "Board" wherever occurring and substitute in each case:

Tribunal

15 (2) Section 79—after subsection (4) insert:

(5) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, a review under this section will be taken to come within the Tribunal's original jurisdiction.

117—Amendment of section 80—Decisions and reports on reviews of treatment orders

20

Section 80—delete "Board" wherever occurring and substitute in each case:

Tribunal

118—Repeal of heading to Part 11 Division 2

Heading to Part 11 Division 2—delete the heading

25 **119—Amendment of section 81—Reviews of orders (other than Tribunal orders)**

(1) Section 81(1)—delete "Board) may appeal to the Board against the order" and substitute:

Tribunal) may seek a review of the order by the Tribunal

30 (2) Section 81(1)(d)—delete "Board" and substitute:

Tribunal

(3) Section 81—after subsection (1) insert:

(1a) For the purposes of the *South Australian Civil and Administrative Tribunal Act 2013*, a review under this section will be taken to come within the Tribunal's original jurisdiction.

35

(4) Section 81(2)—delete "An appeal" and substitute:

A review

(5) Section 81(2)—delete "the appeal" and substitute:

the review

5 (6) Section 81(3)—delete "an appeal" and substitute:

a review

(7) Section 81(3)—delete "Board at or before the commencement of the Board's proceedings on the appeal" and substitute:

10 Tribunal at or before the commencement of the Tribunal's proceedings on the review

(8) Section 81(4)—delete subsection (4) and substitute:

(4) On hearing a review of an order, the Tribunal must revoke the order, with immediate effect, if the Tribunal is not satisfied that there are proper grounds for it to remain in operation.

15 (9) Section 81(5)—delete "Board" wherever occurring and substitute in each case:

Tribunal

(10) Section 81(5)—delete "an appeal against" and substitute:

a review of

(11) Section 81(5)(a)—delete "appeal" and substitute:

20 review

120—Repeal of section 82

Section 82—delete the section

121—Amendment of section 83—Review of directions for transfer of patients to interstate treatment centres

25 (1) Section 83(1)—delete "appeal to the Board against the direction" and substitute:

seek a review of the direction by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*

(2) Section 83(1)(d)—delete "Board" and substitute:

Tribunal

30 (3) Section 83(2)—delete "An appeal" and substitute:

A review

(4) Section 83(3)—delete "Board may, on hearing an appeal against" and substitute:

Tribunal may, on hearing a review of

122—Substitution of sections 84 and 85

Sections 84 and 85—delete the sections and substitute:

83A—Reviews and appeals

The following provisions operate in connection with the application of Part 5 of the *South Australian Civil and Administrative Tribunal Act 2013* in relation to this Act:

5

(a) a decision of the Tribunal not to authorise publication of a report of proceedings before the Tribunal may not be the subject of an application for internal review;

10

(b) subject to paragraph (a), an application for internal review may be made by—

15

(i) the applicant in proceedings before the Tribunal in the exercise of its original jurisdiction (within the meaning of the *South Australian Civil and Administrative Tribunal Act 2013*) for the purposes of this Act; or

(ii) a person to whom the proceedings relate (if not the applicant under paragraph (a)); or

(iii) the Public Advocate; or

20

(iv) any person who presented evidence or material before, or made submissions to, the Tribunal in the relevant proceedings; or

(v) any other person who satisfies the Tribunal that he or she has a proper interest in the matter;

25

(c) the person to whom an application for internal review relates (if he or she is not the applicant) will be a party to those proceedings;

30

(d) the Tribunal must hear and determine an internal review as expeditiously as is reasonably practicable and must give priority to hearing and determining internal reviews of decisions relating to an application relating to the detention of any person;

35

(e) the Tribunal may make an order for costs against a party to proceedings for internal review, but only if the Tribunal is satisfied that the institution of the proceedings, or the party's conduct in relation to the proceedings, was frivolous, vexatious or calculated to cause delay;

40

(f) subject to paragraph (g), an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* must be instituted within 14 days—

(i) after the making of the decision to which the appeal relates; or

- (ii) after being furnished with the reasons for that decision,

whichever is the later (but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that period (even if the time for instituting the appeal has expired));

- (g) the following decisions of the Tribunal are not appealable to the Supreme Court:

(i) a decision not to authorise publication of a report of proceedings before the Tribunal;

(ii) a decision made by the Tribunal in the exercise of its review jurisdiction under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*;

- (h) no order for costs may be made against an applicant in an appeal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* if he or she is the person to whom the decision appealed against relates.

84—Representation on reviews or appeals

- (1) In every review or appeal, or application for permission for review or appeal, under this Part, the person to whom the proceedings relate is entitled to be represented by counsel in accordance with this section.
- (2) If a person chooses to be represented by counsel pursuant to this section, he or she is entitled to be represented by a legal practitioner provided pursuant to a scheme established by the Minister for the purposes of this section, being a legal practitioner—
- (a) chosen by the person himself or herself; or
- (b) in default of the person making a choice, chosen by such person or authority as the scheme contemplates.
- (3) A legal practitioner (not being an employee of the Crown or a statutory authority) who represents a person pursuant to this section is entitled to receive fees for his or her services from the Minister, in accordance with a prescribed scale, and cannot demand or receive from any other person any further fee for those services.
- (4) Nothing in this section derogates from the right of the person to whom the proceedings relate to engage counsel at his or her own expense, or to appear personally, by the Public Advocate or by a representative pursuant to any other provision of this Act.

