

Briefing Paper: *Unresolved Matters Arising from Assembly Commission of Inquiry Response Select Committee Hearings, December 2023.*

Compiled: 7 December 2023

ISSUE: Was the Assembly Commission of Inquiry Recommendations Response Select Committee Scrutiny Hearing of the Premier and the Department of Premier and Cabinet, held on Tuesday the 5th of December 2023, misled by misinformation – or the withholding of information?

CONTEXT & SEQUENCE OF EVENTS:

On the 2nd of November 2023 the Premier provided the following statement to the Assembly:

STATEMENT BY PREMIER

Commission of Inquiry - Comments by Hon Meg Webb MLC

[10.02 a.m.]

Mr ROCKLIFF (Braddon - Premier) - *Yesterday, I thought it necessary to come into the House and address matters raised publicly by the member for Nelson, who made the decision to name entities and individuals that the member assumed had received a misconduct notice. One of the questions was: did the commission find itself unable to make either misconduct findings or adverse findings against the 22 individuals and eight entities that appear in the notes of the report as having provided a procedural fairness response? My response was that the commission did not provide the state with a list of individuals who received misconduct notices. This statement is correct.*

*Since my response, further information has been brought to my attention. In the interest of full transparency, I will update the House. **I am advised that the commission of inquiry did write to the state's lawyer in April this year, advising of current and former state servants who the commission had intended, or was considering, issuing misconduct notices to.** The purpose of this information exchange was to ensure wellbeing supports were in place for state servants. To be clear, this correspondence was not shared with myself, ministers or our offices.*

I have asked the head of the State Service to confirm that we are meticulously going through all material sent to and received by the commission of inquiry. All referrals made by the commission are being reviewed as part of the already announced audit of all state servants and former state servants who have been adversely identified.

During the Premier's Assembly Scrutiny Hearings held on Tuesday 5 Dec 2023, in response to questioning seeking to ascertain whether the Premier had seen the email sent by the Commission of Inquiry in April detailing those it had or intended to send section 18 notices, and/or knew of the list of names detailed in that email – neither the Premier nor the DPAC Secretary specifically confirmed they had seen that email, or the list of names it contained (*Note: there was a belated clarification by the Secretary towards the end of the session that those named in the April email 'were known' but without specifically stating a copy of the email had been received either by the Secretary or the Premier*).

This is despite the fact both the Premier and the DPAC Secretary have ultimate responsibility for State Service employees. The Premier is responsible for administering the *State Services Act 2000*, under which he is the ultimate Employer (section 14 of the Act). The DPAC Secretary is the Head of the State Service as defined by section 20 of the Act.

Despite the fact that on the following day, the Attorney-General and Secretary of the Justice Department did release and table a redacted version of the email received by state lawyers from the Commission of Inquiry dated the 26th of April 2023.

This raises two serious matters of concern:

- 1) Was the Assembly Select Committee misled, and/or did it have pertinent information withheld from it during the scrutiny hearings of Tuesday the 5th of December?
- 2) Were all respective responsibilities as Head of the State Service, and Employer as defined by the *State Service Act 2000*, exercised fully and appropriately in relation to actions taken, or not taken, following Commission of Inquiry correspondence received that 'relates to Section 18 notices', actual, intended or under consideration?

