

Critical Date: ASAP

APPROVED / NOT APPROVED / NOTED
SIGNED: 
DATE: 20/6/22

Minute to the Attorney-General and Minister for Justice

TASCAT Ordinary Members

Minister's notation:

1. See more E've ticked (✓)
2. Add - 

RECOMMENDATION

That you:

1. Note the contents of this Minute; and
2. Confirm your preferred candidates to fill the vacancies for members on the Tasmanian Civil and Administrative Tribunal (TASCAT).

KEY POINTS:

1. The terms of appointment of several members of TASCAT expire on 26 June 2022.
2. On 7 April 2022, you approved a single public expression of interest process to identify suitable candidates for appointment to fill vacancies resulting from the expiration of those appointments.
3. The expression of interest process has been completed and the selection panel has delivered its report.

BACKGROUND:

- Expressions of interest for the positions of Ordinary Tribunal Members (Sessional) of the Tasmanian Civil and Administrative Tribunal (TASCAT) were advertised on 16 April 2022 in the Mercury, Examiner and Advocate newspapers, and online at the Department of Justice website.
- Expressions of Interest were submitted by 29 April 2022.
- The selection panel consisted of:
 - Malcolm Schyvens - President TASCAT (Chair)
 - Kristy Bourne – Deputy Secretary, Department of Justice
 - Yvonne Chaperon – Deputy President Mental Health Stream TASCAT
- Thirty one (31) applications were received from the following applicants:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.



25. [REDACTED]
26. [REDACTED]
27. [REDACTED]
28. [REDACTED]
29. [REDACTED]
30. [REDACTED]
31. [REDACTED]

- Following a review of the applications, the selection panel decided to interview the following twenty five (25) applicants:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]
23. [REDACTED]
24. [REDACTED]
25. [REDACTED]

- Mr Evan Hughes subsequently withdrew his application following his appointment as a Magistrate.
- Following interviews, the selection panel concluded the following applicants were suitable for appointment:

- ✓ 1. [REDACTED]
- ✓ 2. [REDACTED]
- ✓ 3. [REDACTED]
- ✓ 4. [REDACTED]
- ✓ 5. [REDACTED]
6. [REDACTED]
- ✓ 7. [REDACTED]
- ✓ 8. [REDACTED]
- ✓ 9. [REDACTED]
- ✓ 10. [REDACTED]
- ✓ 11. [REDACTED]
12. [REDACTED]
- ✓ 13. [REDACTED]
- ✓ 14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
- ✓ 17. [REDACTED]

- The selection panel's report is attached.
- All appointments will require Cabinet approval consistent with current policy.

Kristy Bourne
Deputy Secretary – Justice and Reform

Prepared by: Kym Child
 Position: Tribunal Appointments Policy Officer
 Phone: 61 65 6739
 Date: 6 June 2022

Cleared by: Kristy Bourne & Kerrie Crowder
 Position: Deputy Secretary
 Phone: 61 65 4943
 Date: 8 June 2022

Attachments:

1. Member Selection Report
2. DPAC TASCAT Sizing Statement

Selection Report Ordinary Tribunal Members (Sessional) Tasmanian Civil and Administrative Tribunal (TASCAT)

Background

Expressions of interest to be appointed as Ordinary Tribunal Members (Sessional) of the Tasmanian Civil and Administrative Tribunal (TASCAT) were sought by advertisement on 16 April 2022 in the Mercury, Examiner, and Advocate newspapers, as well as online at the Department of Justice website.

Expressions of Interest were to be submitted by 29 April 2022.

A copy of the Information Pack for applicants, which provides detail about the requirements of the role, is attached at **Appendix B**.

