

## **DRAFT SECOND READING SPEECH**

**HON GUY BARNETT MP**

### **Tasmanian Civil and Administrative Tribunal (Additional Jurisdictions) Bill 2024**

*\*check Hansard for delivery\**

Honourable Speaker, I move that the Bill now be read a second time.

Establishment of the Tasmanian Civil and Administrative Tribunal (TASCAT) was a landmark law reform delivered by this Government. Having a single civil and administrative tribunal in this State has enabled a more client-centric focus, delivering greater consistency in decision-making across a range of civil and administrative matters and improved access to justice for all Tasmanians.

Our Government has taken a staged approach to delivering this important reform. Stage 1 involved passage of the *Tasmanian Civil and Administrative Tribunal Act 2020* (the TASCAT Act) to enable the appointment of key personnel and the co-location of

nine Tribunals and Boards at premises in Hobart. Mr Malcolm Schyvens was appointed as the inaugural President of TASCAT and commenced in that role in May 2021.

Stage 2 of the TASCAT reforms was delivered in 2021 with the passage of the *Tasmanian Civil and Administrative Tribunal Amendment Act 2021* and the *Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021*.

That legislation provided for the formal transfer of jurisdictions to TASCAT, established the Tribunal's substantive processes, powers and procedures, and provided for formal disestablishment of the co-located Tribunals and Boards and transfer of their functions to TASCAT. This enabled TASCAT to commence operations as a single civil and administrative tribunal in November 2021.

The Government is now delivering Stage 3 of the TASCAT reforms, which will further expand the Tribunal's jurisdiction by transferring certain administrative appeals that currently lie to the

Administrative Appeals Division of the Magistrates Court or to the Supreme Court of Tasmania, transferring jurisdiction 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).

Honourable Speaker, I will first outline the provisions in the Bill that relate to the transfer of various administrative appeals to TASCAT.

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.

Most of the Bill's provisions consist of clauses that transfer jurisdiction for certain administrative appeals to TASCAT. This is primarily 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 references to the Tasmanian Civil and Administrative Tribunal as the appropriate body to review decisions.

Honourable Speaker, the Government is firmly committed to implementing the recommendations arising from the Commission of Inquiry. Accordingly, 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, as proposed by the Commission in the first part of recommendation 18.13.

Clause 249 of the Bill provides for these matters to be heard in a new Community, Children and Families stream of TASCAT, and requires the President of the Tribunal to allocate members who have relevant knowledge, expertise or experience in relation to the matter. This provides a legislative response to the second part of recommendation 18.13.

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.

It is important to note that 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 appropriate that these matters are dealt with by a judge or magistrate.

Part 64 of the Bill makes amendments to the TASCAT Act. The main purpose of these amendments is to insert new procedural provisions and to make changes to the streams in which the Tribunal operates. I will now outline some of the key provisions included in this Part of the Bill.

The TASCAT Act contains its own procedural provisions for dealing with matters. Many of these are comparable to powers and processes that exist in the Magistrates Court; however, there are some differences. To ensure

that the transferred administrative review 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 TASCAT Act to replicate certain procedural provisions from the *Magistrates Court (Administrative Appeals Division) Act 2001* where there is currently no suitable equivalent.

Clause 240 of the Bill inserts a new section 74A into the TASCAT Act that sets out the general provisions regarding applications for review and the process by which an application must be made. The provisions specify who may apply for a review of a reviewable decision, the timeframe for making an application, and who must be notified that such an application has been made.

Clause 241 of the Bill amends section 75 of the TASCAT Act to clarify that the new administrative reviews being transferred to the Tribunal are to be conducted by way of a hearing *de novo*, that is, beginning afresh as though the Tribunal was making the decision on the relevant matter for the first time. This is

how these matters are currently heard in the Magistrates Court.

Clause 242 of the Bill amends section 76 of the TASCAT Act to include additional provisions based on the operation of sections 22 and 36 of the *Magistrates Court (Administrative Appeals Division) Act 2001*. These provisions enable an original decision-maker to be exempted from providing documents or a statement of reasons in circumstances where the Tribunal determines it is desirable or reasonable to do so.

This is important where information held by the original decision-maker is particularly sensitive and there may be good reasons for it to be withheld from disclosure. Some examples would be information relating to whistleblowers, ongoing police investigations and sensitive information provided in relation to a decision made under the *Registration to Work with Vulnerable People Act 2013*. It will be the Tribunal that makes the determination as to whether an exemption is warranted, and not the original decision-maker.



Clause 243 of the Bill inserts a new Division 1A in Part 8 of the TASCAT Act. This Division replicates existing provisions in the *Magistrates Court (Administrative Appeals Division) Act 2001* by setting out the preliminary procedures that apply to decision-makers for the administrative review matters that are being transferred to TASCAT by this Bill. These include requirements for decision-makers to provide relevant interested persons with notice of decisions, rights to review and the right to request a statement of reasons if not already provided. The new provisions also outline the circumstances in which the original decision-maker may refuse to provide reasons, and the steps that a person may take to apply to the Tribunal to order that those reasons be provided.

The TASCAT Act currently mandates that written reasons are provided for the Tribunal's decisions in the Resource and Planning stream, while in the Guardianship and Administration stream a party to proceedings or a person aggrieved by a determination may apply for a written statement of reasons and the Tribunal must comply. However, there is currently no general provision in the TASCAT Act that requires the

Tribunal to provide reasons for decisions made in other streams. Clause 244 of the Bill addresses this gap by inserting a new section 86A into the TASCAT Act, which will 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.

