

FACT SHEET

Tasmanian Civil and Administrative Tribunal (Additional Jurisdictions) Bill 2024

The Tasmanian Civil and Administrative Tribunal (TASCAT) commenced operations as a single Tribunal in November 2021 through Stage 2 of the TASCAT reforms, enabling TASCAT to assume the functions and powers of nine former tribunals and boards.

During Parliamentary debate on the legislation that gave effect to the Stage 2 reforms, the Government indicated that future reforms could include the transfer to TASCAT of certain appeals that currently lie to the Administrative Appeals Division of the Magistrates Court or to the Supreme Court of Tasmania.

This Bill delivers those reforms, as well as transferring jurisdiction to TASCAT from the Property Agents Tribunal and making various miscellaneous amendments to improve TASCAT's procedures and create greater consistency.

The Bill also includes a legislative response to recommendation 18.13 of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (the Commission of Inquiry).

Why these changes are being made

Civil and administrative tribunals in all other Australian states and territories are empowered to review various decisions made by governmental bodies and officers. The range of administrative matters dealt with by these tribunals varies across jurisdictions but is generally extremely broad.

Tribunals are less formal than most courts and have streamlined procedures. They offer a faster, more accessible and less expensive process for resolving disputes. Tribunals are particularly well suited to reviewing the merits of administrative decisions, and not just their lawfulness.

The Administrative Appeals Division of the Magistrates Court was established by legislation in 2001, when Tasmania did not have a single civil and administrative tribunal to hear these kinds of matters. Now that TASCAT has commenced operations it is sensible for these reviews to be transferred to the Tribunal's jurisdiction, as is the practice in the rest of Australia.

Transfer of certain administrative appeals to TASCAT

Most of the Bill's provisions consist of clauses that transfer jurisdiction for certain administrative appeals to TASCAT. This is generally given effect through consequential amendments that replace references in numerous Acts to the Magistrates Court (Administrative Appeals Division) and the *Magistrates Court (Administrative Appeals Division) Act 2001* with the references to the Tasmanian Civil and Administrative Tribunal as the appropriate body to review decisions.

Part 57 of the Bill provides for administrative reviews of decisions under the *Registration to Work with Vulnerable People Act 2013* to be heard by TASCAT. Clause 249 of the Bill provides for these matters to be heard in a new Community, Children and Families stream of TASCAT and for the Tribunal to allocate members who have relevant knowledge, expertise or experience, in accordance with recommendation 18.13 of the Commission of Inquiry.

Under Part 51 of the Bill, one administrative review is being transferred to TASCAT from the Supreme Court, being a review under section 75B of the *Police Service Act 2003* of the Police Review Board's decision in relation to an application for review of the Commissioner's decision, determination, order or recommendation in respect of disciplinary matters. This will allow for reviews of these matters on the merits.

To ensure that the transferred matters are dealt with in largely the same way as they currently are in the Magistrates Court, clauses 240, 241, 242 and 243 of the Bill make amendments to the *Tasmanian Civil and Administrative Tribunal Act 2020* (the TASCAT Act) to replicate certain procedural provisions from the *Magistrates Court (Administrative Appeals Division) Act 2001* where there is currently no suitable equivalent. The amendments in clauses 240, 241 and 243 will only apply to the newly transferred matters.

Not all administrative review matters will be transferred to TASCAT. Following consultation with the courts and the government agencies that administer the relevant legislation, it was decided that appeals for several matters should remain within the jurisdiction of the Supreme Court or the Administrative Appeals Division of the Magistrates Court. They include matters that may potentially involve enforcement, compliance or seizure of materials, elements of criminality or those that require judicial review. It is important that these matters are dealt with by a judge or magistrate.

