

The Health Practitioners Tribunal

Annual Report

2019/2020

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





TASMANIA

HEALTH PRACTITIONERS TRIBUNAL

07 June 2021

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

Dear Attorney-General

HEALTH PRACTITIONERS TRIBUNAL - ANNUAL REPORT 2019/2020

I am pleased to submit the 2019/2020 Annual Report for the Health Practitioners Tribunal. The report summarises the activities of the Health Practitioners Tribunal for the financial year commencing 1 July 2019.

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

A handwritten signature in black ink, appearing to read 'A M Clues'.

A M Clues
CHAIRPERSON

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In accordance with s56 of the *Health Practitioners Tribunal Act 2010* (the Act), I submit to the Attorney-General/Minister for Justice my report on the activities of the Tribunal during the 2019/2020 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.
- determine 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*, s36
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

Since the Act was amended in September 2015, the Chairperson must be an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner¹¹. The previous Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal (WRCT) was appointed to the position of Chairperson in November 2016. In February 2020, 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 Act¹².

3.2 Deputy Chairperson

The prerequisites for appointment as Deputy Chairperson are the same as for the Chairperson¹³. In February 2017 Lucinda Wilkins was appointed to this role¹⁴.

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 Chairperson¹⁵.

3.3 Professional Members

The Chairperson may appoint¹⁶ 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
- (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 appoint¹⁷ a person to be the community member of the Tribunal. A person may only be appointed if the person:

11 s8(1)(b) of the Act
12 s10 of the Act
13 s9 of the Act
14 For a period of 2 years
15 s9(3) of the Act
16 s11 of the Act
17 s13 of the Act

- (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 WRCT and therefore utilises the staff of that Tribunal.

	30 June 2020 Actual	2020 Budget
Full Time Equivalent Staff	6.9	8

5 Tribunal Accommodation

The HPT is co-located with the Workers Rehabilitation and Compensation Tribunal and three other tribunals (the Health Practitioners Tribunal, the Motor Accidents Compensation Tribunal and the Anti-Discrimination Tribunal).

As from July 2020 the HPT now shares accommodation with a number of other tribunals at the new Tribunal Centre at 38 Barrack Street, Hobart. The new premises has a number of purpose built rooms designed for hearings, mediations and meetings.

In Launceston the tribunals moved to new and improved premises at 1/111 St John Street in August 2015. These leased premises provide a hearing room, two conference rooms and two meeting rooms as well as office space for staff. These rooms are also made available to other tribunals.

Signage at premises in both Hobart and Launceston reflect the colocation of these tribunals.

If a conciliation is required on the North West Coast, then rooms at the Devonport Community & Health Services Centre at 23 Steele Street, Devonport can be utilised.

Tribunal staff are based in Hobart and travel as required to the North or North-West of the State.

Video and telephone conferencing as well as recording facilities are available at the premises in Hobart and Launceston.

6 Referrals for 2019/2020 and COVID-19

The Tribunal received eight applications in the 2019/2020 financial year.

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

No application was adversely impacted in any way as a result of COVID-19.

Applicant	Respondent	Filing Date	Determination Date	Outcome
Nursing & Midwifery Board of Australia	Stanley Horne	25/09/2019		In progress
Dr Stuart Lynch	Medical Board of Australia	2/12/2019	19/05/2020	Application for review granted. Decision of Board to suspend Dr Lynch set aside.
Giselle Sara-Michelle Boulter	Nursing & Midwifery Board of Australia	17/12/2019	29/04/2020	Application withdrawn
Nursing & Midwifery Board of Australia	Naomi Erends	31/01/2020	21/07/2020	Finding of professional misconduct and appropriate sanctions imposed.
Satyendranath Keenoo	Nursing & Midwifery Board of Australia	26/02/2020	3/07/2020	Application for stay dismissed. Application to file appeal out of time dismissed.
Medical Board of Australia	Dr Paul Thompson	05/03/2020		In progress
Pharmacy Board of Australia	Cindy Maree Strachan	11/03/2020	3/08/2020	Finding of professional misconduct; fine imposed.
Medical Board of Australia	Dr Stuart Lynch	21/04/2020		In progress

7 Conciliation

While 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 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.

Any agreement reached with respect to the resolution of a matter, must be considered and if appropriate, approved by the Tribunal before any determination can be made.

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 Tribunal¹⁸.

There were no appeals to the Supreme Court in the 2019/2020 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/>.

Six decisions were published during the 2019/2020 financial year.

10 Report on Financial Statement

The fee for an application during 2019/2020 was \$243.00¹⁹ per application made by a practitioner²⁰. Where a matter is initiated by a Professional Board there is no application fee.

The Tribunal's Financial Statement for the financial year 2019/2020 is attached to this report as Annexure 1.

An agreement between the Department of Justice and the Australian Health Practitioner Regulation Authority²¹ (AHPRA) 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

¹⁸ s52 of the Act

¹⁹ In the 2018/2019 financial year the Tribunal received \$237.00 in application fees (as Health Practitioner Boards are not required to pay lodgement fees)

²⁰ s21(6)(e) of the Act and *Health Practitioners Tribunal (Fees) Regulations* 2010, r4 and *Fee Units Act* 1997, ss5 and 8.

²¹ 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

Justice for services provided and these will, to the extent provided by the agreement, be recovered from AHPRA. The agreement was reviewed in 2014.

