

POLICY CONCERNING PUBLIC STATEMENTS ON BEHALF OF THE TASMANIAN BAR

PURPOSE

The making of public statements can be a valuable means of promoting the interests of the Tasmanian Bar and its members, and of furthering respect for the rule of law and the administration of justice. Making public statements, however, also carries risks, including risks to the reputation and standing of the Tasmanian Bar, and to the cohesion of its members.

The purpose of this policy is to:

- identify who is authorised to speak publicly on behalf of the Tasmanian Bar;
- identify appropriate forms of public engagement; and
- set out guiding principles for ascertaining when it will be appropriate for the Tasmanian Bar to make public statements.

AUTHORISATION

The President may make public statements on behalf of the Tasmanian Bar.

The President or the Tasmanian Bar Council may authorise any member to make public statements on behalf of the Tasmanian Bar in respect of such subject-matter, for such period, and under such conditions, as the President or the Tasmanian Bar Council specify.

Unless authorised to do so by the President or the Tasmanian Bar Council, no member or staff member of the Tasmanian Bar may make any public statement which purports to be, or might reasonably be understood to be, a statement made on behalf of the Tasmanian Bar, the President or the Tasmanian Bar Council, or as having been made with the concurrence of the President or the Tasmanian Bar Council.

Where members or staff members of the Tasmanian Bar receive requests to make public statements on behalf of, or that might reasonably be understood to be on behalf of, the Tasmanian Bar, they should refer those requests to the President C/- admin@tasbar.com.au.

FORMS OF PUBLIC STATEMENT

Public statements may be either reactive: that is, in response to a request from a journalist or some other person; or proactive: that is, initiated other than by way of response to a request by a journalist or other person.

Public statements may take such form as the President, or other person duly authorised by the President or the Tasmanian Bar Council in accordance with this policy, see fit. Without limiting the forms of public statement that may be appropriate in particular cases, examples include media releases, giving interviews, calling talkback radio, submitting letters to the editor or opinion pieces to newspapers and journals, making online posts and the use of social media platforms.

The choice of medium should be guided by all of the circumstances, and in particular the medium most likely to reach the intended audience.

SUBJECT-MATTER

The reputation of the Tasmanian Bar and its members can be enhanced where the Tasmanian Bar publicly adopts positions on subjects in respect of which it will be seen to be speak with authority. On the other hand, the reputation of the Tasmanian Bar, the strength of its voice and the cohesion of its members could be diminished if the Tasmanian Bar were perceived to be making public statements outside the appropriate ambit of its remit. There is no bright line between subject-matter that is appropriate, and subject matter that is not appropriate, for public comment.

Two principles, derived from the purposes of the Tasmanian Bar as set out in clause 2 of the Constitution, should guide the circumstances in which it will be appropriate for public statements to be made on behalf of the Tasmanian Bar:

- there is a fundamental public interest in having a flourishing, strong and independent Bar in the State of Tasmania; and
- the Tasmanian Bar and its members share a commitment to, and an interest in, furthering, both generally and in specific cases, the rule of law, access to the courts, the administration of justice and the principle of equality before the law.

In many cases, it will be obvious that it is appropriate for the Tasmanian Bar to make public statements in respect of particular issues, because they relate to either or both of those guiding principles. Examples include explaining the importance of the Tasmanian Bar and the independence of its members; responding to attacks upon, and criticisms of, the Tasmanian Bar; defending the independence of courts and the judiciary both generally and in specific cases; advocacy in support of adequately resourcing courts and the adoption of measures to reduce pressures faced by members of the judiciary; and advocacy in relation to proposed changes to the law that affect access to justice, equality before the law or rights to representation.

In other cases, reasonable minds might differ as to whether it is appropriate for the Tasmanian Bar to speak publicly in respect of a particular issue.

In all cases, the President has discretion as to the making of public statements on particular issues. In exercising that discretion, it is important for the President to bear in mind that the Tasmanian Bar is a professional membership organisation, and that members of the Tasmanian Bar may have a range of views in respect of any given issue. Making statements, on behalf of the Tasmanian Bar, on matters that do not relate to the core purposes of the Tasmanian Bar, has the potential to cause division between members of the Tasmanian Bar and the President or the Bar Council, and to undermine the cohesion of the Tasmanian Bar as a whole.

In cases where the President considers that reasonable minds might differ as to whether it is appropriate for the Tasmanian Bar to speak publicly in respect of a particular issue, he or she should consult with the executive team or a selection of members of the Bar Council or, in sensitive cases, the whole of the Bar Council.

This policy should be periodically reviewed.

Adopted by resolution of the Tasmanian Bar Council on 25 June 2020.