

# MEG WEBB MLC

*Independent Member for Nelson*

## ***Submission: Commissions of Inquiry Amendment (Private Sessions Information) Bill 2025 – Consultation Draft.***

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## Introductory Comments

I welcome this opportunity to provide comment on this important Consultation Draft *Commissions of Inquiry Amendment (Private Sessions Information) Bill 2025* (Draft Bill).

I also provide my consent for this submission to be published in full by the Department as per the 'Publication of Submissions Received by Tasmanian Government Departments in response to Consultation on Major Policy Issues' policy.

I have a particular interest in the progress of this legislative reform, as the particular problem the Draft Bill seeks to address came to light during my advocacy on behalf of a constituent during the second half of 2024.

That first-hand experience provides the lens by which I have considered the Consultation Draft Bill, and the basis upon which the comments below are provided.

## Background Context

### *Commission of Inquiry Final Report and Personal Information Records*

The 2023 Final Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings made a range of recommendations regarding the State Archivist's role in the ongoing and systematic retention, management and disposal where appropriate of all child safety related government records.

The Final Report also highlighted identified obstacles, including problematic culture within government institutions, experienced by victims/survivors in accessing their personal records and information. These obstacles experienced included:

- A difficult bureaucratic system to navigate;
- Continual obfuscation and long delays; and
- Repetitive demands applicants justify why they should be given access to records concerning their experiences of abuse.

The Final Report found the obstacles experienced and the:

*"... traumatic impact on victim-survivors, confirm the current framework for providing victim-survivors with access to information does not meet the principle the National Royal Commission recommended that: 'Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent'. Cultural, legislative, procedural and resourcing barriers have combined to impede individuals' ability to exercise their rights to access information in a meaningful and supportive way."*<sup>1</sup>

Following its conclusion, it was confirmed all Commission of Inquiry records, including personal evidence and information provided by victims/survivors, whistleblowers and other contributors would be held by the State Archives Office. Further, it was perceived that the State Archives Office repository would facilitate appropriate and long term storage, retrieval and access of records independent of government agencies.

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<sup>1</sup> *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings Report*, August 2023, Volume 7: Chapter 17 — Redress, civil litigation and support; pg 194.

### *First attempt to Access Commission of Inquiry Personal Information Records*

Ironically, the first formal attempt to access personal information relating to Commission private sessions from the State Archives Office Commission of Inquiry repository revealed a further obstacle unforeseen by the Commission: that being the Section 19C of the *Commissions of Inquiry Act 1995*.

Following discussions with a constituent in late June 2024, I wrote to the State Archivist on my constituent's behalf seeking a copy to be released to them of all personal records pertaining to their records pertaining to their private sessions with the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

I wish to stress that from receipt of my letter on 24 June 2024, the State Archives Office was helpful, and did their best to provide progress updates in as transparent a manner as possible.

My request on behalf of my constituent was the first the State Archives Office had received regarding accessing and providing copies of sensitive personal Commission of Inquiry records as distinct to just being the custodians of those records. While the State Archives Office reiterated its commitment to facilitating access for victims/survivors to their own records consistent with the sentiment expressed in the Commission of Inquiry Final Report, the Archives Office itself was still becoming familiar with the secure software applications, as well as having to create the appropriate confidentiality protocols for accessing, assessing and then releasing these sensitive personal records when appropriate to do so.

It also became apparent that the complexity of these new considerations and sensitivities were compounded by the fact modern personal information records are no longer solely analogue but exist in a range of different formats.

For example, by early August 2024 the State Archives Office identified private session personal information records pertinent to my constituent's request in the following formats:

- Email correspondence with the Commission of Inquiry;
- Transcript of a phone conversation with a Commissioner;
- Audio file of interview with the Commission;
- An additional transcript.

However, despite the identification of the relevant requested personal information, in early October 2024 I received correspondence from the Department of Justice Commission of Inquiry Response Taskforce advising that as this request was the first of this nature that the State has received, it has presented a number of legal complexities. The Department of Justice was working to resolve those complexities as both a matter of urgency and priority, including seeking legal advice.

On the 8<sup>th</sup> of November 2024 I received correspondence from the Attorney-General, the Hon Guy Barnett MP, detailing the following:

*"I am advised that in the course of progressing that request, an unanticipated legal issue has been identified. I understand that [...] participated in a private session, pursuant to section 19A of the Commissions of Inquiry Act 1995. As you are aware, there are prohibitions on the sharing of information obtained by commissions in private sessions. In this case, the consent of [...] is required (as you have kindly already provided) but also, any other person who was referred to in the relevant private session.*

*This creates an obstacle to individuals receiving their own information and I have instructed my Department to urgently provide me with advice as to how this obstacle can be removed, which may require an amendment to the legislation."*

The Attorney-General also offered my constituent the option of receiving partial and redacted copies of their requested personal records, as an interim measure pending any eventual resolution of current identified legal impediments. While that offer was accepted, it was clearly unsatisfactory as a permanent mechanism of dealing with this immediate and any future requests by victim/survivors to access their own personal information records from the Commission of Inquiry repository.

