Unfinished Business: Submission to the Independent Assessment of Concerns Raised by The Commissioners of the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings Regarding the Actions of Heads of Agency

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Introduction

I welcome the opportunity to make a submission to this independent assessment of concerns raised by the Commissioners of the *Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings* (the Commission) regarding the actions of Heads of Agency.

In its final report *Who was looking after me? Prioritising the Safety of Tasmanian Children,* the Commission states as a finding that:

> *We observed some leaders within the State Service resisted constructive criticism and lacked the curiosity and initiative required to ensure children's safety was prioritised. We also saw passivity and failures to act, particularly in response to past reviews, inquiries and internal reports highlighting problems that increased risks to children in institutions. We would like to see leaders be role models for prioritising children's rights and safety. To achieve this goal, leaders need the qualities of self-reflection, an ability to acknowledge mistakes and a drive for making improvements.* [1]

The Commissioners also acknowledged:

> *We are grateful to those state servants who were cooperative, reflective and sought to assist our Inquiry. While most people engaged with us in good faith, we were disappointed that this cooperation was not universal*.[2]

These statements summarise the crux of the problem which both sparked the need for this additional independent assessment, and which it must also attempt to tackle.

The Commission clearly identified and experienced, state service leadership resistance and cultural impediments to full cooperation during the course of their investigation.

Worryingly, similar leadership resistance and cultural impediments to self-reflection and acceptance of responsibility appear to continue beyond, and in the face of, the Commission's Final Report's findings and recommendations.

[1] *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse* (Report, August 2023) Vol 1. Pg 9.
[2] Ibid; Vol 1. Pg 2.

Commission of Inquiry: Unfinished Business

Tasmanians were shocked - with many devastated - to discover upon the public tabling of the Commission's Final Report on the 26th of September last year, that the Commission felt impeded by State actions from making a number of findings in respect to State servants that it otherwise may have.

Specifically, despite issuing 30 section 18 misconduct notices to 22 people, the Commission only made one actual misconduct finding while making it clear it felt blocked by protracted legislative impediments and legal wrangling on the part of the state from pursuing other potential misconduct and adverse findings.

As acknowledged by the Premier, the Hon. Jeremy Rockliff MP, in subsequent correspondence to the Commissioners dated the 17th of October 2023, this raises serious concerns, "*that the Commission has not been able to complete its task and that State Servants have avoided accountability for their actions*." [3]

To put it bluntly – the Commission of Inquiry has significant unfinished business due to these impediments.

Tasmanians expected the Commission to identify where accountability and responsibility needed to be allocated – not only upon perpetrators (and it is noted that the Commission referred over 100 people to police and child protection authorities during the course of its inquiries), but also upon those whose actions or inactions failed to protect children.

The community is still waiting to see that accountability and responsibility be taken. That unfinished business has exacerbated ongoing trauma where there should have been closure, and risks undermining confidence in implementation of recommendations moving forward.

Limitations

At the outset, I need to state clearly that I have serious reservations regarding the narrow scope of this review's terms of reference. No matter the thoroughness and diligence with which the assessment may be undertaken, there is considerable disquiet amongst victims/survivors, advocates and whistleblowers that these limitations will, by default, prevent the assessment from addressing key unresolved matters arising from the Commission.

I will discuss in further detail the ramifications of the restricted terms of reference.

Unfortunately, I cannot claim to have access to the insights of the Commissioners beyond the information they provided on the public record either during the Commission's public hearings and transcripts, and the Final Report released publicly in September 2023. Undoubtedly there is considerable material and documentation generated by the Commission pertinent to this independent assessment which is not in the public domain.

Hence, this contribution will focus on identifying and highlighting key matters of concern and questions raised by the Commission in relation to Heads of Agency, as it is beyond the scope of this submission to provide the analysis which could answer those questions or resolve that unfinished business.

[3] See Appendix G: Correspondence from the Premier to the former Commissioners, dated 17 October 2023

Background Context

It is useful to provide background context to this additional independent review, particularly how and why it came into place.

Following public outcry and ongoing disquiet over the revelations, and consequences of, the Commissioners' statements at the Commission's final hearings in August last year regarding challenges they faced, which were then reiterated in its Final Report, the government announced a range of internal state service audits, plus a series of subsequent reviews.[4]

This included an independent audit in response to information and concerns raised by the Commission in its Final Report regarding public officers:

> *An independent audit of all the actions taken in response to the information and concerns raised by the Commission regarding public officers employed in the State Services will be undertaken, with the results tabled in this place and any suggestions or findings acted on.*[5]

Concern were raised at the time regarding the lack of transparency surrounding the internal reviews to be undertaken by Heads of Agency, as well as the above flagged 'independent audit' on the basis that it still limits that examination within the framework of the State Service Code of Conduct.

Instead of this series of fragmented and piecemeal reviews, I called for a comprehensive external independent examination of the Commission's outstanding matters of concern to be undertaken. [6]

On the 14th of November last year, when the Legislative Council was scheduled to debate my motion formally calling for such an independent inquiry to be initiated, the government announced both this independent assessment, known as the Blake Review, as well as an additional independent review to consider the actions, and effectiveness of those actions, by government agencies and other relevant authorities taken in response to the information and concerns raised by the Commission which is currently being undertaken by Australian Public Service Commissioner Peter Woolcott AO.

For brevity's sake, I have attached my Hansard contributions in the appendices rather than repeat as extensive quotations within this submission.

The following additional independent reviews (as opposed to internal audits being undertaken by government agencies) have also been announced:

- The Tatarka Review – examining whether there are appropriate grounds to require any Public Officers, who received a grant of legal assistance in the course of the Commission, to reimburse the Crown for reasonable costs and expenses.
- The Tasmanian Law Reform Institute's examination of the operation of the *Commissions of Inquiry Act 1995*, and section 194K of the *Evidence Act 2001* (Tas)
- The Weiss Review (commissioned by the Police Commissioner) in relation to the conduct of former police officer Paul Reynolds.

[4] See the Ministerial Statement delivered in the House of Assembly by the Premier, 17 October 2023.
[5] Ibid.
[6] See Appendix I: *Background Brief: Concerns Arising from the Commission of Inquiry Report*, 31 October 2023

Misconduct and Adverse Findings: Section 18 Notices

Which leads to the question: is this series of subsequent reviews – including this Blake Review - sufficient to address key outstanding matters arising from the Commission of Inquiry, and if not, why not?

Unfortunately, the answer must be no.

None of the announced reviews or internal audits will examine or provide clarity surrounding the intentions of the Commission to pursue misconduct and adverse findings, or otherwise, against the 22 recipients of the 30 section 18 notices issued by the Commission.

As mentioned above, I submit that the terms of reference for this assessment are too narrow, with the omission of outstanding matters pertaining to the issued section 18 notices from its scope being of specific concern.

I cannot stress enough that until clarity is provided by a robust and independent mechanism surrounding the section 18 notices issued by the Commission, the sense of betrayal felt by those victims/survivors, whistleblowers, their families, friends, supporters and advocates who participated in good faith will continue to fester and solidify.

Public confidence in any implementation of recommendations stemming from the Commission, will be undermined.

I take this opportunity to reiterate the calls made previously for the need for the following matters to be addressed as a matter of urgency:

1) The need for the interactions between the Commission and the State's lawyers, and government officers if applicable, over the section 19 adverse findings and 18 misconduct processes and issues arising. This should include examination of in what way, and why, did the Government, through its officers and or lawyers, instruct the Commission that potential findings of adverse conduct needed to be addressed under s18 of the Act rather than s19.
2) The outstanding matter of the 22 people issued with section 18 notices must be resolved. If these represent findings of misconduct that the Commission intended to make, but were prevented from making, the names of those people and the circumstances of the misconduct findings against them should be made public through independent and transparent processes.

As stated, the Commission was impeded or prevented from finishing some of its work, in terms of accountability, specifically in relation to resolving section 18-related matters.

We are left with no conclusive indication in the report as to the identity of the 21 other people additional to the one person the report did make a finding of misconduct against, Mr Peter Renshaw, who might have received section 18 notices. We do not know whether the findings of misconduct against them would have been finalised, if the commission had not been unable to complete the task.

Not only does this betray the reasonable expectation held by victims/survivors and their supporters; whistleblowers; other witnesses; and the broader Tasmanian community that the Commission would furnish findings that would deliver justice and accountability in relation to both systems and individuals as appropriate.

These unresolved matters also raise very serious concerns in light of the possibility that Commission of Inquiry recommendations may be implemented or overseen by senior public servants who were recipients of section 18 notices from the Commission.

This disturbing prospect is untenable for many in the community and the child protection sector.

Ironically, the ongoing failure to address the two points above is another example of the lack of willingness to engage in meaningful self-reflection and responsibility taking identified by the Commission, cited earlier in this submission.

Commissions of Inquiry Act 1995 vs State Service Code of Conduct

This independent assessment's terms of reference require the examination of actions undertaken by specified Heads of Agency in light of concerns raised by the Commission, and then the consideration of whether those actions may be in breach of the Tasmanian State Service Code of Conduct.[7]

This limited terms of reference overlooks the fact that the Commission was applying a different assessment criteria – that being the definitions of 'misconduct' and 'adverse findings' as defined by section 3 of the *Commissions of Inquiry Act 1995*. The Commission was not necessarily using the State Service Code of Conduct benchmark as the basis of its considerations.

Misconduct and adverse findings made under the auspices of the *Commissions of Inquiry Act 1995* would potentially present more serious ramifications than breaches of the Code of Conduct, or failure to uphold the State Service Principles.

While it may be appropriate for Heads of Agency to assess any state service employee mentioned by the Commission for any potential breach of the Code of Conduct, that assessment does not obviate the need also to assess any recipients of section 18 notices against the higher threshold test of the *Commissions of Inquiry Act 1995*.

Equally, Heads of Agency should also be assessed as to their compliance with State Service Principles, both in their interaction with the Commission, as well as their previous or current actions undertaken on child safety concerns.

Whether by design or accident, there is an inference that either this assessment or the Woolcott Review will be applying the Commissions of Inquiry Act threshold test, when in fact that is not the case. This should be clarified, and clearly identified as a significant gap which must be addressed.

Statutory Officers

Another serious absence in the post-Commission series of internal audits and external reviews is the lack of scrutiny of the relevant Statutory Officers also mentioned by the Commission, particularly those mentioned in the report as providing Procedural Fairness Responses.