Evidence provided Tuesday 5 December 2023	Evidence provided Wednesday 6 December 2023
Premier & DPAC	Attorney General & Dept of Justice Scrutiny Hearings
<p>Ms GALE - I'm not aware of who received section 18 notices as such. We have not been provided with a list of people who received section 18 notices.</p>	<p>Ms HADDAD - ...</p> <p>What I need to know from you, Attorney-General, is, are you aware of the list of 22 names and have you sought a copy of that list for yourself?</p> <p>Mr BARNETT - Thank you very much for the question. I would like to provide a very comprehensive response to that. Following the Premier's statement on 1 November 2023, my office received a copy of an email between the solicitor for the state and the commission of inquiry in relation to misconduct notices.</p> <p>Today, I would like to table that email, dated 26 April 2023, entitled Urgent: Department of Health misconduct notices.</p> <p>...</p>
<p>Ms GALE - I understand that what you may be referring to in relation to April is information that the Government received in relation to those employees for whom the commission of inquiry was considering, or may have been considering, to issue misconduct findings. I just want to clarify that. A list of who received misconduct findings we do not have. [...]</p>	<p>Ms WEBSTER - [...]</p> <p>In the final report, the commission say there were 30 section 18 notices issued to 22 individuals. The commission doesn't say if all the 22 individuals are current State Service servants. As has been stated, the commission did not provide to the state a final list of state servants who received section 18 notices, or state servants who were corresponded to about a potential section 18 notice, or state servants who responded to a section 18 notice and subsequently were advised the notice was withdrawn.</p> <p>What they did provide, as the Attorney-General has just said and he has just tabled, was an email with the names of state servants who have received or who may receive correspondence about a section 18 notice. This was to allow relevant heads of agencies to provide the appropriate support to the individual, as part of their work health and safety responsibilities.</p>
<p>Ms GALE - If I am understanding your question correctly, the information I indicated that we were aware of back in April, which was in relation to those state servants who the commission of inquiry may have been going to issue a notice or were considering issuing a notice, those people are known and they are included in the assessments that the agencies are</p>	<p>[...] An email from the commission was sent to the state's lawyer at approximately 6.30 p.m. on 26 April. That correspondence contained a list of 17 individuals who the commission say they had written to in relation to a section 18 notice, and a further five individuals who the commission said they may write to in relation to a section 18 notice. Obviously, 17 and</p>

undertaking. What we do not have is a final list from the commission of inquiry of the individuals to whom section 18 notices were provided. They were provided to the individuals, not to institutions.
[...]

Ms WHITE - No, I'm talking about section 18.

Ms GALE - who was listed in the report is under assessment and that some ED5s are underway. There is a meticulous process of cross-checking between what Justice received and what agencies have received through that 34A. We've made sure that any information that came in relation to staff where there may have been some kind of notice being issued, are included in those assessments, as I said previously.

Ms WHITE - Premier, you said to the parliament last month that you were advised the commission of inquiry did write to the state's lawyers in April this year advising of current and former state servants. This is the section 18 notices where the commission had intended or was considering issuing misconduct notices to these people. It's not about section 34A, it's about section 18 notices for these individuals. I've asked you repeatedly today whether or not you or the secretary have seen a list of those names and you've claimed that you don't have access to it, yet you updated the parliament just last month and said you received written advice from the commission about that in April, or at least the state lawyers did, and then you tasked the head of the State Service to meticulously go through that material. What material has the head of the State Service been going through meticulously if it hasn't included this?
[...]

five is 22. None of these 22 individuals were alleged to have abused children. I want to be very clear about that.
[...]

As advised by the head of the State Service yesterday, all those employees have been reviewed by the relevant head of agency. Whilst it is a matter for the Premier, the head of the State Service and other heads of agency, I understand of the seven remaining individuals, six are not in the workplace and the remaining individual does not have a child facing role and is not in the response of implementation of the commission's recommendations.

I would like to reiterate none of those individuals are alleged to have harmed children. I would also like to be very clear the state's lawyer advised the relevant heads of agency about their employees the following day, 27 April, noting we got the email at 6.30 p.m. Heads of agency only received advice about their employees. The state's lawyer - at my request - also sent advice about all the employees from all the agencies to the Head of the State Service the following day on the 27 April.

Ms HADDAD - Thank you for that very through information. I find it quite remarkable that at this table yesterday - she is not here to defend herself - the head of the State Service said she did not have knowledge of the list and she didn't have a copy. It's quite clear that it was provided on 27 April 2022 by the state lawyer. So that is something deeply concerning. I don't expect a response from you, Attorney-General, it's not your agency, but that's very concerning for the Tasmanian public.

Ms WEBSTER - To clarify, I think it was 27 April 2023. Also, my understanding is that the head of the State Service did actually say that she was aware of the wellbeing list; she did receive a copy of that wellbeing list. That was my understanding.

Ms HADDAD - I might have to look at the *Hansard*. Are you able to give a breakdown of the number of those people on that list by agency, or is that not something that can be provided to the committee?

Ms WEBSTER - To be clear, there were no Department of Justice employees on that list, so I think it is a matter for the head of the State Service and the individual agencies to provide that information. The Department of Justice was simply providing that conduit. I don't really feel comfortable providing that on behalf of another head of agency or head of the State Service.
[...]

