

## DRAFT SECOND READING SPEECH

Hon Elise Archer MP

### *Tasmanian Civil and Administrative Tribunal Amendment Bill 2021*

*\*check Hansard for delivery\**

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

As I have previously stated, I am immensely proud to be the Minister introducing these significant reforms to establish the Tasmanian Civil and Administrative Tribunal (TASCAT).

The introduction of TASCAT as Tasmania's single tribunal by our Government is bringing in a new era for Tasmania's tribunals.

As someone who has practised in protective jurisdictions, I am particularly pleased to pursue reform in this area as TASCAT will bring about improved access to justice for all Tasmanians. It will allow for the better use of administrative support and resources for tribunal matters, promote greater use of alternative dispute resolution and provide for more consistent decision-making.

The establishment of TASCAT is a significant undertaking. In order to ensure that the transition from multiple Tribunals and Boards to a single civil and administrative tribunal occurs with appropriate consultation, TASCAT is being established in three stages through several pieces of legislation.

Stage 1 of our Government's initiative to establish TASCAT was completed last year with commencement of the *Tasmanian Civil and Administrative Tribunal Act 2020*. This enabled the co-location of nine separate Tribunals and Boards at new premises at Barrack Street in Hobart.

The nine co-located Tribunals and Boards are:

- the Anti-Discrimination Tribunal;
- the Asbestos Compensation Tribunal;
- the Forest Practices Tribunal;
- the Guardianship and Administration Board;
- the Health Practitioners Tribunal;
- the Mental Health Tribunal;
- the Motor Accidents Compensation Tribunal;
- the Resource Management and Planning Appeal Tribunal; and
- the Workers Rehabilitation and Compensation Tribunal.

The commencement of the 2020 Act has also enabled the appointment of key personnel to support the establishment, and in March this year I was pleased to announce the appointment of Mr Malcom Schyvens as the inaugural President of TASCAT.

The legislation to implement Stage 2 of TASCAT consists of the Tasmanian Civil and Administrative Tribunal Amendment Bill 2021 and the Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Bill 2021.

With the passage of these Bills, TASCAT will be able to formally commence operations as Tasmania's single tribunal. The legislation will formalise the required amalgamation and transfer of powers, provide for the processes and procedures of the nine co-located Tribunals and Boards, and deliver a combined civil and administrative tribunal for the very first time in Tasmania.

The Amendment Bill will amend the Principal Act to add in the provisions required for TASCAT to carry out its functions in exercising its original and review jurisdiction, conferred by 40 relevant pieces of legislation. It will also provide a consolidated set of provisions for appeals from TASCAT to the Supreme Court of Tasmania.

The Consequential Bill amends various pieces of legislation to substitute updated references to the Act and the Tribunal, and repeals provisions that will no longer be required because they will be dealt with through the Tribunal's consolidated powers, processes and procedures under the amended Act.

I will speak more to the Consequential Amendments Bill following the conclusion of debate on this Bill, being the substantive TASCAT Amendment Bill.

Mr Speaker, it is important to note that the task of preparing these Bills has involved accommodating and integrating two important objectives.

It is a guiding principle that, wherever possible, there should be consistent processes and procedures that apply across the various streams of TASCAT's jurisdiction. This furthers the objectives of the Act by encouraging transparency and consistency in decision-making, and promoting accessibility for users of TASCAT.

However, as there are some significant differences in the various jurisdictions that are currently exercised by the nine Boards and Tribunals that are to be amalgamated, it has been identified some of these must be maintained. I will explain these in more detail, but they are required to be maintained in order to ensure natural justice and fairness, and to recognise the needs and vulnerabilities within the diverse groups of Tasmanians who rely on them to provide just outcomes when their matters are dealt with.

This Bill aims to ensure that these objectives – which sometimes compete – are reflected in the Act. Accordingly, while there will be general provisions in the Amendment Act that are the standard or default for TASCAT, some of those provisions are explicitly excluded from applying in specified streams, or in particular circumstances.

By way of example, there are specific protections that apply to those who come before the Mental Health Tribunal, and which must continue to apply when their matters are dealt with under the Mental Health stream of TASCAT.

The Bill, therefore, sets out the specific provisions that will prevail over the general provisions when TASCAT is dealing with matters in certain streams, such as the Resource and Planning stream and the Guardianship stream.

