

The Health Practitioners Tribunal

Annual Report

2020/2021

Presented to both Houses of Parliament
pursuant to s56 of the *Health Practitioners
Tribunal Act 2010*



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In accordance with s56 of the *Health Practitioners Tribunal Act 2010* (the Act), I submit to the Attorney-General/Minister for Justice my report on the activities of the Tribunal during the 2020/2021 financial year.

I Overview

As at 5 November 2021, the Health Practitioners Tribunal (HPT) 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. Health Practitioners Tribunal (HPT);
2. Workers Rehabilitation and Compensation Tribunal (WRCT);
3. Asbestos Compensation Tribunal (ACT);
4. Motor Accidents Compensation Tribunal (MACT);
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 HPT, TASCAT will remain an independent quasi-judicial tribunal, separate to government.

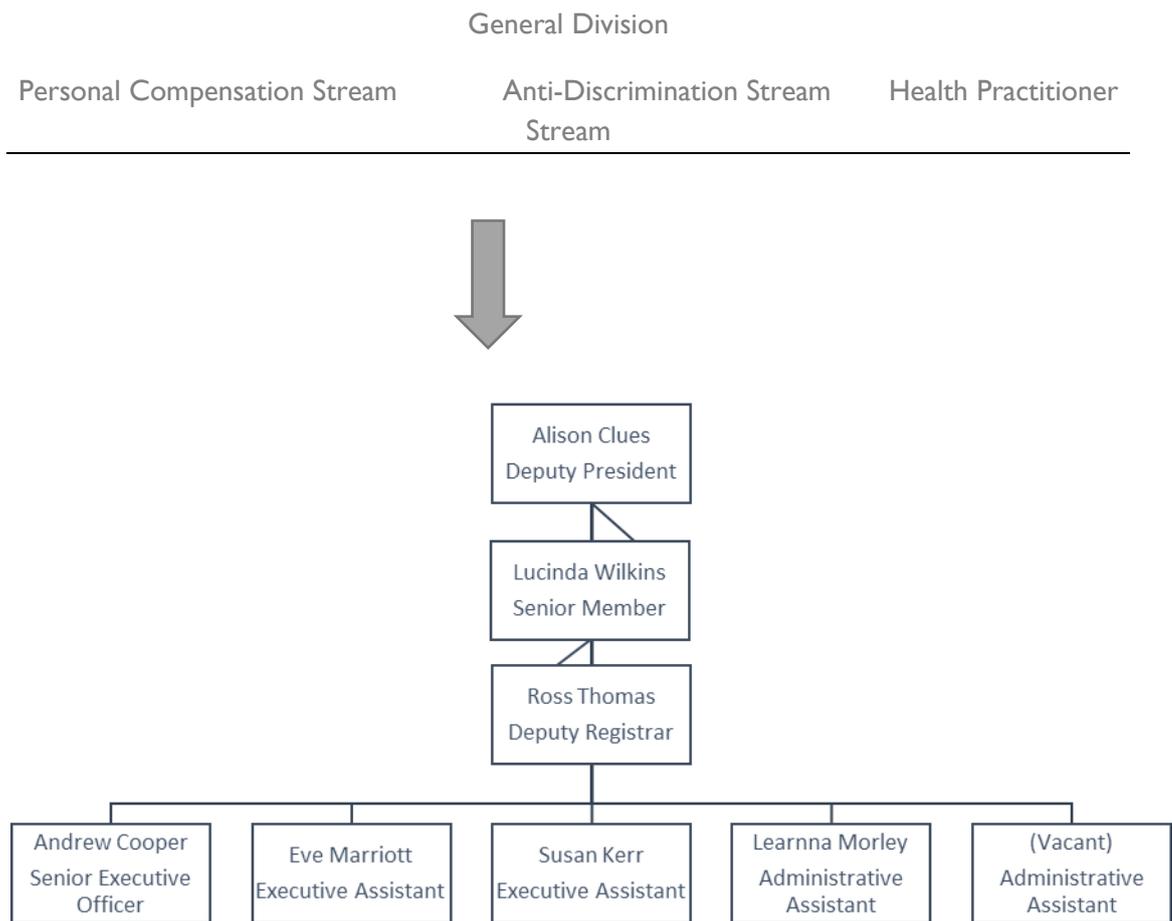
TASCAT is to be established on 1 November 2021. The actual commencement date will be the date of Royal Assent which is scheduled for 5 November 2021. The individual tribunals and board will continue to operate in the usual way between those two dates. On commencement day, full amalgamation (including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

When TASCAT commences, HPT will be part of the General Division – Health Practitioners Stream.

