

QUESTION ON NOTICE

Legislative Council

ASKED BY: The Hon Meg Webb MLC

ANSWERED BY: The Hon Leonie Hiscutt MLC, Leader for the
Government in the Legislative Council

QUESTION:

With regard to the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings, a specific question I placed on the record in this place on 31 October 2023, asked when the Department of Justice first became aware, "*...of the Commissioners' concerns that sections 18 and 19 of the Act, including the State's interpretation of those sections, was impeding their capacity to make the adverse and/or misconduct findings they felt necessary. As the response in the Premier's statement, tabled on 1 November this year, did not provide a clear answer to that question, I reiterate the question in more detail:-*

- (1) When did the former Attorney-General first become aware of the Commission's concerns that sections 18 and 19 of the *Commissions of Inquiry Act 1995*, including the State's interpretation of those sections, was impeding their capacity to make the adverse and/or misconduct findings they felt necessary;
- (2) When did the Office of the Attorney-General first become aware of these concerns held by the Commission;
- (3) Once known, did the Attorney-General, and/or the Office of the Attorney-General advise the Premier or the Premier's Office of the Commission's concerns; and
- (4) When did the Department of Justice first become aware of these concerns held by the Commission?

ANSWER:Questions 1 and 2:

- I cannot answer for the former Attorney-General and as such I provide answers to the questions based on advice and records.
- I am advised that the former Attorney-General and her office had an awareness that the staff of the Commission had raised concerns about how procedural fairness obligations were to be met, but it was understood to be an issue of additional time.
- I am advised that from approximately February 2023, the Commissioners raised with the Government directly the need for time to comply with their procedural fairness obligations in the context of a requesting an extension of time in correspondence, and during a meeting with the Premier and former Attorney-General. I am further advised the Commissioners did not raise with the Premier and the former Attorney-General a concern that sections 18 and 19 of the *Commissions of Inquiry Act 1995* (the Act), or the State's lawyers' interpretation of those sections, was impeding their capacity to make the adverse and/or misconduct findings.

Question 3:

- I am advised that the Premier also became aware of the Commissioner's concerns on 30 August 2023.

Question 4:

- I am advised that the Department of Justice first became aware that Commission of Inquiry staff had concerns regarding the procedural fairness related requirements of the Act on 22 February 2023 when the Commission provided a draft chapter on 'Establishing the Scope and Conduct'. The draft chapter was provided by staff of the Commission to the State's lawyers on the caveat that it was not the work of the Commissioners and was yet to receive Commissioner's approval. I am advised that this draft chapter included a statement that the process requirements limited the Commission's capacity to make findings of misconduct.

- I am advised that in response, the State's lawyers challenged the accuracy of those comments, and actively engaged with the staff of the Commission to offer assistance to the Commission to meet its procedural fairness obligations.
- I am further advised, that on 1 August 2023, the staff of the Commission sent a draft executive summary to the State's lawyers which also included the information about the procedural fairness issue and concerns that sections 18 and 19 of the Act impeded their capacity to make some adverse and/or misconduct findings.

A handwritten signature in black ink, appearing to read 'Guy Barnett', with a long horizontal flourish extending to the right.

Hon Guy Barnett MP

Attorney-General

Date: 18 December 2023