

INDEPENDENT REVIEW REPORT

November 2025

Independent Review into the actions taken in response to the information and concerns raised by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

Subject to Parliamentary Privilege

Report to the Honourable Jeremy Rockliff MP, Premier of Tasmania

Independent Reviewer
Peter Woolcott AO

INDEPENDENT REVIEW REPORT – NOVEMBER 2025

Part A

INDEPENDENT REVIEW *into the actions taken in response to the information and concerns raised by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*

P Woolcott AO, Independent Reviewer

Subject to Parliamentary Privilege

FOREWORD

The Report of the Independent Review (Review) into the actions taken in response to the information and concerns raised by the Commission of Inquiry into the Tasmanian Government 's response to Child Sexual Abuse in Institutional Settings, contains the observations and views of the Independent Reviewer.

I would like to thank the Premier of Tasmania, the Honourable Jeremy Rockliff for giving me the privilege to conduct this Review and for the strong support he has shown throughout our work.

I would like to acknowledge the courage and determination shown by the victims of child sexual abuse and their support organisations to see that justice is done.

It has been a stark and confronting exercise to go through the records of the Commission of Inquiry and to see how these children were failed by the system.

Importantly, it has been re-assuring to meet with so many outstanding and committed individuals in the Government, in the Parliament, in the State Service and in civil society who are determined to see that this never happens again in Tasmania. If the Independent Review contributes in some way to this that would provide us with enormous and heartfelt satisfaction.

The Review has taken a focus on Justice and achieving systemic change to the State Service. We have sought to help future proof the system from such events happening again and to build on the exceptional work of the Commission of Inquiry. I thank the Commissioners for that and for their continuing interest in the progress of this Review.

The Report acknowledges that much has been done in Tasmania since the Commission of Inquiry report was released. In the more than 18 months that we have been engaged on the Review the progress has been tangible. This is a consequence of much work by Ministers, Parliamentarians and officials. Civil society has continued to play a critical role.

There remains, of course, much to do. The protection and safety of children goes to the heart of society in Tasmania. It needs to be a whole of society effort and Government needs to work in genuine partnership with others in the development of effective policy and trust.

Finally, I would like to acknowledge the extraordinary work of the Review's small team. Radha Sharma (Thomas) has been the foundation for much of our work. Her intellect and dedication are of the highest order, and I thank her profusely. I would also like to thank Lina Ranieri for her strong support and knowledge in the development of employment directions.

Peter Woolcott AO

Independent Reviewer

November 2025

SUMMARY OF RECOMMENDATIONS

CHAPTER 1: INTRODUCTION AND SUMMARY

Strategic Recommendations

Strategic Recommendation 1.1

That the Tasmanian Government assign the recommendations arising from this report to the Implementation Monitor for oversight.

CHAPTER 4: EMPLOYMENT FRAMEWORK AND EMPLOYMENT DIRECTIONS

Strategic Recommendations

Strategic Recommendation 4.1

The Review recommends amendments to the State Service Act 2000 which contain clear provisions:

- outlining the purpose of State Service employment as serving the ‘Government, Parliament and the Tasmanian community’.
- to ensure that employees must adhere to all elements of the Code of Conduct at all times.
- to ensure that ‘misconduct’ as defined under the Integrity Commission Act (Tas) 2009 also constitutes a breach of the code of conduct under the State Service Act.
- to ensure that any reportable conduct of an employee at any time is considered to be a breach of the Code of Conduct.
- to ensure that a breach of the departmental professional conduct policy at any time constitutes a breach of the State Service Code of Conduct.

Strategic Recommendation 4.2

The Review recommends that the Head of State Service review the attached employment directions and undertake further consultation with relevant stakeholders to finalise revised drafts for approval by the Premier.

Operational Recommendations

Operational Recommendation 4.1

The Review recommends that the performance agreements of all executives and their direct reports within the State Service include a commitment to stewardship of the State Service.

Operational Recommendation 4.2

The Review recommends that the Head of State Service develop detailed guidance and templates for the conduct of workplace investigations.

Operational Recommendation 4.3

The State Service Management Office should prepare and publish detailed guidance to managers and decision makers about employment matters including the conduct of investigations, review of suspension and termination decisions and appeals by the Tasmanian Industrial Commission as a means of developing the ongoing capability of managers and leaders.

Operational Recommendation 4.4

The State Service Management Office should develop guidance on the use of template letters ensuring that potential sanctions identified in the letter align to seriousness of the alleged conduct.

CHAPTER 5: CULTURE

Strategic Recommendations

Strategic Recommendation 5.1

The Review recommends and supports the Tasmanian Government's proposed implementation of Recommendation 5 of the Weiss Review to amend the Integrity Commission Act (Tas) 2009 to ensure all notifications made to the Integrity Commission in respect of Tasmania Police officials who are alleged to have groomed and/or sexually abused persons [serious misconduct] can be investigated independently by the Integrity Commission through enhanced powers and remit as outlined in the report.

Strategic Recommendation 5.2

The Review recommends that the Department of Justice should prioritise the development of legislation that would enable the sharing of information regarding child sexual abuse matters across law enforcement, regulatory and other agencies and authorities as a priority with a view to ensuring the effective implementation of the HRIS system.

Strategic Recommendation 5.3

The Review recommends that the Attorney-General direct the Solicitor-General to provide transparent advice on the interpretation of legislation regarding sharing of information related to child sexual abuse matters across agencies and authorities.

Strategic Recommendation 5.4

The Review recommends that the Tasmanian Government:

- Working through the Secretary of Department of Premier and Cabinet, revamp and rebadge the State Service Management Office by clearly defining its role as a system steward with accountabilities for capability, culture, integrity and performance amongst other accountabilities. As system steward, the role of the State Service Stewardship Office should be to act at all times as the custodian of the values which inform the conduct and operations of the whole State Service.

- Establish a new role of Commissioner of the State Service appointed by the Premier and working to the Head of State Service and that the changes enable the Commissioner to be a full member of Secretaries Board.
- Review the arrangements at the end of three years with a view to a possible decision on moving towards a public sector commission model.

Operational Recommendations

Operational Recommendation 5.1

The Review recommends that all agencies and authorities include data on employee conduct including Code of Conduct matters and the reportable conduct scheme in their annual reports.

Operational Recommendation 5.2

The Review recommends that the SSMO:

- work in partnership with the Integrity Commission to roll out mandatory training on ethical decision-making and integrity for all State Service employees in a management position. The Head of each Agency report on participation as part of the agency's annual report.
- develop and deliver mandatory training regarding the management of Conflicts of Interest for all officials and particularly those with delegated decision-making authority on a regular basis.

Operational Recommendation 5.3

The Review recommends that the Commissioner of the State Service chair the Corporate and Workforce Sub-Committee to identify, progress and report on key transformation priorities related to the strategy, culture and operations of the Tasmanian State Service.

Operational Recommendation 5.4

The Review recommends that the Secretaries Board develop and publish an engagement and partnership framework for engagement with relevant community-based organisations responsible for child safety and wellbeing services across Tasmania and nationally.

Operational Recommendation 5.5

The Review recommends that the Secretaries Board develop a key account management approach to managing relationships with key community organisations in the child safety and wellbeing sector in Tasmania identifying and reporting on priorities for collaboration against a joint plan of action to address shared child safety and wellbeing goals. This should include identification of lead agencies to manage the full relationship across the State Service. Reporting on progress should occur to Secretaries Board and publicly.

Operational Recommendation 5.6

The Review recommends that DECYP prioritise the establishment of the role of 'Executive Director for Aboriginal Children and Young People' as identified in the COI. The Review further recommends that DECYP prioritise the establishment of the Office of Aboriginal Policy and Practice in accordance the recommendations of the COI report.

CHAPTER 6: OVERSIGHT AND REGULATORY AGENCIES

Strategic Recommendation 6.1

The Review recommends that the Tasmanian Government amend the Child and Youth Safe Organisations Act 2023 Schedule 2 and 3 to explicitly include Tasmania Police as a regulated entity subject to both the Child and Youth Safe Standards and the Reportable Conduct Scheme, ensuring that Tasmania's premier law enforcement agency is held to the same child protection standards and accountability mechanisms as every other government organisation that engages with children and young people.

Strategic Recommendation 6.2

The Review recommends that the Tasmanian Government amend the Registration to Work with Vulnerable People Act 2013 and associated regulation to:

- Ensure that the appointment of the Registrar is made by the Governor in Council and that the Registrar has similar stature as a Commissioner, although reporting lines to remain with the Secretary of Department of Justice.
- Establish an expert advisory body (aligned to existing legislation) to provide advice to the Minister and the Registrar on the Registrar's decision-making processes via reviewing positive and negative risk assessments and reporting on the results at least once a year.
- Introduce a provision for an annual performance report to be tabled to Parliament on the strategic and operational performance of the scheme.

Strategic Recommendation 6.3

The Review recommends:

- Changes to the Personal Information Protection Act 2004 to include additional provisions to enable the sharing of information across all government agencies, regulatory and law enforcement authorities/entities in relation to child sexual abuse concerns and reportable conduct.

Operational Recommendations

Operational Recommendation 6.1

The Review recommends:

The Independent Regulator and the Registrar for Working with Vulnerable People, develop and implement a roadmap to enhance information sharing between the Independent Regulator, the Registrar for Working with Vulnerable People, the Teacher's Registration Board, Tasmania Police, the Ombudsman and the Integrity Commission taking account of:

- the benefits of new technology to analyse patterns and trends to develop risk-based strategies and solutions
- the need for cultural and systemic change
- the benefit of feedback loops and learning systems; and
- the value of undertaking a use case analysis using historical records.