This arrangement does not reimburse the Workers Rehabilitation and Compensation Tribunal (WRCT) for the general administrative costs of providing the Health Practitioners Tribunal. To cover these costs an allocation of \$10,496.00 has been made by the Department of Justice. This allocation has been provided to cover the administrative costs of both the HPT and the Motor Accidents Compensation Tribunal. The intent is that these costs not be covered by the WRCT 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 order to review whether the WRCT was subsidising the costs of the other tribunals it administers, the Department of Justice engaged KPMG to conduct an audit of the funding and accounting of the various tribunals administered by the WRCT. The objective of the audit was to ensure that the funds provided to support the various activities of the tribunals were being applied in compliance with current policies and legislative requirements of the various tribunals. The audit commenced in August 2017 and was finalised by February 2018. The audit considered the current procedures for the recovery by the WRCT of the cost of work done in other tribunals and found overall the procedures used to account for tribunals' funds are effective. It recommended the agreement be renewed to ensure the fees being charged for the service being provided adequately reflect the cost of providing those services. The reason for this is when a medical practitioner sits on the Tribunal he or she (quite properly) charges a commercial rate for the work performed. That rate is not wholly recoverable under the agreement and therefore the Department of Justice is left to pay to the practitioner the difference between the rate charged by the practitioner and the amount recoverable from AHPRA.

The review of the service agreement and the budgeting for all tribunals administered by the WRCT will need to occur when all of the tribunals at the new Tribunal Centre at 38 Barrack Street, Hobart are amalgamated in 2021.

11 Intent for 2020/2021

- The Tribunal will liaise with the Department of Justice when necessary to ensure appropriate resources are available in terms of professional members and community members.
- Discuss with the Department of Justice the service agreement and the budgeting for all tribunals administered by the WRCT.
- Discuss with the Department of Justice the merits of integrating the HPT matters into the case management system which is used for WRCT matters, as well as Motor Accidents Compensation Tribunal and Anti-Discrimination Tribunal matters. At present Health Practitioners Tribunal matters are administered manually.
- To conduct the business of the Tribunal fairly, efficiently and with as little formality as the rules of procedural fairness and a proper consideration of the matters before the Tribunal permit²².

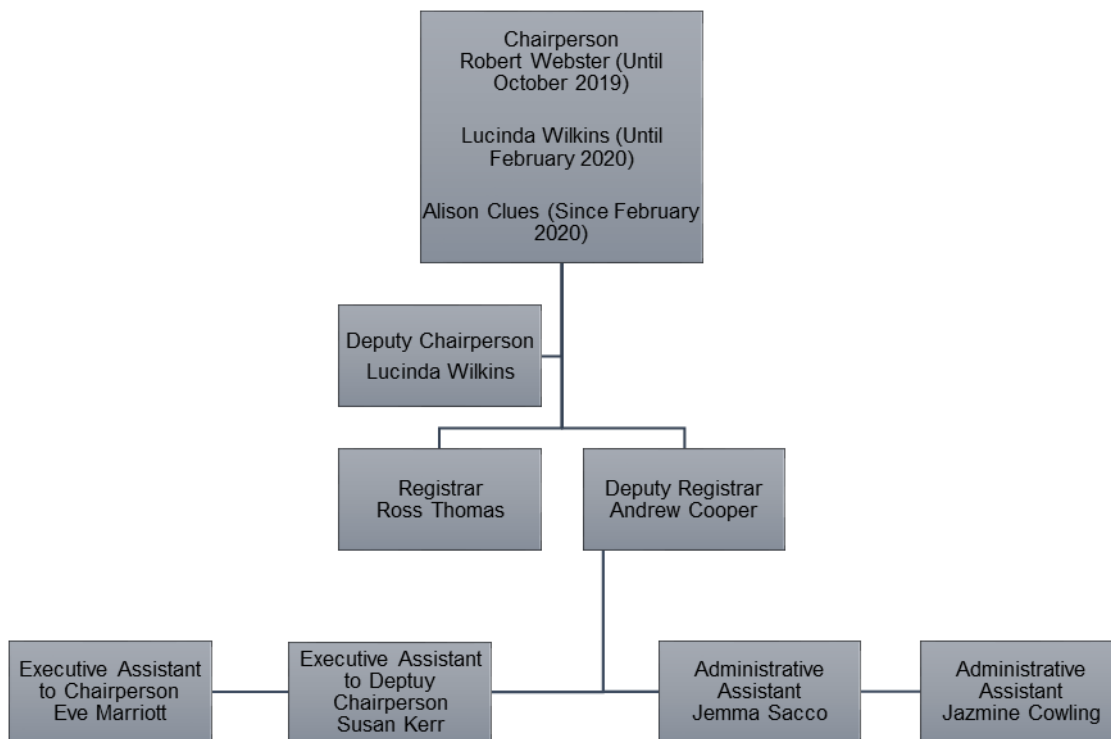
²²

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 the Deputy Chairperson and myself.



A M Clues
Chairperson

Annexure 1

Department of Justice
Trust Fund Financial Management Report
Trust Fund Report for Month Ending 30 June 2020

Budget Centre : T598 - Health Practitioners Tribunal	YTD Actual
Opening Balance	
31004 Trust Balance Brought Forward	30,271.29
Total Opening Balance	30,271.29
Revenue	
46102 Other Revenue	(711.00)
Total Revenue	(711.00)
Operating Expenditure	
Salary Related Expenditure	
51114 Recoveries of Salaries	62.00
Total Salary Related Expenditure	62.00
Non Salary Expenditure	
52217 Email	68.92
Total Non Salary Expenditure	68.92
Total Operating Expenditure	130.92
Closing Balance for: T598 - Health Practitioners Tribunal	29,691.21