Selection panel

A selection panel was appointed by the Minister. The panel recommended the selection criteria for the appointments process in accordance with s 43 of the *Tasmanian Civil and Administrative Tribunal Act 2020*. The panel was comprised of:

- Malcolm Schyvens - President TASCAT (Chair)
- Yvonne Chaperon – Deputy President TASCAT
- Kristy Bourne – Deputy Secretary, Department of Justice

Applications received

Thirty one (31) applications were received from the following applicants:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]

12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]
23. [REDACTED]
24. [REDACTED]
25. [REDACTED]
26. [REDACTED]
27. [REDACTED]
28. [REDACTED]
29. [REDACTED]
30. [REDACTED]
31. [REDACTED]

Conflicts of interest

On reviewing the applications, panel members declared conflicts as follows.

- Malcolm Schyvens advised that he has professional associations with:

- [REDACTED];
- [REDACTED].
- [REDACTED]

Malcolm Schyvens also identified he had a previous working relationship with:

- [REDACTED].

- Kristy Bourne advised that in her role as Deputy Secretary, she has a professional association with:

- [REDACTED];
- [REDACTED];

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED]
- [REDACTED]
- [REDACTED] and
- [REDACTED].

Ms Bourne identified she has had previous working relationships with:

- [REDACTED]; and
- [REDACTED]

- Yvonne Chaperon advised that she has a professional association with:

- [REDACTED] Tribunal.

Ms Chaperon also advised she has working relationships with:

- [REDACTED];
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED].

Conflict of interest acknowledgement forms are attached at **Appendix C**.

Shortlisting process

The panel members individually assessed the applications to devise a shortlist and then, as a group, met on Wednesday 4 May 2022 to determine which applicants would be interviewed.

Twenty Five (25) applicants were shortlisted for interview:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]
23. [REDACTED]
24. [REDACTED]
25. [REDACTED]

Of the above shortlisted applicants, the following applicants are current TASCAT members who have applied for reappointment and on this basis it was deemed appropriate to interview them.

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]

The following applicants were deemed by the panel not suitable for interview, for the reasons outlined:

Candidate	Reason for not shortlisting
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Interview and selection process

Interviews were held over five (5) days on 18 May, 20 May, 24 May, 1 June and 2 June 2022 at TASCAT, Hobart.

Candidates were asked a series of questions relevant to the role, with each member of the panel asking questions in turn. Following the formal questions, candidates were given the opportunity to ask questions or provide additional information. Interview questions are provided at **Appendix D**. As applicants were applying for varying roles within the Tribunal, bespoke interview questions were developed for each applicant.

In reaching its conclusions, the panel considered the responses of each applicant provided in their application and at interview. At least two (2) reference checks were also conducted in relation to each applicant recommended for appointment who is not currently a Member of the Tribunal.

A summary of the panel's views on each candidate and recommendation is provided at **Appendix A**

Summary of findings

The panel found the following 17 candidates suitable for appointment:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The panel found the following **7** candidates not suitable for appointment:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



Malcolm Schyvens
President, TASCAT

Date: 6 June 2022



Kristy Bourne
Deputy Secretary, DoJ

Date: 6 June 2022



Yvonne Chaperon
Deputy President, TASCAT

Date: 6 June 2022

Individual assessment for applicants found suitable for appointment

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Individual assessments for applicants found not suitable for appointment

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Information Package

EOI – ORDINARY TRIBUNAL MEMBERS (SESSIONAL)
TASMANIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
APRIL 2022

Organisational Environment

The Tasmanian Civil and Administrative Tribunal (TASCAT) is a statutory independent body established on 5 November 2021 to serve the Tasmanian community in resolving disputes and making decisions where required by law, under a broad range of legislative provisions.

The work of the Tribunal is arranged into Divisions and Streams to ensure efficient and effective decision-making functions occur with appropriate supervision by the President, Deputy Presidents and Registrars.

The scope of the Tribunal's decision making functions is very broad ranging from Guardianship and Mental Health matters under the Protective Division to Personal Compensation, Planning and Resources, Anti-Discrimination, Forestry and Health Practitioners matters under the General Division. The Tribunal's objectives are set out under Section 10(1) of the *Tasmanian Civil and Administrative Act 2021* ("the Act").