KEY CONCEPTS AND TERMS

Commission of Inquiry (COI)

Department of Premier and Cabinet (DPAC)

Department of Justice (DOJ)

Department of Health (DOH)

Department for Education Children and Young People (DECYP)

Department of Communities (DCT)

Department of Education (DOE)

Department of State Growth (DSG)

Department of Police, Fire and Emergency Management (DPFEM)

Tasmania Police (TASPOL)

State Service Management Office (SSMO)

Office of Solicitor-General (OSG)

Department of Treasury and Finance (DTF)

Department of Natural Resources and Environment (NRE)

Office of Independent Regulator (OIR)

Office of Implementation Monitor (OIM)

Registrar to Working with Vulnerable People (RWVP)

Teachers Registration Board (TRB)

Australian Health Practitioner Regulation Agency (Ahpra)

Integrity Commission (IC)

Employment Directions (ED)

State Service Act 2000 (SSA)

Police Service Act 2003 (PSA)

Personal Information Protection Act 2004 (PIP Act)

Right to Information Act 2009 (RTI Act)

Children and Youth Safe Organisations Act 2023 (CYSO Act)

Registration to Working with Vulnerable People Act 2013 (RWVP Act)

Integrity Commission Act 2009 (ICA)

Teachers Registration Board Act 2000 (TRB Act)

Commissioner for Children and Young People (CCYP)

Tasmanian State Service (State Service)

Tasmanian State Service Review (TSSR)

Head of Agency (HoA)

Head of State Service Management Office (HOSS)

Minister Administering the State Service Act (MASSA)

Child Sexual Abuse (CSA)

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CHAPTER ONE: INTRODUCTION AND SUMMARY

1 CONTEXT AND INTRODUCTION

In October 2024, the Department of Premier and Cabinet (DPAC) in Tasmania published on its website, a report by the National Centre for Action on Child Sexual Abuse. *'The Australian child sexual abuse attitudes, knowledge and response study: Tasmania'* provides benchmarking and novel insights to inform prevention, intervention, and support efforts to reduce the incidence of child sexual abuse (CSA). True to its title the report provides an indicator of the current status of community attitudes, knowledge, and capability on child sexual abuse matters in Tasmania. The Report outlines the results of a survey involving 356 respondents aged over 18 years who completed a specifically designed questionnaire. While there are a number of important insights from the report, the Review was particularly struck by the following:

- All (100%) of the Tasmanian respondents (base n = 176) had heard the term 'child sexual abuse' prior to the survey and 64% were aware of the term 'harmful sexual behaviours'.
- Almost three-quarters (74%) of respondents (base n = 176) had read, seen, or heard about child sexual abuse cases in the three months prior to the survey.
- Almost 98% of the respondents agreed with the statement that 'There are many more victims & survivors of CSA in the community than most people realise'.¹
- Almost 95% of the respondents agreed that 'the long-term impacts of CSA are a significant public health problem'.
- And finally, 86% agreed that 'Governments in Australia should do more to respond to the needs of adult CSA victims & survivors'.

The report notes that broader comparisons indicate that a significantly higher proportion of Tasmanian respondents reported having recently heard of child sexual abuse cases than other Australian jurisdictions.²

The report was released approximately a year after the Premier of Tasmania, the Honourable Jeremy Rockliff, MP commissioned this 'independent review into the actions taken in response to the information and concerns raised by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings'. The results of the survey, reflect the stark reality of child sexual abuse and its impact on the Tasmanian community.

The Tasmanian community has long been aware of the devastating impact of child sexual abuse. As identified by the Commission of Inquiry, the former Department of Communities (DCT) held substantial information about child sexual abuse matters particularly at the Ashley Youth Detention Centre (AYDC) going back to nearly 2003, when Tasmania ran its first redress scheme the 'Abuse in State Care' program. The decade long program was replaced by the Abuse in State Care Service in 2015. The state redress schemes overlapped somewhat with the national Royal Commission into Child Sexual Abuse in Institutional Settings which ran from 2013 - 2017. Following the Royal Commission, the National Redress Scheme was launched, with the Tasmanian Government adopting the scheme in 2018. Given the existence of these schemes and the number of claimants that came forward during these periods (nearly 1832 in the case of the National Redress Scheme)³, it is to be expected that the Tasmanian State Service (State Service) would have been aware of the number of allegations, details of

¹ Please note that this is from a (base n=352-356). The same base applies to the remainder of the statements. [Australian child sexual abuse attitudes knowledge and response study Tasmania.pdf](#); pg 14.

² *National Centre for Action on Child Sexual Abuse, The Australian child sexual abuse attitudes, knowledge and response study Report 1 (2024)*. [Australian child sexual abuse attitudes knowledge and response study Tasmania.pdf](#)

³ This figure is current as of 11 August 2025

perpetrators, and the nature of the allegations for at least some time. Certainly, the government's response reflects its concern as it commissioned two independent reviews into child sexual abuse and an investigation into the AYDC just prior to establishing the Commission of Inquiry (COI) in 2021.⁴

The COI hearings brought to light multiple cases of child sexual abuse in state institutions over many years. The courage, forbearance and integrity of victim-survivors, their families and support groups shed light on cases that appeared to have otherwise escaped scrutiny. As both the Government and the community grappled with the details, calls for justice and accountability grew louder. Against this backdrop the Premier of Tasmania the Honourable Jeremy Rockliff, commissioned multiple reviews. This included the Blake Review and the Tatarka Review. The carefully crafted Terms of Reference for each review sought to bring greater transparency on the conduct of personnel within the State Service and the mechanisms to hold them to account.

The Terms of Reference (TOR) for this (Review) were focused on the response of the State Service to the matters of concern that had been raised during the COI hearings as well as through its final report. At their core, the TOR were crafted to ensure that independent assurance could be provided to the Tasmanian community, Parliament, and Government that the State Service had pursued all the necessary steps to hold individuals to account in a timely and effective manner. The Review was also tasked with recommending any further necessary actions to the Government, and to reflect on systemic settings that would improve accountability in the future. In essence, the TOR asked the Review to examine actions to hold individuals to account, whilst simultaneously identifying lessons and improvements that would ensure a better system for child protection in Tasmania.

1.1 REVIEW PERSPECTIVE

Since the commissioning of the Review in November 2023 and its formal commencement in February 2024, the Independent Reviewer Peter Woolcott AO has conducted the Review with a strong focus on how to improve the child protection system in Tasmania so that it is future fit. This focus has guided the Review's methodology and the development of frameworks that have been central to its work over the course of nearly two years. Thus, the examination and analysis of individual matters of concern has been undertaken with a view to pursuing justice through identifying and reviewing the progress of disciplinary and criminal justice processes, as well as transitioning the insights that emerge from such analysis to recommendations that will improve the system in the future.

At its commencement, the Review observed the considerable community appetite for truth as well as justice. In reflecting back on the early events, the Review team acknowledges the underlying sentiment that drove community concern – that the facts of individual cases of child sexual abuse were not known, and that somehow, they had remained unexposed for too long. The Review's report seeks to bring transparency to the way in which the State Service has handled matters of concern and the issues and challenges it has encountered as it has sought to do so. In drafting this report, the Review team has been careful not to varnish the truth – instead in acknowledging the facts, it has tried to focus on how these facts inform future reform direction.

The Review notes up-front that it has intentionally not engaged substantively with individual victims of child sexual abuse or individual victim-survivors. This was based upon advice from experts that noted the risk of re-traumatisation. As a consequence, the Review team has been acutely conscious of the need to be as inclusive as possible and to hear from a broad spectrum of community-based actors and organisations that support, care, and advocate for victim-survivors. The Review team has also had the privilege to meet Tasmanian children in two distinct settings – as part of the Children's Consultative Panel, and at the (AYDC). These experiences have been uplifting and sobering at the same time.

⁴ The Review notes that the National Redress Scheme is not an investigative process. It is designed to be a trauma informed process centred on the applicant. This can present barriers on occasion in progressing investigations.

The wide-ranging consultations held by the Review team early on, helped inform its views on how to interpret its TOR and therefore what justice might mean to those most affected by the harm that has occurred. Throughout the consultations, accountability remained a central prism for the Review's work. While this reflected a strong appetite for disciplinary actions and outcomes from criminal justice processes, most of the Reviews interlocutors also acknowledged the shortcomings if this became the focus of the Review's work. Through multiple engagements conducted almost on a monthly frequency, the Review noted that stakeholders expressed a desire for transparency, as well as a strong desire for *'this should never occur again'*. This has helped frame the Review teams understanding of its task and structure of this report.

This is the Review's final report, and it consists of two parts that will be released separately. This is Part A of the report, which forms the first and major component of the report. This part of the report addresses disciplinary matters (the audit), employment frameworks that underpin individual accountability and the culture within which these arrangements operate. This part also describes the regulatory oversight of this system and considers existing information sharing provisions. Part B of the report to be provided to the Premier shortly provides a comprehensive and considered view of the regulatory and oversight arrangements and their intersection with the justice system in Tasmania including the Office of the Solicitor-General as well as how the system can be strengthened to ensure best practice. Part B of the report is narrowly focused but involves complex legal issues and these require further consultation.