Part 11A—Special provisions relating to Tribunal

85—Tribunal must give notice of proceedings

(1) Tribunal must give the following persons reasonable notice of the time and place of the hearings of proceedings before the Tribunal:

- (a) the applicant;
- (b) the person to whom the proceedings relate;
- (c) the Public Advocate;
- (d) such other persons as the Tribunal considers have a proper interest in the matter.

(2) Despite subsection (1)—

- (a) the Tribunal is not obliged to give notice of proceedings to a person if the person's whereabouts cannot, after reasonable enquiries, be ascertained; and
- (b) the Tribunal may, if satisfied that urgent action is required in proceedings before the Tribunal, make an order (or any other decision) as a matter of urgency without complying with subsection (1), with effect for a period not exceeding 21 days as directed by the Tribunal.

85A—Reasons for decisions

The Tribunal must, on request by a person who has a right of internal review of a decision of the Tribunal or who satisfies the Tribunal that he or she has a proper interest in the matter, furnish the person with a written statement of the Tribunal's reasons for the decision, but not—

- (a) if the request is made after the period for the review has expired; or
- (b) if a review has been instituted—after the review has been decided.

85B—Representation of person who is subject of proceedings

(1) A person who is the subject of proceedings before the Tribunal is entitled to appear before the Tribunal by—

- (a) the Public Advocate; or
- (b) except in the case of an internal review—by a recognised advocate.

(2) Subsection (1) applies in addition to section 56(1) of the *South Australian Civil and Administrative Tribunal Act 2013*.

(3) In this section—

recognised advocate means a person who is, by instrument in writing, recognised by the Tribunal as a person who is qualified to act as an advocate in proceedings before the Tribunal for the person to whom the proceedings relate.

123—Amendment of section 101—Errors in orders etc

Section 101(2)—delete "Board" and substitute:

Tribunal

124—Amendment of section 107—Prohibition of publication of reports of proceedings

Section 107—delete "Board" wherever occurring and substitute in each case:

Tribunal

125—Amendment of section 108—Requirements for notice to Tribunal or Chief Psychiatrist

Section 108—delete "Board" and substitute:

Tribunal

126—Transitional provisions

(1) In this section—

Guardianship Board means the Guardianship Board established under the *Guardianship and Administration Act 1993*;

principal Act means the *Mental Health Act 2009*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

- (2) The Tribunal will conduct a review under section 15 of the principal Act in respect of any order for which notice is given on or after the relevant day.
- (3) An order, consent or decision of the Guardianship Board under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be an order, consent or decision of the Tribunal.
- (4) A right to make any application or referral, or to seek a review or to institute an appeal, under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Guardianship Board, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- (5) Any proceedings before the Guardianship Board under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.
- (6) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Guardianship Board, and draw any conclusions of fact from that evidence that appear proper; and
 - (b) adopt any findings or determinations of the Guardianship Board that may be relevant to proceedings before the Tribunal; and

(c) adopt or make any decision (including a decision in the nature of a consent), direction or order in relation to proceedings before the Guardianship Board before the relevant day (including so as to make a decision or give a consent, direction or order, in relation to proceedings fully heard before the relevant day); and

(d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

(7) Nothing in this section affects a right to appeal to the Administrative and Disciplinary Division of the District Court against a decision, direction or order of the Guardianship Board made or given before the relevant day.

(8) A reference in subsection (5) to proceedings before the Guardianship Board will be taken to include a reference to a review being conducted under section 79 of the principal Act.

Part 11—Amendment of *Public Sector Act 2009*

127—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *Commissioner* insert:

decision, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

(2) Section 3(1), definition of *Public Sector Grievance Review Commission*—delete the definition

(3) Section 3(1), after the definition of *term employee* insert:

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

128—Amendment of section 25—Public Service employees

Section 25(2)(j)—delete paragraph (j)

129—Amendment of section 49—Remuneration

Section 49(4)—delete "Public Sector Grievance Review Commission" and substitute:

Tribunal

130—Amendment of section 62—External review

(1) Section 62—after subsection (4) insert:

(4a) Section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* does not apply to or in relation to a decision of the Tribunal acting as the appropriate review body under this section.

(2) Section 62(8), definition of *appropriate review body*, (b)—delete "Public Sector Grievance Review Commission" and substitute:

Tribunal

131—Substitution of Schedule 2

Schedule 2—delete the Schedule and substitute:

Schedule 2—Special provisions relating to Tribunal

1—Panels of nominees

- 5 (1) For the purposes of proceedings before the Tribunal there is to be—
- (a) a panel of public sector employees nominated by the Commissioner for Public Sector Employment; and
 - (b) a panel of public sector employees nominated by public sector representative organisations.
- 10 (2) The Minister may, from time to time, invite the public sector representative organisations to nominate employees to constitute a panel.
- 15 (3) If a public sector representative organisation fails to make a nomination in response to an invitation within the time allowed in the invitation, the Minister may choose public sector employees instead of nominees of the organisation and any employees so chosen are to be taken to have been nominated to the relevant panel.
- (4) A person ceases to be a member of a panel if the person—
- (a) ceases to be a public sector employee; or
 - 20 (b) resigns by notice in writing to the Minister; or
 - (c) is removed from the panel by the Minister on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out duties of the member satisfactorily; or
 - 25 (d) has completed a period of 2 years as a member of the panel since being nominated, or last renominated, as a member of the panel, and is not renominated to the panel.