The Tribunal, whilst based in Hobart, operates throughout Tasmania.

More information as to the streams of the Tribunal and general operations is available on the Tribunal's website: www.TASCAT.tas.gov.au

Diversity and Inclusion

The Tribunal is a diverse and inclusive workplace. Expressions of interest are welcome from people of all backgrounds, including Indigenous Australians, people with disability, people from diverse cultural and linguistic backgrounds, mature age people and lesbian, gay, bisexual, trans and intersex (LGBTIQ+) people.

If you have individual requirements that need to be accommodated in order to participate in the expression of interest process generally, please inform the Tribunal's Principal Registrar, Mr Jarrod Bryan.

The Role

Expressions of interest are sought from people interested in seeking appointment as an ordinary Member of the Tribunal on a sessional basis. Sessional Members are listed to hear applications before the Tribunal at the direction of the Presidential Members. The number of listings allocated to a Member is solely at the discretion of the Presidential members and varies widely across the Streams of the Tribunal due to the disparity of applications/workload across the Streams.

All Members are required to provide regular availability for listings. When listed, Members will usually be provided with hearing papers in advance of a hearing and must review these papers in preparation.

Members who are legal practitioners, depending upon the Stream to which they are assigned, may be listed as a single member or as part of a multi-member panel. Members with other expertise form part of a multi-member panel together with at least one Member who is a legal practitioner.

All Members are subject to a Code of Conduct which is available on the Tribunal's website: [TASCAT Code of Conduct](#)

Applicants

Expressions of interest are welcome from people interested in seeking appointment and assignment to any of the seven (7) streams of the Tribunal. However, the Tribunal is particularly seeking expressions of interest from people with expertise and interest in being appointed and then assigned to the following streams of the Tribunal:

Anti-Discrimination Stream

This Stream hears and determines reviews and referrals from the Office of Equal Opportunity Tasmania arising from the operation of the *Anti-Discrimination Act 1998*.

Forestry Practices Stream

This Stream hears and determines all appeals arising from operation of the *Forest Practices Act 1985*.

Resource & Planning Stream

This Stream hears a broad range of appeals and originating applications arising from a large number of statutes set out in Schedule 2, Part 8, Clause 3 of the *Tasmanian Civil and Administrative Tribunal Act 2020*. A substantial proportion of the work in this Stream relates to appeals and applications arising from the operation of the *Land Use Planning and Approvals Act 1993* and associated legislation under the Resource Management and Planning System suite of legislation.

Guardianship Stream

This Stream hears and determines a range of proceedings relating to people with disabilities pursuant to the *Guardianship Act 1995*. Applications are determined to decide whether a person, due to impaired decision-making capacity, need the appointment of substitute decision maker. The Stream can appoint a guardian to make a lifestyle decision for a person and an administrator to make financial decisions. The Stream hears a range of other applications, all relating to people with disabilities.

Mental Health Stream

The Mental Health Stream makes orders and/or conducts reviews under the *Mental Health Act 2013* and the *Criminal Justice (Mental Impairment) Act 1999*. It protects the rights, safety, inclusion and dignity of people being involuntarily treated for mental illness. The Stream's main function is to authorise and review the treatment of people with mental illness, who don't have the capacity to make decisions and provide informed consent for treatment. This includes deciding when people with a mental illness can be detained in a hospital or other treatment facility, and what treatment a doctor can provide when it has been decided that the person is too unwell to make treatment decisions for themselves.

Applicants must specify in their application which Stream(s) of the Tribunal they wish to be considered for appointment and assignment to.

Selection Criteria

Applicants must provide a statement with their expression of interest which addresses both the primary selection criteria and the selection criteria applicable to the Stream(s) to which they are seeking appointment and assignment. Please note, as outlined below, the primary selection criteria an applicant is required to address

depends upon whether they are seeking appointment on the basis that they are a legal practitioner or based upon other relevant expertise.