In its early chapters, this report outlines the process by which the Review has conducted its work. Whilst the Review is grateful for all the inputs it has received; it alone owns the outputs it has generated. The chapter on the response by the State Service to matters of concern is written to provide assurance that all alleged perpetrators and enablers of child sexual abuse raised in the COI report have been identified. It also outlines whether appropriate accountability processes are in place and examines their effectiveness. This focus on individual accountability was expanded, and the insights from the analysis were channelled to include wider systemic, legal, and institutional accountability in subsequent chapters. These propose reform through a selection of recommendations that target changes to policy, structure, institutions, operations, and legislation.

The Review notes that during its tenure there have been two elections in Tasmania. The concepts of accountability and justice that lie at the heart of the Reviews report also form the foundations of our democracy and our way of life. People entrust power through elections in a Government. They expect Governments to uphold justice, care for the wellbeing of the people, be prepared to be transparent, allow them to prosper, and to protect them from harm.⁵ Elected governments rely on unelected officials to deliver on these expectations through policy design and implementation and service delivery. Trust and integrity are central to this compact. For the compact to endure the State Service must continue to rise to the challenge every day because Tasmanians trust them to do so.

1.2 REVIEW REFLECTIONS

1.2.1 The Role of the Centre of Government

A major section of this report focuses on the chronology of actions taken by the State Service in response to matters of concern that arose from the COI. As later sections of this report will highlight, these actions varied by agency and authority, and the timeliness and effectiveness of actions was dependent upon a range of factors.

⁵ Geoff Mulgan, *What are Governments for?* (2025).

In drafting this report, the Review has been conscious of the need to be fair in its assessment and narrative, against the backdrop of the horrific nature of the crimes and abuse that has occurred. In engaging with the State Service, the Review team has observed how a range of factors have impacted the best of intentions and efforts: volume, complexity, pace, resourcing constraints, change in leadership and elections. The Review team has also observed the frustration within the community around the slowness of processes and the limits on transparency. On the other hand, it has also observed the State Service try desperately hard to assemble the evidence base, pull together all the facts, launch taskforces, and appoint special investigators to secure accountability. Recognising all this, the Review has asked itself - what happened and what more should have been done? The answer we have arrived at, is that the State Service should have been better prepared at the outset to handle the flow on effects of the COI.

As noted above, the COI was established by the Tasmanian Government as a consequence of growing concern that the number of child sexual abuse cases in state institutions was significant. Notwithstanding the fact that data and information provided through the redress schemes may have lacked detail and rigour, it provided sufficient red flags and signals that there was serious cause for concern. The COI proceedings itself occurred over two years, and the detail from the hearings and the work behind the scenes from within the State Service should have highlighted that there was a large and complex volume of individual cases that would need to be addressed through disciplinary and other mechanisms. While the State Service documents accessed by the Review indicate that the Secretaries Board sought to develop a plan, in this Review's opinion the attempts at the outset never caught up with the enormity of the task.

The COI hearings, its ongoing consultations with the State Service, and ongoing referrals of matters of concern should have alerted agency heads that post conclusion of the hearings the need for accountability, and swift and decisive action would be strong. It should also have been apparent that certain parts of the State Service would be more impacted than others not least because departments such as the Department for Education, Children and Young People (DECYP) had inherited a large volume of cases post machinery of government changes, and the Department of Health (DOH) was still emerging from the impacts of Covid-19. The reputational risks to the integrity of the State Service post cases such as Paul Reynolds would also have been obvious. Indeed, in many ways, the response from Tasmania Police (TASPOL) in launching the Weiss Review and immediately progressing disciplinary action against police officers reflects an agency that recognised the outrage, anticipated the risks of delayed actions and assembled a plan of action.

Against, this background, the Review notes that it would be expected that the centre of government represented by – DPAC along with the State Service Management Office (SSMO) would have undertaken due diligence and planning to have a coherent and structured plan to respond to the COI recommendations. While the Review recognises that DPAC led the demanding preparation of the government response to the 191 recommendations through development of the 'Keeping Children Safe and Rebuilding Trust' document it released in December 2023, the Review would have hoped to see a similar plan to tackle the volume of individual cases of alleged misconduct that formed the core of the work of the COI.⁶

In the Westminster system of government, the bureaucratic centre of government plays a critical role in a crisis. Geoff Mulgan describes this eloquently when stating that an important role for the centre of government, in this case DPAC would have been to project power and leadership throughout government and beyond and ideally in response to the wishes and interests of the public.⁷ Mulgan also notes that it is the role of the centre of government to direct the key resources of power-money, legislation, and attention to critical tasks. In this Review's opinion, in the months immediately leading

⁶ Tasmanian Government, *Keeping Children Safe and Rebuilding Trust: Government Response to the Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings* (2023).

⁷ Geoff Mulgan, *What are Governments for?* (2025).

up to and post the release of the COI report, the bureaucratic centre of government in Tasmania, DPAC and the SSMO, focused on one half of the equation (that is the policy and structural components of the COI recommendations) and not the other half (that is the accountability and justice aspects of the COI recommendations).

The Review would have expected to see revised Employment Directions (EDs) that would have enabled matters of concern to be dealt with effectively and with greater ease than what has occurred. Similarly, the centre may have anticipated and re-directed HR resourcing to ensure agencies such as DECYP, DOH and regulatory authorities such as Teachers Registration Board (TRB) and Registrar for Working with Vulnerable People (RWVP) felt better equipped to handle the volume of cases they were going to have to deal with. The confusion that prevailed throughout the Scrutiny Committee hearings in December 2023, could have been avoided had the agency heads received from the SSMO the same level of detailed information that is now evident in the Routine Disclosures released by DPAC. A co-ordinated response would also have equipped agency heads to receive advice from the centre in the form of detailed guidelines to interpret, analyse allegations and share intelligence promptly through clear protocols that addressed all real and perceived barriers to information sharing across agencies.

The Review notes here that support was also needed for HR personnel who dealt with detailed allegations and evidence of abuse in an intensive manner to ensure that accountability concerns were met and addressed. As an employer, the State Service had a duty of care to these staff and ensuring an appropriate distribution of the case load.

Stepping back from the volume and complexity of the case load, a well organised and strategic SSMO may have also provided input into reflecting and implementing an accountability framework that would support the assessment of cases that spanned multiple years. What can the State Service learn from the systemic vs operational and procedural accountability failures that occurred? How could the State Service have approached the individual matters of concern and allegations of breaches of the code of conduct so as to ensure systemic, operational, and procedural accountability? What are the policy challenges that were reflected in the cases that emerged from the COI? Did the allegations reflect a pattern or trend of abuse that clustered in particular institutional settings? How could reporting have triggered early alerts? What interventions may avoid the inter-generational trauma that is evident in some cases?

A more joined and directional centre of government may have guided a different response working proactively across other agencies and authorities as well as civil society to develop a response.

In highlighting the above, the Review is heartened to note that such a response has emerged over the last twelve months as changes to leadership have occurred across the State Service. The formation of the Joint Referral Review Team has led to a material change in detail, rigour and responsiveness on COI matters. The appointment of a new Head of State Service has, for example, led to changes to ED5 in 2024 with further changes under development in relation to the *State Service Act 2000* (Tas) (SSA) and ED4. The appointment of Regina Weiss and the establishment of the Shared Capability and Central Investigations Unit is delivering results in convictions based on new evidence⁸. The culture shows a palpable shift with the tone and response to the Review being one of open inquiry and confident execution. The reporting on matters of concern now reflects transparency, rigour, and an appreciation of the public interest. State officials responding to Scrutiny Committee hearings are co-ordinated and well prepared in their responses. These are significant shifts in what has been a relatively short period of time. Notwithstanding resourcing constraints, by and large commitments to infrastructure projects and COI recommendations have continued to progress at pace. Ward 4 at Launceston General Hospital, long a scene of terrible abuse, is now not just refurbished physically; the culture of care and concern is evident in rank and file. Lessons learnt from implementing a culture change program such as 'One Health' in the DOH have credibly been rolled out across the State Service.⁹

⁸ [New unit to streamline serious Code of Conduct investigations | Premier of Tasmania](#)

⁹ [DOH8534-One-Health-Culture-Program-Strategy-P101.pdf](#)

The Review notes that these are substantial achievements. They are in their own respect tectonic shifts and their effects will continue to be felt as other matters of concern continue to be progressed. Finally, in noting the above, the Review does not seek to dismiss the significant work that individual agencies undertook to address accountability issues within their agencies. It merely seeks to note that these efforts could have been amplified, better co-ordinated, better resourced, better led by an empowered centre that was better prepared to lead.

1.3 CHAPTER SUMMARY

This section provides a short summary of the substantive chapters of the Review's report including their key conclusions and recommendations. It is not intended to be a comprehensive summary but rather a guide to the contents of this report.

Chapter Three – 'Chronology Analysis and Observations' of the Review's report examines how the State Service responded to concerns and information raised by the COI. It focuses on auditing and analysing the chronology and effectiveness of actions taken by government agencies and authorities with the aim of identifying systemic issues and recommending improvements. The Review notes that it audited records from the COI, including Section 18 notices¹⁰, Section 34A referrals (to agencies and authorities)¹¹, and other relevant documents in order to develop a comprehensive data set accounting for all matters of concern and individuals associated with them. The Review used this data set for comparison with official State Service records (such as the Routine Disclosure Information released by DPAC) to ensure all persons of interest were accounted for. The Review then examined and analysed the detailed chronology of actions taken by individual State Service agencies and authorities to hold individuals to account using a bespoke framework drawing on its TOR and best-practice. The framework enabled the Review to analyse the timeliness, accuracy, and efficacy of agency and authority responses, including disciplinary actions, referrals to regulatory bodies, and record-keeping.

