

# The Asbestos Compensation Tribunal

## Annual Report

# 2020/2021

Presented to both Houses of Parliament  
pursuant to section 134 of the *Asbestos-Related  
Diseases (Occupational Exposure) Compensation Act  
2011*



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In accordance with s134 of the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011* (the Act) I submit to the Minister my report on the operation of the Tribunal during the 2019/2020 financial year.

## I Overview

As at 5 November 2021, the Asbestos Compensation Tribunal (ACT) is scheduled to formally become part of the Tasmanian Civil and Administrative Tribunal (TASCAT), which will be formed through the amalgamation of nine existing tribunals and a board into one statutory tribunal. It will join the existing seven other CATs or “Super Tribunals” that already exist in each other State and Territory.

The nine bodies to be amalgamated in TASCAT are:

1. Workers Rehabilitation and Compensation Tribunal (WRCT);
2. Asbestos Compensation Tribunal (ACT);
3. Motor Accidents Compensation Tribunal (MACT);
4. Health Practitioners Tribunal (HPT);
5. Anti-Discrimination Tribunal (ADT);
6. Resource Management and Planning Appeal Tribunal (RMPAT);
7. Forest Practices Tribunal (FPT);
8. Mental Health Tribunal (MHT); and
9. Guardian and Administration Board (GAB).

The work of the existing tribunals and board will continue largely unchanged once TASCAT commences.

The primary difference being that each of the jurisdictions will come under the umbrella of one organisation with a leadership structure headed up by a President, supported by Deputy Presidents and Principal Registrar, supported by Deputy Registrars.

Like the ACT, TASCAT will remain an independent quasi-judicial tribunal, separate to government.

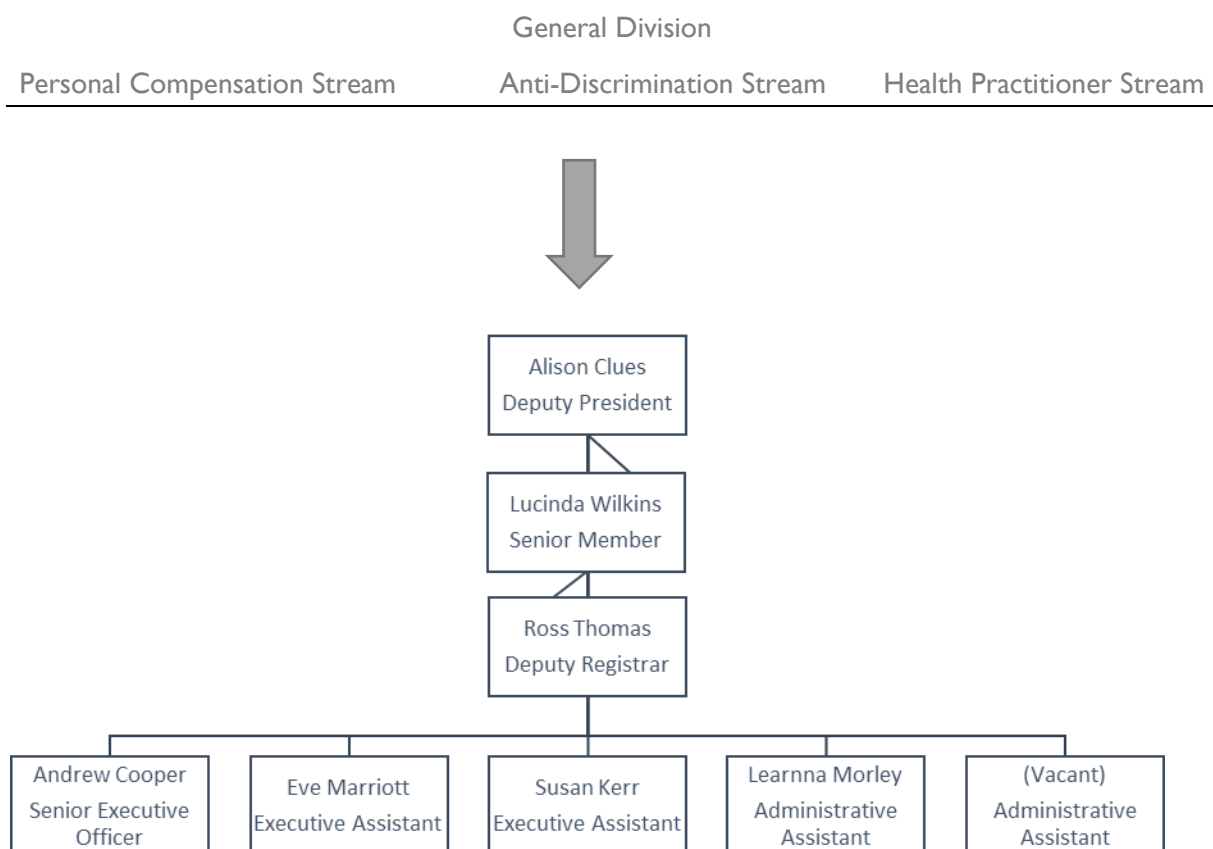
TASCAT is to be established on 1 November 2021. The actual commencement date will be the date of Royal Assent which is scheduled for 5 November 2021. The individual tribunals and board will continue to operate in the usual way between those two dates. On commencement day, full amalgamation (including the abolishment of the old tribunals and board) takes effect.