2—Constitution of Tribunal and other matters

- 30 (1) In exercising its powers under the *South Australian Civil and Administrative Tribunal Act 2013* for the purposes of this Act, the Tribunal will be constituted by 3 members of whom—
- (a) 1 will be selected from the panel of nominees of the Commissioner for Public Sector Employment by the President of the Tribunal for the purpose of the proceedings; and
 - 35 (b) 1 will be selected from the panel of nominees of public sector representative organisations for the purpose of the proceedings—
 - (i) by the applicant for review; or

(ii) if there are 2 or more applicants and they do not agree on the selection of a nominee—by the President of the Tribunal.

(2) A member of the Tribunal who is a public sector employee is not subject to direction as an employee in respect of the performance of duties as a member of the Tribunal.

(3) The Tribunal must endeavour to complete any review within 3 months and must, in any event, proceed as quickly as a proper consideration of the matter allows.

132—Transitional provisions

(1) In this section—

principal Act means the *Public Sector Act 2009*;

PSGRC means the Public Sector Grievance Review Commission;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal.

(2) A right to apply to PSGRC for a review of a decision under the principal Act in existence before the relevant day (and not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

(3) Nothing in this section affects any proceedings before PSGRC commenced before the relevant day.

(4) The Governor may, when he or she thinks it is appropriate to do so, by proclamation, dissolve PSGRC.

(5) When a proclamation is made under subsection (4) any member of PSGRC, or member of a panel constituted for the purposes of PSGRC, holding office at the time of the making of the proclamation will cease to hold office and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this subsection at the same time (and no right of action will arise against a Minister or the State on account of that termination).

Part 12—Amendment of *Residential Parks Act 2007*

133—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *bailiff*—delete the definition and substitute:

bailiff means a bailiff appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

(2) Section 3(1), definition of *deputy registrar*—delete the definition and substitute:

Deputy President means a Deputy President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

Deputy Registrar means a Deputy Registrar of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

- (3) Section 3(1), definition of *Presiding Member*—delete the definition and substitute:

President means the President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

- (4) Section 3(1), definition of *registrar*—delete the definition and substitute:

Registrar means the Registrar of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

- (5) Section 3(1), definition of *Tribunal*—delete the definition and substitute:

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

134—Amendment of section 87—Enforcement of orders for possession

- (1) Section 87(1)—delete subsection (1) and substitute:

(1) If an order for possession of rented property has been made by the Tribunal but has not been complied with, the Registrar or a Deputy Registrar must, at the written or oral request of the person in whose favour the order was made (or agent of that person), direct a bailiff to enforce the order.

- (2) Section 87(2)—delete subsection (2) and substitute:

(2) A bailiff must enforce an order for possession as soon as is practicable after being directed to do so under this section.

- (3) Section 87(10)—delete subsection (10)

135—Substitution of heading to Part 11

Heading to Part 11—delete the heading and substitute:

Part 11—South Australian Civil and Administrative Tribunal

136—Repeal of Part 11 Divisions 1 and 2

Part 11 Divisions 1 and 2—delete the Divisions

137—Amendment of section 103—Jurisdiction of Tribunal

Section 103(4)—after "this Act" insert:

and, to such extent as may be necessary and appropriate, the powers of the Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*

138—Repeal of section 104

Section 104—delete the section

139—Substitution of heading to Part 11 Division 4

Heading to Part 11 Division 4—delete the heading and substitute:

Division 4—Representation of parties in mediation

140—Repeal of sections 105 to 109

Sections 105 to 109 (inclusive)—delete the sections

141—Amendment of section 110—Representation of parties in mediation

Section 110—delete "A party to a residential park" and substitute:

5 If a residential park dispute is referred by the Tribunal for mediation, a party
to the

142—Repeal of section 111

Section 111—delete the section

143—Substitution of Part 11 Division 6

10 Part 11 Division 6—delete Division 6 and substitute:

Division 6—Amendment of proceedings

113—Amendment of proceedings

15 The Tribunal may amend proceedings if satisfied that the amendment
will contribute to the expeditious and just resolution of the questions
in issue between the parties.

144—Amendment of section 117—Special powers to make orders

(1) Section 117(2)—delete "Presiding Member" and substitute:

President or a Deputy President

(2) Section 117(3) to (5)—delete subsections (3) to (5) (inclusive)

20 **145—Repeal of section 120**

Section 120—delete the section.