Despite these required differences provided for in the Bills, it is intended that, after TASCAT has formally commenced, there will be future opportunities to identify provisions in the Act that can be further consolidated and unified, as users of TASCAT become more familiar with its operations and procedures over time.

Mr Speaker, I would now turn to several specific aspects of the Bill.

The new Part 6 provides for the constitution of TASCAT and covers matters such as the number of members who may constitute TASCAT, circumstances where a registrar or staff member may exercise the TASCAT's jurisdiction, establishing who presides for a particular matter, process for resolving decisions where the opinion of members is divided, and disclosure of interests by TASCAT members.

It is important to note that the general provisions in Part 6 are modified for particular streams by the specific provisions found within Schedules 2 and 3 of the amended Act.

The new Part 7 of the Act sets out which matters fall within the original and review jurisdictions of TASCAT. TASCAT will exercise its original jurisdiction where a relevant Act confers upon it the power to act as the original decision-maker for a matter.

Where a decision has already been made a person or body under a relevant Act, and that Act provides for the decision to be appealed, TASCAT will exercise its review jurisdiction. Section 75 of the amended Act sets out the nature of proceedings in TASCAT's review jurisdiction, and this reflects that there are several types of review that may be undertaken by TASCAT, depending on the kind of matter before it.

For example, section 75(2) of the amended Act provides that for the Resource and Planning stream, reviews are to be conducted by way of a *de novo* hearing, where the matter is heard afresh. For other matters, the review may be conducted as a re-hearing, with TASCAT given the capacity to have regard to, or give weight to, the decision of the original decision-maker.

The nature of the review jurisdiction exercised pursuant to Part 7 reflects the way that those matters are currently reviewed by the nine Tribunals and Boards to be amalgamated, as set out in the relevant Acts that confer the review power.

Part 7 of the Bill also includes provisions to empower TASCAT to direct the original decision-maker to provide assistance, to clarify the effect that review proceedings have on the original decision, and to set out the range of decisions available to the TASCAT upon completing its review.

The new Part 8 of the Bill contains the general provisions relating to principles, powers and procedures that must be followed by TASCAT when conducting proceedings.

These include providing for when hearings may be held in private or may be subject to directions that prohibit or restrict publication or disclosure, and the measures TASCAT is to take to promote transparency and accessibility during proceedings.

Division 3 of Part 8 contains powers for proceedings to be dismissed or withdrawn, including where proceedings are frivolous, vexatious or being conducted to unnecessarily cause disadvantage to another party.

Division 5 of Part 8 sets out who may be a party to proceedings, while Division 6 provides for a party to appear before TASCAT personally or to be represented by an Australian legal practitioner or, with leave of TASCAT, another person. That Division also empowers TASCAT to appoint a person to represent a party or act as a *guardian ad litem*. Some of these general provisions are displaced by specific provisions in Schedules 2 and 3 relating to the Resource and Planning stream and the Guardianship stream respectively.

Division 7 of Part 8 of the Bill provides for compulsory conferences, the purpose of which is to identify and clarify the issues in proceedings and to promote the resolution of matters by settlement between the parties, and for alternative dispute resolution processes that may be used to resolve or narrow the issues between parties.

Division 10 of Part 8 contains the provisions relating to costs. The default position under section 120(1) is that parties bear their own costs in proceedings, however under subsection (2) TASCAT may make an order for a party to pay all or any of the costs of another party if it considers it appropriate to do so after taking into account the specified matters. The provisions of this section may be displaced if otherwise specified in the Act, a relevant Act or regulations under a relevant Act.

Sections 121 and 122 provide for the powers TASCAT may exercise in particular circumstances to make an order compensating another party for expenses or loss, to require a party's representative to pay costs incurred unnecessarily by another party because of that representative's conduct in proceedings, or to make an order for costs incurred by TASCAT.

Mr Speaker, it is important to note that in the Mental Health Stream and Guardianship stream, TASCAT is not permitted to make an order for a party to pay the costs of another party, including compensatory costs, or to pay costs incurred by TASCAT. This recognises the vulnerability and financial hardship that is frequently experienced by people appearing in Mental Health and Guardianship stream proceedings.