The Commission's Final Report reveals that, in addition to the 22 individuals identified in footnotes as providing a Procedural Fairness Response, so did the following eight entities:

	Table 1: Examples of citation in the Report's Notes
State of Tasmania	State of Tasmania, *State Procedural Fairness Response*, 20 June 2023, 2–4. – In Vol. 8, Chapt 18.
Office of the Solicitor-General	Office of the Solicitor-General, *Procedural Fairness Response*, 16 March 2023, 10 [20]. – In Vol. 7, Chapt 17.

[7] Note: I am limiting my discussion to the Tasmanian State Service Code of Conduct as applicable to non-Police Heads of Agencies.

Department of Health	Department of Health, *Procedural Fairness Response*, 28 April 2023, - In Vol. 6, Chapt 14.
Department for Education, Children and Young People	Department for Education, Children and Young People, *Procedural Fairness Response*, 1 August 2023, 3–4. – In Vol. 4, Chapt 9.
Integrity Commission	Integrity Commission, *Procedural Fairness Response*, 23 May 2023, 3. – In Vol. 8, Chapt 18.
Tasmania Police	Tasmania Police, *Procedural Fairness Response*, 23 March 2023, 3.
Office of the Director of Public Prosecutions	Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 2 – in Vol. 7, Chapt 16
Teachers Registration Board	Teachers Registration Board, *Procedural Fairness Response*, 17 March 2023, 2. – Vol. 3, Chapt. 6.

* Note: Victoria Police also provided the Commission with a Procedural Fairness Response, however that Agency is outside Tasmania's jurisdiction: Victoria Police, *Procedural Fairness Response*, 14 March 2023, 1, in Vol. 7, Chapt 16.

The 22 individuals identified in the Report's Notes section as providing Procedural Fairness Responses include the following individuals holding statutory roles (Table 2):

	Table 2: Examples of citation in the Report's Notes
The Solicitor-General✦	Solicitor-General of Tasmania, *Procedural Fairness Response*, 20 June 2023 – in Vol. 8, Chapt 19.
Commissioner for Children and Young People✦	Commissioner for Children and Young People, *Procedural Fairness Response*, 11 July 2023, 2. – In Vol. 5, Chapt 11.
The Ombudsman✦	Richard Connock, *Procedural Fairness Response*, 19 July 2023, 1. – In In Vol. 5, Chapt 11.
CEO of the Integrity Commission ✦	Michael Easton, *Integrity Commission Procedural Fairness Response*, 8 March 2023, 2. – Vol. 8, Chapt 20.

✦ *State Service Act 2000 does not apply to role.*

✦ *State Service Act 2000* does apply to role as the Head of Agency within the meaning of that Act.

As has been noted elsewhere, those combined lists consist of key independent oversight bodies in the state. Any on-going question mark hovering over their role in, and examination by, the Commission is detrimental to public confidence in the robustness and integrity of our fundamental system of good governance.

Hence, I take this opportunity to reiterate my previous call for the establishment of a suitable independent review and examination of relevant statutory officers. [8]

[8] The Premier has confirmed that neither the Woolcott Review nor the Blake Review will examine Statutory Officers – see correspondence from the Premier dated 13 February 2024.

Recommendations

It is of paramount importance, and in the public interest, that the conduct of this independent assessment is as transparent and detailed as possible.

In this context it would be highly valuable for the assessor to 'step through' processes undertaken for the reader. For example, the assessor should detail:

1. Efforts made, and extent of access to the former Commissioners and the Commission's documentation, records and personnel, and whether and how that addressed specific elements of the Terms of Reference;

2. Any requests made of the former Commissioners, the government or any other entity which were partially or fully complied with or denied;

3. On what basis submissions were invited;

4. Whether any other investigations were undertaken by the Assessor, and to what end;

5. The involvement of any victims/survivors, advocates and/or whistleblowers or any other stakeholder in the assessment;

6. Any interrogative processes which may have been undertaken to comply with Point 2 of the Terms of Reference; and

7. Any correlation and interaction with the Woolcott Review.

It is also crucial that significant matters which may be determined as falling outside the scope of this independent review, are clearly identified with accompanying recommendations of additional work required.

Conclusion

Assessing the concerns raised by the Commission in relation to any actions undertaken, or not undertaken by the heads of Agency specified by the Terms of Reference, is undoubtedly a positive oversight step to occur.

Yet, while I acknowledge that any limitations of the terms of reference are not the responsibility of the Assessor, the serious matters of public concern and interest that may fall outside this review's scope cannot be ignored.

Additional to the matters listed above which warrant specific addressing via this independent assessment, clear and detailed recommendations for further actions and follow up must also be included.

This review presents a serious opportunity to turn around the lack of self-reflection and willingness to accept responsibility, to demonstrate leadership – all of which the Commission had identified as sorely lacking in some quarters of the State Service, including senior management.

Lastly, I am happy for this submission to be cited and/or released publicly by the Assessor. Further, I am also happy to discuss further any matters arising.

Appendix A

Legislative Council Hansard: Tuesday 31 October 2023

Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings - Adverse Findings

[5.03 p.m.]

Ms WEBB (Nelson) - Mr President, I rise on the adjournment to speak on an urgent matter related to the recently completed Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

First, a brief summary of pertinent facts as context. The final report of the commission of inquiry was provided to the Government on 31 August 2023 and tabled on 26 September . Titled, 'Who was looking after me? Prioritising the safety of Tasmanian children', the report is extensive: 3000 pages in 23 chapters over eight volumes, making 75 findings and 191 recommendations.

In response to the direct question posed by the title, *Who was looking after me?* most expected the commission's report to provide answers and accountability. However, as we know, notably and shockingly, the report presents only one finding of misconduct against one individual and none of its 75 findings were specified as adverse. Many in the community, especially those who have been involved as witnesses in the commission of inquiry, found this unfathomable and at odds with the stated purpose and expected outcomes of the inquiry process.

While the commission met its responsibilities during the progress of the inquiry in referring over 100 people to police and child protection authorities, as required, the key tangible output of its investigations, the findings presented contain a glaring lack of specific accountability for the extensive, egregious and protracted failures presented and discussed in the body of the report. It appears clear on reading the report that the commission's attempts to pursue adverse findings and findings of misconduct were complicated by legislative changes made after the commission was established and by interpretations of those legislative changes insisted on by the legal representatives of the state.

The result of this was the commission being constrained in its ability to make adverse findings and findings of misconduct to the point that it appears intended findings of both these types had to be abandoned by the commissioners in the interest of prioritising currently vulnerable children, and were consequently omitted from being explicitly included in the report. In making that statement, and arriving at that undeniable and entirely unacceptable conclusion, I am drawing in particular on the following sections of the report:

- Volume 1 - 5.1: Challenges we faced
- Volume 2 - 2.3.1: Legislative and regulatory amendments
- Volume 2 - 2.3.4: Power to make a finding of misconduct and an adverse finding
- Volume 8 - 3.1: Adverse findings and misconduct findings.

Some may recall this alarming situation was reported by news outlets following the tabling of the commission's report.

Mr President, turning to my specific matter of urgency today. I must stress I do not take this action lightly. I have had many sleepless nights since I first became aware over the last week of the matters I am

about to raise. I have also given serious consideration to my responsibilities as an elected member to raise with the responsible authority at the earliest available opportunity matters of serious consequence, which I believe this to be. Further, I believe in this instance that the parliament is a relevant authority and the adjournment today is the first available mechanism for me to do so.

Looking at the report, we see that in the course of its work, the commission issued 30 section 18 misconduct notices to 22 people. From section 18 of the act, we know that issuing such a notice means the commission was satisfied that an allegation of misconduct against that person had been, or should be made, in its inquiry and that person should be required, or was likely to be required, to give evidence to the inquiry in relation to the allegations.

We also know that at the insistence of the state's legal representatives, any instances in which the commission wanted to make an adverse finding as per section 19(2)(a) and (2)(b), they would be obliged to utilise the same full procedural fairness response as for misconduct in section 18. The commission makes it clear that due to being blocked by protracted legislative impediments and calculated legal wrangling on the part of the state, it was not able to finalise the apparently intended adverse findings and findings of misconduct indicated by the issuance of 30 section 18 notices to 22 people.

As a result, as mentioned earlier, only one finding of misconduct ultimately appeared in the report. So, 21 people, against whom it would appear the commission may have wished or intended to make either findings of misconduct or adverse findings, are not explicitly listed in the body of the report, meaning they have not been fully or publicly held to account for their actions.

Mr President, on closer reading of the report, however, we begin to be able to put pieces of information together which may point us to individuals who were issued with section 18 notices relating to misconduct or adverse findings. My understanding is that once a section 18 notice is issued to a person, they would have been required to submit a procedural fairness response to the matters outlined in the notice. In the past week, I have become aware that the report contains the names and/or roles of some individuals who provided procedural fairness responses to the commission.

It may be that these individuals were recipients of section 18 notices the commission stated were issued. The names and or roles of the individuals can be located in the notes sections of the report, where there are numerous references to procedural fairness responses submitted to the commission.

Located throughout the notes sections across the various volumes of the report there are references to procedural fairness responses from the following 22 individuals: Solicitor-General of Tasmania; Commissioner for Children and Young People; Richard Connock; Michael Easton; Michael Pervan; Manager AYDC; Patrick Ryan; Stuart Watson; Greg Brown; Pamela Honan; Mandy Clark; Kathy Baker; Jacqueline Allen; Sarah Spencer; Sue McBeath; Janette Tonks; Helen Bryan; James Bellinger; Micheal Sherring; Eric Daniels; Matthew Harvey; and Peter Renshaw.

In addition to those 22 individuals, the notes sections of the report also refer to procedural fairness responses from the following Tasmanian departments, statutory authorities and entities: State of Tasmania; Office of the Solicitor-General; Department of Health; Department for Education, Children and Young People; Tasmania Police; Office of the DPP; Integrity Commission; and Teachers Registration Board.

This is an astonishing list and to my knowledge despite being locatable in the notes sections of the report, the Government is yet to acknowledge publicly whether these 22 individuals and eight entities were subject to section 18 misconduct notices. This is entirely unacceptable. On a prima facie reading of the commission's report, legitimate questions arise relating to each of these individuals and entities and whether the commission was considering or intending to make a finding of misconduct or an adverse finding against them.

As I stated earlier, the commission's report makes it clear that the absence of specific misconduct or adverse findings is because those processes had to be abandoned unfinished, due to apparent obstacles raised primarily by the state; not necessarily because of a lack of merit or of any potential thwarted findings.