The Review's analysis yielded a set of insights which are captured in the chapter. Specifically, the Review notes the following:

- The State Service has now consolidated all matters of concern and associated individuals into a central database, improving transparency and accountability.
- Agencies faced multiple challenges in responding to potential breaches of the code of conduct. This included difficulties applying the Code of Conduct to conduct outside of employment, lack of detailed guidance on thresholds for breaches, inconsistent documentation and record keeping supporting decision-making processes.
- As a consequence, the Review notes that while agencies generally acted in a timely manner to suspend individuals thereby reducing the risk of harm to children, their overall timeliness was compromised due to resource constraints, lack of clear guidelines, poor record-keeping, and the complexity of managing multiple concurrent investigations.
- The Review notes that agencies would benefit from detailed guidelines to ensure consistent outcomes from disciplinary processes. It acknowledges that its analysis established that in the main, the type of sanction applied aligned to the severity of the allegation/conduct.

¹⁰ Section 18 of the Commissions of Inquiry Act provides that if a Commission of Inquiry wishes to make an allegation of misconduct against a person, the Commission must give notice of the allegation to the person, state the evidence that supports it, and provide the person with a right to be heard.

¹¹ Section 34A of the *Commission of Inquiry Act 1995* (Tas) provides that a Commission of Inquiry may refer information relating to a breach of the law to the Attorney-General, or law enforcement agency for investigation.

- The quality and format of investigation reports varied, with some lacking clear analysis and rationale. There was a shortage of skilled investigators, and disciplinary processes were often delayed and/or frustrated by the refusal of complainants and witnesses to participate in the proceedings.
- Poor historical record-keeping hampered investigations, especially for older cases.
- Most referrals to regulatory and law enforcement bodies were timely and accurate, but a significant proportion of risk assessments (e.g., by the RWVP remained pending).
- Systemic settings enabling accountability have not sufficiently changed post-COI. There is a need for ongoing improvement in employment frameworks, disciplinary processes, and the culture of the State Service.

In summary the chapter sets the stage for recommendations to improve accountability, timeliness, and child safety across government agencies.

Chapter Four of the Review's report focuses on the State Service 'Employment Framework and EDs'. It examines the legislative, policy, and operational framework governing employment and disciplinary processes in the State Service, especially in relation to misconduct and child safety matters. It analyses current weaknesses, undertakes comparative analysis vis a vis other Australian jurisdictions, and makes recommendations for reform.

The Review notes that the SSA is the main instrument governing employment in the State Service, and this is supplemented by regulations and ED's. Unlike the *Australian Public Service Act 1999* (Cth) (APSA), the SSA lacks a clear statement of purpose for state service employment. In the Review's opinion this has contributed to ambiguity about the role and accountability of the State Service. Therefore, the Review recommends amending the SSA to explicitly state that the purpose of state service employment is to serve the Government, Parliament, and Tasmanian community.

The chapter also identifies existing accountability mechanisms that encompass both individual and collective accountability through which the State Service remains answerable to the community, Parliament and the Tasmanian Government. This includes mechanisms such as parliamentary oversight, audits, and internal disciplinary processes. The Review notes that the current Code of Conduct (embedded in the SSA) outlines expected behaviours but currently applies mainly to conduct within the course of employment, with only limited provisions applying at all times. To strengthen accountability so that it meets community expectations, the Review recommends amending the SSA so that all elements of the Code of Conduct apply at all times.

The Review also recommends aligning definitions of "misconduct" across relevant legislation, the SSA and *Integrity Commission Act 2009* (Tas) (ICA), alongside ensuring that any "reportable conduct", as defined in the *Child and Youth Safe Organisations Act 2023* (TAS) (CYSO) is automatically a breach of the Code of Conduct. Additionally, the Review supports the COI's recommendation that all agencies develop professional conduct policies, especially for roles that are child facing. It recommends that breaches of these policies should also be considered to be breaches of the Code of Conduct.

The Review's analysis of individual disciplinary matters highlights a range of issues with the current suite of EDs. Through extensive consultation, the Review has provided four revised EDs for consideration by the Head of State Service. These include substantial revisions to ED5, including differentiating between preliminary assessments and investigations, providing timeframes for completion of process milestones and allowing for consideration of unsubstantiated prior behaviour in determining whether or not to proceed with an investigation. In addition to ED5 the Review proposes changes to three other EDs (ED4, ED6 and ED26). Key changes include enabling immediate suspension (with or without pay) for child safety concerns, loss of mandatory qualifications, or risk to others, with clearer guidance and timeframes.

The Review recommends building internal investigation capability, reducing reliance on external investigators, and supports the State Service's efforts to enhance the capability and focus of the Shared Capability and Investigations Unit. The Review also endorses the development of a whole-of-

government Human Resource Information System (HRIS) for better case management and tracking of disciplinary matters. Finally, the Review calls for the SSMO to prepare and publish detailed guidance for managers on investigations, suspensions, terminations, and appeals, and to develop better template letters for disciplinary matters so that the sanctions identified are proportionate to the seriousness of conduct.

In summary, Chapter Four provides a comprehensive blueprint for reforming the employment and disciplinary framework in the State Service, aiming to improve accountability, consistency, and therefore child safety, and to ensure the system is fit for purpose now and into the future.

Chapter Five addresses the cultural aspects of the State Service that impact its ability to protect children and respond to misconduct. It recognises that legislative and policy reforms alone are not enough—cultural change is essential for lasting improvement in child safety and public trust. The COI noted and the Review concurs that the culture within the State Service has historically failed to prioritise child safety, leading to systemic issues and a lack of accountability. The Review notes the need for a cultural shift so that disciplinary processes are interpreted and applied with child safety as the paramount concern, and so that staff feel supported to report misconduct.

The Review notes the existence of multiple accountability mechanisms (such as annual reports, external reviews, and parliamentary oversight), but identifies that their effectiveness depends on a culture of transparency, accurate record-keeping, and willingness to act on concerns. The Review commends recent improvements, such as including stewardship and child safety responsibilities in executive performance agreements. The Review also welcomes improvements in reporting and training, including high rates of child safety training completion across agencies.

The report emphasises the principle of stewardship and how this can bind the service together to take decisive action. The Review notes that embedding the principle of stewardship would have assisted the State Service in preparing a response to the COI by reflecting on it as an opportunity to demonstrate commitment to institutional accountability and public trust. Viewed through the principle of stewardship, the State Service would have approached the COI as a moment of institutional learning - an opportunity to understand what went wrong, why it went wrong and how to prevent similar failures in the future.

Since its commencement much has changed within the State Service including leadership changes. In observing these changes, the Review is confident that there is a genuine commitment to this principle in both theory and practice. The Review encourages the centre of government to continue to use task forces which bring together cross-agency and cross-sectoral capability to solve complex problems facing Tasmania.

Noting that integrity is vital for public trust, the Review recommends mandatory, regular training on ethical decision-making and conflict of interest management for staff with management and decision-making responsibility.

Finally, in reflecting on the lack of central co-ordination evident in the handling of matters of concern, and the lack of consistent guidance to support the management of disciplinary processes, the Review notes that the SSMO has historically lacked the authority and resources to drive cultural change. The Review recommends revamping the SSMO, including establishing a new State Service Commissioner role, and making the SSMO the steward of system-wide capability, culture, and integrity.

A critical shift for the State Service is working more closely with community organisations, especially those focused on child safety and Aboriginal children's wellbeing. The Review recommends developing a partnership framework and key account management approach for engaging with these organisations.

In summary, Chapter Five emphasises that real progress in child safety and public trust requires deep cultural change in the State Service. This includes stronger leadership, better training, more transparent reporting, and genuine collaboration with the community, supported by structural reforms and a renewed focus on stewardship and accountability.

The final chapter, Chapter Six – on ‘Regulatory and Oversight Agencies’ - briefly describes the regulatory and oversight arrangements related to child sexual abuse in Tasmania and identifies the key agencies tasked with various functions. It describes the Review’s views on the principle of independence in relation to the important role performed by oversight and regulatory agencies generally. With regards to Tasmanian regulatory and oversight agencies this chapter identifies how these agencies can better coordinate and share information to protect children.

The COI intended for all government agencies, including Tasmania Police (TASPOL), to be subject to the CYSO Act and the Reportable Conduct Scheme. The Review identifies that recent legal interpretations have meant that TASPOL is no longer subject to the scheme, creating a gap in oversight and accountability. The Review strongly recommends amending the CYSO Act to explicitly include TASPOL, ensuring they are held to the same child protection standards as other agencies. The Review notes and welcomes confirmation from TASPOL that they are supportive of such amendments to the legislation.

In its final reflections, the Review notes the critical role performed by the RWVP scheme in screening and monitoring those working with children. The Review recommends elevating the Registrar’s status through changes to the appointment process, establishing an expert advisory body, and requiring annual performance reporting to Parliament.

Effective child protection depends on timely, accurate information sharing between regulatory, oversight, and law enforcement agencies. Therefore, the Review recommends amending the *Personal Information Protection Act 2004 (Tas)* (PIP Act) to explicitly allow sharing of information about child sexual abuse and reportable conduct across all relevant agencies. It also calls for a roadmap to enhance information sharing, leveraging technology and fostering a culture of collaboration.

In summary, Chapter Six argues that to be effective Tasmania’s child safety oversight system requires collaboration. This requires legislative reform, cultural change, and technological investment to ensure all agencies, including the police service, are accountable, information flows freely, and children are therefore better protected.