It should also be noted that the costs provisions within Division 10 do not apply to the Resource and Planning stream. Specific costs provisions for that stream are included in the amended Schedule 2, which replicate current practice for those matters under the *Resource Management and Planning Appeal Tribunal Act 1993*.

The new Part 9 deals with the federal jurisdiction, enabling proceedings on an application to be referred to the Magistrates Court in circumstances where TASCAT does not, or may not, have jurisdiction to determine the application because it involves matters of the kind referred to in section 75 or 76 of the Constitution of the Commonwealth. This resolves the legal issues relating

to federal diversity jurisdiction that have arisen as a result of the High Court decision of *Burns v Corbett* (2018).

The new Part 10 consolidates the provisions for appeals from TASCAT to the Supreme Court of Tasmania. It captures all such appeals that are currently provided for in relevant Acts, and replicates the current nature of those appeals in terms of who may appeal, and whether the appeal is permitted on a question of law only, on a question of law or fact, or on a question of law as of right and on a question of fact with the leave of the Court. The consolidation of these appeal rights within the Act means that they can be repealed from the relevant Acts by the Consequential Bill.

The new Part 11 provides appropriate protections and immunities for members of TASCAT, TASCAT staff and persons acting under TASCAT's direction, as well as parties and their representatives, witnesses, experts, and persons presiding over alternative dispute resolution processes.

The new Part 12 contains miscellaneous provisions, while savings and transitional provisions are found in Part 13.

Mr Speaker, I would also like to draw attention to the Bill's amendments to Schedules 2 and 3 of the Act. As I mentioned earlier, the amended Schedules will include provisions that relate to the particular streams in which TASCAT operates. These provisions specify the relevant Acts pursuant to which the TASCAT may exercise its functions and powers in the stream and how TASCAT is to be constituted for proceedings in that stream.

For example, under Part 5 of Schedule 3, where TASCAT is constituted by 3 or more members for purposes of proceedings in the Mental Health stream, the members must include a psychiatrist and a legally qualified member.

Part 8 of the amended Schedule 2 contains a series of additional provisions that apply to the Resource and Planning stream. The purpose of these provisions is to replicate the current powers, processes and procedures of the Resource Management and Planning Appeal Tribunal (RMPAT) where those powers, processes and procedures differ from, or are not already reproduced in, the general provisions of the amended Act. This means that once TASCAT commences, resource and planning matters will continue to be dealt with in substantially the same way as they are now under RMPAT.

Similarly, Part 4 of Schedule 3 includes additional provisions relating to matters in the Guardianship stream, preserving particular provisions that will be repealed from the Guardianship and Administration Act 1995.

Mr Speaker, while the legislation for Stage 1 of TASCAT set up the broad structure and appointment provisions for TASCAT, the Bills that I have introduced to implement Stage 2 are of considerably greater significance.

They provide the legislative framework for TASCAT to commence its work as a single tribunal, enabling a more client-centric focus, delivering greater consistency in decision-making across a range of civil and administrative matters, and improving access to justice for all Tasmanians.

As I have noted, the Government has taken a staged approach to TASCAT to ensure a smooth transition to a single tribunal and to ensure that there is appropriate consultation with stakeholders and the public.

Following the passage of this legislation, the Government's attention will turn to Stage 3, which will involve the transfer of further powers and functions to TASCAT.

As part of this stage, the Department of Justice will consider approaches in other jurisdictions and stakeholder views to inform this further work, to determine which Tribunals, Boards and other areas that would be appropriate to be transferred to the TASCAT in future.

Subject to further detailed analysis and consultation, possible matters that our Government will consider for transfer to TASCAT include:

- residential tenancy matters;
- certain appeals relating to licensing matters within the consumer affairs portfolio;
- building matters, including certain building disputes;
- certain other appeals to the Administrative Appeals Division of the Magistrates Court; and
- certain appeals within the jurisdiction of the Supreme Court of Tasmania.

We will consult with stakeholders, the broader Tasmanian community and the Tribunal itself before making any final decisions on the scope of this future stage.

As Attorney-General and Minister for Justice, I am pleased to have prioritised this significant reform and I am confident that TASCAT will deliver a more client-centric focus, particularly for our protective jurisdictions.

Mr Speaker, I commend the Bill to the House.