

The Health Practitioners Tribunal

Annual Report

2016/2017



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





TASMANIA

HEALTH PRACTITIONERS TRIBUNAL

13 August 2018

The Hon. Elise Archer
Minister for Justice
10th Floor, Executive Building
15 Murray Street
HOBART TAS 7000

Dear Minister

HEALTH PRACTITIONERS TRIBUNAL - ANNUAL REPORT 2016/2017

I am pleased to submit the 2016/2017 Annual Report for the Health Practitioners Tribunal. The report summarises the activities of the Health Practitioners Tribunal for the financial year commencing 1 July 2016.

Following the tabling of the report in Parliament, it will be available for public access on the Tribunal's website at www.healthpractitionertribunal.tas.gov.au.

If you have any queries, please do not hesitate to contact me.

Yours sincerely

R. B. Webster
CHAIRPERSON

Table of Contents

| | | |
|----|---|----|
| 1 | Overview | 1 |
| 2 | Constitution of the Tribunal | 2 |
| 3 | Membership of the Tribunal..... | 3 |
| 4 | Summary of Human Resources | 4 |
| 5 | Tribunal Accommodation..... | 4 |
| 6 | Referrals to the Tribunal 2016/2017 | 5 |
| 7 | Conciliation..... | 6 |
| 8 | Appeals to the Supreme Court of Tasmania..... | 6 |
| 9 | Decisions of the Tribunal..... | 6 |
| 10 | Report on Financial Statement | 7 |
| 11 | Intent for 2017-2018..... | 8 |
| 12 | Members of Tribunal & Staff..... | 9 |
| | Annexure 1..... | 10 |

In accordance with s56 of the *Health Practitioners Tribunal Act 2010* (the Act), I submit to the Attorney-General my report on the activities of the Tribunal during the 2016/2017 financial year.

1 Overview

1.1 By the *Health Practitioner Regulation National Law (Tasmania) Act 2010*, Tasmania became part of a National scheme providing for the regulation of prescribed health professions¹ 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.

1.2 National Boards are established for each of these health professions² and in some professions the National Board has established local boards/committees in each State or Territory³ with the delegated authority⁴ of the National Board. The Boards have the primary role (amongst others) to:

- register suitably qualified and competent persons within that health profession.
- decide the requirements for registration.

¹ Schedule to the *Health Practitioner Regulation National Law Act*, s5
² Schedule to the *Health Practitioner Regulation National Law Act*, s31
³ Schedule to the *Health Practitioner Regulation National Law Act*, s33
⁴ Schedule to the *Health Practitioner Regulation National Law Act*, s37

- 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))⁵.
- 1.3 Boards or the delegated local committee may take action in respect of a health professional for any of the following⁶:
- performance management (competence)
 - health management (impairment); or
 - conduct (discipline)
- 1.4 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 Tribunal⁷.
- 1.5 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 obtained⁸.

2 Constitution of the Tribunal

- 2.1 The Tribunal may be constituted⁹ 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.
- 2.2 The composition of the Tribunal is to be determined by the Chairperson but the Tribunal must be constituted either with professional members or a professional member and community member in addition to the Chairperson or Deputy Chairperson if either party so requests¹⁰.

⁵ Schedule to the *Health Practitioner Regulation National Law Act*, s35. See also ss38 and 39
⁶ See Part 8 of the Schedule to the *Health Practitioner Regulation National Law Act* (ss138-207)
⁷ Schedule to the *Health Practitioner Regulation National Law Act*, s199
⁸ Schedule to the *Health Practitioner Regulation National Law Act*, s193
⁹ s18(1) of the Act
¹⁰ s18(2) of the Act

3 Membership of the Tribunal

3.1 Chairperson

Up until the Act was amended in September 2015 the Chairperson was a magistrate appointed to the role by the Attorney General upon the recommendation of the Chief Magistrate¹¹. Since the inception of this Tribunal, until 12 October 2016 when my predecessor Stephen Carey retired, his appointment as a Magistrate allowed his appointment to this Tribunal as the Chairperson. The amendment to the Act allows, as an alternative, the appointment of an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner¹². In November 2016 I was appointed as Chairperson for a period of 5 years. I qualified for appointment under s8(1)(b).