Summary:

- The Hansard transcript indicates a ‘game of semantics’ was underway. Questioners when pursuing whether the Premier/DPAC had seen the list of names contained in the April email, referred to the list of those who ‘received section 18 notices’. In response, the DPAC Secretary stated the government had not received from the Commission a list of those who received s.18 notices – which in the absence of other information needs to be accepted at face value. The April email detailed those ‘in relation to section 18’ notices – but is silent on the status of those section 18 notices: whether issued, intended or under consideration. The April email also makes reference to “those who have previously received section 18 notices” leaving it unclear whether there are additional persons to those contained in this specific email.
- The Secretary does at one stage clarify that the people raised by the Commission “back in April” are known and have been included in the assessment/review processes.
- **But** – the Premier remained silent on whether he had sought and/or seen the contents of that April email. Similarly, no details were forthcoming as to whether the Secretary had sought to brief the Premier or anyone in the Premier’s Office following receipt of the information provided by the Department of Justice – which we now know was provided on the 27th of April.
- The Tuesday scrutiny committee could not ask those specific questions, as they did not have knowledge of that sequence of events which was only placed in the public domain the following day, Wednesday the 6th December.

Therefore, this belated provision of pertinent information could be grounds for the Assembly today to move to reconvene the Select Committee and seek to recall the Premier and the DPAC Secretary, in light of the information provided during subsequent hearings.

Further Questions Arising:

- Why didn’t the Premier, as State Service Employer, nor the Head of the State Service, the DPAC Secretary, provide the Committee with a (redacted) copy of the Commission’s email of the 26th April at the outset?

It is arguable the withholding of that email from the Committee despite the line of questioning underway could be interpreted as misleading the Committee, even by omission.

- Why did the DPAC Secretary fail to volunteer whether she had provided that information to the Premier, - or anyone in the Premier’s office - or alerted the Premier to the fact the government was in receipt of that information, on or after the 27th of April, which courtesy of the Attorney-General’s subsequent hearing we now know was sent to the Head of the State Service on that date.
- What was the correspondence of Monday 24 April cited in the Commission’s email of the 26th of April? Which State representative received that, and what further action was taken upon receipt? Was the DPAC Secretary informed and/or receive the information contained in that email of the 24th April? Was the Premier, or anyone in the Premier’s office informed?
- There are now questions around the Premier’s statement to the Parliament on the 2nd of November: “***I am advised that the commission of inquiry did write to the state's lawyer in April this year, advising of current and former state servants who the commission had intended, or was considering, issuing misconduct notices to.***”

How was that interpretation arrived at? The text of the April email only states the contents are “in relation to section 18 notices for...” - it is agnostic regarding the status of those s18 notices, with no indication of whether they have been issued, or intended or under consideration... How did the Premier come to that interpretation when updating the Parliament?

What action was taken by the government to seek confirmation as to whether those detailed in the email did or did not receive s. 18 notices? How many did?

Hinss, Oliver

From: Heath, Jared
Sent: Wednesday, 26 April 2023 6:34 PM
To: Hinss, Oliver
Cc: Driver, Thomas; Deschamps Ferrari, Laura
Subject: RE: Urgent - DOH - Misconduct Notices

Importance: High

Good afternoon Oliver

Thank you for your calls. My apologies for the delayed response. I've been in back to back meetings.

As you are aware, on Monday, 24 April 2023 we wrote to the State in relation to section 18 notices for:

[REDACTED]

We advise on Monday, 24 April 2023 we also wrote to the relevant legal representative in relation to section 18 notices for

[REDACTED]

For completeness, we note that in the coming days we may also write to the legal representatives for:

[REDACTED]

Based on the draft health chapter and other chapters which have previously been circulated to the State, as well as those who have previously received section 18 notices, the Commission anticipates that the State would have reasonably anticipated many of these recipients.

Given the important purpose of sharing this information with the State in order to appropriate manage any concerns in respect of wellbeing for State Servants, the Commission will seek to update you if it writes to the legal representatives of other State Servants not identified above (for example in relation to forthcoming Ashley Youth Detention Centre draft chapter content).

If the State has any concerns in respect of any wellbeing issues for those State Servants who are independently represented, to the extent you have not already done so we encourage you to consider contacting their legal representatives and advise them of these so that when the Commission contacts these legal representatives they are actively able to consider their clients' wellbeing and engage with the Commission about any such issues as well.

As always, if you wish to discuss, please contact me.

Best wishes,