1.4 REVIEW’S APPROACH TO RECOMMENDATIONS

The Review notes that over the last decade and a half the State Service has been through multiple reviews and external inquiries. Each of the reviews has examined a different aspect of the State Service’s strategy, operations and capability and some have had a wider focus than child sexual abuse matters. Each has delivered a range of recommendations.

Noting the requirement for this Review to align with and build upon the Terms of Reference for the COI, the Review team has been intentional in ensuring that the recommendations do not cross-over COI recommendations. Instead, they seek to build upon the COI recommendations through reflecting on progress that has occurred since the COI and ensuring that the reform direction remains consistent. The Review team has also consulted with the COI on its full report as well as the recommendations. The Review team notes for absolute clarity that the Review did not identify any areas where it would have disagreed with the findings of the COI or its recommendations.

Separately, the Review also notes that it recognises the immense burden on a relatively small State Service of progressing a large volume of recommendations. This is challenging because each recommendation entails a significant change to either policy, practice, custom or culture. To ensure that change is properly embedded each recommendation must be fully understood and embraced by relevant employees. Changes to practice and custom take time to embed. Where there are a large volume of changes the State Service also needs to reflect on how best to sequence the changes.

This Review notes when accounting for the number of recommendations to be implemented by the State Service from multiple reviews over the last several years, the number exceeded 700. This includes recommendations from the COI, the Tasmanian State Service Review (Watt Review), the National Royal

Commission into Child Sexual Abuse, the Blake Review, the Weiss Review and the Launceston General Hospital Governance Review. Noting this, this Review does not wish to add to the burden of recommendations.

As a consequence, the Review's recommendations build upon the COI, Blake Review, Watt Review and in some instances Weiss Review recommendations and either reinforce them and/or provide an updated articulation of reform direction. Having had the benefit of being the most recent Review, the recommendations contained in this report also provide a basis for prioritisation. Given the evolution of the system in the time since the other reviews were concluded, it has been valuable to observe the key areas where systemic change is necessary.

Noting the role of the Implementation Monitor in overseeing the implementation of other recommendations, this Review recommends that the Tasmanian Government assign the recommendations contained in this report to the Implementation Monitor for oversight purposes. This will ensure coherence and consistency in implementation monitoring and provide the State Service with a single point of engagement and reporting. This is vital in what is already a resource constrained environment. The Review further notes that prioritisation of its recommendations for implementation may be guided through the Implementation Monitor given their role in overseeing other recommendations.

Finally, the Review notes that its recommendations have been clustered into two categories: strategic and operational recommendations.

1.4.1 Strategic Recommendations

These are recommendations that propose systemic changes that typically require either legislative change or cabinet-level decision making. They propose changes that reshape foundational structures, governance arrangements or institutional/service wide frameworks. Alternatively, the recommendations are likely to have service-wide impact and create permanent change to the way the Tasmanian government works.

Accountability for implementing these recommendations is distributed. In the case of legislative reform this responsibility rests with the Tasmanian Parliament.

1.4.2 Operational Recommendations

Operational recommendations can be implemented by the State Service without the need for legislative change. They relate to policies, practices, processes or management approaches. They often sit within the decision-making authority of the Head of Agency (HoA) or the Head of State Service (HOSS).

Accountability for implementing these recommendations therefore rests with the leaders of the State Service.

Strategic Recommendation 1.1

That the Tasmanian Government assign the recommendations arising from this report to the Implementation Monitor for oversight.

1.5 CONCLUSION

The Review hopes that this report provides the assurance sought by the Tasmanian community that the State Service has responded to all matters of concern related to the COI hearings and in its final report.

The Review team expresses its gratitude to all the children, families and victim-survivors who have fought hard for justice. Their efforts have not been in vain. As Martin Luther King Jr observed:

'The arc of the moral universe is long, but it bends towards justice'

CHAPTER TWO: REVIEW METHODOLOGY

2 CONTEXT AND INTRODUCTION

This chapter outlines the Review's Terms of Reference and its interpretation of them and the many approaches through which the Review was conducted over the last nearly two years. As noted, this is Part A of the final report of the Independent Review into the Tasmanian State Service's handling of matters of concern arising from the COI. It follows three previous Interim Reports produced in November 2024, August 2024 and April 2024.¹² The Review also sent correspondence to the Premier on its progress and likely timing for completion in May and August 2025.

2.1 TERMS OF REFERENCE AND SCOPE OF THE REVIEW

2.1.1 Objectives of the Review

The Independent Review (Review) was commissioned on the basis of a 'Terms of Reference' which outlined the scope of the review, process considerations, timeframes and reporting requirements.¹³

The Terms of Reference (TOR) underscored that the final report of the Review would be made available to Parliament, and that three monthly progress reports would be provided in the meantime.

The Review's scope encompasses the actions taken by **all government agencies** and **relevant state authorities including TASPOL** in response to *information and concerns raised by the Commission of Inquiry* about Tasmanian State Service employees and officers.

Based upon the TOR and following consultations with key stakeholders the Review has identified the following key objectives:

1. Audit, examine and analyse the chronology and response to the concerns and information raised by the COI in its final report about State Service employees and officers to review the:
 - a. efficacy of decisions and actions, with respect to the assessment of seriousness of harm and non-compliance with policy, employment frameworks, or legislation
 - b. timeliness in which concerns, and information were considered and acted upon by government agencies or other relevant state authorities
 - c. the timeliness and accuracy of any referrals made by relevant state authorities to relevant regulatory, integrity, or law enforcement bodies during the COI hearings and upon publication of the Final Report.
2. Examine and analyse the policy and legislative framework relevant to matters of misconduct within the State Service.

¹² These were published in full and are available on the Keeping Children Safe website. [Reviews | Keeping Children Safe](#)

¹³ Attached in Appendix A

3. Examine and analyse the reporting requirements of government agencies and relevant authorities as it relates to information and concerns raised by the COI.
4. Make recommendations in relation to policy, legislative and operational changes to improve the system for responding to information and concerns about the conduct of State Service employees and officers.
5. Make recommendations in relation to any other systemic and cultural enablers that will ensure that the State Service is well equipped both now and into the future to ensure the safety and protection of children in its care.

The Review notes that as per its TOR, it is required to make any recommendations in addition to and not contrary to those made by the COI about policy, legislative and operational changes to improve the system for child safety in Tasmania. Therefore, the Review has sought to ensure that its recommendations build upon the recommendations put forward by the COI.

The Review is intentionally future focused, and analysis of previous events has been undertaken with the intention of identifying areas of improvement across a range of themes including the legal/regulatory environment, policies, and procedures as well as cultural settings and enablers.

2.1.2 Scope of the Review

In determining the applicability of its terms of reference to 'government agencies, relevant state authorities and officers and employees', the Review has used the definitions for these terms as set out in the SSA and the Police Services Act 2003 (Tas) (PSA) as relevant.

Based upon this determination, the Review's scope includes the following agencies and state authorities:

- Department of Premier and Cabinet (DPAC)
- Department of Treasury and Finance (DTF)
- Department of State Growth (DSG)
- Department of Natural Resources and Environment (NRE)
- Department of Police, Fire and Emergency Management (DPFEM)
- Department of Justice (DOJ)
- Department for Education Children and Young People (DECYP)
- Department of Health (DOH)
- Integrity Commission (IC)

This list does not include other agencies identified in the State Services Act 2000 such as Brand Tasmania and Tourism Tasmania as they are not the central focus of the Commission of Inquiry.

In addition to the list of agencies and authorities identified above, the Review has also identified other relevant regulatory and law enforcement agencies of relevance to its inquiry as per the COI report. These include:

- Teacher's Registration Board (TRB)
- Office of the Solicitor-General (OSG)

- Registrar for Working With Vulnerable People (RWVP)
- Children’s Commissioner (CC)
- Office of the Independent Regulator (OIR)
- Office of the Implementation Monitor (OIM)
- Tasmania Police (TASPOL)

2.1.3 Exclusions

As per the TOR the scope of the Review excludes the following:

- The application of ED16 policy in granting legal assistance to Public Officers.
- The assessment of administrative matters of concern and adverse commentary in relation to Heads of Agency.
- The review of the Commissions of Inquiry Act 1995 in relation particularly to sections 18 and 19, and Section 194K of the Evidence Act 2001.

The Review also made an early determination that its scope explicitly excluded the capability of the State Service as this has been the subject of separate recent reviews.

2.1.4 Powers and Referrals

The Independent Review does not have any investigative powers. Where the Review, through its consultation and analysis became aware of information related to its inquiry that was beneficial to improving the system of child safety in Tasmania, it has sought to bring these to the attention of relevant authorities.

2.2 CONDUCT OF THE REVIEW

The Review’s Interim Progress Reports provided substantive details in relation to its core activities and approaches to conducting the Review. The Review’s Interim Reports also provided detailed lists of stakeholder meetings, and the second progress update also included a comprehensive index of all information and data requested and received by the Review from agencies and authorities across the State Service.¹⁴

The Final Report should therefore be read in conjunction with the Interim Progress Reports. This chapter provides details on all the mechanisms used to conduct the Review as of the end of September 2025. The Review notes that its TOR enabled it to conduct its engagements on a confidential basis. The Review therefore notes that not all details of its engagements are summarised in this report.