The Chairperson may delegate to the Deputy Chairperson any of his or her functions under the Act or any other Act¹³.

3.2 Deputy Chairperson

The prerequisites for appointment as Deputy Chairperson are the same as for the Chairperson¹⁴. Since the inception of this Tribunal, until March 2016, this position had been filled by the Commissioner of the Workers Rehabilitation and Compensation Tribunal, Rodney Chandler, who was also appointed as a Magistrate which enabled his appointment to this Tribunal. Between March 2016, when Mr Chandler resigned, and February 2017 when Lucinda Wilkins was appointed¹⁵, there was no Deputy Chairperson. The amendments to the Act in 2015 permits the Minister to appoint, as Deputy Chairperson, an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner¹⁶. Ms Wilkins qualifies for appointment under this provision.

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 Chairperson¹⁷.

3.3 Professional Members

The Chairperson may appoint¹⁸ 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

11 s8 of the Act
12 s8(1)(b) of the Act
13 s10 of the Act
14 s9 of the Act
15 For a period of 2 years
16 s9(1)(b) of the Act
17 s9(3) of the Act
18 s11 of the Act

- (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 appoint¹⁹ 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 Summary of Human Resources

The following table provides a summary of the number of Full Time Equivalent staff assigned to the Tribunal as at 30 June each year. The Health Practitioners Tribunal is administered and run by the Workers Rehabilitation & Compensation Tribunal and therefore utilises the staff of that Tribunal.

| | 30 June 2017 Actual | 2017 Budget |
|----------------------------------|------------------------|-------------|
| Full Time Equivalent Staff | 7.1 | 6.5 |

5 Tribunal Accommodation

The Tribunal shares accommodation with the Workers Rehabilitation & Compensation Tribunal. There are currently four tribunals administered by the Workers Rehabilitation and Compensation Tribunal, being the Health Practitioners Tribunal, Motor Accidents Compensation Tribunal, Asbestos Compensation Tribunal and the Anti-Discrimination Tribunal. Signage at premises in both Hobart and Launceston reflect the colocation of these Tribunals.

The Tribunal's Hobart premises are located at Level 7, NAB House, 86 Collins Street, Hobart. These premises consist of the registry, office accommodation and work spaces, two hearing rooms, two conciliation rooms and two meeting rooms. In Launceston the Tribunals moved to new and improved premises at 1/111 St John Street in August 2015. Tribunal staff are based in Hobart and travel as required to the North of the State.

Video conference facilities are available at the premises in Hobart and Launceston.

¹⁹

s13 of the Act

6 Referrals to the Tribunal 2016/2017

The Tribunal received seven applications in the 2016/2017 financial year.

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

| Applicant | Respondent | Filing Date | Determination Date | Outcome |
|--|------------------------------|-------------|--------------------|---|
| Medical Board of Australia | Dr Daniel Mark Dawson Tucker | 5/09/2016 | | In progress |
| Nursing & Midwifery Board of Australia | RN Christopher Barrell | 30/09/2016 | 13/04/2017 | Respondent is guilty of professional misconduct and appropriate sanctions imposed |
| Dr Rowan Molnar | Medical Board of Australia | 28/11/2016 | | In progress |
| Nursing & Midwifery Board of Australia | EN Lindsay Trevor Reid | 19/12/2016 | 6/03/2017 | Respondent is guilty of professional misconduct and appropriate sanctions imposed |
| Kerry Hore | Pharmacy Board of Australia | 3/01/2017 | 14/02/2017 | Leave granted to applicant to withdraw her application for review |
| Dr S Robina Hanafi | Medical Board of Australia | 24/03/2017 | 10/07/2017 | In progress |
| Pharmacy Board of Australia | Susan Margaret Fisher | 25/05/2017 | | Listed for hearing on 18/08/2017 |

Since the end of the 2016/2017 financial year the three matters in the table above which are described in the Outcome column as being in progress have been finalised.