146—Amendment of section 121—Application to vary or set aside order

(1) Section 121(2)—delete "3 months" and substitute:

1 month

25 (2) Section 121—after subsection (2) insert:

30 (3) If the reasons of the Tribunal are not given in writing at the time of
making an order and the applicant for an order varying or setting
aside the order then requests the Tribunal to state its reasons in
writing, the time for making the application runs from the time when
the applicant receives the written statement of the reasons.

(4) This section does not limit any provision of the *South Australian
Civil and Administrative Tribunal Act 2013*.

35 (5) Proceedings under this section do not constitute a review of a
decision for the purposes of sections 34 or 70 of the *South Australian
Civil and Administrative Tribunal Act 2013*.

147—Repeal of section 122

Section 122—delete the section

148—Substitution of section 123

Section 123—delete the section and substitute:

123—Reasons for decisions

The Tribunal must, if requested by a person affected by a decision of the Tribunal, where written reasons have not been given, state in writing the reasons for the Tribunal's decision.

123A—Time for application for review or instituting appeal

Furthermore, if the reasons for a decision of the Tribunal have not been given in writing and—

- (a) an applicant for review of the decision of the Tribunal under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*; or
- (b) a person appealing against a decision of the Tribunal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013*,

requests the Tribunal within 1 month of the making of the decision to state the reasons in writing, the time for making the application for review or instituting the appeal (as the case may be) runs from the time when the person receives the written statement of reasons.

149—Repeal of Part 11 Division 9

Part 11 Division 9—delete the Division

150—Amendment of section 126—Representation in proceedings before Tribunal

Section 126(1)—after "Act" insert:

(including at a conference or mediation under sections 50 and 51 respectively of the *South Australian Civil and Administrative Tribunal Act 2013*),

151—Repeal of Part 11 Division 11

Part 11 Division 11—delete the Division

152—Transitional provisions

- (1) In this section—

principal Act means the *Residential Parks Act 2007*;

relevant day means the day on which this Part comes into operation;

Residential Tenancies Tribunal means the Tribunal established under the *Residential Tenancies Act 1995*;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) A decision (including a decision in the nature of a declaration), direction or order of the Residential Tenancies Tribunal under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- 5 (3) A right to make any application or to seek a review under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Residential Tenancies Tribunal, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- 10 (4) Any proceedings before the Residential Tenancies Tribunal under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.
- (5) The Tribunal may—
- 15 (a) receive in evidence any transcript of evidence in proceedings before the Residential Tenancies Tribunal, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of the Residential Tenancies Tribunal that may be relevant to proceedings before the Tribunal; and
- 20 (c) adopt or make any decision (including a decision in the nature of a declaration), direction or order in relation to proceedings before the Residential Tenancies Tribunal before the relevant day (including so as to make a decision or declaration, or a direction or order, in relation to proceedings fully heard before the relevant day); and
- 25 (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (6) The Tribunal may, on application under section 121 of the principal Act made after the relevant date, vary or set aside an order of the Residential Tenancies Tribunal made before the relevant date, provided that the application is made to the Tribunal within 3 months of the making of the order by the Residential Tenancies Tribunal.
- 30 (7) Nothing in this section—
- (a) affects the ability to register an order of the Residential Tenancies Tribunal made before the relevant day in an appropriate court, as provided for by section 120 of the principal Act before its repeal by this Act; or
- 35 (b) affects a right to appeal to the Administrative and Disciplinary Division of the District Court against a decision, direction or order of the Residential Tenancies Tribunal made or given before the relevant day.

Part 13—Amendment of *Residential Tenancies Act 1995*

153—Amendment of section 3—Interpretation

- 40 (1) Section 3(1)— after the definition of *ancillary property* insert:

bailiff means a bailiff appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

- (2) Section 3(1)—after the definition of *Commissioner* insert:

decision, of the Tribunal, has the same meaning as in the *South Australian Civil and Administrative Tribunal Act 2013*;

Deputy President means a Deputy President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

Deputy Registrar means a Deputy Registrar of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

- (3) Section 3(1)—after the definition of *premises* insert:

President means the President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

- (4) Section 3(1)—after the definition of *registered community housing provider* insert:

Registrar means the Registrar of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

- (5) Section 3(1), definition of *Rules*—delete the definition

- (6) Section 3(1), definition of *Tribunal*—delete the definition and substitute:

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

154—Amendment of section 5—Application of Act

Section 5(2)(a)—delete "(*Residential Tenancies Tribunal*)" and substitute:

(*South Australian Civil and Administrative Tribunal*)

155—Substitution of heading to Part 3

Heading to Part 3—delete the heading and substitute:

Part 3—South Australian Civil and Administrative Tribunal

156—Repeal of Part 3 Divisions 1 and 2

Part 3 Divisions 1 and 2—delete the Divisions

157—Amendment of section 24—Jurisdiction of Tribunal

- (1) Section 24(1)(c)—delete paragraph (c)

- (2) Section 24(4)—after "this Act" insert:

and, to such extent as may be necessary and appropriate, the powers of the Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*

158—Substitution of section 25

Section 25—delete the section and substitute:

25—Application to Tribunal

5 Despite any requirement under the *South Australian Civil and Administrative Tribunal Act 2013*, a requirement to give notice of an application under this Act—

- 10 (a) may, if relevant, be directed to an occupier or subtenant of premises; and
- (b) if paragraph (a) applies, need not address the occupier or subtenant by name.