Changes to TASCAT's streams

The TASCAT Act allocates matters to various streams to ensure that the Tribunal is appropriately constituted when hearing them, for example, in relation to the expertise and knowledge required for Tribunal members. The Bill makes changes to TASCAT's streams to better reflect the nature and volume of matters it will be dealing with:

- Clause 248 of the Bill establishes a new Administrative stream. This stream will hear most of the administrative appeals that are being transferred by the Bill, however some will be allocated to other streams where TASCAT members have specialist knowledge that is relevant to those matters.
- Clause 248 also replaces the Health Practitioners stream with a new Occupational and Disciplinary stream. This broader stream will deal with both health practitioner and property agents matters, with the Tribunal constituted accordingly to ensure it includes appropriate expertise. Several of the administrative appeals being transferred from the Magistrates Court will also sit within this stream.
- The separate Forestry Practices stream is removed. Matters under the *Forest Practices Act 1985* will instead be heard in the Resource and Planning stream, with special provisions applying to the composition of the Tribunal when dealing

with forestry matters, replicating current provisions in the Forestry Practices stream. These changes are also made through clause 248 of the Bill and reflect that only two appeals have been dealt with in the Forest Practices stream since TASCAT commenced operations in 2021, one of which was withdrawn and the other dismissed by consent. Prior to that, the former Forest Practices Tribunal's most recent decision was in 2011.

- Clause 249 establishes a new Community, Children and Families stream within the Protective Division of TASCAT for matters that require expertise in particularly sensitive areas.

Transfer of jurisdiction from the Property Agents Tribunal

The main purpose of the Property Agents Tribunal is to hear and determine conduct complaints referred to it by the Property Agents Board. The Property Agents Tribunal deals with a small number of matters each year, and it is sensible for its role to be assumed by TASCAT.

Part 53 of the Bill makes various amendments to the *Property Agents and Land Transactions Act 2016* to transfer the functions and powers of the Property Agents Tribunal to TASCAT, while clause 248 of the Bill provides for property agents matters to be heard in the Occupational and Disciplinary stream. The Property Agents Board will continue to receive and investigate complaints in the first instance and deal with minor misconduct matters that do not require referral to the Tribunal.

Other amendments in the Bill

TASCAT has been operating as a single tribunal for nearly three years. Over that period, the Tribunal and other stakeholders have identified several ways in which the Tribunal's operations could be improved and made more consistent, and the Bill makes a number of miscellaneous amendments to achieve this:

- Part 8 of the Bill amends the *Anti-Discrimination Act 1998* to provide for TASCAT to review decisions of the Anti-Discrimination Commissioner to 'not accept' a complaint, and to enable the withdrawal provisions in the TASCAT Act to apply instead of the current withdrawal provisions in the *Anti-Discrimination Act 1998* (the provisions in the TASCAT Act are broader).
- Part 20 of the Bill amends the *Criminal Justice (Mental Impairment) Act 1999* to explicitly provide that TASCAT may continue to review a supervision order whilst the order is suspended, and clause 245 of the Bill amends the TASCAT Act to clarify that a determination of Tribunal made pursuant to the *Criminal Justice (Mental Impairment) Act 1999* may be appealed to the Supreme Court.
- Part 37 of the Bill amends the *Health Practitioners Tribunal Act 2010* to remove the requirement for the National Board to provide TASCAT with a list of prospective professional members. Professional members will still need to be registered health practitioners in respect of the health profession to which the proceedings relate and have suitable skill, knowledge or experience. The National Board supports this reform, which will assist in reducing delays in health practitioner matters proceeding before TASCAT.