Of the six applications referred to in the 2016 Annual Report:

- The matter of Dr Malte Schlieter has been heard and the determination has been reserved.

- The matter of pharmacist Michael Francis Meaney was determined on 27 January 2017. The practitioner was found guilty of professional misconduct and appropriate sanctions were imposed.
- In the matter of RN Susan Farmer, the applicant was granted leave to withdraw her application on 24 January 2017.
- The matter of RN Benjamin Quinn was determined on 13 April 2017 and he was found guilty of professional misconduct and appropriate sanctions were imposed.
- The matter of Dr Jane Tolman will, given indications at a recent directions hearing, take considerable resources to be heard. At least one month will need to be set aside and at this stage the Tribunal is looking at hearing this matter in or about February/March 2018.

The back log of matters mentioned by my predecessor in last year's report has now been cleared.

7 Conciliation

Whilst 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 either resolving a matter in its entirety or 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.

8 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 Tribunal²⁰.

There were no appeals to the Supreme Court in the 2016-2017 financial year.

9 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/>.

Three decisions were published during the 2016/2017 financial year.

²⁰

s52 of the Act

10 Report on Financial Statement

The fee for an application during 2016/2017 was \$222.00²¹ per application made by a practitioner²². Where a matter is initiated by a professional Board there is no application fee.

The Tribunal's Financial Statement for the financial year 2016-2017 is attached to this report as Annexure 1.

An agreement between the Department of Justice and the Australian Health Practitioner Regulation Authority 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 the Australian Health Practitioner Regulation Agency²³. The agreement was reviewed in 2014.

This arrangement does not reimburse the Workers Rehabilitation and Compensation Tribunal for the general administrative costs of providing the Health Practitioners Tribunal. To cover these costs an allocation of \$10,000.00 has been made by the Department of Justice. This allocation has been provided to cover the administrative costs of both this Tribunal and the Motor Accidents Compensation Tribunal. The intent is that these costs not be covered by the Workers Rehabilitation and Compensation Tribunal 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.”

In response to my predecessor's comments that the Workers Rehabilitation and Compensation Tribunal was subsidising the costs of the other tribunals it administers and in so doing funds provided to it were not being utilised for the purposes of the *Workers Rehabilitation and Compensation Act 1988* I am pleased to report that the Department of Justice has engaged KPMG to conduct an audit of the funding and accounting of the various tribunals administered by the Workers Rehabilitation and Compensation Tribunal. The objective of the audit is to consider the application of and accounting for the funds provided to support the various activities of the tribunals overseen by the Chief Commissioner of the Workers Rehabilitation and

²¹ In the 2016/2017 financial year the Tribunal received \$666.00 in application fees (as Health Practitioner Boards are not required to pay lodgement fees)

²² s21(6)(e) of the Act and *Health Practitioners Tribunal (Fees) Regulations 2010*, r4

²³ This agency is established by s23 in the Schedule to the *Health Practitioner Regulation National Law Act* and its powers and functions are set out in ss24 and 25. Amongst other things it provides administrative assistance and support to the National Boards

Compensation Tribunal to ensure that those funds are being applied in compliance with current policies and legislative requirements of the various tribunals. The audit was due to commence in August 2017.

11 Intent for 2017/2018

- The Tribunal will continue to liaise with the Department of Justice to ensure appropriate resources are available in terms of professional members and community members.
- Consider and discuss with the Department of Justice the results of the audit being conducted by KPMG. The result of that audit should be a transparent funding allocation to the Workers Rehabilitation and Compensation Tribunal for the service provided in operating the Health Practitioners Tribunal.
- The Tribunal will consider updating and utilising its existing case management system to capture statistical data however this would require funding from the Department of Justice so that Health Practitioners Tribunal matters can be integrated into the case management system
- I intend to discuss with the Department of Justice some legislative changes which I consider will enhance the Tribunal's duty which is to conduct its proceedings fairly and with as little formality, and as quickly, as a proper consideration of the matters before the Tribunal permit²⁴.

