



MEG WEBB MLC

Independent Member for Nelson

Hon. Jeremy Rockliff MP
Premier of Tasmania
Level 10, 15 Murray Street
Hobart TAS 7001

via email: jeremy.rockliff@dpac.tas.gov.au

6 October 2022

Dear Premier

RE: TERMS OF REFERENCE FOR THE REVIEW OF USE OF SURVEILLANCE DEVICES IN PRISONS TABLED IN PARLIAMENT ON THURSDAY 29 SEPTEMBER 2022.

I write to you to raise a number of important questions about the Terms of Reference (ToR) for the O'Farrell Review tabled in Parliament last week.

The proposed review follows on from the decision of Justice Brett in the case of solicitor, Mr Jeff Thompson, in which it was found that police had acted illegally due to a serious defect in the surveillance devices warrant and had left devices running in a prison visitor's room for over 2 months capturing the private and legally privileged conversations of many others.

I gave an [adjournment speech](#) on this issue in the Legislative Council on Tuesday 27 September 2022, voicing my concerns about the Jeff Thompson decision and the lack of a compliance culture in the Tasmania Police. My speech also referred to reports of the Commonwealth Ombudsman on Tasmania Police's lack of accountability and compliance in relation to stored communications and telecommunications data. Tasmania was singled out as the worst performing jurisdiction/agency in two of the last three annual reports. Civil Liberties Australia (CLA) CEO, Mr Bill Rowlings OAM, [reported in detail](#) on the matter on the CLA website on 26 September 2022.

Despite this track record of poor compliance on surveillance issues, Tasmanian Police has continued to assure the public that all is well with a "Nothing to see here!" attitude – an attitude that is reflected in the preamble of the ToR itself.



meg.webb@parliament.tas.gov.au | megwebb.com.au

P: 03 6212 2290 | M: 0427 911 719

Suite 3, 32 Channel Hwy Kingston 7050 | PO Box 694, Kingston 7051



It has been [clearly identified](#) that a truly independent investigation is required into electronic surveillance use by Tasmania Police with a view to identifying much-needed reform to policy, procedure and relevant legislation. Equally clear is that the proposed ToR for the O'Farrell Review comes nowhere close to adequately providing such an investigation.

You will note that in my adjournment speech I called for Mr O'Farrell SC to step down from his role due to the possibility of a perceived conflict of interest for a number of reasons. Most telling being his former role at the time of the Jeff Thompson matter and his written comments in a letter to Ms Eve Ash, dated 16 May 2017, following the provision of the "white paper" on the Sue Neill-Fraser case to the Premier of the day (and Mr O'Farrell SC and the Acting Attorney-General) by Robert Richter QC on 11 May 2017.

It now seems that the ToR for the proposed review have been hastily crafted and tabled in Parliament without proper consideration of the concerning issues at hand and the legal issues presented by such a review.

I note the unacceptably narrow scope of the ToR, confined to only reviewing warrants issued since 1 January 2012 relating to the use of surveillance devices in prisons. This excludes the very issues raised in the Thompson investigation, namely, the invalidity of the warrant, the way in which police acted on the warrant and the scope of the evidence obtained as a result. The ToR also do not appear to provide for consideration of whether Tasmania Police complies with its reporting requirements

Further, the ToR also excludes examination of the statutory structure in which warrants are issued, under either the Listening Devices Act 1996 or the Surveillance Devices Act 2001. There is considerable overlap between the two Acts in terms of what they may authorise, but different requirements as to oversight and reporting— for instance the LDA requires reporting to the Attorney-General in some cases while the SDA requires reporting back to the person who issued the warrant - and different offences and penalties. As the ToR does not include scrutiny of the current relevant legislation, potential recommendations for legislative improvement arising from the review are precluded.

A comprehensive review with the genuine intention of identifying systemic issues, improvements and the restoration of full confidence in Tasmania Police would include consideration of the manner in which police seek warrants for the use of surveillance equipment, the manner in which police execute such warrants, and whether oversight systems are sufficient to prevent abuse. There should be no question that an appropriate independent review should also consider the operation of the two Acts that authorise surveillance warrants, and whether legislative reform is required to provide more robust oversight, transparency and accountability.