What that clearly means is that significant clouds - rightly or wrongly - remain over those eight entities and 22 individuals. This is why I have had sleepless nights. This is of grave and urgent concern because the entities listed contain most of Tasmania's key independent oversight watchdogs and separately, amongst the individuals listed, are a number of the statutory office holders attached to them. It cannot be emphasised strongly enough that public confidence and trust in these entities and these office holders must be paramount. If the commission had been able to present further findings of misconduct plainly in the report, even if they involved these individuals and entities, it would have been concerning, but able to be transparently understood and openly addressed. As it is, there is all the appearance of a deliberate effort to suppress such findings, denying the opportunity for full understanding and transparent accountability.

Furthermore, these entities and some individuals referred to could have key responsibilities in implementing, or providing oversight of, the implementation of the formal Government response to the commission's recommendations. How are we to trust or have confidence in any commission of inquiry implementation plan moving forward if some of those with key responsibilities in implementing it have been left with such a serious question mark over them from a stymied commission process?

Mr President, it is unacceptable for this opacity of outcome to be left unaddressed, hanging over the heads of those 22 people and casting public doubt over those eight departments, authorities and entities. This is an intolerable situation for those Tasmanians who engaged with this commission of inquiry in good faith, often at great personal distress, with the expectation that it would provide genuine acknowledgement and accountability at all levels. The report lays out catastrophic failures of both individuals and systems to adequately protect children in state institutions; and yet, the state appears to have gone to great lengths to prevent the commission from making any findings of misconduct or adverse findings, especially against individuals. This concern must be transparently examined and tested. It cannot be swept under the already threadbare carpet.

The report is gut-wrenching reading and at times, it presents what appears to be close to a paedophile protection racket in Tasmanian state institutions.

This is utterly wretched. To find even at the latest stages of the commission process, that there appears to have been calculated blocking by the state of misconduct and adverse findings being made. It looks like nothing short of a devastating continuation of that same protection racket mentality. This is a disgrace. It is unconscionable. Any further perception that Government is closing ranks and back covering is occurring must be removed immediately and entirely.

The ministerial statement made by the Premier on 17 October 2023, promised anyone identified in the report as needing to be held to account would be held accountable. It now appears the state itself must needs be held to account, including key personnel in the State Service, in Government and possibly in oversight entities. On an issue as sensitive as this, all efforts must be made to rebuild public trust and confidence in the state and our oversight entities, but the relevant Government actions announced by the Premier are largely internal processes not suitably independent of Government and not guaranteed to be transparent.

In conclusion, I put on the record here questions that must be answered as a matter of urgency on this situation noting that in the days, weeks and months to come there will no doubt be many further questions requiring answers.

1. Did the current Solicitor-General, Ombudsman, CEO of the Integrity Commission, Commissioner for Children and Young People and manager of Ashley Youth Detention Centre receive section 18 notices from the commission of inquiry indicating they may be the subject of misconduct findings? If not, did they receive section 19 notices indicating possible adverse findings?

2. Are any of the commission of inquiry recommendations being implemented or overseen by senior public servants who received section 18 notices from the commission of inquiry?

3. If the Solicitor-General received a section 18 notice indicating that she herself may be the subject of a misconduct finding, will she be stepping aside from providing legal advice to Tasmanian departments and statutory authorities on the Government response to the commission of inquiry and also from any civil litigation matters that involve child sexual abuse?

4. Who will provide legal advice to the Government in relation to matters raised about the Solicitor-General at the commission of inquiry?

5. Did the commission intend but find itself unable to make either misconduct findings or adverse findings against the 22 individuals and eight entities that appeared in the notes of the report as having providing procedural fairness response?

6. Did the state deliberately draft the amendments made to the act in 2021 in order to argue an interpretation that would create obstacles for the commission to make adverse findings and findings of misconduct against the state, other entities and individuals?

7. Under whose instruction or direction did the legal representatives for the state assert an interpretation of sections 18 and 19 of the act that the commission regarded as onerous and a barrier to fully undertaking its role?

8. When did the Premier first become 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 adverse and/or misconduct findings they felt necessary?

9. When did the Department of Justice first become 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 adverse and/or misconduct findings they thought necessary?

10. After the Department of Justice became aware of the commissioners' concerns over sections 18 and 19 of the act, what action was taken by the department and/or the Attorney-General?

I appreciate the indulgence of the Chamber. I will finish by again reiterating I do not take this step lightly. I did so because I genuinely believe the commission's report title, *Who was looking after me?* was not chosen lightly either. I do not read it as merely a rhetorical question but one directed to us all in this parliament. Distressingly, I cannot answer it for those children then or even now and, worryingly, I cannot in good conscience answer who will be looking after me.

It is now incumbent on the parliament to follow the trail set by the commission and see those answers.

Appendix B

Legislative Council Hansard: Wednesday 1 November 2023

Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings - Adverse Findings

[5.30 p.m.]

Ms WEBB (Nelson) - Mr President, I rise on adjournment to respond to recent developments on matters briefly raised in this place. As members would be aware, I placed on the public record here a series of questions for the Government. I acknowledge the formal response provided by the Premier this morning on some of the matters and questions I raised arising from the final report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

However, serious questions still remain. I am also surprised by omissions in the Premier's response. While it is tempting to counter and dispute points made by the Premier in response to the questions and matters I raised in this place, I do not intend to do so in this forum.

As I stated yesterday, I believe an external independent reviewer needs to be appointed to investigate outstanding matters raised by the commission's report. Those matters include the extent that the state's interpretation of section 18 of the act made it impossible for the commission to make the findings - including misconduct and adverse - it may have otherwise have done, and the unresolved matter of the 30 section 18 notices sent to 22 individuals.

It appears there are at least two different versions of events surrounding the issues with the act: the version contained in the commission's report, and the Premier's response this morning. The best way to deliver a comprehensive assessment and clarity regarding these significant outstanding matters is via a suitably qualified, external independent reviewer, rather than resorting to a piecemeal approach.

I also take this opportunity to correct a misreporting. I raised serious questions based on specific content of a publicly tabled report. I did not make allegations against individuals or entities but, in the public interest, called for clarity about how and why they were cited - as they were - in the notes sections of the report, in light of the description of the commission of the processes undertaken and constraints experienced. As I stated, and I reiterate, those individuals deserve that clarity to be provided and independently verified, as do all those who engaged with the commission, including victims/survivors.

All elected representatives should be held accountable for their actions, including me. I stand by my statement of yesterday, that clarity was - and remains - required in relation to those cited in a specific way in the notes of the commission's final report, and other concerns raised regarding the state's interactions with the commission. For the purposes of restoring public confidence, full clarity must be delivered through a comprehensive independent assessment.

As I said, I did not take that step lightly but I have a responsibility to do my job, particularly in pursuing clarification of matters such as this, that impact so many people - no matter how uncomfortable that may be for the Government or for me.

Appendix C

Legislative Council Hansard: Tuesday 14 November 2023

MOTION

Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

Consideration and Noting

[4.31 p.m.]

Ms WEBB (Nelson) - Mr President, I move -

(1) That the Legislative Council notes that:

(a) statements by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings that amendments made to the Commissions of Inquiry Act 1995, (the Act) in 2021 and the Government's interpretation of the procedural fairness requirements in the Act, meant the Commission was unable to make some findings it might otherwise have made (see the Final Report of the Commission of Inquiry into the Tasmanian Government's Responses into Child Sexual Abuse in Institutions: Who was looking after me? Prioritising the safety of Tasmanian Children, Vol 1, 5.1, p.25); and

(b) the Commission issued 30 Section 18 notices to 22 persons (refer to the above-mentioned Final Report, Vol 2, 2.3.4, p.14), ultimately finalising only one finding of misconduct, resulting in a lack of clarity on which of the remaining potential findings of misconduct were abandoned or resolved.

(2) Further, the Legislative Council calls upon the Government to establish an independent review to inquire into all interactions between the Tasmanian Government and the Commission of Inquiry in relation to:

(a) impediments identified and experienced by the Commission due to the interpretation and operation of the Commissions of Inquiry Act 1995, including amendments made to the Act in 2021; and

(b) all matters surrounding the issuing of the 30 section 18 notices to 22 persons, and reasons for the lack of finalisation of those processes by the Commission; and further

(3) This Council agrees that such an independent review is to:

(a) be undertaken by a person, or persons, who has not been previously employed by the State of Tasmania; and

(b) have its report published upon finalisation, and tabled in the Parliament at the first available opportunity.

Mr President, I rise to speak on this motion in my name. The motion has two parts. First, it notes the unfinished work of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings - in particular, the inability of the commission to make findings it may otherwise have made.

Second, it calls on the Government to establish an independent examination or review of the circumstances of that unfinished work; the impediments experienced by the commission; and the matters surrounding the issuing of 30 section 18 notices to 22 people, from which only one finding of misconduct was able to be finalised in the report.

Before I begin my contribution in detail, I acknowledge that today is National Survivors' Day - a day to acknowledge and express support for those who are survivors of sexual assault, systemic and institutional abuse. I wear these coloured ribbons today as an acknowledgement of that day. I stand with survivors on this day and offer and extend my heartfelt support, not just today but every day. There may be survivors here today or watching online, and please know that I recognise your strength, resilience and bravery.

In bringing this motion today, it is the experiences of, and impact on, victims/survivors that is at the forefront of my mind. I am mindful that we are here discussing the commission of inquiry because of the bravery, persistence and pursuit of justice undertaken by many Tasmanian victims/survivors of abuse in government institutional settings, and also by their families and supporters - and in conjunction with the bravery and determination of whistleblowers.

The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings was established as a result of the advocacy and campaigning of these brave Tasmanians, even in the face of considerable personal vulnerability and harm. It was established by the Government - admirably - in response to those efforts.

That is one reason that the outcome and impact of the commission of inquiry process matters. It is not just a matter of producing useful, well-informed recommendations for systemic reform and improvement to better protect Tasmanian children within government institutional settings in the future.

An essential and expected outcome of the commission of inquiry was also the provision of public accountability and justice. Before I go further, I note that the Government has made some new, detailed announcements today. I will briefly speak about those later in my contribution; but I will continue with the contribution I would make on this motion anyway. It is my expectation and hope that we have arrived at a very pleasing place today in discussing this motion. I will reflect on that at the end, in speaking about new information brought forward today.

The final report of the commission of inquiry titled *Who was looking after me - Prioritising the safety of Tasmanian children*, was expected to deliver accountability on both the systems and also individuals where appropriate who had allowed and in some cases enabled abuse of children to occur in Tasmanian institutions over decades. Unfortunately, that has not proven to be the case.