25A—Registrar may make orders in certain cases

15 The Registrar or a Deputy Registrar of the Tribunal may make an order in relation to a tenancy dispute with the written consent of the parties to the dispute (and such an order operates as an order of the Tribunal).

159—Substitution of heading to Part 3 Division 5

Heading to Part 3 Division 5—delete the heading and substitute:

Division 5—Procedural powers of Tribunal

160—Repeal of section 31

20 Section 31—delete the section

161—Amendment of section 32—Intervention of designated housing agency

Section 32(1), (1a) and (2)—delete subsections (1), (1a) and (2)

162—Substitution of section 33

Section 33—delete section 33 and substitute:

25 **33—Amendment of proceedings**

The Tribunal may amend proceedings if satisfied that the amendment will contribute to the expeditious and just resolution of the questions in issue between the parties.

163—Substitution of heading to Part 3 Division 7

30 Heading to Part 3 Division 7—delete the heading and substitute:

Division 7—Orders

164—Amendment of section 35—Special powers to make orders

- (1) Section 35(2)—delete "Presiding Member" and substitute:

President or a Deputy President

- 35 (2) Section 35(3) to (5)—delete subsections (3) to (5) (inclusive)

165—Repeal of section 36

Section 36—delete the section

166—Amendment of section 37—Application to vary or set aside order

Section 37—after subsection (3) insert:

- 5 (4) This section does not limit any provision of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (5) Proceedings under this section do not constitute a review of a decision for the purposes of sections 34 or 70 of the *South Australian Civil and Administrative Tribunal Act 2013*.

167—Repeal of section 38

Section 38—delete the section

168—Substitution of section 39

Section 39—delete section 39 and substitute:

39—Reasons for decisions

15 The Tribunal must, if requested by a person affected by a decision of the Tribunal, where written reasons have not been given, state in writing the reasons for the Tribunal's decision.

39A—Time for application for review or instituting appeal

20 Furthermore, if the reasons for a decision of the Tribunal have not been given in writing and—

- (a) an applicant for review of the decision of the Tribunal under section 70 of the *South Australian Civil and Administrative Tribunal Act 2013*; or
- 25 (b) a person appealing against a decision of the Tribunal under section 71 of the *South Australian Civil and Administrative Tribunal Act 2013*,

30 requests the Tribunal within 1 month of the making of the decision to state the reasons in writing, the time for making the application for review or instituting the appeal (as the case may be) runs from the time when the person receives the written statement of reasons.

169—Repeal of Part 3 Divisions 9 and 10

Part 3 Divisions 9 and 10—delete the Divisions

170—Substitution of heading to Part 5 Division 8

Heading to Part 5 Division 8—delete the heading and substitute:

Division 8—Enforcement of orders for possession

171—Repeal of section 98

Section 98—delete the section

172—Amendment of section 99—Enforcement of orders for possession

- (1) Section 99(1)(a)—delete "of the Tribunal" wherever occurring
- (2) Section 99(8)—delete subsection (8)

173—Amendment of section 101—Application of income

Section 101(1)(a)—delete paragraph (a) and substitute:

- (a) towards the costs of—
 - (i) administering and enforcing this Act and the *Residential Parks Act 2007*; and
 - (ii) the operation of the Tribunal to the extent that the costs are attributable to proceedings under this Act, the *Residential Parks Act 2007* or the *Retirement Villages Act 1987*; and

174—Amendment of section 106—Definitions

Section 106, definition of *conciliation conference*—delete the definition and substitute:

conciliation conference means a conference called by the Commissioner under section 107(4).

175—Amendment of section 107—Conciliation of dispute by Commissioner

- (1) Section 107(3)—delete "registrar or deputy registrar" and substitute:
Registrar or a Deputy Registrar
- (2) Section 107(6)—delete "registrar or deputy registrar" and substitute:
Registrar or a Deputy Registrar

176—Repeal of Part 8 Division 1 Subdivision 3

Part 8 Division 1 Subdivision 3—delete Subdivision 3

177—Amendment of section 108A—Functions of Commissioner in conciliation of dispute

Section 108A—delete "Conciliators have the following functions in the conciliation of a tenancy dispute" and substitute:

The Commissioner has the following functions in the conciliation of a tenancy dispute under this Division

178—Amendment of section 108B—Procedure

- (1) Section 108B(1) to (5) (inclusive)—delete "conciliator" wherever occurring and substitute in each case:

Commissioner

- (2) Section 108B(7)—delete subsection (7) and substitute:

- (7) The settlement must be put into writing and signed by or for the parties and a copy of the signed settlement must be provided to the Tribunal.

- (3) Section 108B(9)—delete subsection (9)
(4) Section 108B(10)—delete subsection (10) and substitute:

(10) The Commissioner has the same protection and immunity as a member of the Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*.