2.2.1 Meeting with Commissioners

Peter Woolcott AO, the Independent Reviewer met with the Commissioners upon being appointed to lead the Review. The Independent Reviewer welcomed the frank discussions and proactive and ongoing offer of support and assistance from the Commissioners and their legal representatives from Corrs Chambers Westgarth. Subsequently, the Review team has continued to engage with the

¹⁴ These were published in full and are available on the Keeping Children Safe website. [Reviews | Keeping Children Safe](#)

Commissioners through their legal representatives to understand the COI's report and its recommendations. The Review has provided draft copies of relevant chapters to the Commissioners via their legal representative and received valuable feedback. This has been helpful in facilitating appropriate alignment between the COI's recommendations and the Review's recommendations.

2.2.2 Targeted 'Request for Information' Issued to Tasmanian Government Agencies and Authorities

In line with its TOR and Objectives, the Review issued a formal 'Request for Information' to the agencies and authorities listed in the table below.

Table 1. Summary of Targeted Requests for Information

Date	Agency/Authority
24 April 2024	Department for Education, Children and Young People
24 April 2024	Department of Health
24 April 2024	Department of Natural Resources and Environment
24 April 2024	Department of State Growth
24 April 2024	Department of Treasury and Finance
30 April 2024	Department of Justice
30 April 2024	Department of Premier and Cabinet
2 May 2024	Department of Police, Fire and Emergency Management
13 May 2024	Integrity Commission

2.2.3 Targeted Call for Written Submissions

The Review also issued targeted 'Calls for Submissions' to the organisations outlined in the table below. Written submissions were requested on a wide range of topics discussed during the Review's consultations including:

- Legislative, policy and procedural improvements
- Case studies on disciplinary and complaints matters
- Frameworks related to child safety protection and prevention
- Cultural barriers and enablers, and
- Accountability and governance matters.

Table 2. Summary of Calls for Written Submissions

Date	Stakeholder Category
3 April 2024	State Authority
3 April 2024	Union (2)
18 April 2024	Union
30 April 2024	Union
18 April 2024	Community Services Organisation
22 April 2024	Community Services Organisation
24 April 2024	Community Services Organisations (9)
24 April 2024	University
30 April 2024	Union
Second Half of 2024	Tasmanian Regional Aboriginal Communities Alliance (TRACA) Tasmanian Aboriginal Legal Service (TALS) Tasmanian Aboriginal Centre (TAC)

As detailed in its progress report/s, the Review received written submissions on a wide range of topics discussed during consultations including, legislative, policy and procedural improvements, case studies on disciplinary and complaints matters, frameworks related to child safety protection and prevention, cultural barriers and enablers, accountability and governance matters. The Review's May-August 2024 report provided a detailed index of the documents provided to the Review for consideration. Due to the confidential nature of much of the information received and accessed by the Review, it is not possible to provide a detailed index for all the material received or accessed by it.

The Review notes that its Interim Progress Reports outline the submissions and responses it has received in detail.

2.2.4 Confidential Submissions and Engagement

The Review engaged on a confidential basis as per its TOR with a range of individuals/entities.

2.2.5 Targeted Stakeholder Consultations

In addition to the Request for Information issued to agencies and authorities, the Review consulted with stakeholders across Tasmania on a monthly basis. These consultations covered a variety of topics

relevant to the Review's TOR and were of great benefit to the Review. The Review thanks those who provided their time, expertise and resources during these consultations. The Review held approximately 211 meetings (not including confidential discussions and or ongoing engagements) during the course of its inquiry. While a majority of the meetings were held in Hobart, the Review also met with stakeholders in Launceston, visited the Ashley Youth Detention Facility in Deloraine, and held several meetings online.

The tables below provide the key details of the stakeholder consultations held by the Review from its commencement in February 2024 up to 30 September 2025.

It should be noted that the tables below illustrate the meetings convened by the Review but do not reflect all communications held regarding the Review.

Table 3: Meetings held by the Review

Number of Meetings by Month	
2024	
February	14
March	15
April	21
May	28
June	24
July	17
August	13
September	3
October	6
November	10
December	11
2025	
January	1
February	12
March	7
April	Nil
May	4
June	2
July	9
August	2
September	12

Table 4: Meeting by Stakeholder Category

Meetings by Stakeholder Category	
Government Departments	112
Union	16
External Expert	12
Statutory Government Bodies	21
Community Service	8
Member of Tasmanian Parliament	15
Previous Reviewer	6
Legal	9
Academic Expert	4
Other	6
Member of Tasmanian Legislative Council	2
Confidential	*

Table 5: Meeting by Location

Meetings by Location	
Hobart	158
Online	34
Melbourne	8
Launceston	10
Deloraine	1

2.2.6 Weiss Review

The Review has also held multiple discussions with Ms Regina Weiss who led the Weiss Review and was subsequently appointed as an Independent Investigator by DPAC on the 31st July 2024.

2.2.7 Visit to Ashley Youth Detention Centre

On 12 July 2024, the Review team visited the AYDC and toured the whole facility. The visit was facilitated by the DECYP. AYDC staff welcomed the Review team and provided a comprehensive tour and explanation of the ongoing cultural change initiatives and proposed facility renovations. During the visit the Review team was also able to speak briefly to children at the facility.

2.2.8 Children's Consultative Panel

Also on 12th July 2024, the Review team was invited to attend the Children's Consultative Panel in Launceston alongside the Premier and the Minister for Children and Youth. The panel was organised by the Commissioner for Children and Young People and provided an excellent opportunity to engage a group of inspiring young leaders on their views and perspectives on how the Review could contribute to improving the safety and wellbeing of children in Tasmania. The Review team was grateful to be included in this event and the discussions provided much food for thought and hope for the future.

2.2.9 Visit to Launceston General Hospital

On 12 April 2024, the Review team visited the Launceston General Hospital's child and adolescent and paediatrics wards. The visit was facilitated by the DOH. Hospital staff welcomed the Review team and provided a comprehensive tour and explanation of the ongoing cultural change initiatives and facility renovations.

2.2.10 Research

The Review was committed to being future focused and therefore has undertaken considerable research relevant to its TOR. This research includes literature reviews and reviews of policy and related documents provided by the State, as well as those requested from other jurisdictions. The Review team has also regularly spoken to external and academic experts to benefit from their insights, knowledge and experience.

Through its research, the Review has considered a number of public sector reviews, commissions and reports. These have assisted in building the Review methodology, along with providing insights on comparative approaches to ensuring transparency, managing cultural change, dealing with accountability challenges in the public service and dealing with issues of public trust. While the Review has referenced ideas and suggestions that have been directly relevant to its work, it also wishes to acknowledge that it has drawn insights on systemic and operational settings from other Reviews. The Review therefore acknowledges these other Reviews as listed below:

- Afghanistan Inquiry Implementation Oversight Panel, Final Report to the Deputy Prime Minister and Minister of Defence (2023)
- Australian Public Service Commission, Centralised Code of Conduct Inquiry Taskforce (2024)
- Baroness Casey Review Final Report, (March 2023)
- David Thodey AO, Our Public Service, Our Future. Independent Review of the Australian Public Service Full Report (2019)
- Dr Ian Watt AC, Independent Review of the Tasmanian State Service Final Report (2021)
- Herbert Coombs, Royal Commission on Australian Government Administration: report (1976)
- Integrity Commission Tasmania, Integrity Commission Annual Report 2023-2024 (2024)
- Let the sunshine in, Review of Culture and accountability in the Queensland public sector, Final Report, Peter Coaldrake AO, (June 2022)
- National Centre for Action on Child Sexual Abuse, The Australian child sexual abuse attitudes, knowledge and response study Report 1 (2024)
- Queensland Government, A Fair and Responsive Public Service for All Report (2019)

- Regina Weiss, Weiss Independent Review into Paul Reynolds Final Report (2024)
- Robert Officer, National Commission of Audit report to the Commonwealth Government (1996)
- Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report (2017)
- Sam Tatarka, Report of the Independent Review of Grants of Legal Assistance under Employment Direction 16 (2025)
- Tasmanian Government, Keeping Children Safe and Rebuilding Trust: Government Response to the Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (2023).
- Assessment for the Premier of Tasmania, The Blake Review, Mike Blake AM (2024)
- Reform of Australian Government Administration, Terry Moran, 2010

2.3 CONCLUSION

Since the formal commencement of the Review in February 2024, the Review has undertaken continuing and substantive consultation with relevant stakeholders to inform its work and identify the systemic and cultural barriers relating to child sexual abuse in Tasmanian institutions.

The Review's recommendations have been informed by the feedback and insights shared by stakeholders, submissions provided to it, research accessed by it, site visits, engagement sessions including with Tasmanian Aboriginal community organisations, as well as information provided to it by government agencies and authorities.

The Review is grateful for all the inputs and submissions it has received and particularly grateful to community service organisations who have represented the views of victim-survivors and shared their experiences.

CHAPTER THREE: CHRONOLOGY ANALYSIS AND OBSERVATIONS

3 CONTEXT AND INTRODUCTION

As noted previously, on the 17th October 2023, Premier Rockliff announced an independent review into the actions taken by the State Service in response to matters of concern and information raised with and by the Commission of Inquiry.

In announcing the Review, the Premier noted that the government was:

‘...aware of a level of concern that had arisen in the community that some individuals who may not have been made the subject of findings, due to the operation or interpretation of law, may not be held accountable for their actions or omissions.’

In his statements the Premier assured the Parliament and the Tasmanian people that his government would act to ensure that these concerns were responded to and committed to investigating any allegations and making certain that all issues had been identified and addressed. The Premier outlined the government’s response including:

*‘...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.’*

Following on from the Premier’s statements above, the Premier re-iterated his concerns and expectations in correspondence addressed to the Head of State Service on 14 December 2023. The Premier’s letter noted:

‘As Premier, it is my top priority to ensure perpetrators of, and enablers of, child sexual abuse are held to account.