The work of the commission in important ways remains unfinished with the report presenting a bewildering absence of clear accountability. Incredibly, as was immediately noted by many, the final report contains only one finding of misconduct against one individual and none of its 75 findings are specified as adverse. This is in direct contrast to what was promised at the establishment of the inquiry to victims/survivors, their supporters and state whistleblowers. These are the people who were advocating for meaningful action and justice. These are the people who were asked to provide evidence, to be witnesses and to trust the commission to deliver meaningful justice through acknowledgment and accountability.

When we now reflect on the ultimate outcome of the commission of inquiry, it is hard to imagine any greater betrayal of these vulnerable Tasmanians to be left feeling that its work, especially in terms of accountability, remains unfinished.

On that note I would like to mention some comments provided to me, and she has provided me with permission to identify that they are from Katrina Munting, one of the victims/survivors who were involved in the commission and have provided evidence and has been incredibly brave and forthright in her involvement in these matters. I asked her for her reflections on how it felt at the close of the commission of inquiry to find that it seemed to fall so far short in terms of accountability and here are some of the comments that Katrina provided and provided me with permission to mention today. She said this:

> This Commission of Inquiry report is not what we were promised, not what we bared the darkest parts of our past for. This is not accountability. This is a continuation of passing the buck. Denial of personal responsibility, keeping entities' reputations intact, all under the guise of procedural fairness.

She went on:

> Recommendations to improve child safety are immensely important if and when they are implemented fully to which I keenly await to see these actions. However, the lack of findings against individuals and entities is a slap in the face. They are still protected, despite an independent inquiry. How is that even possible?

And further from Katrina:

> We placed our trust in the Commission of Inquiry process. We were finally heard loud and clear in the public domain. The community was outraged. Finally, they were outed for their atrocious behaviours and we felt like we were finally getting accountability. That was until the report was released and almost all the people and entities who were exposed in the inquiry process have been given a leave pass on a technicality. No findings against them. How is that even possible after all we heard and we read in the bulk of the report?

She also said:

> The Commissioners truly heard us. The time they invested into us and our evidence was immense. They had so much to say. However, they were bound and gagged at the last hurdle, publishing their findings. So many people, so much wrong doing, all left unsaid. Throughout the Commission of Inquiry hearings and the media coverage that ran alongside it, apologies were being thrown out left, right and centre. They are also sorry for what has happened and continues to happen. However, no one is being held directly responsible in print. That is appalling.

And her final comment:

> The Commission was about exposing some of the most horrific acts and cover ups by the state and to gain accountability. Without the second half, our pain and retraumatisation has been for nothing. It has left us more damaged than we already were. When will I learn?

I wanted to put those comments on the record, the direct voice of somebody who was affected in this way by abuse in government institutional settings and then also through her experience in the commission of inquiry which has ultimately been felt as a negative experience. What I hope is that we still have an opportunity to remedy that situation to the greatest extent possible by continuing efforts and actions, both

by government, by our government agencies and also by the parliament in its scrutiny and its responsibility to hold to account that government and those agencies.

The commission did gather and interrogate a significant and valuable body of evidence. They made referrals of more than 100 people to police and other authorities for further appropriate investigation. However, a key tangible output of its investigations and findings presented contained what I would say is a glaring lack of specific accountability for the extensive, egregious and protracted failures that are presented when you read the body of the report.

Beyond referring alleged perpetrators and other criminal matters to police and regulators for investigation, the key focus of the inquiry process was how the state systems within our Health, our Education our Youth Justice and our Out of Home Care systems failed to identify, to respond to, stop or prevent such sexual abuse of children in the state's care. Systems are not just structures that exist in a vacuum. Systems are operated by people. When examining the failure of systems, it cannot simply be about policies, processes and structures. It also has to be about accountability for those people who operate within the system, operate the system itself and for the human culture that is pivotal when it comes to the outcomes delivered by any system.

On this front, the commission's attempts to pursue adverse findings and findings of misconduct in relation to individuals and perhaps state entities were complicated by the legislation it operated under and, more particularly it would seem, by interpretations of that legislation, apparently insisted on by the state's lawyers.

I make that statement from my reading of the various comments to that effect made by the commission in the final report. For example, in relation to the legislative amendments made in March 2021, in Volume 2, section 2.3.1, page 11, the commission notes:

> These amendments …
>
> - created additional requirements to provide procedural fairness where a witness to a commission of inquiry or another person may be subject to a finding of misconduct or other adverse finding.

Further in Volume 1, section 5.1, page 25, the commissioners note this:

> The way these requirements were drafted enabled various parties, including the State and lawyers acting for some individuals, to adopt interpretations which had practical consequences for the way we approached our work. We heard arguments that any adverse comment about an individual's behaviour could constitute misconduct (for example, because it was a breach of the very broad State Service Code of Conduct). This interpretation made it difficult and, in some cases, impossible for us to make some of the findings we might otherwise have made.

The commissioners then went on to explain in further detail and they described the difficulties they faced and what had caused that and they had three dot points listed in reference to what had been the cause of some of those difficulties in making the findings. The first point said:

- we received evidence or information that implicated people after our public hearings, or very close to finalising our report, which meant we did not have the time or ability to follow the required statutory processes

The second point:

- our proposed adverse findings may have resulted in victim-survivors and their families or whistleblowers (many of whom had already provided evidence) being recalled and cross-examined, potentially exacerbating their distress and trauma - something we

considered it was appropriate to avoid given our primary focus was on making recommendations for systemic reform and not testing the veracity of individual accounts

The third point:

- pursuing an adverse finding would have been time-consuming, expensive, lengthened the life of our Inquiry and diverted us away from other important activities, such as designing recommendations for the future that could be implemented as quickly as possible.

They then went on to say:

> As a result, we had to make some difficult decisions about how we wrote our report and framed our findings. This involved balancing the public interest in holding individuals and systems to account with the public interest in prioritising effort and funding to tangible changes to protect children. Given our grave concerns about Ashley Youth Detention Centre, we felt we could not afford to delay our findings and recommendations. As a result, we could not pursue some issues in detail.

When I read these comments in the report I was alarmed by them, because I believe that the commission should never have been put in a position to make these choices; between making findings and delivering accountability on the one hand and bringing the inquiry to a conclusion due to the urgency of risks that the commission has identified exists currently at Ashley Youth Detention Centre in particular, on the other hand.

The report contains further explanations on the specific ways that section 18 and 19 of the act, but also crucially, the interpretation of those sections of the act, impacted on the making of misconduct and adverse findings.

In volume 2, section 2.3.4, the commission says this:

> During our inquiry, various interpretations of sections 18 and 19 of the Commissions of Inquiry Act, and the relationship between them, were presented by the State and lawyers acting for individuals. In relation to state servants, some have argued that the interpretations of these provisions have the effect that if our Commission of Inquiry wishes to make an adverse comment about the conduct of a state servant, this may effectively be a finding of misconduct against that person and require the specific processes under section 18 to be followed.

Further:

> We understand that lawyers would adopt the most beneficial interpretation for their clients and seek to minimise any adverse findings or findings of misconduct, but note that the State also advocated for the interpretation that had the effect of combining adverse comment and misconduct in relation to a person's conduct.

Additionally, this:

> To avoid drawn-out legal argument and dispute, we adapted our procedural fairness processes to align with this interpretation and avoid making adverse findings against individuals where they may have been considered to be findings of misconduct.

The picture of the difficulties faced by the commissioners is further outlined in volume 8 section 3.1. It states this. I am going to quote a number of particular statements from that same section separately. First:

> In a practical sense, these specific requirements make it more difficult to make such findings, where these findings may be unnecessary, and indeed counterproductive, to appropriately protecting the rights and interests of those who might be affected by such findings.

They also said:

> … one of the practical challenges of the specific procedural requirements for the findings of misconduct in the Commissionss of Inquiry Act is that it limited the ability of our Inquiry to determine how we conducted ourselves ...

And then further:

> The practical challenge is that the rights in relation to responding under section 18(3) could allow the person to effectively control the commission of inquiry's processes.

Further:

> We consider section 18, in particular, imposes requirements that are unnecessary, counterproductive, onerous and not in the public interest.

I know that was a lot of material to quote from the report, but they exist in the report in different volumes, and it is important to bring them together because it does paint quite a striking picture. There is no question the commission of inquiry felt hindered to some extent, by both amendments made to the Commission of Inquiry Act in March 2021, and by the state's legal interpretations of that act.

I also believe that if my understanding of that, or interpretation of that when reading the report is incorrect from when I look at the statements from the commissioners, then we need to clarify that that is incorrect. Others would be reading it that way too, and if question marks remain over those matters, and any suggestion that my interpretation might be true, these are the things that we need to clarify independently and transparently, among others.

The commissioners make the point that they think the Commission of Inquiry Act should be changed to make it less onerous to make adverse findings, or a finding of misconduct against an individual. They point that out quite clearly in the report, and it is positive that we have already seen that suggestion from the commission about reviewing the act has been picked up on by the Government. In an announcement made in the ministerial statement on 17 October, the Government is seeking to have the TLRI - the Tasmania Law Reform Institute - undertake such a review. That is a positive announcement, and I said so at the time. It is a forward-looking, future-looking announcement, and hopefully it means we will not find ourselves in a similar situation should another commission of inquiry be undertaken in the state.

It is a positive and sensible announcement. However, it does not resolve the issues and concerns relating to the commission of inquiry which we have just had and the failure to deliver adequate accountability in the eyes of the public. While the report gives insight into misconduct findings that may have been intended by the commission - and it does state that 30 section 18 misconduct notices were issued to 22 people - it seems those findings, largely, were unable to be finalised. We know that because the report contains only one finding of misconduct against one person.

It is worth putting on the record further detail about that because people have asked me about it and there might be others who are wondering, on the face of it you may wonder, how the commission managed to make that one finding of misconduct if it was impeded from making others. On my reading, and I stand to be corrected, I suspect it is likely this one finding of misconduct made it through into the final report due to

practical circumstances. I do not believe it got caught up in the legal wrangling that was occurring over procedural fairness processes in other potential findings of misconduct.