Further discussions with the Department and Attorney-General's Office confirmed that amending the *Commission of Inquiry Act 1995* would be necessary in order to resolve the unintended obstacles created by the current provisions of section 19C of that Act.

## Feedback on Consultation Draft Bill

As stated above, it is clear legislative amendment to the *Commissions of Inquiry Act 1995* (the Act) is required urgently, in order to address an apparent inadvertent consequence of the current legislation prohibiting persons from accessing their own personal information provided to, or participation records arising from, a Commission of Inquiry private sessions related-process.

Additionally, the proposed amendment should facilitate the stated objectives of the recent Commission of Inquiry to shift the State's culture and practice when it comes to processing victim/survivors' access to their personal information in a best-practice and trauma-informed manner.

It is also crucial that this amendment is retrospective in application. As indicated by the experience detailed above which was the catalyst for this amendment, we know there is at least one person currently prevented from accessing a complete and comprehensive copy of their Commission of Inquiry personal information and records, which was provided to, and also that which was generated via the Commission's private sessions proceedings.

### ***Substantive clause 4: Section 19C amended (Offences relating to private sessions)***

The proposed new clause to be inserted into Section 19C (2) of the Act seeks to make explicit provision for a person who provided information to the Commission either during a private session, and/or for the purposes of a private or proposed session.

The intent of the proposed new clause 19C(2) (da) is welcome, and reflects the nature and spirit of recent negotiations and discussions with the Department and the Attorney-General's Office.

However, as the proposed new clauses is currently worded, it does raise the following three questions for clarification:

#### ***1. Definition clarification***

Proposed new clause (da) subclause (ii) references "a member of the Commission".

*Section 3 Interpretation* of the Act defines a Commissioner as "a member of the Commission". Hence my query is whether subclause ii restricts the release of personal information to only that which was provided directly from a person to a Commissioner, or whether it will apply more broadly to staff employed by the Commission?

Individuals may provide documents or other personal materials to a Commission staff member as part of the process towards a proposed or actual private session, and it is important that it is clear that should any personal information identified as falling in this category is also to be released to an applicant upon request for their personal information.

## **2. Retrospective application**

As stated above, it is crucial the current proposed amendment will be applied retrospectively to any person's requests for their personal information which may have been made prior the commencement of this proposed amendment.

I acknowledge the Consultation Draft Bill's accompanying background information provided by the Department of Justice states the Bill will ensure these amendments apply retrospectively to the records of the recent Commission as well as any future Tasmanian Commission of Inquiry, it is unclear how that is delivered, as the current proposed amendment is silent on the matter of retrospectivity.

I contend that it cannot hurt to have the retrospectivity provisions explicitly stated as part of the amendment.

## **3. Release of personal information requests concurrent with Commissions of Inquiry**

It is also unclear whether there will be any applicable timeframes regarding when personal information requests can be released in the case of any future Commissions of Inquiry. For example, can a person request and receive a copy of their personal information, such as transcripts of a private session interview while a Commission of Inquiry is underway, or only once a Commission of Inquiry has concluded?

Future Commissions of Inquiry may have legitimate reasons for requiring flexibility when it comes to the release of requested personal information while the Inquiry is underway, and that potential future flexibility may need to be provided for under this proposed amendment Bill.

Should there be inserted any caveat for the release of personal information while an Inquiry is underway, it will be equally important to additionally add that upon the conclusion of a Commission of Inquiry all requests by a person for their personal information provided to that Inquiry is to be assessed and released as per the provisions of the current new clause 19C (2) (da).

## **Concluding Comments**

In summary, I welcome and commend the efforts by the Department of Justice and the Attorney-General's office to take remediative action to address the unintended obstacle posed by Section 19C of the *Commissions of Inquiry Act 1995*, following its identification during late 2024.

Legislative amendment to the Act is required to ensure those agencies responsible for the retention, protection and provision of Commissions of Inquiry catalogue of individual's personal information provided during the course of such inquiries can facilitate appropriate access to those person's records as appropriately, sensitively and seamlessly as possible.

The urgency for this legislative amendment is due to the paramount need to progress in a trauma informed manner a person seeking their personal information records provided during private sessions contained in the current repository of the in the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings' records.

The lessons of the contemporary example, which served as the catalyst for this Consultation Draft Bill, the need for the Act to be as unambiguous as possible for both previous and future Commissions of Inquiry and their participants.

Hence additional clarification is required regarding retrospective application to personal information provided during, and for the purposes of, private sessions of Commissions of Inquiry held prior the commencement of the proposed amendment.