The General Division will also include the Personal Compensation Stream and the Anti-Discrimination Stream.

The Anti-Discrimination Stream includes the ADT. The Personal Compensation Stream includes the WRCT, the ACT and the MACT. The administration and operation of the HPT, the ADT, the ACT and the MACT is conducted by the WRCT personnel.

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



I.2 The HPT in 2020/2021

By the *Health Practitioner Regulation National Law (Tasmania) Act 2010*, Tasmania became part of a National scheme providing for the regulation of prescribed health professions which include:

- (a) Aboriginal & Torres Strait Islander health practice;
- (b) Chinese medicine;
- (c) chiropractic;
- (d) dental (including dentists, dental therapists, dental hygienists, dental prosthetists and oral health therapists);
- (e) medical;
- (f) medical radiation;
- (g) nursing and midwifery;
- (h) occupational therapy;
- (i) optometry;
- (j) osteopathy;
- (k) pharmacy;
- (l) physiotherapy;
- (m) podiatry;
- (n) psychology.

National Boards are established for each of these health professions and in some professions the National Board has established local boards/committees in each State or Territory with the delegated authority of the National Board. The Boards have the primary role (amongst others) to:

- register suitably qualified and competent persons within that health profession.
- determine the requirements for registration.
- develop or approve standards, codes and guidelines for that health profession.
- establish panels to conduct hearings about health, performance and professional standards of members.
- refer matters about health practitioners to a responsible tribunal (Tasmanian Health Practitioners Tribunal (the Tribunal)).

Boards or the delegated local committee may take action in respect of a health professional for any of the following:

- performance management (competence);
- health management (impairment); or

- conduct (discipline).

A health professional affected by a decision of a Board in respect of his or her registration or a decision by a Board to take health, conduct or performance action may appeal to the Tribunal.

A National Board must refer a matter about a registered health practitioner to the Tribunal if it reasonably believes, based on a notification or for any other reason:

- the practitioner has behaved in a way that constitutes professional misconduct; or
- the practitioner's registration was improperly obtained.

2 Constitution of the Tribunal

During 2020/2021 the HPT was constituted by:

- the Chairperson or Deputy Chairperson sitting alone or;
- the Chairperson or Deputy Chairperson and two professional members; or
- the Chairperson or Deputy Chairperson and one professional member and one community member.

In 2020/2021 the composition of the HPT was determined by the Chairperson but the Tribunal was required to be constituted either with professional members or a professional member and community member in addition to the Chairperson or Deputy Chairperson upon the request of either party so requests. All hearings in 2020/2021 were conducted by the Chairperson or Deputy Chairperson sitting alone.

3 Membership of the Tribunal 2020/2021

3.1 Chairperson

The Chairperson must be an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner. In February 2020, I was appointed as Chairperson for a period of 5 years.

The Chairperson may delegate to the Deputy Chairperson any of his or her functions under the Act or any other Act.

3.2 Deputy Chairperson

The prerequisites for appointment as Deputy Chairperson are the same as for the Chairperson. In February 2017 Lucinda Wilkins was appointed to this role.

The Deputy Chairperson is to act as the Chairperson whenever the Chairperson is absent from duty or from Tasmania or is unable to act as the Chairperson and also during a vacancy in the office of the Chairperson.

3.3 Professional Members

The Chairperson may appoint a person to be a professional member of the Tribunal. A person may only be appointed to be a professional member of the Tribunal if the person is:

- (a) a registered health practitioner in respect of the health profession to which the proceedings relate; and
- (b) in the opinion of the Chairperson a person with suitable skill, knowledge or experience to assist in the proceedings; and
- (c) is included in the list provided to the Chairperson by the National Board; and
- (d) is not a member of a National Board or a State or Territory Board.

