

# The Anti-Discrimination Tribunal

## Annual Report

2020/2021

# Table of Contents

1	Overview.....	1
2	Constitution of the Tribunal.....	3
3	Membership Requirements.....	4
4	Tribunal Accommodation.....	4
5	Referrals to the Tribunal 2020/2021 .....	5
6	Tribunal Procedure and COVID-19 .....	5
7	Appeals to the Supreme Court of Tasmania.....	6
8	Decisions of the Tribunal .....	6
9	Report on Financial Statement.....	7
10	Intent for 2021/2022 .....	7
11	Members of Tribunal & Staff.....	8

# I Overview

The Anti-Discrimination Tribunal (ADT) is an independent statutory tribunal established under the *Anti-Discrimination Act 1998* (the Act) with responsibility to:

- review decisions of the Anti-Discrimination Commissioner (ADC) to dismiss or reject a complaint made under the Act;
- review decisions made by the ADC as to applications for exemptions;
- conduct inquiries on matters referred by the ADC.

Since 2015 the ADT has been administered and operated by the staff of the Workers Rehabilitation and Compensation Tribunal (WRCT). The same staff also administer and operate the the Health Practitioners Tribunal, the Motor Accidents Compensation Tribunal and the Asbestos Compensation Tribunal).

In July 2020, all of these tribunals re-located to a purpose built Tribunal Centre at 38 Barrack Street, Hobart. A number of other tribunals and a board have re-located to the same premises. There will be a formal amalgamation of all of the tribunals. This is anticipated to occur on 5 November 2021.

As at 5 November 2021, the Anti-Discrimination Tribunal (ADT) 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. Anti-Discrimination Tribunal (ADT);
2. Workers Rehabilitation and Compensation Tribunal (WRCT);
3. Asbestos Compensation Tribunal (ACT);
4. Motor Accidents Compensation Tribunal (MACT);
5. Health Practitioners Tribunal (HPT);
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 ADT, 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.

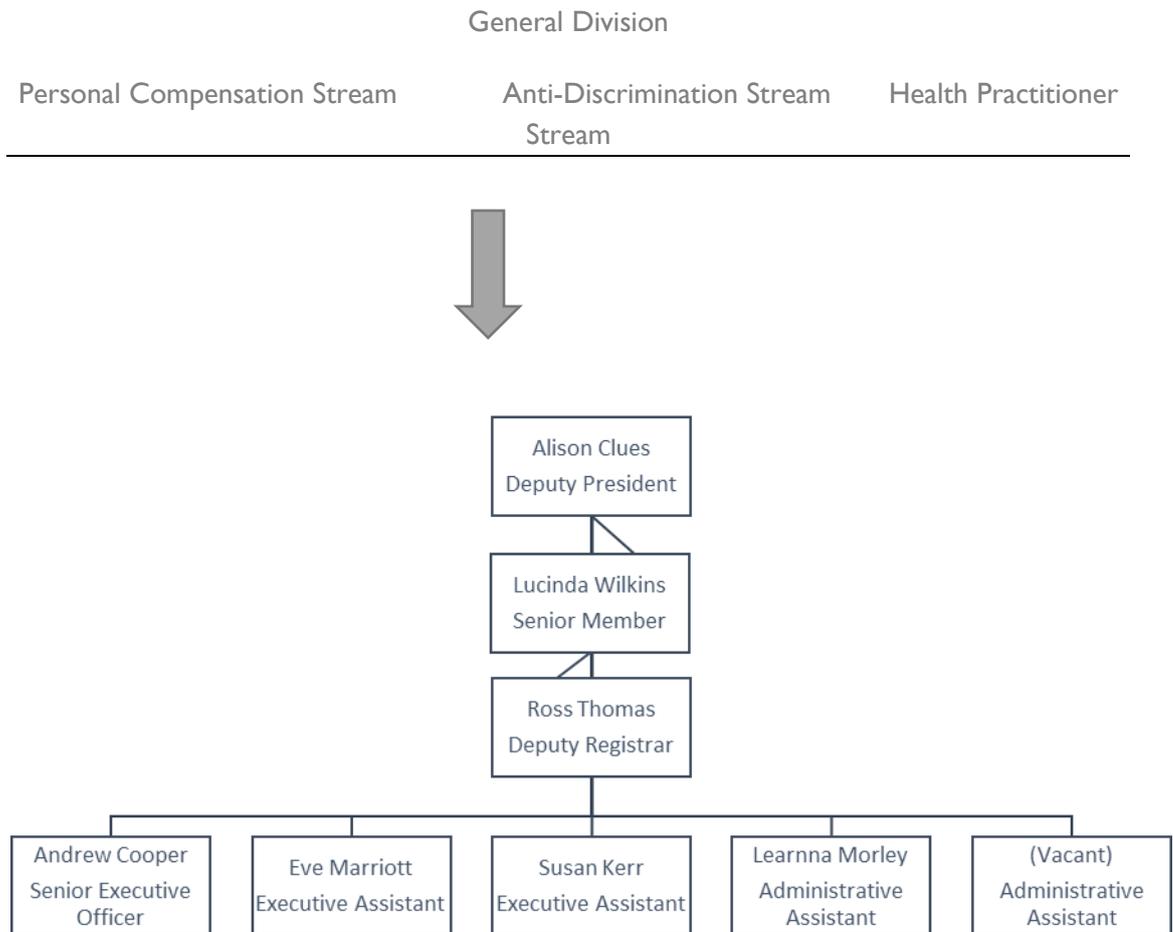
When TASCAT commences, ADT will be part of the General Division – Anti-Discrimination Stream.