.....I am concerned investigations into allegations against State Service employees identified through the Commission of Inquiry are taking too long. This not only falls short of my expectations, but the expectations of Tasmanians.

.....I understand there are often complicating matters surrounding such investigations, and that, in the pursuit of justice, appropriate processes and legislation need to be adhered to.

.....Notwithstanding the fact that alleged child abuse perpetrators are immediately removed from the workforce, I request that you work with Heads of Agencies to provide assurances that all available legal and workplace remedies to resolve outstanding matters are being taken as quickly as possible. I am mindful that some of those matters may involve legal complexities that must be considered and impact on timeliness.

I would also request advice on impediments or barriers that Heads of Agencies identify, and options that government could consider that would assist with more timely resolution of investigations.’¹⁵

The letter went onto to note that the Premier expected that the **advice** received from agency heads would be made available to the independent reviews he had announced.

In order to appreciate the statements made by the Premier in relation to community concerns regarding ‘individuals’ not being subject to ‘findings’, it is valuable to briefly recap the powers and mechanisms used by the COI regarding how it dealt with matters of concern and information related to individual conduct.

¹⁵ Correspondence from Premier to Head of State Service, December 2023

3.1 COI METHODOLOGY

Volume 2 of the COI Final Report outlines the Commissions approach to interpreting its Terms of Reference, powers, scope and conduct. In this section, the COI noted that as directed by the Order of the Governor, it had focused its work on systemic problems in institutional contexts with a view to identifying options for reform. The COI further outlined that:

Equally, examining specific institutions' responses to child sexual abuse has enabled us to identify patterns of behaviour that have gone unaddressed. In particular, we are concerned that a systemic problem in the Government's response to institutional child sexual abuse is a failure to deal with poor conduct or behaviour, including in relation to the conduct of individuals in responding to reports about the behaviour of others.

We have identified poor conduct and failures by institutions and by individuals where the evidence before us supported such a conclusion, with the goal of ensuring that persistent and systemic issues are not perpetuated. Under the Commissions of Inquiry Act, we also have the power to make findings of misconduct. We discuss this power further in section 2.3.4.¹⁶

In section 2.3.4 of the report, the Commissioners identified that under Section 19 of the COI Act they could make an **adverse finding** against a person based upon the evidence they had gathered.

Volume 1 of the COI Report contains a number of findings including identifying a range of individuals either via the use of pseudonyms or directly in relation to their conduct in matters relevant to the COI's work.

The Commissioners also noted that under Section 18 of the COI Act they had the power to make a **finding of misconduct** against a person.

Relevant to the above, in section 2.3.4 the COI noted that it had issued 30, Section 18 notices to 22 people during its inquiry.¹⁷

The COI also identified that it made one finding of misconduct which was outlined in Volume 6.

In section 2.3.3, the COI further noted that; during the Commission of Inquiry, it referred more than 100 people to appropriate authorities. The COI went onto provide a list of organisations it had made referrals to including the:

- Registrar of the Registration to Work with Vulnerable People Scheme
- Australian Health Practitioner Regulation Agency
- Assistant Commissioner, TASPOL
- Secretary, Department for Education, Children and Young People and, before that, the Secretary, Department of Communities and the Secretary, Department of Education
- Secretary, Department of Health
- Secretary, Department of State Growth

¹⁶ COI Report Volume 2: Chapter 1, pg 9.

¹⁷ COI Report Volume 2: Chapter 1, pg 14.

- Teacher’s Registration Board¹⁸

In the same section the COI also noted that during the Commission of Inquiry it made more than 230 referrals to Tasmanian and other authorities regarding risks or potential risks to the welfare of children. These referrals were made under section 34 A of the COI Act. Section 34A of the COI Act empowers a Commission of Inquiry to refer individuals believed to have contravened the law, to law enforcement and regulatory authorities, including the Attorney-General, the Director of Public Prosecutions, and authorities or persons responsible for the administration or enforcement of the relevant law. Section 34A also provides a wide range of further referral powers, including in circumstances where a Commission obtains information or evidence in relation to a person that relates, or may relate, to the safety and protection of children.¹⁹

The statements made by the Premier detailed above reflect the backdrop and context to the commissioning of the Independent Review. The public release of the COI Report in 2023 not surprisingly raised questions about the identity of the recipients of the section 18 notices as well as section 34A referrals and the processes to hold and bring these individuals to account. Case studies in the COI Report had outlined the details of a number of cases of child sexual abuse in Tasmanian institutions, and there was growing community and parliamentary concern about whether the perpetrators of child sexual abuse and those within the system who may have enabled such child sexual abuse to occur had been swiftly and appropriately brought to account for their actions. Concerned with the pace of disciplinary processes, Premier Rockliff commissioned a range of independent reviews including this Review.

Accordingly, the Terms of Reference for this Review directly reflected the concerns identified above and included:

2. The chronology and response to the concerns and information raised by the COI about Tasmanian State Service employees and officers including but not limited to:

i. The efficacy of decisions and actions, with respect to the assessment of seriousness of harm and non-compliance with policy, employment frameworks or legislation as they relate to the information and concerns raised by the COI regarding Tasmanian State Service employees and officers;

ii. The timeliness in which concerns, and information were considered and acted upon by government agencies or other relevant state authorities;

iii. The timeliness and accuracy of any referrals made by relevant state authorities to relevant regulatory, integrity or law enforcement bodies during the Commission of Inquiry Hearings and upon the publication of the Final Report.

3. Recommending actions where the Independent Reviewer identifies non-compliance with policy, employment frameworks or legislation, as part of its review and in respect to items 2 i, 2ii, and 2iii above.

²⁰

Commensurate with the above extract from its Terms of Reference, this chapter provides an outline of how the Review has interpreted this section of its Terms of Reference, including its powers and the process it has followed to conduct the Review. The audit and analysis were undertaken with the express purpose of ensuring that the Review addressed the key concerns raised with it by the Tasmanian Government and by stakeholders from across the Tasmanian community and Parliament. A comprehensive summary of the Review’s audit and analysis of all matters of concern and information arising from the COI forms the central feature of this chapter. The chapter also details the information

¹⁸ COI Report Volume 2: Chapter 1, pg 13.

¹⁹ Sam Tatarka, *Report of the Independent Review of Grants of Legal Assistance under Employment Direction 16* (2025), pg 23.

²⁰ Extract of Independent Review Terms of Reference, [Reviews | Keeping Children Safe](#)

and materials provided to the Review to undertake this audit and analysis. Finally, the Review's observations arising from its audit and analysis are summarised at the conclusion of the chapter.

The Review wishes to acknowledge the courage and integrity of all victim survivors, their families and supporters for change, that contributed to the COI. The Review also acknowledges the work of the many state servants who have worked within the system to ensure that accountability and justice prevail. The Review notes that it has been very difficult to read the material shared with it which describes the pain, trauma and suffering of many individuals. While much that will follow in the subsequent pages will describe the Review's task through the lens of procedures, policies, frameworks, numbers, definitions and legal interpretation, the Review notes that its work has always been informed and guided by an overriding consideration:

Ensuring that justice is done through:

- (i) the appropriate application of all relevant individual accountability mechanisms and***
- (ii) identifying and recommending systemic improvements so that the system for child safety in Tasmania is fit for purpose in the future.***

3.2.1 Concerns Raised With the Review

The Review has conducted its work through extensive consultation with relevant stakeholders across a broad spectrum of organisations both private and public. A range of concerns in relation to the handling of individual matters of concern by the State Service were raised. These concerns are summarised below. The purpose of summarising these concerns is simple; the Review wants to be clear it has heard them and has paid attention to them in the course of its audit and analysis.

The concerns shared with the Review have helped shape our approach to driving systemic improvements for child safety in Tasmania. They have also provided important context as to how the Review has approached this task. Among the concerns raised with the Review are the following:

- That the Review may not be furnished with all relevant material and information related to the COI matters of concern and information. In particular, in the early stages of the Review, the Review team were advised that they should ensure that they had access to all transcripts and statements that form part of the document library for the COI and that they had access to the restricted publication chapter/case study.
- That the Review may not have access to all section 18,19 and 34A notices, withdrawals, referrals and/or related materials.
- That there were systemic issues related to the application of accountability mechanisms in the State Service and that State Service was intent on 'protecting its own'.
- That Tasmania's regulatory agencies lacked resources and that while the architecture of these agencies reflected the model in other Westminster jurisdictions in theory, for all practical purposes the agencies were constrained by legislation, custom and practice in operating with the same impact as their counterparts in other jurisdictions.
- That Tasmania's close-knit community had disadvantages when it came to enforcing or upholding accountability as people prioritised long standing relationships and were therefore unlikely to come forward to provide statements and evidence.
- That it was not possible to manage all conflicts in a state and community the size of Tasmania.
- That the proceedings of the COI would have had a detrimental impact on the morale and confidence of the State Service.

- That leaders and managers within the State Service were likely to be traumatised by the proceedings and public exposition of allegations that reflected the decadal abuse of children in state institutions.
- That the COI proceedings had exposed not just individual findings, but also systemic issues and that this was likely to impact the confidence of those who worked in the system in its ability to deliver necessary results and impact.