179—Amendment of section 113—Representation

Section 113(1)—delete "or at a conciliation conference under this Act" and substitute:

(including a conference or mediation under sections 50 and 51 respectively of the *South Australian Civil and Administrative Tribunal Act 2013*), or at a conciliation conference under this Act,

180—Amendment of section 114—Remuneration of representative

Section 114—delete "or at a conciliation conference under this Act" and substitute:

(including a conference or mediation under sections 50 and 51 respectively of the *South Australian Civil and Administrative Tribunal Act 2013*), or at a conciliation conference under this Act,

181—Transitional provisions

- (1) In this section—

principal Act means the *Residential Tenancies Act 1995*;

relevant day means the day on which this Part comes into operation;

Residential Tenancies Tribunal means the Tribunal established under the *Residential Tenancies Act 1995*;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) A decision (including a decision in the nature of a declaration), direction or order of the Residential Tenancies Tribunal under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- (3) A right to make any application or to seek a review under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Residential Tenancies Tribunal, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- (4) Any proceedings before the Residential Tenancies Tribunal under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.
- (5) The Tribunal may—
- (a) receive in evidence any transcript of evidence in proceedings before the Residential Tenancies Tribunal, and draw any conclusions of fact from that evidence that appear proper; and

- (b) adopt any findings or determinations of the Residential Tenancies Tribunal that may be relevant to proceedings before the Tribunal; and
- (c) adopt or make any decision (including a decision in the nature of a declaration), direction or order in relation to proceedings before the Residential Tenancies Tribunal before the relevant day (including so as to make a decision or declaration, or a direction or order, in relation to proceedings fully heard before the relevant day); and
- (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (6) The Tribunal may, on application under section 37 of the principal Act made after the relevant date, vary or set aside an order of the Residential Tenancies Tribunal made before the relevant date.
- (7) The Residential Tenancies Tribunal is dissolved by force of this subsection.
- (8) A member of the Residential Tenancies Tribunal holding office when subsection (7) comes into operation will cease to hold office at that time and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this subsection at the same time (and no right of action will arise against a Minister or the State on account of that termination).
- (9) Nothing in this section—
- (a) affects the ability to register an order of the Residential Tenancies Tribunal made before the relevant day in an appropriate court, as provided for by section 36 of the principal Act before its repeal by this Act; or
- (b) affects a right to appeal to the Administrative and Disciplinary Division of the District Court against a decision, direction or order of the Residential Tenancies Tribunal made or given before the relevant day.

Part 14—Amendment of *Retirement Villages Act 1987*

182—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *authorised officer* insert:
- bailiff* means a bailiff appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;
- (2) Section 3(1)—after the definition of *community retirement village* insert:
- Deputy President* means a Deputy President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;
- (3) Section 3(1)—after the definition of *premium* insert:
- President* means the President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;
- (4) Section 3(1), definition of *the Tribunal*—delete the definition and substitute:
- Tribunal* means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

183—Amendment of section 31—Termination of residents' rights

Section 31(11)—delete "of the Tribunal"

184—Amendment of section 32—Resolution of disputes

(1) Section 32(3) to (5)—delete subsections (3) to (5) (inclusive) and substitute:

(3) Despite section 51(3) of the *South Australian Civil and Administrative Tribunal Act 2013*, the Tribunal may only refer a matter, or any aspect of a matter, in dispute between an administering authority and a resident for mediation with the express consent of the parties (which may not be subsequently withdrawn).

(2) Section 32(6)(b)—delete paragraph (b)

(3) Section 32(7)—delete subsection (7)

(4) Section 32—after subsection (8) insert:

(8a) However, a member of the Tribunal who is not legally qualified cannot make an order under subsection (8) without the approval of the President or a Deputy President of the Tribunal.

(5) Section 32(10) and (11)—delete subsections (10) and (11)

(6) Section 32(13)(b)—delete paragraph (b)

185—Repeal of section 39

Section 39—delete the section

186—Amendment of Schedule 1—Proceedings before Tribunal

(1) Schedule 1, clause 2—delete clause 2

(2) Schedule 1, clause 3(2)—delete subclause (2) and substitute:

(2) An application under subclause (1) must be made within 1 month of the making or giving of the order, decision or direction (unless the Tribunal allows an extension of time).

(3) This clause does not limit any provision of the *South Australian Civil and Administrative Tribunal Act 2013*.

(4) Proceedings under this clause do not constitute a review of a decision for the purposes of sections 34 or 70 of the *South Australian Civil and Administrative Tribunal Act 2013*.

(3) Schedule 1, clauses 4 and 5—delete the clauses

(4) Schedule 1, clauses 7 and 8—delete the clauses

- (5) Schedule 1, clause 9—delete the clause and substitute:

9—Costs on referral of question of law

5 Any costs arising from the referral of a question of law to the Supreme Court under section 26(2)(b) of the *South Australian Civil and Administrative Tribunal Act 2013*, including costs incurred by the parties to the proceedings, must be paid out of the General Revenue of the State and this Act, without any further appropriation, is sufficient authority for such payment.

187—Transitional provisions

- 10 (1) In this section—

principal Act means the *Retirement Villages Act 1987*;

relevant day means the day on which this Part comes into operation;

Residential Tenancies Tribunal means the Tribunal established under the *Residential Tenancies Act 1995*;

15 *Tribunal* means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (2) A decision, direction or order of the Residential Tenancies Tribunal under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.