The General Division will also include the Personal Compensation Stream and the Health Practitioners Stream.

The Personal Compensation Stream includes the WRCT, the ACT and the MACT. The Health Practitioners Stream includes the HPT.

The administration and operation of the ADT, the HPT, the ACT and the MACT is conducted by the WRCT personnel.

## I.1 Human Resources of WRCT and ADT (when they become part of TASCAT)



## 2 Constitution of the Tribunal 2020/2021

The Tribunal may be constituted by one or more members as determined by the Chairperson in respect of a particular matter referred to the ADT and the Chairperson may also determine which of those members is to be the presiding member.

The membership panel of the ADT is currently:

- Ms Alison Clues - Chairperson
- Ms Lucinda Wilkins

- Ms Kate Cuthbertson
- Ms Leigh Mackey
- Ms Audrey Mills
- Mr Robert Winter

### 3 Membership Requirements

To qualify for appointment as Chairperson of the ADT a person must be an Australian lawyer of not less than 7 years' standing as an Australian legal practitioner, a magistrate or former judge.

If in any particular matter the ADT consists of only one member, that member must be an Australian lawyer of not less than 7 years' standing as an Australian legal practitioner, a magistrate or former judge.

If in any matter the ADT consists of two or more members, one of those members must be an Australian lawyer of not less than 7 years' standing as an Australian legal practitioner. The other members must be persons with experience and expertise relevant to the inquiry before the ADT.

It is for the Chairperson to determine which member or members will constitute the ADT in any particular matter and if the ADT is constituted by more than one person, then the Chairperson may determine who is to be the presiding member.

### 4 Tribunal Accommodation

In July 2020, the ADT 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 ADT 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 a party or parties are 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.

## 5 Referrals to the Tribunal 2020/2021

The Tribunal received 36 applications in the 2020/2021 financial year.

Description	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021
Inquiry	62	24	22	19	22	17
Review of Rejection	6	15	21	8	10	18
Review of Dismissal	3	2	3	2	3	1
<b>Total:</b>	<b>71</b>	<b>41</b>	<b>46</b>	<b>29</b>	<b>35</b>	<b>36</b>

The Tribunal conducted 19 Hearings in the 2020/2021 financial year

The Tribunal finalised 58 referrals in the 2020/2021 financial year. This is a significant increase on previous years. The settlement of 1 matter involved 9 separate reviews.

Finalisation Period	2019/2020	2020/2021
1 Month	2	3
1-3 months	6	11
3-6 months	9	16
6-9 months	5	20
9-12 months	4	8
<b>Total</b>	<b>26</b>	<b>58</b>

## 6 Tribunal Procedure and COVID-19

The procedure for how matters are dealt with by the ADT was reviewed and altered when the administration and operation of the ADT was passed to the WRCT. All matters received by the ADT are now subjected to active case management by telephone direction conferences conducted by the Registrar and

Deputy Registrar during which timely action is directed to be undertaken by the parties in order to fully prepare their case. At the conclusion of this preliminary stage a conciliation conference may be conducted where appropriate by the Registrar or Deputy Registrar. The ADT employs the alternate dispute resolution process as the primary method of resolving disputes and matters are not advanced to formal hearing until such time as the Registrar or Deputy Registrar conducting the conciliation process determines that a negotiated resolution is unlikely.

Seven matters were resolved by conciliation in 2020/2021. All inquiries are referred to conciliation. Some reviews of dismissal are referred to conciliation. Reviews of rejection are not appropriate for conciliation because the alleged respondent is unaware of the matter at that stage.

The conciliation process provides an avenue for the parties to achieve an acceptable outcome without the risks and costs associated with a formal hearing. It provides the opportunity for parties to settle on terms that the ADT may not have the power to order. A conciliation is also held in private as opposed to a hearing which is open to the public.

The procedure of the ADT has not been adversely impacted in any way by COVID-19. All matters were able to proceed by teleconference or Microsoft Teams. It was not necessary to adjourn any matter due to inaccessibility to the ADT due to COVID-19.