Primary Selection Criteria – All Streams – Legal Practitioners

Applicants to be considered suitable for appointment must be possessed of the following attributes:

1. Must be an Australian Lawyer of at least five (5) years standing as an Australian legal practitioner;
2. Demonstrated ability to hear and determine legally and/or factually complex proceedings in a fair, impartial, expeditious and cost-effective manner, and, as required, attend to the role of member as either the presiding member or as part of a multi-member panel;
3. Demonstrated ability to produce well-reasoned and defensible reasons for decision according to law as required and in timely manner
4. Demonstrated knowledge of the law in relation to the jurisdictions allocated to the Tribunal or the capacity to acquire that knowledge quickly;
5. Excellent oral and written communication skills, including the ability to communicate effectively and courteously in plain English with parties, Members, registry staff and the Tribunal's stakeholders;
6. Preparedness to adhere to the TASCAT Member Code of Conduct and to maintain the Tribunal's independence and reputation, as well as personal independence and integrity, and to promote the highest standard of behaviour.

Primary Selection Criteria – All Streams – Other expertise

Applicants to be considered suitable for appointment must be possessed of the following attributes:

1. Possess an in depth and up-to-date expert knowledge of the relevant subject matter of the Tribunal's relevant field(s) of expertise;
2. Demonstrated high level communication skills to communicate effectively and courteously in plain English with parties, Members, and registry staff;
3. Be able to exercise sound judgment with the appropriate exercise of discretion and perform the role of Member as part of a multi-member panel;
4. Preparedness to adhere to the TASCAT Member Code of Conduct and to maintain the Tribunal's independence and reputation, as well as personal independence and integrity, and to promote the highest standard of behaviour.

Stream Specific Criteria

Anti-Discrimination Stream

Applicants to be considered suitable for appointment and assignment to the Anti-Discrimination Stream would preferably be possessed of the following attributes:

1. Demonstrated understanding of Anti-Discrimination issues;
2. Practical experience in dealing with issues related Anti-Discrimination matters;
3. Possess a sound and practical knowledge of the Anti-Discrimination Act 1998.

Forestry Practices Stream

Applicants to be considered suitable for appointment and assignment to the Forestry Practices Stream would preferably be possessed of one or more of the following attributes:

1. A sound and practical knowledge of forestry, road construction in forests and harvesting timber;
2. Tertiary qualifications in sciences appropriate to land and forest management and has had substantial practical experience in those sciences;
3. A sound knowledge of, and has at least 5 years' practical experience, in agriculture and forestry;
4. A sound knowledge of, and has at least 5 years' practical experience, in conservation science.

In addressing Selection Criterion I of the primary selection criteria for members with other expertise, information regarding these fields should be provided.

Resource & Planning Stream

Applicants to be considered suitable for appointment and assignment to the Resource and Planning Stream would preferably be possessed of the following attributes:

1. Expertise in one or more of the fields set out in Schedule 2, Part 8, Clause 4; and in particular, planning; science; engineering; environmental management; building; architecture; building surveying; disability access to buildings; environmental and public health; heritage.

In addressing Selection Criterion I of the primary selection criteria for members with other expertise, information regarding these fields should be provided.

Guardianship Stream

Applicants to be considered suitable for appointment and assignment to the Guardianship Stream would preferably be possessed of the following attributes:

1. All categories – a demonstrated commitment to the principles of the *Guardianship Act* (s 6), [that is, in performing the role of a member assigned to the Guardianship Stream, ensuring that decisions are made which are least restrictive, in the best interests of, and accord with the wishes of the person with disability, where possible] and a personal understanding of the needs of people with disabilities
2. All applicants other than legal practitioners – either:
 - a) relevant professional qualification (such as a medical practitioner, psychologist or social worker, etc.) who has demonstrated special knowledge, skill or expertise in assessing or treating persons with disabilities such as dementia, mental illness, acquired brain injury, intellectual disability, stroke, eating disorders and other cognitive impairments; or
 - b) A person with the “lived experience” of disability, either through having a disability, or having been a carer or advocate for persons with disability.