That is because the actual misconduct finding in the report that is there against Peter Renshaw, which is listed in the summary of findings on page 203 of volume 1 of the report says:

> Misconduct finding - Dr Peter Renshaw misled our Commission of Inquiry about his state of knowledge

It is fairly clear the misconduct in this finding is that Peter Renshaw misled the commission. It does not relate to any of his main actions or inactions outlined in the evidence presented and discussed in the body of the report. It is the only misconduct finding that the commission perhaps could readily make because it related to factual misleading of itself, the commission. Presumably, the commission had access to clear evidence of that; and making the misconduct finding would not necessarily have triggered Peter Renshaw being able to run the clock on other procedural fairness responses, or provide him with the opportunity that they had identified with some of the impediments in other ways - such as, requiring hearings to be re-held or other witnesses to be re-examined.

It may be that other misconduct findings were being contemplated against Peter Renshaw. In the summary of findings, on page 200 and again on page 202 of volume 1, there are five other findings that refer to actions of Peter Renshaw, but they are not labelled adverse or misconduct. We are left to infer their level of accountability, in terms of what they present.

As I have said, the commission was impeded or prevented from finishing some of its work, in terms of accountability.

We are left with no conclusive indication in the report as to the identity of the 21 other people who might have received section 18 notices, or whether the findings of misconduct against them would have been finalised, if the commission had not been unable to complete the task.

Any questions hanging over the people or entities with responsibility for implementation or oversight of recommendations from the commission of inquiry must be answered with as much transparency and confidence as possible.

Victims/survivors and their supporters; whistleblowers; other witnesses; the broader Tasmanian community - not to mention this parliament - have a reasonable expectation that the commission of inquiry process would furnish findings that would deliver justice and accountability; not just in relation to systems, but also individuals.

After all, we have invested more than two years, millions of dollars and a great deal of pain in what has been, in the end, a not entirely acceptable outcome - especially for those who were encouraged to trust and participate in the process.

It cannot be emphasised strongly enough that public confidence and trust in the commission of inquiry process and the outcomes it has delivered must be restored to the greatest extent possible.

Mr President, how can this be made right?

The Premier's statement of 17 October 2023, promised that anyone identified in the report, as needed to be held to account, would be held accountable. However, it is now clear that such simplistic reassurances are far from sufficient. The state needs to be held to account, particularly for any actions taken by its lawyers to prevent legitimate findings being made by the commission. The actions announced by the Premier on 17 October 2023, to pursue matters relating to potential section 18 misconduct findings by the commission, are internal government processes: a review by heads of agency; and therefore, on my estimation and the estimation of others, not suitably independent and not guaranteed to be entirely transparent.

In saying that, I am focusing on the announcement that related to potential section 18 misconduct findings issues raised in the report, that the commissioners had clearly been looking at.

Other matters that the Premier committed to, in the ministerial statement of 17 October 2023, covered other aspects, and no doubt positive investigations or reviews to be done - such as the TLRI review of the act and the announcement of an independent review of the legal assistance provided to some public servants as part of the process and the examination of whether there was acting in good faith in terms of that. There were some other positive announcements of those sorts. They were not material to the essence of the findings issue here. I do not mean to dismiss them or their value, but I am focusing on the one announcement that did relate to this, which was an internal review by heads of agency.

A briefing was provided on Friday 27 October to members of parliament who wished to engage with it, about the various announcements made in the ministerial statement of 17 October. That briefing was provided by the Secretary of DPAC and questions were asked about the various matters that were outlined in the ministerial statement. I asked about this internal review to be done by heads of agency, of people who are mentioned in the report who may have had adverse or misconduct findings considered in relation to them. That review was then going to investigate whether there were State Service Code of Conduct misconduct matters to be investigated as a result.

However, I did not find the answers to be sufficiently detailed or convincing, in terms of transparency appropriateness. For example, when I asked about who would be reviewing the heads of agency themselves, the answer provided in the briefing was that it would be the Premier who would consider and undertake assessment to form reasonable action. That was a verbal answer to the question. I did leave questions on notice to be answered. I have not received answers to those questions on notice from that briefing at this point in time, so I cannot clarify whether there was further information to be provided there.

At the time, I was concerned that there would still be this internal review, including of the heads of agency. It still was not clear to me, if we are following up on matters raised in the review and potential issues that may have gone towards adverse findings, or findings of misconduct, related to statutory entities or office holders, who would be reviewing them. I did not see at the time how that could be captured by an internal heads of agency review or even by the Premier's review of heads of agency.

There remains significant vagueness on detail and a remaining sense that internal reviews of any sort would not cut it and instead would compound people's legitimate concerns and continue to erode the hope, trust and patience of victims/survivors. On that basis I continued to ask questions in this place and to table this motion we are debating today. I was interested to pursue more discussion and more attention to these matters, and to have more definitive answers provided.

The Tasmanian community deserves and is owed much better than what has been delivered so far. The Premier had the opportunity to make this right by establishing an independent examination of the commission's unfinished work on the issue of findings of misconduct - including full scrutiny, which is needed, of the way the state's lawyers may have interacted and influenced that work of the commission.

There have been consistent calls from community members and also from parliamentarians, including me, for a suitably qualified external and independent reviewer to assess these outstanding matters as raised by the commissioners' report. That call, for example, was also made by former Social Inclusion Commissioner, now UTAS Professor David Adams, when he published an opinion piece a couple of weeks ago in the *Mercury* newspaper. The piece was titled *Inquiry Cloud Must be Lifted - There Needs to be an Open and Transparent Process to Clear the Air*. I will quote from that piece by Professor Adams:

> … the consequence according to the commission was it was unable to properly investigate people for their actions in a transparent manner - the basic role of the commission. So the cloud was formed then and there without a satisfactory resolution for anybody. And while there has been a subsequent exchange of correspondence between the Premier and the commission, at no point, including in the Premier's statement in parliament on

> Wednesday has there been an open and transparent process mooted by the Government to lift the cloud, to demonstrate accountability, to clear the air.

In making my calls for a more independent review and transparency process, the sorts of questions that would hopefully provide the opportunity to answer included these: what was the commission's intended outcomes of those apparently unresolved 30 section 18 misconduct notices? Are any of those section 18 notice recipients potentially involved in or responsible for implementing the recommendations of the Commission of Inquiry's final report, which we know is imminently coming to us and public for consideration?

Another question was whether and to what degree actions such as legal arguments and interpretations by the state and its lawyers impacted on the commission fulfilling its role as it saw fit, including the possible prevention of additional misconduct or adverse findings being made? How does this align with the state acting as a model litigant in these sorts of matters? I have questions on that that remain to be answered.

Those questions generated by the revelations contained in the commission's final report lead to the further crucial query, how do we secure credible, trustworthy and transparent answers for the community? To be credible, answers need to be derived from a process which is independent and at arm's length from those involved in either the commission's misconduct and/or adverse findings processes or the state's responses to those commission processes. Importantly, such process needs to be responsible to the Tasmanian parliament rather than just to the government of the day. Reporting to parliament.

The appropriate vehicle to address those crucial questions of the commission's apparently incomplete process on misconduct findings should include looking into all interactions between the Tasmanian Government and the Commission of Inquiry in relation to any impediments identified or experienced by the commission and the matters surrounding the issuing of the 30 section 18 notices to 22 people and the reasons for a lack of finalisation of those processes.

For complete independence, this process should be undertaken by a person or persons who has not previously been employed by the state of Tasmania. For the greatest public transparency, it should be that any report published upon finalisation of such a review, should be tabled in parliament at the first available opportunity.

That is speaking to the content of the motion today, which is calling on the Government to take such steps towards that sort of independent accountability review.

It is a fairly simple proposition. A fresh pair of eyes needed to provide a clear and credible assessment of why the commission was unable to adequately complete critical aspects of its job. The community, the victims/survivors and other participants in the commission process need and deserve to see an examination process unequivocally at arm's length from Government, for any outcomes to be considered trustworthy and build confidence.

On new developments today, some brief remarks to conclude my contribution on the motion. My reading of announcements put into the public domain today from the Premier and the Government is we are seeing positive progress on these matters. I have not had time to fully examine the proposals made. There are two reviews been suggested, building on previously announced things in the ministerial statement of 17 October. Building with more detail and with additional processes that have not been clear from those previous announcements.

I regard this as positive progress, very much in keeping with the intent of the motion before us. While I personally might believe it does not fully align with all aspects of the motion before us, I am explicitly acknowledging it is very positive progress towards that. I would see it as a satisfactory response in advance of what the motion is asking this Chamber to call on from the Government. I hope the Government hears and can acknowledge that is what I am saying here quite explicitly of positives here.

Processes announced by the Government today, I am sure the Leader's contribution will go into more detail. If I make some broad descriptive remarks and any are incorrect or not fully understanding, it is because of a brief opportunity to look at what is proposed. I am sure the Leader will be able to correct me. The way I see it is, we have two independent processes now more fully announced in the public domain from the Government.

One is going to be specifically undertaken to be an independent assessment of conduct of heads of agency as identified in the final report of the Commission of Inquiry into the Tasmanian Government Responses to Child Sexual Abuse in Institutional Settings. This is not just current heads of agency but previous heads of agency, or heads of agency of departments that may no longer exist in the same form they did at the time of the commission's evidence taking. This is an important element, because this was not clear from previous announcements, that heads of agency would be reviewed in a way independent of Government for things that are raised in the commission's report. It is being undertaken by Mike Blake who many of us are familiar with. He was the previous Auditor-General for the State and he has held many other hats. That is a process which again, in its terms of reference, does state it is being reported back to the Premier.

I believe the Government will also make a commitment to provide a public reporting opportunity for that too in some form. I would like to hear more from the Government about that and the detail. There is more to be looked at in the terms of reference. It is a positive, further detailed outline of a process that was previously not sufficiently independent.

The other independent review being announced that is a positive move in the right direction is an ultimate review by an entirely external person. The Government has engaged Peter Woolcott AO, the Australian Public Service Commissioner from 2018-23, to do this independent review. This is going to be of all actions undertaken in terms of responses since the commission of inquiry. It is going to be an examination and analysis of the policy and legislative framework relevant to matters of misconduct in the State Service. It is going to provide a chronology and response of the concerns and information raised by the commission and then what has been done in response to that, decisions taken, actions taken, the timeliness of which concerns and information were considered and acted on, the timeliness and accuracy of referrals made. A whole range of detailed matters are going to be fully independently reviewed, which is positive to see.

What public accountability will there be of the final report that comes to parliament? It is not entirely sure what the time line will be of that independent review. It is going to be undertaken as required. There will apparently be, according to the terms of reference, status reports on a three-monthly basis and an ultimate final report with findings when all the matters to be reviewed are completed and reviewed as part of the process.

I have endeavoured to describe those accurately, but stand to be corrected on matters I may have misconstrued or misrepresented.