When TASCAT commences, ACT will become part of the General Division – Personal Compensation Stream.

The Personal Compensation Stream also includes the WRCT and the MACT. The administration and operation of the ACT and the MACT are conducted by the WRCT personnel.

The WRCT personnel, also administer and operate the HPT and the ADT, both of which will be part of the General Division – Health Practitioners Stream and Anti-Discrimination Stream respectively.

## 1.1 Human Resources of WRCT and ACT (when they become part of TASCAT)



## 1.2 The ACT in 2020/2021

The Asbestos Compensation Tribunal (ACT) is an independent statutory tribunal established by s129 of the Act. Its primary responsibility is to determine all matters referred to it pursuant to the Act (see s130). Examples of matters that can be referred to the Tribunal include:

- a determination of the Asbestos Compensation Commissioner for compensation under s70;
- a determination of the Asbestos Compensation Commissioner of an application to vary a lump sum entitlement to compensation under s75 or s77, such application being made under s74 or s76;
- questions as to whether the Asbestos Compensation Commissioner is required to pay any or all expenses specified in a claim under s121(1), whether the services the subject of the expenses claimed were required or necessarily incurred, whether the amount of the expenses claimed is reasonable or the period for which any constant attendance services are to be provided;
- questions as to who are members of the family of a person who has a compensable disease or questions as to the apportionment of the total lump sum to which members of the family of the person who has a compensable disease are entitled.

The ACT is currently constituted by the Chief Commissioner and Commissioner who by reason of s129 of the Act are the Chief Commissioner and Commissioner within the meaning of the *Workers Rehabilitation and Compensation Act 1988*. These positions are separate and independent of the Asbestos Compensation Commissioner.

Both the Chief Commissioner and the Commissioner fulfill the requirements of the *Workers Rehabilitation and Compensation Act 1988* in that they are Australian lawyers of at least 5 years standing as Australian legal practitioners. The Chief Commissioner and the Commissioner are both appointed on a full-time basis.

The functions of the ACT are:

- To determine all claims for compensation referred to it under the Act.
- To determine such other matters as are referred to it under the Act.
- To exercise the powers conferred and the duties imposed on it in the Act.

The ACT may conduct conciliation conferences in appropriate circumstances in order to resolve disputes by agreement. Hearings can be held in Hobart and Launceston to resolve disputes by arbitration where agreement cannot be reached between the parties.

The Tribunal is operated along the same lines as the Workers Rehabilitation & Compensation Tribunal (WRCT) for reasons of efficiency and consistency.

## 2 Tribunal Premises

In July 2020, the ACT and the other tribunals that are operated and administered by the WRCT relocated with the other tribunals and board that form TASCAT to a purpose built and accessible premises located at 38 Barrack Street, Hobart.

Through the WRCT the ACT also has available to it premises suitable for hearings and conciliations at 1/111 St John Street, Launceston. These rooms are also made available to other tribunals.

If a conciliation is required of a matter where the claimant is based on the North West Coast then rooms at the Devonport Community & Health Services Centre at 23 Steele Street, Devonport are utilised.

Video and telephone conferencing as well as recording facilities are available at the premises in Hobart and Launceston.

### 3 Referrals for 2020/2021 and COVID-19

The ACT received one referral. The ACT has received twelve referrals since it was established on 31 October 2011.

A party to a proceeding before the ACT who is aggrieved by a determination, order, ruling or direction of the ACT may appeal to the Supreme Court on a question of law.

There were no appeals to the Supreme Court.

The operation of the ACT was not impacted at all by COVID-19

### 4 Report on Financial Statement

The ACT does not have a specific budget and accordingly all work and expenses are accounted for in the WRCT budget.

An agreement has been reached with the Department of Justice, which has been in place since 2011, whereby the Asbestos Compensation Commissioner reimburses the WRCT for various items which are related to the performance of functions imposed on the ACT under the Act. The WRCT provides a breakdown of work performed each quarter and seeks reimbursement for the cost of the work performed.