- Clause 244 of the Bill amends the TASCAT Act to enable parties to, and persons with a proper interest in, proceedings across all of TASCAT's streams to request a statement of reasons for the Tribunal's decisions, and to allow that statement to be provided as a transcript or recording. This ability is currently only available in some of TASCAT's streams.
- Clause 248 of the Bill amends clause 9 of Part 8 of Schedule 2 to the TASCAT Act to enable the general time limit provisions of the Act to apply to Resource and Planning matters, rather than specifying a 90 day limit. This will align Resource and Planning matters to other streams of TASCAT and enable the Tribunal to set, extend or abridge time limits for these matters at its discretion, appropriately based on the particular circumstances and complexities of the matter and any submissions from the parties.
- Part 69 of the Bill amends the *Water Management Act 1999* to remove the mandatory requirement for a compulsory conference or alternative dispute resolution when an appeal is made to TASCAT. Most matters brought to TASCAT under this Act require determination of a question of law, and therefore cannot be resolved through mediation. TASCAT will retain discretion to order a compulsory conference or alternative dispute resolution where that process can assist in resolution of matters.
- Part 73 of the Bill amends the *Workers Rehabilitation and Compensation Act 1988* to repeal provisions that restrict access to representation in matters relating to workers rehabilitation and compensation, and amends provisions relating to service of documents, to enable the relevant provisions in the TASCAT Act to apply instead (the TASCAT provisions are broader and more flexible).

The Bill will commence on a day or days to be proclaimed, to allow TASCAT time to recruit and train relevant staff for its expanded jurisdiction and make any necessary administrative arrangements to support the reforms.

Changes made to the Bill following consultation

Following public and stakeholder consultation on a draft version of the Bill, several changes were made in response to feedback received and further review by the Department of Justice. Most of these changes were minor consequential amendments, such as additional instances where TASCAT needed to be referred to in legislation. The notable changes made were as follows:

- The previous clause 225 of the consultation draft version of the Bill inserted a new section 75A into the TASCAT Act relating to the application of Government policy to Tribunal decisions. This replicated the existing section 27 of the *Magistrates Court (Administrative Appeals Division) Act 2001* and was intended to apply only to those matters being newly transferred to TASCAT but was inadvertently drafted to have broader application. That clause has been removed from the final Bill. It is established at common law that administrative tribunals should consider and apply relevant government policies in the merits review of discretionary decisions, and this will continue to be the case for reviews undertaken by TASCAT.

- Clause 238 of the Bill inserts a definition of “interested person” into the TASCAT Act to provide a clear and consistent interpretation for the various administrative decision-makers whose decisions will be subject to the provisions of that Act.
- Clause 243 of the Bill now includes additional procedural protections in the proposed new Division 1A of Part 8 of the TASCAT Act, replicated from the *Magistrates Court (Administrative Appeals Division) Act 2001*. These provisions allow a person to apply to TASCAT if they request a statement of reasons from the original decision-maker and do not receive that statement within the relevant time period. They also allow TASCAT to determine whether the person was entitled to receive the statement, and whether a request for reasons was made within a reasonable time.
- The final Bill provides for the transfer of several additional administrative review matters from the Magistrates Court to TASCAT that were not included in the consultation draft:
 - Part 9 of the Bill – compensation amounts in respect of deprivation of records, pursuant to section 13 of the *Archives Act 1983*.
 - Part 21 of the Bill – leasing hardship determinations pursuant to section 17A of the *Crown Lands (Shack Sites) Act 1997*.
 - Part 43 of the Bill – Code of Conduct Panel determinations pursuant to sections 28ZJ and 28ZP of the *Local Government Act 1993*.
 - Part 46 of the Bill – cancellation or suspension of deer farm licenses pursuant to regulations 8 and 9 of the *Nature Conservation (Deer Farming) Regulations 2022*.
- Clause 245 of the Bill amends section 136 of the TASCAT Act to clarify that appeals on a question of law may be made to the Supreme Court from decisions made in TASCAT’s new Community, Children and Families stream.
- The transitional provisions in clause 246 of the Bill now clarify that where administrative review proceedings have commenced in the Supreme Court or Magistrates Court at the time the Bill’s amendments commence, any matters for which a hearing date has already been allocated will continue to be dealt with by the relevant court.

Further information in relation to each of the Bill’s individual clauses is available in the Clause Notes prepared for the final Bill.