Positives - there are external, independent people undertaking these reviews explicitly in the terms of reference. It provides for each of the reviewers under each of these terms of reference to liaise with the commissioners who were engaged in the commission of inquiry process with resources available to do that. My understanding is it will potentially, facilitate access to relevant commission of inquiry records, materials and documentation, although the details of how that will work are yet to be determined.

I note that in each instance of each review submissions will be sought or made, or be available to be made, where relevant to the terms of reference of the reviews. That is a really pleasing level of detail to now see in both those spaces.

In reflecting on the announcements of today, I look to the Government to confirm that reporting on these matters would come back to parliament, so that we would have the transparency and accountability in that way in that mechanism.

I wonder about, and look forward to, more information to answer my questions about whether we are going to see an examination of the interactions between the commission of inquiry and the state's lawyers,

which resulted in the findings not being made that might otherwise have been made. Will there be some accountability of how that process played out and how we were placed in this position? It is not clear to me that these reviews would go to that, but we may get there, or get closer to that, through these reviews.

I am also interested to know how statutory officers and other entities will be dealt with in these reviews. It is not clear that they will be included in those processes. I look forward to hearing more about that.

One other comment I would make, and it may be something that can be resolved, is of the reporting time frame, particularly for the review being undertaken by Mr Mike Blake, on matters raised in the commission about heads of agency. That reporting time frame is the end of March next year.

In this place today, we tabled a motion to establish a committee for Estimates-style hearings to occur in the last week of March, but those hearings would occur before this review reports, as it is described now in the terms of reference. It will be pleasing if we were able somehow to be able to incorporate matters learned through that review into further review in Estimates-style hearings here in this place, around the commission.

On behalf of people who had raised concerns, including victims/survivors and other participants in the commission of inquiry, I suggest that it is probably reassuring to see those concerns that have been raised in recent times, beginning to be taken seriously and responded to more fully.

Time will tell how effective these processes announced today - including those previously announced - will deliver the appropriate transparency and accountability on these matters. However, for now, we have arrived at a point of shared acknowledgement that the restoration of public confidence and trust on this must be delivered. When an expectation of accountability has been established on a matter as sensitive as this, justice must be seen to be done.

I thank members for the opportunity to consider the motion that I have put forward today. The motion is in keeping with what the Government has now come forward and announced today and I have tried to be very explicit about that. I received the announcements today very positively and see that it touches into many of the questions and spaces that were part of the concerns being raised.

There will be more conversations to be had, but this looks like positive progress. I hope that we will continue to see that sort of positive receptivity regarding transparency and accountability. I encourage members if they wish to contribute to this debate, to add their comments to the motion and I encourage members to still support the motion. I believe it is in keeping with the steps the Government is already now taking and has made public today.

Appendix D

MEG WEBB MLC

Independent Member for Nelson

The Premier
The Hon. Jeremy Rockliff MP
The Executive Building
15 Murray St, Hobrt, TAS 7000

Via email: premier@dpac.tas.gov.au

Wednesday, 15 November 2023

Dear Premier,

Re: Proposed Woolcott and Blake Independent Reviews into Concerns arising from the Final Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

Thank you for your announcement yesterday of two independent reviews into state service actions, government agencies and other relevant authorities, and the effectiveness of those actions, in response to information and concerns raised by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (the Commission).

At the outset, I welcome keys aspects of the two independent reviews which mirror many of the matters I have been calling for on behalf of stakeholders. Specifically, as you would be aware, I have emphasised the necessity for an independent review to be conducted by someone independent and external to Tasmania, so I welcome the appointment of Australian Public Service Commissioner Peter Woolcott AO in that capacity.

I also wish to thank you for providing me with a briefing yesterday on those announced reviews' terms of reference, with your Chief of Staff and other senior advisors.

I am writing regarding matters arising from that briefing, and my subsequent closer consideration of the two terms of reference released for the separate reviews to be conducted by Mr Woolcott AO and former Tasmanian Auditor General Mike Blake AM respectively.

Premier, as I am sure you are aware, the considerable disquiet and distress felt by many victim/survivors, whistleblowers and other participants who interacted with the Commission in good faith, following the release of the Final Result is due in no small part to the realisation of the apparent extensive impediments experienced by the Commission when seeking to finalise potential misconduct and/or adverse findings.

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This disquiet and distress is further compounded by statements made by the Commission regarding the involvement of state lawyers and state "interpretations" of the Act as contributing to those impediments.

Clearly, it is crucial to do our utmost to address those concerns in a transparent and accountable manner.

Indeed, I cannot stress enough, that if we continue to fail to address these significant outstanding matters of concern, we will not only continue to fail victim/survivors, but we risk both compromising stakeholders' confidence in the Commission of Inquiry itself, as well as erode any trust or confidence in the state's implementation efforts moving forward.

However:

1) It is unclear to me which – if either – of the Woolcott and Blake reviews will be tasked with examining the interactions between the Commission and the State's lawyers, and government officers if applicable, over the section 19 adverse findings and 18 misconduct processes and issues arising. This should include examination of in what way, and why, did the Government, through its officers and or lawyers, instruct the Commission that potential findings of adverse conduct needed to be addressed under s18 of the Act rather than s19. The issue of why the Government felt is necessary to fund private legal advice for public officers to the tune of $1.6 million should also be examined.

2) Nor is it clear which – if either – review will be tasked with resolving the outstanding matter of the 22 people issued with section 18 notices. It is necessary and appropriate that should these represent findings of misconduct that the Commission intended to make, but were prevented from making, the names of those people and the circumstances of the misconduct findings against them should be made public through independent and transparent processes, which people are now presuming could be either the Woolcott or Blake review's task.

Can you please confirm that both matters 1) and 2) above will be addressed specifically by these reviews, and also clarify which of the Woolcott or Blake reviews will be tasked to address either or both of these two distinct outstanding matters of concern?

The following further matters pertain specifically to the Blake review of Heads of Agency.

Specifically, I seek clarification as to whether the scope of this review is intended to include a similar examination of relevant Statutory Officers, as the released terms of reference for this review is silent on this matter.

I recognise the Blake review's final report may have implications for potential future industrial or other actions, and it may not be appropriate for such details to be released publicly or tabled in the parliament when you receive the review's report. However, it is vital for rebuilding community trust and confidence that as much of the report's outcomes and findings as appropriate are released publicly via tabling in the parliament as soon as possible.

Premier, will you please consider amending the Blake Terms of Reference to include examination of Statutory Officers, and to reflect a commitment that parliament will be provided as comprehensive an update that is appropriate in light of any potential industrial or further actions required sensitivities at the earliest possible time following your receipt of the final Report. Additionally,

upon clarification of whether and which review will be tasked to address matters 1) and 2) discussed above, I urge the relevant review terms of reference are also amended and updated accordingly.

Again, thank you for the time your advisors provided yesterday, and noting some of the matters raised above were discussed briefly during that meeting you may already be aware of them. However other matters have arisen since, following further consideration of the terms of reference documents released.

I look forward to your response at your earliest convenience, and please do not hesitate to contact me at any time to discuss further.

Kind regards,

Hon Meg Webb MLC

Independent Member for Nelson

Appendix E

MEG WEBB MLC
Independent Member for Nelson

The Premier
The Hon. Jeremy Rockliff MP
The Execurive Building
15 Murray St, Hobart, TAS 7000

Via email: premier@dpac.tas.gov.au

Wednesday, 31 January 2024

Dear Premier,

Re: Status Queries re Woolcott and Blake Independent Reviews into Concerns arising from the Final Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

I hope you had a relaxing and enjoyable festive season.

I am writing in relation to the two independent Reviews announced by yourself in November last year, one to be undertaken by Australian Public Service Commissioner Peter Woolcott AO and the other by former Tasmanian Auditor General Mr Mike Blake, and queries arising regarding the status of, and capacity for public interaction with, both reviews.

These queries are becoming increasingly urgent in light of the fact the Blake Review is scheduled to report to you no later than the 29th of March this year, and the Woolcott Review was to commence from "mid-January" this year.

Premier, you may be unaware that at the time of writing it appears neither Reviews' final and current Terms of Reference are readily accessible to the public.

Despite conducting electronic searches across the Department of Premier and Cabinet, Keeping Children Safe and other Tasmanian Government websites, my office has been unable to locate a site providing any substantial details or context designed to keep the community informed on either of these significant reviews.

In contrast, the Weiss independent Review into Paul Reynolds, announced by Police Commissioner Donna Adams in October last year, has an accessible webpage: https://www.police.tas.gov.au/commission-of-inquiry/weiss-independent-review/ on which members of the public can access the review's Terms of Reference, background contextual details, related media statements, as well as the recently released Weiss interim Report. Crucially, a contact email address for the use of members of the public is highly visible and accessible, while also being emphasised on the Weiss webpage and related media statements.

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

As a further example, the Department of Justice website has clearly identifiable links to both the respective Terms of Reference for the (Tatarka) Independent Review into legal assistance provided to State Servants, and the *Review into the Commissions of Inquiry Act 1995*.

The contrasting absence of any publicly available information or contact details for either the Woolcott or Blake Reviews is stark.

My office is currently fielding enquiries regarding where and how to access information and how to contact the Independent Reviewers.

Premier, can you please ensure an appropriately detailed public communication site for each Independent Review is established as a matter of urgency, providing access to the current Terms of Reference, timeframes, and contact details by which members of the public can make submissions?

Further Premier, as you would recall, I wrote to you on the 15th of November last year following your announcement and a briefing I'd received from your advisors, raising concerns regarding the two reviews' respective proposed Terms of Reference.

Despite receiving a response from the Acting Premier dated the 12 of December 2023, key matters I had raised remained unaddressed, particularly in relation to the status and scope of both terms of reference. For the record, I reiterate those unaddressed concerns here:

1) The need for the interactions between the Commission and the State's lawyers, and government officers if applicable, over the section 19 adverse findings and 18 misconduct processes and issues arising to eb examined. This should include examination of in what way, and why, did the Government, through its officers and or lawyers, instruct the Commission that potential findings of adverse conduct needed to be addressed under s18 of the Act rather than s19.

2) The outstanding matter of the 22 people issued with section 18 notices must be resolved. If these represent findings of misconduct that the Commission intended to make, but were prevented from making, the names of those people and the circumstances of the misconduct findings against them should be made public through independent and transparent processes, such as either the Woolcott or Blake review.

I restate my firm opinion that the above matters 1) and 2) should be addressed specifically by the Woolcott or Blake reviews, and urge you to reconsider their specific inclusion. I note with concern, once again, the lack of independent examination of relevant Statutory Officers.

