

QUESTION ON NOTICE

Legislative Council

ASKED BY: The Meg Webb MLC

ANSWERED BY: The Hon Leonie Hiscutt MLC, Leader of the Government in the Upper House

QUESTION:

With regard to the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings and the Premier's announced review to be undertaken by Heads of Agencies to examine matters surrounding those State Servants identified by the Commission, can the Leader confirm:-

- (1) This review is being conducted as an inquiry into potential breaches of the Code of Conduct under the *State Service Act 2000*?
- (2) That external lawyers have been retained and remunerated by the State to undertake investigations into alleged breaches of the State Service Code of Conduct?
- (3) Whether any allegations being investigated using this process include serious and/or indictable offences?

If any allegations being investigated using the aforementioned process do include potentially serious and/or indictable offences:

- (4) Are all of the people being investigated for Code of Conduct breaches in relation to potential serious and/or indictable offences current employees of the State Government; and
- (5) If some of the persons accused of serious and indictable offences are no longer employees of the State Government, what (if any) alternative process is being used to investigate them or what other process will apply?
- (6) Have any matters being referred to the Tasmania Police or DPP for investigation and/or prosecution?

Further in relation to the Code of Conduct investigations currently being conducted:

- (7) What are the terms of appointment for the external lawyers and could a copy of the terms of appointment be tabled in the House;
- (8) Is there a lawyer-client relationship with the State Government, and if so, do the external lawyers have a conflict of interest in that they are engaged by the State Government but may be being asked to determine whether serious allegations of criminal conduct on the part of State Government employees have occurred, and which may also have potential civil liability ramifications?

This review is being conducted as an inquiry into potential breaches of the Code of Conduct under the State Service Act 2000?

That external lawyers have been retained and remunerated by the State to undertake investigations into alleged breaches of the State Service Code of Conduct?

Whether any allegations being investigated using this process include serious and/or indictable offences?

ANSWER:

Depending on their nature, allegations have been referred to the most appropriate place for consideration and investigation, whether that be Tasmania Police, regulatory bodies such as Working with Vulnerable People or AHPRA, and/or Heads of Agency for assessment as to whether there may have been a breach of the State Service Code of Conduct.

For some employees a process has already been undertaken and they are either no longer employed or, following investigation, it has been deemed appropriate they return to work. Other matters are ongoing.

All relevant Heads of Agency are continuing to work through the issues raised and information provided by the Commission. Heads of Agency have agreed to a common approach to considering action for both current and former employees. Should a Head of Agency have reasonable grounds to believe that a breach of the Code of Conduct may have occurred the Head of Agency will appoint an independent person to investigate the alleged breach. This could be an employee of their Agency with investigation skills, an external investigation firm or practitioner or legal firm.

If Heads of Agency, as part or during the course of an ED 5 investigation become aware of matters that could be of a criminal nature then the Head of Agency immediately refers to the appropriate bodies and would take steps to suspend an employee from duty, if not already suspended at the commencement of the investigation.

Are all of the people being investigated for Code of Conduct breaches in relation to potential serious and/or indictable offences current employees of the State Government; and

If some of the persons accused of serious and indictable offences are no longer employees of the State Government, what (if any) alternative process is being used to investigate them or what other process will apply?

Have any matters being referred to the Tasmania Police or DPP for investigation and/or prosecution ?

ANSWER:

There are a range of circumstances identified in the report, from 'alleged perpetrators' to employees mentioned as part of other commentary.

If there are allegations of child sexual abuse referred to in the Commission of Inquiry report, that state servant has been removed from the workplace with immediate notification to the relevant external agencies; or a process has already been undertaken and they have either left the service or, following investigation, it has been deemed appropriate they return to work. In advance of the receipt and tabling of the final Commission's Final Report, the Government took action to set up cross-agency structures to make sure that we respond to all the concerns relating to the safety of children raised in the Report.

The Joint Safety and Accountability Team (JSAT) was established in August 2023 and is a multi-agency team, comprised of key law enforcement, regulatory authorities and relevant agencies. JSAT was established to ensure that all alleged and identifiable perpetrators of child sexual abuse in the Commission of Inquiry's Final Report were known and reported to authorities.

JSAT completed the Phase 1 component of this urgent work in September 2023. That work confirmed that 34 alleged perpetrators were identified in the Commission's Final Report, and provided visibility of all 34 alleged perpetrators in one or more of the relevant law enforcement and regulatory entities.

JSAT identified 34 alleged perpetrators, seven of which are current State Servants employed by the Department for Education Children and Young People.

Of these seven, the disciplinary process has been completed for two employees, who have been returned to duty in a role with children and young people. Of the remaining five, four are suspended and one is on worker's compensation with an ED5 being progressed for all five.

What are the terms of appointment for the external lawyers and could a copy of the terms of appointment be tabled in the House;

Is there a lawyer-client relationship with the State Government, and if so, do the external lawyers have a conflict of interest in that they are engaged by the State Government but may be being asked to determine whether serious allegations of criminal conduct on the part of State Government employees have occurred, and which may also have potential civil liability ramifications?

ANSWER:

In relation to all Code of Conduct investigations, Employment Direction No. 5 (ED 5) provides that an investigator is appointed where the Head of Agency forms a reasonable belief that a breach of the code of conduct has occurred and commences the disciplinary ED5 process. Recently a whole of government panel for external investigators has been established and there are a number of legal firms that are on the Panel of Approved Providers.

The appointment of an investigator in accordance with ED No.5 where the investigator is a legal practitioner is not the appointment of the investigator in a lawyer- client relationship. The appointment is a commercial transaction that is the result of a procurement process for the panel of investigators for investigations for ED5 and ED6 matters in the Tasmanian State Service.

In that regard there is no conflict of interest perceived or otherwise that arises in the use of legal firms and practitioners as investigators. The role of the investigator is to establish the facts in relation to the allegations of the matter. This is not work of a legal nature and there are non-legal members of the panel of investigators that agencies can choose to appoint in the same way.

Any notifications that require referral to other authorities such as Police, Registrations to Work with Vulnerable People (RWVP), Teachers Registration Board (for teachers) and Australian Health Practitioner Regulation Agency (APHRA).

APPROVED/NOT APPROVED

The Hon Michael Ferguson MP
Acting Premier

Date: 12 December 2023