I request that you reconsider the decision to commission the O'Farrell Review, given its manifest insufficiency in scope and the inescapable perception of conflict of interest. In my adjournment speech and attached here, I provide an example of a comprehensive Terms of Reference for an appropriately commissioned independent review on this matter, one that

should be undertaken by an interstate Judge or legal expert with no pre-existing connections to Tasmania Police or the Jeff Thompson/Sue-Neill Fraser matters.

Further, I ask for your answers to the following questions in order to seek assurances for the Tasmanian people on these critical issues:

1. What are the terms of the appointment of Mr O'Farrell, and in what capacity is he undertaking the review?
2. Was Mr O'Farrell involved in drafting or approving the review ToR before they were tabled in Parliament?
3. Was independent legal advice sought?
4. Who was the most senior person to check and/or authorise the ToR before tabling in Parliament?
5. Did the Attorney-General or the Minister for Police, Fire and Emergency Management approve the ToR before tabling in Parliament?
6. Are you aware of the current suppression/non-publication orders in place in the Jeff Thompson matter, and that much of the hearing in the Thompson matter which will be relevant to the O'Farrell review occurred in a closed court?
7. How will the O'Farrell review access, use, communicate and publish the critical information concerning the application for the warrant, the supporting affidavit and relevant communications relating to the application for the warrant in the Jeff Thompson matter?
8. Can you guarantee that the activities of Mr O'Farrell in conducting the proposed review are entirely lawful?
9. Why does the O'Farrell Review not include investigation into possible misconduct by police or others?
10. Why is there no acknowledgement in the scope of the review of the lack of a proper compliance culture as highlighted in recent reports of the Commonwealth Ombudsman examining stored communications and telecommunications data?
11. In light of the comments of Justice Brett, what immediate reassurance can you give Tasmanians (given it is some months before the review outcomes will be made available) that no other illegal bugging of visitor rooms in Tasmanian prisons has occurred prior to or after the Jeff Thompson matter?
12. Has a check been made to ensure that other warrants (telephone interception, Surveillance Devices etc.) did not suffer from the same serious defect identified in the Jeff Thompson surveillance device warrant application? (It is evident from the decision of Justice Brett that telephone intercepts were also occurring).

I am concerned about the lack of objectivity in the tabled ToR for the O'Farrell review and the clear prejudgement evident in its content. I am deeply concerned about the failure to provide an independent, objective and comprehensive review of electronic surveillance use by Tasmania Police. Tasmanians deserve better.

In conclusion, I seek your reassurance as Premier of Tasmania that the proposed O'Farrell Review, as outlined in the tabled ToR, can be conducted lawfully in this State.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Meg Webb', written in a cursive style.

Meg Webb

ATTACHMENT

Potential Terms of Reference for a comprehensive and genuinely independent Inquiry:

To inquire into the practices of Tasmania Police in:

- A. *seeking warrants for the use of covert surveillance under the Listening Devices Act 1991 and the Police Powers (Surveillance Devices) Act 2005 (“the Acts”);*
- B. *executing such warrants;*
- C. *internal police oversight of the seeking and execution of such warrants, compliance with reporting mechanisms under the Acts, and other oversight mechanisms —*

in particular, without limiting the scope of the inquiry, what the Tasmanian Government should do to:

- i. *better protect confidentiality, privacy, and privileges recognised in Part 10 of the Evidence Act 2001;*
- ii. *achieve best practice in the seeking and execution of such warrants, and oversight of the same;*
- iii. *eliminate or reduce conflict and duplication between statutory provisions under different Acts of Parliament governing the use of covert surveillance methods, in particular by the repeal of existing Acts and the enactment of a single Act of Parliament;*
- iv. *Investigate the enactment of specific statutory mechanisms to require notification to members of the public who have been the subject of improper or illegal covert surveillance methods, and recourse for the same.*

The Inquiry is directed to make any recommendations arising out of its inquiry process that it considers appropriate, including recommendations about any policy, legislative, administrative or structural reforms.