Clause 245 of the Bill amends section 136 of the TASCAT Act, which deals with appeals from TASCAT decisions to the Supreme Court. The amendments provide an appeals pathway for matters heard within the new Community, Children and Families stream. They also clarify that a determination of the Tribunal made pursuant to the *Criminal Justice (Mental Impairment) Act* may be appealed to the Supreme Court.

Honourable Speaker, the TASCAT Act allocates matters to various streams to ensure that the Tribunal is appropriately constituted when hearing them, for example, in relation to any particular expertise or 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.

Schedule 2 to the TASCAT Act relates to the Tribunal's operations in its General Division, and clause 248 of the Bill establishes a new Administrative stream in that Division. This new 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 being 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.

Schedule 3 to the TASCAT Act relates to the Tribunal's Protective Division. As I have mentioned previously, clause 249 of the Bill establishes a new Community, Children and Families stream within that Division for matters that require expertise in particularly sensitive areas.

Clause 250 of the Bill inserts a new Schedule 4 to the TASCAT Act, which sets of all of those matters that are subject to administrative review. These are the matters being transferred from the Magistrates Court and Supreme Court, and to which the new section 79A of the

TASCAT Act will apply, relating to preliminary procedure for certain decision-makers.

Honourable Speaker, as I noted earlier, this Bill transfers jurisdiction from the Property Agents Tribunal to TASCAT. 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. Part 53 also repeals sections of the Property Agents and Land Transactions Act that will no longer be necessary following the transfer of jurisdiction to TASCAT, such as provisions relating to the Property Agents Tribunal's procedures, functions and powers, and its membership and meetings.

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 TASCAT.

There are also two specific changes to current procedure which have been incorporated into the Bill.

Clause 185 amends section 110 of the Property Agents and Land Transactions Act to specify that a fine issued by TASCAT, where a property agent has been found guilty in relation to a conduct complaint, is to be paid to the Property Agents Board. This will allow the Board to continue to fund its operations in an independent manner after the transfer of jurisdiction. This provision is similar to a provision in the *Legal Profession Act 2007*, relating to the Legal Profession Board. This clause also changes the maximum penalty for a fine to 750 penalty units, which matches the maximum penalties in the Legal Profession Act.

Clause 186 makes amendments relating to the application of costs provisions in the Property Agents and Land Transactions Act. Currently, that Act only

allows for orders of costs where a matter goes to hearing, and the process for recovering costs can require a party to apply to the Supreme Court for a further order. The amendments will give TASCAT a broad discretion to make costs orders in any proceedings under the Act where it is appropriate to do so. The clause also excludes the application of certain parts of the TASCAT Act costs provisions that would have fettered that broad discretion. The amendments ensure that the TASCAT Act provision which allows for costs to be assessed under the Tribunal rules or regulations is preserved, so recourse to the Supreme Court for enforcement will no longer be required.

Honourable Speaker, 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. The Bill makes a number of miscellaneous amendments to achieve this, including the removal of unnecessary or duplicated provisions, and I will now outline some of the key changes.

Section 13 of the *Anti-Discrimination Act 1998* provides for TASCAT to review the Anti-Discrimination Commissioner's decisions relating to exemptions, withdrawals, rejections and dismissals of complaints. This currently does not include a decision by the Commissioner to "not accept" a complaint, which may only be reviewed by the Supreme Court. This is unaffordable for many complainants. Part 8 of the Bill amends section 13 to enable TASCAT to review these decisions instead.

Part 8 of the Bill also amends the Anti-Discrimination Act to remove most of section 98A of that Act. This section outlines the procedure for a complainant to withdraw their complaint. These amendments will enable the broader provisions in the TASCAT Act to apply instead, to allow TASCAT to deal with the withdrawal, dismissal or striking out of all or part of proceedings. Sub-section (4) of section 98A will be retained, as it provides that where a complaint was not withdrawn voluntarily, or where investigating a complaint is in the public interest, the matter can still be investigated or inquired into, even



when the complaint has been withdrawn by the person who made it.

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. Currently, under section 37 of that Act, TASCAT has the responsibility to review these orders at least once in each 12-month period. When a person under a supervision order is admitted to an approved hospital, a secure mental health unit or sentenced to a term of imprisonment, any forensic orders relating to that person, including the supervision order, are suspended. Making it clear that supervision orders continue to be reviewed during any period of detention ensures that supervising officers are up to date with the person's circumstances when they are released.

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. Lists of professional members are currently provided by the Australian Health

Practitioner Regulation Agency (AHPRA) as the National Board. This is not the practice in other Australian jurisdictions and is not supported by AHPRA. AHPRA has advised that this process is slow and cumbersome, and such lists of names rapidly become out of date. It may also lead to perceptions that AHPRA 'hand picks' potential decision makers by encouraging the selection of only certain health practitioners to sit on matters where Boards will have an interest in the outcome.

This requirement also substantially duplicates the assessment of suitability that the President of TASCAT must undertake in relation to designated professional members under section 11(2) of the Health Practitioners Tribunal Act. The requirement to have a list updated can lead to significant delays in health practitioner matters proceeding before TASCAT, which does not serve the interests of justice.

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 as set out in section 11 of the Act.

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 cannot be resolved through mediation, which makes a mandatory requirement inappropriate. 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. For example, they permit electronic service with the consent of the person or body being served.

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.

Honourable Speaker, I would like to thank all of those stakeholders who provided valuable feedback during public consultation on a draft version of the Bill.

I would also like to acknowledge the significant work undertaken by Chief Parliamentary Counsel and her Office in drafting and finalising this important legislation.

I commend the Bill to the House.