20 (3) A right to make any application or to seek a review under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Residential Tenancies Tribunal, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

25 (4) Any proceedings before the Residential Tenancies Tribunal under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.

- (5) The Tribunal may—

30 (a) receive in evidence any transcript of evidence in proceedings before the Residential Tenancies Tribunal, and draw any conclusions of fact from that evidence that appear proper; and

(b) adopt any findings or determinations of the Residential Tenancies Tribunal that may be relevant to proceedings before the Tribunal; and

35 (c) adopt or make any decision, direction or order in relation to proceedings before the Residential Tenancies Tribunal before the relevant day (including so as to make a decision, direction or order in relation to proceedings fully heard before the relevant day); and

40 (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

(6) The Tribunal may, on application under Schedule 1 clause 3 of the principal Act made after the relevant date, vary or set aside an order of the Residential Tenancies Tribunal made before the relevant date, provided that the application is made to the Tribunal within 3 months of the making of the order by the Residential Tenancies Tribunal.

5 (7) Nothing in this section affects a right to appeal to the District Court against a decision, direction or order of the Residential Tenancies Tribunal made or given before the relevant day (as the right existed under section 39 of the principal Act before its repeal by this Act).

10 **Part 15—Amendment of *South Australian Civil and Administrative Tribunal Act 2013***

188—Amendment of section 33—Original jurisdiction

(1) Section 33(1)—delete "review of a decision" and substitute:

reviewable decision within the meaning of section 34

(2) Section 33(2)—delete subsection (2) and substitute:

15 (2) Subject to subsections (3) and (4) the Tribunal will, in its original jurisdiction, depending on the nature of the matter—

(a) act as the original decision-maker in the matter (and accordingly apply those principles which, according to law, are to be applied to bodies that make such decisions pursuant to statute); or

20 (b) resolve a dispute between parties to the relevant proceedings; or

(c) adopt any other course of action that the Tribunal considers appropriate to deal with the matter.

25 **189—Amendment of section 34—Decisions within review jurisdiction**

(1) Section 34(1)—after "decision" insert:

(a reviewable decision)

(2) Section 34(2)—delete subsection (2) and substitute:

30 (2) For the purposes of subsection (1) (and the other sections of this Division), and subject to the provisions of a relevant Act, a reviewable decision is—

(a) a decision made by the Crown or an agency or instrumentality of the Crown; or

(b) a decision made by a prescribed person or body; or

35 (c) a prescribed decision or class of decision,

but does not include a decision made by a person or body or a decision, or class of decision, excluded by the regulations.

- (2A) For the purposes of this Act, the person or body that made or is taken to have made the reviewable decision is the *decision-maker* for the decision.

190—Amendment of section 39—Principles governing hearings

Section 39(1)(b)—delete paragraph (b) and substitute:

- (b) the Tribunal is not bound by the rules of evidence, may adopt, as in its discretion it considers appropriate, any findings, decision or judgment of a court or other tribunal (insofar as may be relevant to the proceedings before the Tribunal), and may otherwise inform itself as it thinks fit; and

191—Amendment of section 43—Practice and procedure generally

Section 43(2)—after paragraph (e) insert:

and

- (f) may proceed to hear and determine proceedings in the absence of a party.

192—Amendment of section 53—Parties

Section 53(1)—after paragraph (c) insert:

- (ca) without limiting a preceding paragraph, a respondent to an application before the Tribunal, a person against whom a claim is made by proceedings brought before the Tribunal, or a party to a dispute before the Tribunal; or

193—Amendment of section 70—Internal reviews

Section 70(1)—delete subsection (1) and substitute:

- (1) Subject to this section, an application for a review of a decision of the Tribunal—

- (a) in the exercise of its original jurisdiction; or
 (b) as constituted by a registrar or other member of the staff of the Tribunal,

may be made under this section.

- (1a) An application for review under subsection (1)(b) is only by leave of a Presidential member of the Tribunal.

194—Amendment of section 71—Appeals

(1) Section 71—after subsection (1) insert:

- (1a) The Rules of the Supreme Court may provide that a matter that would otherwise go to the Full Court under subsection (1) will instead go to a single Judge, and vice versa.

(2) Section 71—after subsection (2) insert:

(2a) Without limiting subsection (2), an appeal against a decision of the Tribunal in the exercise of its original jurisdiction, or in a case where the Tribunal is constituted by a registrar or other member of the staff of the Tribunal, may not be instituted under this section unless or until a review of the decision has been conducted under section 70.

(2b) However—

(a) the operation of subsection (2a) may be—

- (i) displaced by the Rules of the Supreme Court in specified classes of cases; or
- (ii) displaced by regulations under this Act; or
- (iii) displaced or modified by the provisions of a relevant Act; and

(b) subsection (2a) does not apply if the President of the Tribunal determines that a decision (or class of decision) should not be subject to a requirement for review under section 70.

(3) Section 71—after subsection (3) insert:

(3a) An appeal under this section will be by way of rehearing.