Mental Health Stream

Applicants to be considered suitable for appointment and assignment to the Mental Health Stream would preferably be possessed of the following attributes:

1. Demonstrated understanding of current mental health issues;
2. Commitment to the principles embodied in the **Mental Health Act 2013**;
3. Practical experience in dealing with issues related to the mental health of individuals (applications open to psychiatrists, mental health professionals and other people with relevant mental health experience).

Eligibility for and Basis of Appointment

In accordance with section 44 of the Act the Governor of Tasmania may only appoint a person as an ordinary Member of the Tribunal if the person is either:

- an Australian lawyer of not less than 5 years’ standing as an Australian legal practitioner; or
- a person who has extensive knowledge, expertise or experience relating to a type of matter in relation to which functions or powers may be performed or exercised by the Tribunal and, if required, holds a particular qualification or an authority to engage in a profession that relates to that type of matter.

Following consideration of the matter by Cabinet, the Attorney-General will recommend an appointment to the Governor-in-Council. Successful applicants will be appointed by the Governor for a period of five (5) years.

Remuneration

Rates of fees for sessional members both Senior and Ordinary. All sessions will be half-day sessions of 4 hours or less duration. However, hourly rates are able to be claimed and approved.

Stream/Jurisdiction	Fees per session
Mental Health Stream	Legal Presiding Member \$510 per session
Guardianship Stream	Legal Presiding Member as a single member panel \$127.50 per hour
Health Practitioners Stream	Ordinary or Senior Members (where not a legal presiding member) \$340 per session
Forestry Practices Stream	Ordinary or Senior Members as a single member panel \$85.00 per hour
Anti-discrimination Stream	
Resource and Planning Stream	
Personal Compensation Stream	Psychiatrist members hourly rate equivalent to Visiting Medical Specialist Level 4 which at present is \$189.83 per hour

Further Information

For further information please contact:

Jarrold Bryan

Principal Registrar – Tasmanian Civil & Administrative Tribunal

Jarrod.bryan@TASCAT.tas.gov.au

Phone: (03) 61656787

Applications

All expressions of interest must include a statement addressing each of the primary selection criteria and the selection criteria applicable to the stream to which you are expressing interest, a current curriculum vitae, the details of at least two (2) professional and confidential referees, a signed probity statement, and should be marked “PERSONAL and CONFIDENTIAL” and emailed to applications@justice.tas.gov.au; or by mail to:

Human Resources
Recruitment and Establishment
GPO Box 825
HOBART TAS 7001

Applications must be received by close of business **29 April 2022**. All applications will be acknowledged when received

Appendix D – Conflict of Interest Acknowledgement Forms

Appendix E – Interview Questions

21 June 2022

The Honourable Elise Archer LLB
Attorney-General
10th Floor, Executive Building
15 Murray Street
HOBART 7000
elise.archer@parliament.tas.gov.au

Dear Attorney-General,

I have been provided today with the Minute in which you have approved of the appointment of Members to TASCAT dated 20 June 2022 (attached).

I note that you have recommended 6 applicants be appointed who were not recommended for appointment by the selection panel. Similarly, you have not recommended that 4 applicants be appointed contrary to the selection panel's recommendations. Given only 17 applicants were recommended for appointment, your recommendations represent a significant divergence from the views of the appointed selection panel (attached).

In light of s 44(4) of the *Tasmanian Civil & Administrative Tribunal Act 2020*, I would appreciate the opportunity to meet with you urgently to discuss the matter of Tribunal Member appointments.

Yours faithfully



Malcolm Schyvens
President

c.c. Ginna Webster, Secretary, Department of Justice