## 7 Appeals to the Supreme Court of Tasmania

A person may appeal to the Supreme Court on a question of law or fact against an order made under s89 (which is made once a complaint has been substantiated after inquiry) or s95 (as to costs). In addition, a person may appeal to the Supreme Court against a decision under s78(4) (where the ADC declines to refer a complaint to the ADT and dismisses it) or a dismissal by the ADT under s99. Finally a person may appeal to the Supreme Court against a determination on a question of law under s86(4).

There was one appeal to the Supreme Court in the 2020/2021 financial year.

## 8 Decisions of the Tribunal

The ADT's determinations in relation to Inquiries are published on <http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/tas/TASADT/> (save for those

matters with suppression orders). Where appropriate, some decisions relating to reviews of dismissals or reviews of rejections are de-identified and published

Ten decisions were published during the 2020/2021 financial year.

## 9 Report on Financial Statement

Due to the fact that the WRCT as it is funded by the Workers Compensation Fund (non-consolidated revenue) there needs to be a proper accounting for the value of services provided by the WRCT and costs incurred by the ADT. In 2020/2021 the sum of \$209,649.00 was allocated from consolidated revenue to the costs of the ADT.

The time of all staff including Tribunal Members on matters is recorded so that there can be a proper accounting for the cost of operating the ADT. The funds paid do not specifically include the cost of premises, equipment, electricity or vehicles and the like. However those costs were taken into account when there was an increase in funding in the 2018/2019 financial year.

The funding for the ADT will be addressed again prior to the commencement of TASCAT on 5 November 2021. It is likely that a direct budget allocation model will be adopted.

## 10 Intent for 2021/2022

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

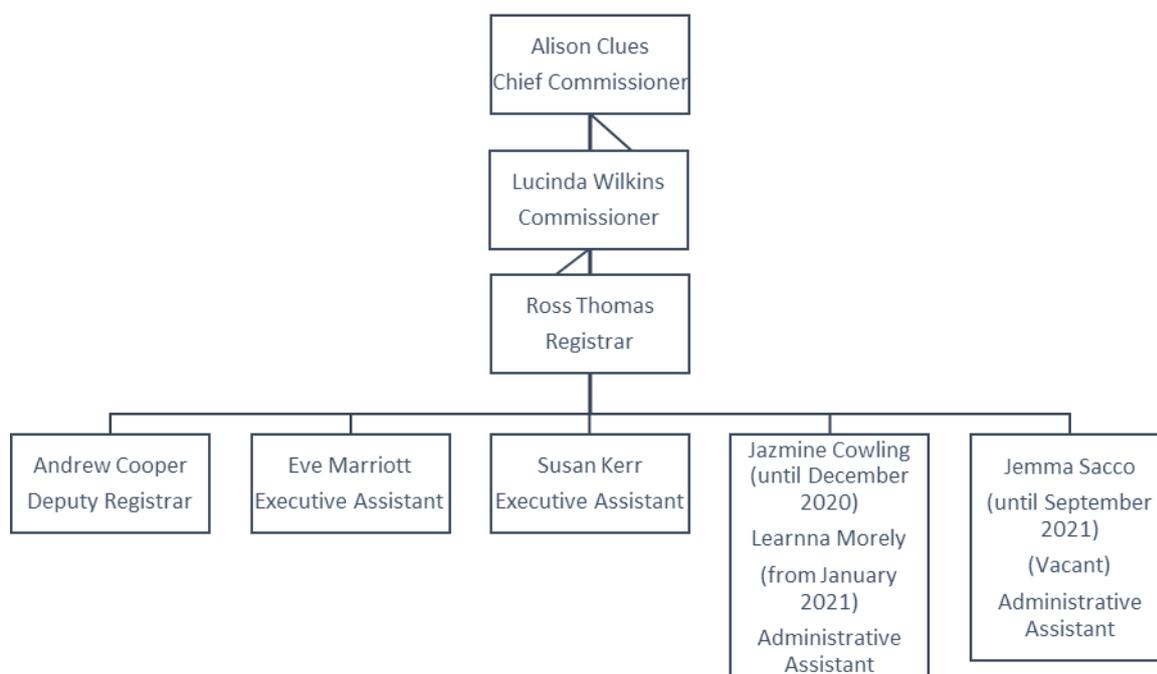
- (a) The promotion of independence in decision making, natural justice and procedural fairness, high quality, consistent decision making as well as transparency and accountability.
- (b) To be accessible by being easy to find and easy to access, and to be responsive to parties, especially parties with greater needs for assistance than others.
- (c) To ensure that all matters referred to the ADT 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 ADT 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 ADT and all tribunals currently supported by the WRCT.

## II Members of Tribunal & Staff

The ADT staff are the same as the WRCT staff set out in the following diagram. I thank them and the 4 members of the ADT for the work they have done and the support and assistance they have provided to the ADT over the last 12 months.

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



A M Clues  
**CHAIRPERSON**