(3b) The Supreme Court may, in conducting an appeal, draw inferences of fact from evidence or material before the Tribunal and may, as it thinks fit, allow further evidence or material to be presented to it.

(4) Section 71(4)(c)—delete paragraph (c) and substitute:

(c) set aside the decision appealed against and, if it thinks fit, return the matter to the Tribunal for reconsideration in accordance with any directions that the Court considers appropriate.

195—Amendment of section 79—Immunities

Section 79(5)—after "Tribunal" insert:

or produces books, papers or documents to the Tribunal

196—Insertion of section 89A

After section 89 insert—

89A—Bailiffs

(1) The President may appoint a person to be a bailiff.

(2) The office of bailiff may be held (but may not need to be held) by—

- (a) a person employed in a public sector agency; or
- (b) a person appointed under the *Courts Administration Act 1993* or the *Sheriff's Act 1978*.

- (3) The regulations may prescribe fees to be paid in respect of any action taken by a bailiff (and provide for the recovery or enforcement of such a fee).
- (4) A bailiff (and, if relevant, a police officer assisting a bailiff) incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions.

197—Amendment of section 92—Annual report

Section 92—after subsection (2) insert:

- (3) The report must include any information prescribed by the regulations.

198—Insertion of section 93A

After section 93 insert:

93A—Disrupting proceedings of Tribunal

- (1) A person who is present at a place where proceedings of the Tribunal are being conducted must not—
- (a) wilfully interrupt any proceedings; or
 - (b) behave in a disorderly or offensive manner; or
 - (c) use offensive language.

Maximum penalty: \$10 000 or imprisonment for 6 months.

- (2) Nothing in this section derogates from the operation of another provision of this Act.
- (3) In this section—
offensive includes threatening, abusive or insulting.

199—Amendment of section 95—Regulations

- (1) Section 95(2)—after paragraph (d) insert:

and

- (e) make provisions of a saving or transitional nature consequent on the vesting of jurisdiction on the Tribunal under another Act.

- (2) Section 95—after subsection (3) insert:

- (4) A regulation under subsection (2)(e) may (without limiting that subsection)—
- (a) operate in addition to any saving or transitional provision enacted under another Act in connection with the vesting of jurisdiction in the Tribunal; and
 - (b) operate so as to modify the operation or effect of another Act insofar as may be expedient in connection with the transfer of jurisdiction to the Tribunal from another entity; and

- (c) take effect from the day on which jurisdiction is vested in the Tribunal under another Act (including so as to provide for the retrospective operation of the regulation).

Part 16—Amendment of *South Australian Housing Trust Act 1995*

200—Amendment of section 32A—Interpretation

- (1) Section 32A(1), definition of *Appeal Panel*—delete the definition
- (2) Section 32A(1)—after the definition of *tenant* insert:

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- (3) Section 32A(2)(c)—delete paragraph (c) and substitute:

- (c) a complaint about a matter that is the subject of proceedings before the Tribunal exercising its jurisdiction conferred under another Act, or proceedings before a court or another tribunal constituted by law;

201—Repeal of section 32B

Section 32B—delete the section

202—Amendment of section 32D—Appeals

- (1) Section 32D(1)—delete "Appeal Panel" and substitute:

Tribunal

- (2) Section 32D(2)(b)—delete "Appeal Panel" and substitute:

Tribunal

- (3) Section 32D(3) to (5)—delete subsections (3) to (5) (inclusive)

- (4) Section 32D(6)—delete "Appeal Panel" and substitute:

Tribunal

- (5) Section 32D(6)—delete "Appeal Panel's" and substitute:

Tribunal's

- (6) Section 32D(7)(a)—delete "Appeal Panel" and substitute:

Tribunal

- (7) Section 32D—after subsection (8) insert:

- (9) Section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* does not apply to or in relation to a decision of the Tribunal under this section.

203—Transitional provisions

- (1) In this section—

Appeal Panel means the Housing Appeal Panel established under the *South Australian Housing Trust Act 1995*;

5 *principal Act* means the *South Australian Housing Trust Act 1995*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

- 10 (2) A decision, direction or order of the Appeal Panel under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of the Tribunal.
- 15 (3) A right to make any application or to seek a review under the principal Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Appeal Panel, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.
- 20 (4) Any proceedings before the Appeal Panel under the principal Act immediately before the relevant day will, subject to such directions as the President of the Tribunal thinks fit, be transferred to the Tribunal where they may proceed as if they had been commenced before the Tribunal.
- (5) The Tribunal may—
- 25 (a) receive in evidence any transcript of evidence in proceedings before the Appeal Panel, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of the Appeal Panel that may be relevant to proceedings before the Tribunal; and
- 30 (c) adopt or make any decision, direction or order in relation to proceedings before the Appeal Panel before the relevant day (including so as to make a decision, direction or order in relation to proceedings fully heard before the relevant day); and
- (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.
- (6) The Appeal Panel is dissolved by force of this subsection.
- 35 (7) A member of the Appeal Panel holding office when subsection (6) comes into operation will cease to hold office at that time and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this subsection at the same time (and no right of action will arise against a Minister or the State on account of that termination).