3.4 Community Members

The Chairperson may appoint a person to be the community member of the Tribunal. A person may only be appointed if the person:

- (a) has at no time been a registered health practitioner or been registered in respect of a health profession; and
- (b) is not a member of a National Board or a State or Territory Board; and
- (c) is specified on a list of people who are suitable to be appointed. This list is prepared by the Attorney General.

4 Tribunal Accommodation

In July 2020, the HPT 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 HPT 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 health practitioner 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.

5 Referrals for 2020/2021 and COVID-19

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

One of those applications were filed on behalf of a National Board.

No application was adversely impacted in any way as a result of COVID-19.

| Applicant | Respondent | Filing Date | Determination Date | Outcome |
|----------------------------|----------------------------|-------------|--------------------|---|
| Medical Board of Australia | Dr Scot Nicolson Duffton | 7/12/2020 | Pending | |
| Jeremy Buddle | Medical Board of Australia | 25/02/2021 | Ongoing | |
| David Basser | Dental Board of Australia | 15/03/2021 | 20 May 2021 | Consent orders made that applicant have leave to withdraw application |

6 Conciliation

While there is no provision for conciliation in the legislation the parties may agree with the consent of the Chairperson or Deputy Chairperson that conciliation is an appropriate means of reaching agreement in respect of the issue/s to be determined by the Tribunal, facts to be found and/or the documents to be tendered.

Any agreement reached with respect to the resolution of a matter, must be considered and if appropriate, approved by the Tribunal before any determination can be made.

7 Appeals to the Supreme Court of Tasmania

A party to proceedings under the Act may appeal to the Supreme Court of Tasmania, on a question of law, against a decision of the Tribunal.

There were no appeals to the Supreme Court in the 2020/2021 financial year.

8 Decisions of the Tribunal

All determinations of the Tribunal are in writing and they are published on <http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/tas/TASHPT/>, unless a specific suppression order exists.

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

9 Report on Financial Statement

The fee for an application during 2020/2021 was \$249.00 per application made by a practitioner. The Tribunal received \$498.00 in application fees. Where a matter is initiated by a Professional Board there is no application fee.

The Tribunal's Financial Statement for the financial year 2020/2021 is attached to this report as Annexure I.

An agreement between the Department of Justice and the Australian Health Practitioner Regulation Authority (AHPRA) entered into on 1 December 2010 provides for the reimbursement (at a set rate) of certain costs incurred by the Department in respect of the operation of the Tribunal (sitting fees, travel and decision preparation). The Tribunal seeks reimbursement from the Department of Justice for services provided and these will, to the extent provided by the agreement, be recovered from AHPRA. The agreement was reviewed in 2014.

This arrangement does not reimburse the Workers Rehabilitation and Compensation Tribunal (WRCT) for the general administrative costs of providing the Health Practitioners Tribunal. To cover these costs an allocation of \$10,716.00 has been made by the Department of Justice. This allocation has been provided to cover the administrative costs of both the HPT and the MACT. The intent is that these costs not be covered by the WRCT as that tribunal is funded by non-consolidated revenue from the Workers Compensation Fund.

The allocation is designed to provide in effect what the Department of Justice agreed it would provide as part of the agreement with the Australian Health Practitioner Regulation Authority namely:

“1.2.1 Management of and administrative support for the operation of the tribunal.

1.2.2 Administrative support for the Tribunal includes general administrative duties, hearing room hire, all registry work, recording services (including provision of recording of hearing in audio format on compact disc) and videoconferencing.”

As recommended by an independent audit conducted by KPMG which was finalised in February 2018 the agreement should be renewed to ensure the fees being charged for the service being provided adequately reflect the cost of providing those services. The reason

for this is when a medical practitioner sits on the Tribunal he or she (quite properly) charges a commercial rate for the work performed. That rate is not wholly recoverable under the agreement and therefore the Department of Justice is left to pay to the practitioner the difference between the rate charged by the practitioner and the amount recoverable from AHPRA.

The review of the service agreement and the budgeting for all tribunals administered by the WRCT will need to occur after TASCAT formally commences.