²⁴

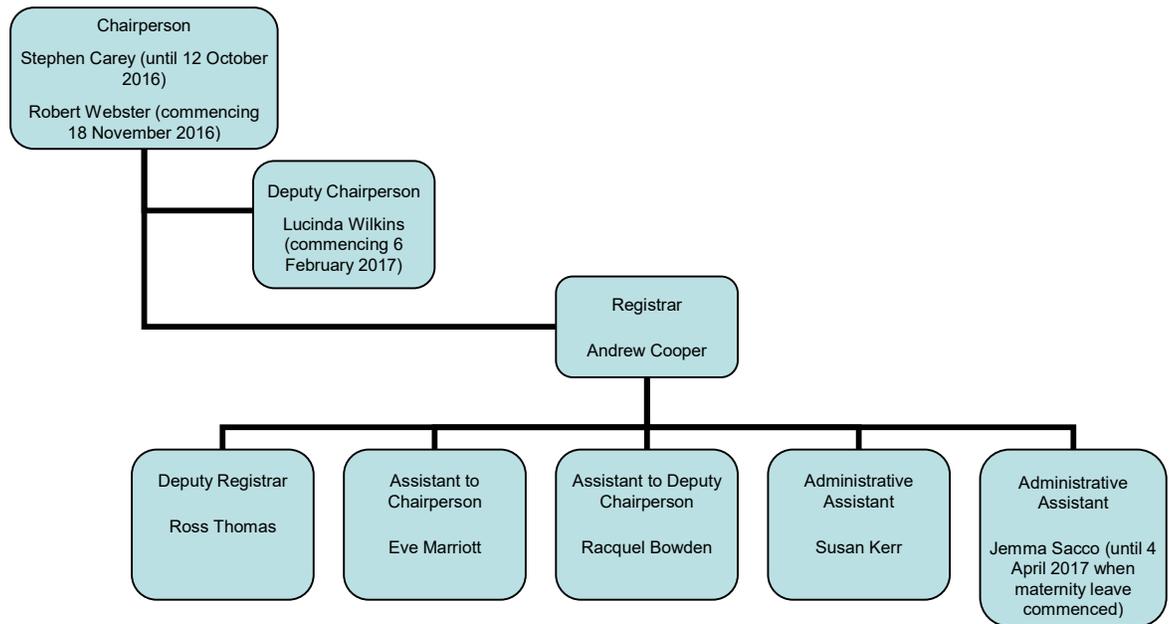
s37(2) of the Act

12 Members of Tribunal & Staff

The executive members of the Tribunal and staff of the Tribunal are detailed below.

I thank them for the work they have done and the support and assistance they have provided to me since my appointment.

I also express my thanks to my predecessor, Stephen Carey, for his years of service since this Tribunal commenced operation in 2010. I wish him well in his retirement.



R Webster
Chairperson

Annexure 1

Department of Justice
Trust Fund Financial Management Report
Trust Fund Report for Month Ending 30 June 2017

| Budget Centre : T598 - Health Practitioners Tribunal | YTD Actual |
|---|-------------------|
| Opening Balance | |
| 31004 Trust Balance Brought Forward | (6,375.35) |
| Total Opening Balance | (6,375.35) |
| Revenue | |
| 46102 Other Revenue | (444.00) |
| Total Revenue | (444.00) |
| Operating Expenditure | |
| Salary Related Expenditure | |
| 51101 Salaries and Wages | 812.50 |
| Total Salary Related Expenditure | 812.50 |
| Non Salary Expenditure | |
| 52217 Email | 58.80 |
| 52873 Arbitration and Mediation Expenses | 1,350.00 |
| Total Non Salary Expenditure | 1,408.80 |
| Total Operating Expenditure | 2,221.30 |
| Closing Balance for: T598 - Health Practitioners Tribuna | (4,598.05) |