In the interim, I urge the swift transparent provision of dedicated websites for each Independent Review commensurate with the example set by the Weiss Independent Review at the very least.

I look forward to your response at your earliest convenience, and please do not hesitate to contact me at any time to discuss further.

Kind regards,

Hon Meg Webb MLC
Independent Member for Nelson

Appendix F

TASMANIA
PREMIER OF TASMANIA

13 FEB 2024

The Hon Megan Webb MLC
Independent Member for Nelson
Legislative Council of Tasmania
meg.webb@parliament.tas.gov.au

Dear Ms Webb MLC Meg

Thank you for your letter of 15 November 2023 about the independent reviews being progressed by Peter Woolcott AO and Michael Blake.

I note your concerns about the interactions between the State and the Commission, with particular regard to the operation of section 18 and 19 of the *Commission of Inquiry Act 1995*. An extensive response to these concerns is being provided to your Question on Notice. The key points which are made in the response however are:

- The concerns regarding the operation of Sections 18 and 19 of the *Commission of Inquiry Act 1995* were first raised by officers working for the Commission in draft text provided to Government Agencies for fact checking and legal concerns on 22 February 2023
- The Commission requested additional time at a meeting with the Premier on 27 February 2023 and in writing in March 2023 to complete the review on the grounds that, in part, this additional time was required to meet the procedural fairness requirements of the Act. The Commission's website notes that the extension in time "*...will also enable the Commission [to] discharge our procedural fairness obligations under the Commission of Inquiry Act 1995*".
- The first time the Commissioners of the Commission of Inquiry advised they had not addressed all procedural fairness related requirements for all matters before them, in the additional time, was in the final hearing on 30 August 2024

You raise the issue of why the Government funded private legal advice for public officers. Employment Direction 16 provides that Public Officers may request legal assistance in respect of inquiries and investigations arising out of their acts or omissions done in good faith in the course of their public office and may be granted legal assistance where certain conditions, as set out in the associated Guidelines, have been met.

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23/549607

To maintain public confidence in the provision of support to Public Officers, the Attorney General is commissioning an independent review of the application of Employment Direction 16 and whether Public Officers who received a grant of legal assistance during the Commission of Inquiry acted in good faith, and if not, whether they should be required to reimburse the Crown for expenses incurred.

You query whether Mr Woolcott's review will consider all of the matters included in section 18 notices issued by the Commission. Section 18 notices are a matter between the Commission and the individuals that were the subject of those notices. While Agencies were provided with a list of current and former employees that may require support for participation in the Inquiry, this list does not include all people that were the subject of a section 18 notice and included individuals that did not receive a section 18 notice. As advised to the House, it was a list of current and former State Servants who the Commission had intended to, or was considering issuing misconduct notices to.

Agencies are responding to all matters that have been raised with them during the course of the Inquiry or through the Commission's final report. Mr Woolcott's review will consider all action taken by Agencies in response to these matters.

I note your reference to whether Statutory Officers are included in the scope of the assessment being conducted by Mr Blake. The current Terms of Reference do not include an examination of any matters of concern related to the actions of Statutory Officers.

I appreciate this may be perceived as a gap in this assurance process. The Government has considered this issue carefully in terms of both ensuring that all public officers are accountable, and ensuring that the Government does not undermine the independence of statutory officers. In considering this issue, it is important to note that I have no direct authority to review the actions of statutory officers. In fact, the very design of these independent statutory roles is to protect their functions from interference in the performance of their duties.

I consider that the appropriate way forward is to recognise the role of Parliament in holding statutory officers to account and to rely on the existing performance management mechanisms contained within the relevant legislation attached to each statutory officer. If there are matters of concern relating to the actions of independent statutory officers, then Parliament can initiate the appropriate review processes and determine what, if any, action is required.

Finally, I commit to making outcomes of both reviews publicly available.

Yours sincerely

Jeremy Rockliff MP
Premier

Appendix G

TASMANIA
PREMIER OF TASMANIA

HOUSE OF ASSEMBLY
31 OCT 2023
TASMANIA

17 October 2023

The Hon Marcia Neave AO
Marcia.Neave@monash.edu

The Hon Robert Benjamin AM SC
Robert.Benjamin@me.com

Professor Leah Bromfield
Leah.Bromfield@unisa.edu.au

Dear Ms Neave AO, Mr Benjamin AM SC and Professor Bromfield

I write regarding your final report *Who was looking after me? Prioritising the safety of Tasmanian Children* (Final Report).

I note that in the Final Report, you have stated that due to limitations under the *Commissions of Inquiry Act 1995* (Act) and the arguments of lawyers – the Commission was unable to make a number of findings in respect of State Servants that it would otherwise have made. The Final Report goes further and states that the Commission *"issued 30 section 18 notices to 22 people. In volume 6, we make one finding of misconduct."*

As Premier, I am concerned that the Commission has not been able to complete its task and that State Servants have avoided accountability for their actions. I am deeply concerned that this may have negatively impacted on the safety of children in state institutions.

In the Final Report, you have noted *"if a commission of inquiry has any information that may be relevant to a criminal prosecution or disciplinary matter, that information can be referred to the appropriate authorities"*. You go on to note that the Commission made referrals to several authorities, including law enforcement, regulatory bodies, and Heads of Agency under section 34A of the *Commissions of Inquiry Act 1995*. The Report states that it made some 230 referrals, in respect of over 100 individuals during its inquiry.

As you know, referrals pursuant to section 34A of the Act are the primary avenue by which a Commission of Inquiry may make referrals to law enforcement and regulatory authorities, including concerns related to disciplinary matters. I would appreciate your confirmation that the Commission made all section 34A referrals that needed to be made. I also ask whether the Commission made section 34A referrals in relation to those individuals who received misconduct notices under section 18 of the Act.

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I would also appreciate your advice as to whether a finding was unable to be made because of time limitations, legislative constraints or any other matter that restricted the Commission's work, in relation to any of those individuals who received misconduct notices.

I appreciate that you may not be able to answer these questions without referral to the Commission's records and if not, I would appreciate your assistance with a way forward to ensure the safety of Tasmanian children.

Yours sincerely

Jeremy Rockliff MP
Premier

Hon Guy Barnett MP
Attorney General

Appendix H

The Hon Jeremy Rockliff MP
Premier of Tasmania

The Hon Guy Barnett MP
Attorney-General

By email: Premier@dpac.tas.gov.au; Minister.Barnett@dpac.tas.gov.au

Dear Premier and Attorney-General

Commission of Inquiry final report

Thank you for your letter of 17 October 2023.

As the Commission of Inquiry into the Tasmanian Government's Reponses to Child Sexual Abuse in Institutional Settings (**Commission**) has now concluded and our appointment as members of that Commission has ended, we collectively respond to your letter in our private capacities.

As set out in the Commission's report, *Who was looking after me? Prioritising the safety* of *Tasmanian Children* (**Commission's report**), the Commission referred more than 100 people to appropriate authorities, including making more than 230 referrals to Tasmanian and other government authorities regarding risks or potential risks to the welfare of children (Chapter 1, page 13).

The Commission otherwise communicated information in accordance with section 34A of the *Commissions of Inquiry Act 1995* (**Act**) where it was appropriate to do so.

The challenges the Commission experienced in relation to making findings of misconduct are set out in detail in the Commission's report (Summary, pages 25-26; Chapter 1, pages 13-17; Chapter 23, pages 319-321). As explained in the Commission's report, it was necessary for the Commission to issue notices of misconduct because that was the process under section 18 of the Act in relation to a broad category of conduct, not all of which may be of equal seriousness. Indeed, as a result of responses to notices of misconduct, the Commission may also have been satisfied that no finding of misconduct was necessary.

Any accountability of, or disciplinary action in relation to, State Servants is a matter for the State of Tasmania, appropriately informed by the Commission's report and the various information which the State of Tasmanian made available to, and received from, the Commission in undertaking its work.

We are confident that the Commission made all referrals it was legally required to make, including to ensure the safety of Tasmanian children.

Yours sincerely,

Marcia Neave AO **Leah Bromfield** **Robert Benjamin AM SC**

27/10/2023

Appendix I

BACKGROUND BRIEFING PAPER:

New Concerns Arising from the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings Final Report

Office of Meg Webb MLC

31 October 2023

CONTEXT

- The Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings provided its Final Report to Governor on 31 August 2023.
- The Report *Who was looking after me? Prioritising the Safety of Tasmanian Children* was tabled in Parliament on 26 September 2023.
- The Report made 75 findings and 191 recommendations; Report details one Misconduct finding (Vol. 6, Chapt 14, p.248).
- The Report stated **30 section 18 misconduct notices were issued to 22** people, but does not provide further detail in the report's main body of text (Vol. 2, Chapt 1, p14).
- Amendments were made to the *Commissions of Inquiry Act 1995* (the Act) in March 2021, one function of which was to create: *"…additional requirements to provide procedural fairness where a witness to a commission of inquiry or another person may be subject to a finding of misconduct or other adverse finding"* (Vol. 2, Chapt 2, p.11).
- The state's interpretation of those additional procedural fairness requirements meant the Commission was unable to make some findings it might otherwise have made:

  "The way these requirements were drafted enabled various parties, including the State and lawyers acting for some individuals, to adopt interpretations which had practical consequences for the way we approached our work. We heard arguments that any adverse comment about an individual's behaviour could constitute misconduct (for example, because it was a breach of the very broad State Service Code of Conduct). This interpretation made it difficult and, in some cases, impossible for us to make some of the findings we might otherwise have made" (Vol. 1, Chapt 5, p.25).
- The Commission regarded the requirements in the Act as onerous, out of step with other states, making it too hard to hold individuals to account:

  "We consider the Commissions of Inquiry Act should be changed to make it less onerous to make adverse findings or a finding of misconduct against an individual. We agree that procedural fairness in these processes is fundamental but consider that the requirements in the Act are out of step with other states and territories and make it too hard to do what commissions of inquiry are tasked to do—which, in some cases, involves holding individuals to account" (Vol. 1, Chapt 5, p.26).
- The Commission noted the rights afforded under section 18 of the Act allowed a person to control the processes of the inquiry:

  "The practical challenge is that the rights in relation to responding under section 18(3) could allow that person to effectively control the commission of inquiry's processes. Under section 18(3), the person may choose to make oral or written submissions, give evidence to a commission of inquiry, cross-examine the person who made the allegation or call witnesses. As a result, a person may compel a commission of inquiry to:

  - *conduct more hearings, even where the commission of inquiry's planned hearings have concluded*
  - *call or re-call witnesses for cross-examination, even in circumstances where there may be other important reasons why this is not appropriate (for example, this could be retraumatising for some witnesses and the nature of the cross-examination may be inconsistent with trauma-informed practice)"* (Vol. 8, Chapt 3, p.319).