10 Intent for 2021/2022

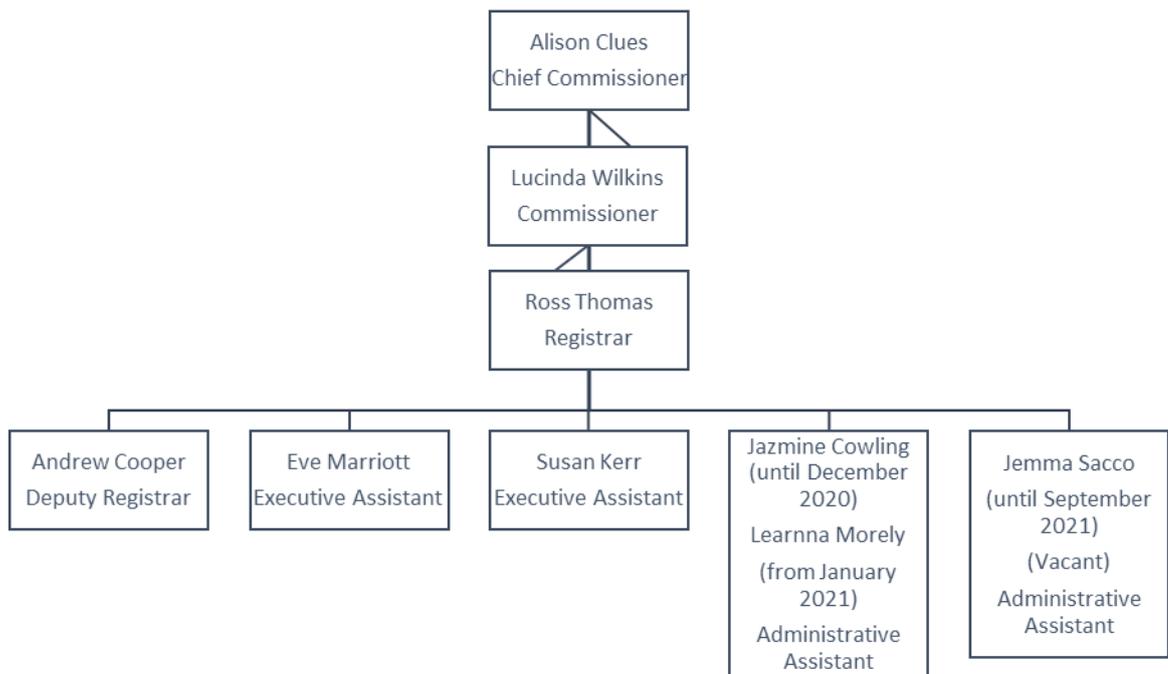
- To ensure appropriate resources are available in terms of professional members and community members.
- To look at integrating the HPT matters into the case management system which is used by the WRCT, the MACT and the ADT.
- To continue to work with the President of TASCAT and various stakeholders to achieve the main objectives of TASCAT including:
 - 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 HPT and all tribunals currently supported by the WRCT.
 - The promotion of independence in decision making, natural justice and procedural fairness, high quality, consistent decision making as well as transparency and accountability.
 - To ensure that all matters referred to the HPT 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.
 - To keep costs to parties to a minimum.
 - To use straight forward language and procedures.
 - To act with as little formality and technicality as possible.

II Members of Tribunal & Staff

The Health Practitioners Tribunal is administered and run by the WRCT. The members and staff of the WRCT are detailed below.

I thank them for the work they have done and the support and assistance they have provided to the Deputy Chairperson and myself.

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



A M Clues
Chairperson

Annexure I

Department of Justice
Trust Fund Financial Management Report
Trust Fund Report for Month Ending 30 June 2021

| Budget Centre : T598 - Health Practitioners Tribunal | YTD Actual |
|--|------------------|
| Opening Balance | |
| 31004 Trust Balance Brought Forward | 29,691.21 |
| Total Opening Balance | 29,691.21 |
| Revenue | |
| 46102 Other Revenue | (968.00) |
| Total Revenue | (968.00) |
| Operating Expenditure | |
| Salary Related Expenditure | |
| 51114 Recoveries of Salaries | 34,625.00 |
| Total Salary Related Expenditure | 34,625.00 |
| Non Salary Expenditure | |
| 52834 Other Communications | 470.00 |
| Total Non Salary Expenditure | 470.00 |
| Total Operating Expenditure | 35,095.00 |
| Closing Balance for: T598 - Health Practitioners Tribunal | 63,818.21 |