

DRAFT SECOND READING SPEECH

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Tasmanian Civil and Administrative Tribunal (Miscellaneous Amendments) Bill 2023

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Mr 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. This stage will be progressed in two bills.

The Tasmanian Civil and Administrative Tribunal (Miscellaneous Amendments) Bill 2023 is the first of those bills.

This Bill transfers jurisdiction of the Property Agents Tribunal to TASCAT and amends various Acts to improve TASCAT's operations, primarily in response to feedback from TASCAT based on its operational experience over the last two years.

Mr Speaker, I will now briefly outline the key clauses in the Bill.

The most significant provisions are contained within Part 5 of the Bill, which makes amendments to the *Property Agents and Land Transactions Act 2016* (the PALT Act). That is the Act under which the Property Agents Tribunal currently operates.

Clause 15 of the Bill amends the definition of the term “Tribunal” within section 3 of that Act, so that it refers to TASCAT. This will give TASCAT jurisdiction to deal with matters under that Act, instead of the Property Agents Tribunal.

Clause 21 repeals the entire Division 5 of Part 7 of the PALT Act, which established the Property Agents Tribunal. These provisions will no longer be necessary following the transfer of jurisdiction to TASCAT, which has its own provisions in the TASCAT Act relating to procedures, functions and powers. This will ensure consistency with existing TASCAT practice.

Schedule 2 of the PALT Act is also repealed completely by clause 27 of the Bill, as this schedule relates solely to the membership and meetings of the Property Agents Tribunal, and will no longer be required when that tribunal ceases to exist as a separate body.

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

Clause 22 amends section 110 of the PALT 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 23 relates to the application of costs provisions in the PALT 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. Clause 23 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 certain parts of the TASCAT Act costs provisions which would have fettered that broad discretion. The clause also ensures 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.

The Bill contains some provisions which remove references to the Property Agents Tribunal from certain parts of the Act, where they are no longer appropriate due to the independent nature of TASCAT. For example, provisions which require the Tribunal to report to the Property Agents Board and require the Board to pay costs incurred by the Tribunal would not be appropriate given that TASCAT will be completely independent of the Board.

The Bill also provides for the repeal of various sections of the PALT Act to enable certain provisions of the TASCAT Act to apply instead. For example, clause 24 will enable the broader indemnities and immunities in the TASCAT Act to apply to protect tribunal members from personal liability; clause 25 will allow TASCAT to make a broader range of orders upon determining a property agents matter; and clause 26 will enable TASCAT decisions in the review jurisdiction to be appealed to the Supreme Court instead of the Magistrates Court, as is generally the case for TASCAT.

The Bill also makes two amendments to address minor issues raised during the drafting of the Bill. The first corrects the name of CPA Australia to reflect the current name of that organisation. The second, in clause 19, clarifies that where a complaint is referred to TASCAT under the PALT Act, the Property Agents Board is always the applicant, rather than the person who made the complaint. This has always been the case, but it was not sufficiently clear in the Act.

Under these reforms, property agents' matters will be allocated to a new Occupational and Disciplinary stream of TASCAT, together with health practitioner matters. This is dealt with in Part 6 of the Bill, which amends the TASCAT Act.

Clause 32 of the Bill establishes this new, broader stream by substituting it for the current Health Practitioners stream in Part 5 of Schedule 2 to the TASCAT Act. Clause 32 also provides for the composition of the Tribunal in the new stream. Specifically in relation to property agents' matters, the Tribunal must include, if practicable, a person who has at least 5 years' experience as a property agent.

Mr Speaker, the other Parts of the Bill make miscellaneous amendments to various Acts. Many of these remove unnecessary or duplicated provisions to create greater consistency across TASCAT's operations, and to respond to issues identified by TASCAT and the Anti-Discrimination Commissioner.

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 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 2 of the Bill amends section 13 to enable TASCAT to review these decisions instead.

Part 2 of the Bill also amends the Act to remove most of section 98A of the Anti-Discrimination 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 3 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 the 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 4 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. The National Board is not required to provide such a list in any other Australian state or territory, and has indicated this is unnecessary. Other requirements for professional members, such as being a registered health practitioner and having suitable skill, knowledge, or experience, will continue to apply when a person is designated for health practitioner proceedings.

Part 6 of the Bill amends the TASCAT Act to change the period of appointment for senior and ordinary members of TASCAT. Currently, the Act states that members are appointed for "5 years". As TASCAT has recruited members over a period of several years, this inflexible timeframe has prevented TASCAT from streamlining this administrative process. By amending this section so that it reads "up to 5 years", the need to conduct multiple appointment processes will be reduced.

Part 7 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. These appeals generally relate to procedural fairness. This is a question of law and is not able to be determined by compulsory conference or alternative dispute resolution, and so it's not appropriate for this to be required. In circumstances where the question in dispute is not a question of law, TASCAT will still have the power, under the TASCAT Act, to send these matters to mediation if it is appropriate.

Finally, Part 8 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 repeal provisions relating to service of documents. These amendments enable the relevant provisions in the TASCAT Act to apply instead, which are broader and more suitable.

Mr Speaker, as I indicated earlier, the Government is also developing a second Stage 3 Bill. That Bill will confer jurisdiction on TASCAT to hear a wide range of administrative appeals that currently lie to the Administrative Appeals Division of the Magistrates Court.

This includes responding to Recommendation 18.13 of the *Final Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*, which recommended that TASCAT should be the forum for administrative reviews of decisions under the *Registration to Work with Vulnerable People Act 2013*. I look forward to Parliament considering those further reforms in the near future.

Mr Speaker, our Government is pleased to have initiated the significant TASCAT reforms that have been implemented over the last few years, and to be building further on those reforms with the amendments in this Bill.

I commend the Bill to the House.