DETAILS OF SECTION 18 NOTICES ISSUED CONTAINED IN PUBLISHED COMMISSION REPORT

- A person issued with a section 18 misconduct notice was required to provide a Procedural Fairness Response to the Commission:

  > *"Under the current Act, a commission of inquiry must give a person notice of any allegation of misconduct (section 18(1)) and allow that person an opportunity to respond (section 18(3))"* (Vo.l 8, Chapt 3, p.319).

- ***Close examination of the Notes sections of the tabled Commission of Inquiry Report reveals Procedural Fairness Responses provided by 22 individuals to the Commission, identifying those individuals in some cases by name and in other cases by position/role.***

- The Notes sections of the Report also reveal that, in addition to 22 individuals who provided a Procedural Fairness Response to the Commission, the **following 8 entities** also provided a Procedural Fairness Response (Table 1):

	Table 1: Examples of citation in the Report's Notes
State of Tasmania	State of Tasmania, *State Procedural Fairness Response*, 20 June 2023, 2–4. – In Vol. 8, Chapt 18.
Office of the Solicitor-General	Office of the Solicitor-General, *Procedural Fairness Response*, 16 March 2023, 10 [20]. – In Vol. 7, Chapt 17.
Department of Health	Department of Health, *Procedural Fairness Response*, 28 April 2023, - In Vol. 6, Chapt 14.
Department for Education, Children and Young People	Department for Education, Children and Young People, *Procedural Fairness Response*, 1 August 2023, 3–4. – In Vol. 4, Chapt 9.
Integrity Commission	Integrity Commission, *Procedural Fairness Response*, 23 May 2023, 3. – In Vol. 8, Chapt 18.
Tasmania Police	Tasmania Police, *Procedural Fairness Response*, 23 March 2023, 3.
Office of the Director of Public Prosecutions	Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 2 – in Vol. 7, Chapt 16
Teachers Registration Board	Teachers Registration Board, *Procedural Fairness Response*, 17 March 2023, 2. – Vol. 3, Chapt. 6.

* Note: Victoria Police also provided the Commission with a Procedural Fairness Response, however that Agency is outside Tasmania's jurisdiction: Victoria Police, *Procedural Fairness Response*, 14 March 2023, 1, in Vol. 7, Chapt 16.

- The 22 individuals identified in the Report's Notes section as providing Procedural Fairness Responses include the following individuals holding statutory roles (Table 2):

	Table 2: Examples of citation in the Report's Notes
The Solicitor-General✦	Solicitor-General of Tasmania, *Procedural Fairness Response*, 20 June 2023 – in Vol. 8, Chapt 19.
Commissioner for Children and Young People✦	Commissioner for Children and Young People, *Procedural Fairness Response*, 11 July 2023, 2. – In Vol. 5, Chapt 11.
The Ombudsman✦	Richard Connock, *Procedural Fairness Response*, 19 July 2023, 1. – In In Vol. 5, Chapt 11.
CEO of the Integrity Commission ⅄	Michael Easton, *Integrity Commission Procedural Fairness Response*, 8 March 2023, 2. – Vol. 8, Chapt 20.

✦ *State Service Act 2000 does not apply to role.*

⅄ *State Service Act 2000* does apply to role as the Head of Agency within the meaning of that Act.

RAMIFICATIONS OF THESE DETAILS COMING TO LIGHT (*Why Should We Care?)*

- There is a significant question over whether or not the Report of the Commission of Inquiry is accurately representative of the Commissioners investigations, and their true and full assessment of responsibility and accountability on the matters they were inquiring into.

- As a result of the Notes sections of the Report identifying providers of Procedural Fairness Responses, a cloud now remains over those 8 state entities and 22 individuals, as to whether or not they were intended subjects of misconduct findings or adverse findings.

- In relation to the section 18 misconduct notices issued, it is not stated clearly anywhere in the Report that the Commission resolved that any of those intended misconduct findings were unwarranted or resolved.

- It is of grave concern that the state entities referenced in the Notes sections as having provided Procedural Fairness Responses include most of Tasmania's key independent oversight watchdog offices, plus individual statutory office holders.

- It cannot be emphasised strongly enough, public confidence and trust in the 8 entities and these specific statutory office holders must be paramount.

- The individuals identified in the Report's Notes sections as having provided Procedural Fairness Responses also include people who were in key roles of responsibility within the public service, through to the most senior levels, and in some cases people who work, or have worked, in direct contact with children and young people.

- Further, these identified entities and some specific individuals who provided Procedural Fairness Responses could have key responsibilities in implementing – or providing oversight of the implementation of – the formal government response to the Commission's recommendations.

- As the Report does not include the full suite of misconduct and adverse findings considered by the Commission during the inquiry process, the Tasmanian public has been denied the transparent accountability that should have been delivered through a Commission of Inquiry process – this is a fundamentally unacceptable outcome.

- Significantly those victims/survivors, whistleblowers, and other witnesses risked further suffering and becoming retraumatised by participating in the Inquiry process in good faith, to try and keep other children safe, and maybe seek a little closure.

- Victims/survivors and their supporters, whistleblowers, witnesses, the Tasmanian community and the Parliament had a reasonable expectation that the Commission of Inquiry process would furnish findings that would deliver justice and accountability in relation to individuals and systems.

- It is of grave concern that despite the Commission's best endeavours, it appears the State's efforts to control the process has purposefully obstructed the Inquiry's mission, and cruelly sabotaged the community's hopes for justice, accountability, reform and cultural change.

- How can we trust, or have confidence in, any implementation plan for Commission recommendations' moving forward if some of those with key responsibilities in implementing it have a question mark over them from a stymied Commission process?

WHAT WE KNOW VS WHAT WE DON'T KNOW

➔ As a result of legislative changes. legal interpretation and argument by the state, the Commission of Inquiry found it impossible to make some of the misconduct or adverse findings it might otherwise have made.	? It is not clear whether the Commission, if not for state legal impediments, would have made misconduct or adverse findings against the 22 individuals who received section 18 notices.
➔ The Report of the inquiry makes only one finding of misconduct and no findings are explicitly designated as 'adverse'.	? If is not clear whether the state asserted the most restrictive legal interpretation of sections 18 and 19 of the Act in order to prevent or deter the Commission from making misconduct or adverse findings.
➔ Section 18 misconduct notices were issued to 22 individuals.	? It is not known whether the Commission's recommendations will be implemented or overseen by any senior public servants who received section 18 notices.
➔ The Notes sections in the Report refers to Procedural Fairness Responses from 22 individuals and eight entities.	? It is not known when the Premier, the former Attorney-General*, or the Department of Justice first became aware of the Commission's concerns that sections 18 and 19 of the Act was impeding the Commission's capacity to make the adverse and/or misconduct findings they considered necessary.

** The former Attorney-General, Elise Archer, held that portfolio for the duration of the Commission, resigning from the Parliament after the Commission's conclusion and the Report's tabling in September 2023.*

WHAT NEEDS TO HAPPEN NOW & WHY GOVERNMENT ACTIONS ANNOUNCED ARE NOT ENOUGH

Full disclosure and transparency are required around the Commission's reported truncated section 18 notices process. Full disclosure and transparency are also required regarding the State, state entities and any individuals identified in the Commission Report in relation to Procedural Fairness Responses, before the Tasmanian community can move forward with any confidence.

Where a clean bill of health can be given – to either entities or individuals - we need independent verification of that.

- The Ministerial Statement made by the Premier on 17 October 2023 promised anyone identified in the Report as needing to be held to account would be held accountable, however, the relevant government actions announced by the Premier are largely internal processes, not suitably independent of government and not guaranteed to be transparent.
- Heads of Agency are being tasked with reviewing and considering potential breach of State Service Code by any State Servants who received section 34 and section 18 notices – this is inappropriate due to its lack of transparency. The review should instead be done externally and independently of government, with the results transparently and publicly reported.

  It is unclear whether, or how, this evaluation of potential breaches of the State Service Code could be applied to entities or any Statutory Officers to whom the *State Service Act 2000* does not apply.

Independent Examination of Commission's Concerns Required:

Instead of an internal and piecemeal Heads of Agency process, an independent-of-government examination should be undertaken by a suitably qualified external independent person(s), ie a retired judge or a former Commissioner of the Australian Public Service Commission;

The independent review's terms of reference should be approved by Parliament;

The Terms or Reference for this independent review must include:

- Examination of all information and concerns raised by the Commission regarding actions of the state, departments and entities;
- Examination of any materials and correspondence between the Commissioners, the Department of Justice and any other relevant entities, relating to issues surrounding the implementation of section 18 and section 19 notices;
- Independent review to report directly to Parliament.

QUESTIONS ARISING:

1. Did the (current) **Solicitor-General, Ombudsman, CEO of the Integrity Commission, Commissioner for Children and Young People** and **Manager of Ashley Youth Detention Centre** receive section 18 notices from the Commission of Inquiry indicating they may be the subject of misconduct findings? If not, did they receive section 19 notices indicating possible adverse findings?

2. Are any of the Commission of Inquiry recommendations being implemented or overseen by senior public servants who received section 18 notices from the Commission of Inquiry?

3. If the Solicitor-General received a section 18 notice indicating that she herself may be the subject of a misconduct finding, will she be stepping aside from providing legal advice to Tasmanian departments and statutory authorities on the government response to the Commission of Inquiry and also from any civil litigation matters that involve child sexual abuse?

4. Who will provide legal advice to the government in relation to matters raised about the Solicitor-General at the Commission of Inquiry?

5. Did the Commission intend but 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?

6. Did the state deliberately draft the amendments made to the Act in 2021 in order to argue an interpretation that would create obstacles for the Commission to make adverse findings and findings of misconduct against the state, other entities and individuals?

7. Under whose instruction or direction did the legal representatives for the state assert an interpretation of sections 18 and 19 of the Act, that the Commission regarded as onerous and a barrier to fully undertaking its role?

8. When did the **Premier** first become 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?

9. When did the **Department of Justice** first become 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?

10. After the Department of Justice became aware of the Commissioners' concerns over sections 18 and 19 of the Act, what action was taken by the Department and/or the Attorney-General?