There has been accounting to the Asbestos Compensation Commissioner in the sum of \$2,625.00 in the 2020/2021 financial year.

Fees for formal hearings, directions hearings etc. have been set by way of this agreement. The agreement was signed in 2011 and requires review and updating.

Given both the ACT and WRCT are funded from the Workers Compensation Fund (non-consolidated revenue) it has previously been recommended that an annual contribution towards the administration and function of the ACT be included in the annual budget allocation for the WRCT rather than following the accounting and reimbursement method set out in the agreement. I support a direct budget allocation.

The budget will need to be reviewed upon the formal amalgamation of all tribunals after 5 November 2021.

## 5 Intent for 2021/2022

To continue to work with the President of TASCAT and various stakeholders to achieve the main objectives of TASCAT including:

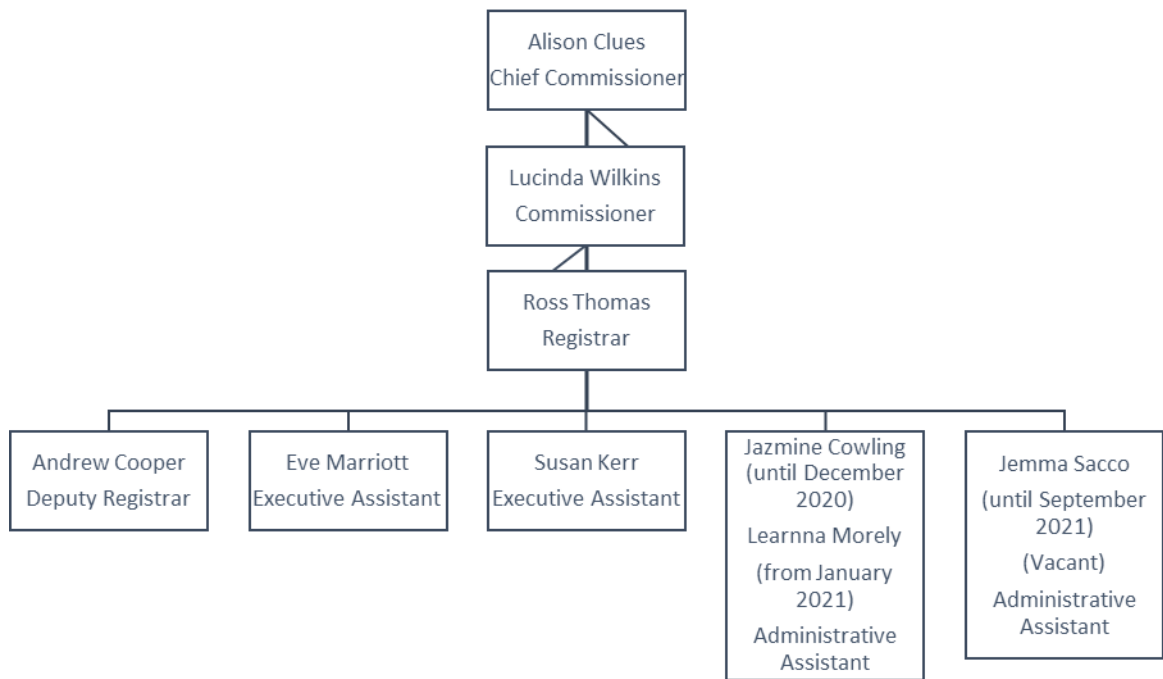
- (a) The promotion of independence in decision making, natural justice and procedural fairness, high quality, consistent decision making as well as transparency and accountability.
- (b) To be accessible by being easy to find and easy to access, and to be responsive to parties, especially parties with greater needs for assistance than others.
- (c) To ensure that all matters referred to the ACT are processed and resolved as quickly as possible while achieving a just outcome, including by resolving disputes through high quality processes and the use of conciliation.
- (d) To keep costs to parties to a minimum.
- (e) To use straight forward language and procedures.
- (f) To act with as little formality and technicality as possible.
- (g) To be flexible in the way in which the ACT conducts its business and to adjust its procedures to best fit the circumstances of a particular case.
- (h) To ensure a seamless amalgamation of all tribunals at the TASCAT premises which will include a review of the most effective way of ensuring appropriate budgeting for the ACT and all tribunals currently supported by the WRCT.

## 6 Members of Tribunal & Staff

The staff of this ACT, which are set out in the chart below, carry out the same or similar duties for the WRCT, HPT, MACT and ADT.

I express my appreciation to all staff for the work they have performed this year which has ensured the efficient operation of the ACT and all tribunals under the WRCT umbrella.

Personnel of Workers Rehabilitation and Compensation Tribunal as at 30 June 2021



A M Clues  
Chief Commissioner