Finally, the Reviewers also heard other concerns of a more general nature including:

- That the commissioning of further reviews would continue to re-traumatise both victim-survivors and state service personnel who engaged with and/or were part of the COI proceedings whilst providing limited additional clarity.
- That additional reviews were a burden on the taxpayer and would achieve limited purpose while drawing away necessary resource from the important work of the service.
- That the implementation of recommendations had tilted the system into overdrive and that individual personnel were now facing scrutiny and reporting for minor behavioural and conduct issues.

In recounting the above concerns, the Review makes one important observation:

The National Centre for Action on Child Sexual Abuse, October 2024 profile for Tasmania highlights that nearly 1 in 5 Tasmanians aged between 18 and 75+ are likely to be identified as victims or survivors of child sexual abuse. These figures starkly illustrate the extent of the challenge in Tasmania. The Review acknowledges all those in the State Service and in civil society who have taken on challenging roles in child safety and protection.²¹

The Review notes that both the nature of these concerns and the acuity with which they were expressed evolved over time. These Review further notes that these challenges cannot be solved without the government, the Parliament and the State Service working in partnership with wider civil society.

3.2.2 Definitions, Process to Conduct the Review and Review's Powers

Central to the Review's Terms of Reference is **consideration** of the actions undertaken by the State Service to identify and hold to account all those employees and officers who had potential concerns raised about their conduct both during the COI proceedings and within its final report. The Review was also tasked with recommending actions where the Review identified non-compliance with policy, employment frameworks and/or legislation.

During its early stages, an oft repeated concern shared with the Review was that the State Service had potentially failed to identify the recipients of all section 18 notices as well as all section 34A referrals and that this would mean that certain individuals would escape accountability. These concerns had arisen due to the commentary around these provisions within the Parliamentary Scrutiny Committee hearings in early December 2023.

Having reflected on these concerns, the Review formed the view that its interpretation of its Terms of Reference needed to clarify both:

²¹[Australian child sexual abuse attitudes knowledge and response study Tasmania.pdf](#); The Review notes that the study sample size was 356 individuals with results extrapolated based upon responses received from the group. Please refer to the full report for the analysis and findings.

- (i) the purpose of its consideration of the actions taken by the State Service, i.e., **why** was it being asked to consider the actions as well as
- (ii) **how** it would give effect to its consideration of such actions, i.e., what was the process it needed to follow in order to acquit its Terms of Reference.

The Review's reflections have resulted in it making a critical determination that **consideration** of the State Services actions needed to involve both an **audit** as well as an **examination and analysis** of matters of concern and information related to State Service employees and officers. The Review felt strongly that this would provide the necessary independent assurance sought by the community and Parliament and highlighted in the Premier's statements in relation to ensuring all individuals were held to account.

The Review notes that it has used the following definitions for the words '**audit**' and '**examine and analyse**' when describing its work.

Audit is defined as '*an independent verification of accounts and/or records held by the State Service in relation to identification of all matters of concern and information and employees and officers of interest*'

Examine and analyse is defined as '*careful scrutiny and analysis of information presented to the Review in relation to the actions taken by the State Service to hold employees and officers to account, with the analysis being conducted using a framework which aligns with the criteria expressed in Clauses 2(i)-(iii) of the Review's Terms of Reference*'.

Accordingly, the Review has conducted its work with a view to meeting the following objectives:

1. Audit, examine and analyse the chronology and response to the concerns and information raised by the COI in its final report about State Service employees and officers to review the:
 - a. efficacy of decisions and actions, with respect to the assessment of seriousness of harm and non-compliance with policy, employment frameworks or legislation.
 - b. timeliness in which concerns, and information were considered and acted upon by government agencies or other relevant state authorities.
 - c. the timeliness and accuracy of any referrals made by relevant state authorities to relevant regulatory, integrity or law enforcement bodies during the COI hearings and upon publication of the Final Report.
2. Recommending actions where the Independent Reviewer identifies non-compliance with policy, employment frameworks or legislation, as part of its review and in respect to items 2i, 2ii, and 2iii above.

The Review notes that the scope of this objective encompasses the actions taken by all government agencies and relevant state authorities including TASPOL, RWVP, TRB and the IC.

Aligned with the above, the Review developed a high-level process to guide its work. This process is summarised below:

- Review all records and other materials to identify and catalogue all matters of concern and information received by the COI.

- Based on the above, identify and catalogue all named and unnamed persons of interest²² associated with all matters of concern and information.
- Consistent with its Terms of Reference, exclude from its further consideration any matters that did not involve a State Service employee or officer²³ (therefore excludes Heads of Agencies) and/or was not related to child sexual abuse and/or was not related to child sexual abuse in a State institution.
- Conduct an audit of State Service records and reports related to the management of matters of concern and employees and officers²⁴ of interest, particularly those being used to support public reporting, to ensure that these records accounted for all employees and officers of interest and that they mirrored the names that appeared on the Review's own independent list.
- Conduct an audit of State Service records and reports to establish if the State Service had initiated all relevant and appropriate accountability processes in relation to all persons of interest.
- Conduct an audit of State Service records and reports to confirm that all employees and officers of interest had been accurately referred to relevant regulatory and law enforcement agencies in a timely manner.
- Conduct a thorough examination and analysis of the actions taken by State Service agencies and authorities to address these matters in an effective and timely manner taking account of the seriousness of harm as well as compliance with existing legislation and/or policy, procedural requirements with a view to identifying improvements that could be made to accountability mechanisms.

The Review notes that its Terms of Reference allowed it to:

- Receive submissions, including confidential submissions.
- Hear from individuals personally.
- Consult with unions as appropriate.
- Engage with one or more former Commissioners.
- Ensure that where necessary and appropriate confidentiality arrangements were made for persons assisting the Review.

The Review did not have investigative powers and/or the power to compel information from the State Service. The latter was reinforced to the Review when reading the minutes of the meeting from the 23rd February 2024 Child and Youth Safety and Wellbeing Subcommittee, which noted the following in response to concerns raised by members about the level of information being sought by the lead Reviewer.

²² Persons of interest is defined as any individual who is identified in a matter of concern and or information generated by the COI.

²³ Employee or officer includes both current and former employees and officers of the State Service.

²⁴ Current and former.

‘The Chair clarified Mr Woolcott is empowered by the Premier but has no power of enforcement. Members shared concern that the level of information being sought could become a resourcing impost on agencies, and there seems to be ambiguity about the scope of his review in the ToR.’²⁵

At the meeting the sub-committee also discussed the ‘complexities with having a legal and lawful basis for providing’ the information sought by the Review. The members also agreed that an exemption to the PIP Act for some of the information would be required and that Attorney-General approval would be needed for the release of Solicitor-General advice.

The Review notes that it was granted necessary exemptions to the PIP Act in order to access the information received by it outlined below.

3.3 INFORMATION AND DOCUMENTS ACCESSED BY THE REVIEW

This section outlines the documents accessed by the Review to meet the objective identified above.

3.3.1 COI Records

The Review was provided access to the COI Records held by the State Archivist.²⁶ This included access to unredacted versions of COI transcripts and statements and access to the restricted publication chapter/case study. Within the COI Records the Review was able to access section 18 notices and withdrawals and section 34A referral letters issued by the COI. The Review was also able to access notification logs created by the COI to record the referrals and notices issued by it. This was helpful in ensuring that the Review was able to account for section 18 notices and withdrawals and section 34 A referrals.

3.3.2 Responses to Request for Information

As detailed in the Review’s Progress Report for May-August 24, the Review issued a detailed Request for Information to all agencies and authorities. The Review notes that a copy of its detailed Request for Information was attached to its Progress Report at the time. Section 1 of the Request for Information issued by the Review requested agencies to provide the Review with a detailed chronology and all associated materials in relation to all matters of concern identified by the COI both during the hearings and in its final report. In response the Review received detailed chronologies in relation to matters of concern and information from all agencies and the Teachers Registration Board. The detailed chronologies were also accompanied by data sets summarising all the matters for ease of analysis.

Data from the RWVP was shared separately as detailed further below.

While subsequent sections of this chapter provide further details on the materials provided to the Review for analysis, the Review notes that the types of materials shared with it included:

- Detailed policies, including professional conduct policies, grievance management policies and assessment guides, complaints management policies and procedures, child safety and wellbeing procedures prevalent at the relevant time in which allegations of misconduct may have occurred.
- Material supporting the chronology of actions: the Review received a range of material from agencies and the TRB related to each matter of concern and the chronology of actions they

²⁵ CYSW Meeting Minutes, 23 February 2024, Other Business agenda item.

²⁶ [Woolcott_Review_Interim_Report_December_2024.pdf](#)

pursued in relation to that. This included documents such as copies of referral letters from the COI received by them, preliminary assessment reports, briefing notes to the relevant delegate in relation to request to proceed with a suspension under an ED4²⁷ or request to proceed with an ED5²⁸ process, detailed investigation reports, documents accompanying the detailed investigation reports including file notes, briefing notes to the relevant delegate identifying the relevant breaches of the code of conduct, briefing notes to the relevant delegates recommending the appropriate sanctions, letters and correspondence to individuals subject to the allegations sent to them as part of the disciplinary process, contemporaneous file notes made by individuals involved in the process, copies of referral letters and/or an account of the dates when referrals were sent to relevant regulatory and law enforcement agencies as well as information and notifications sent to the State Service Management Office.

The Review notes that while agencies sought to be as transparent as possible, the Review did not receive every file note, letter, legal advice, investigation or preliminary assessment report and/or related material to an investigation report for each matter of concern or information. This was not unexpected given for example that documents related to legal advice would have legal privilege associated with them.

The Review also notes that detailed chronology material provided to it was current as of late July-August 2024. Several matters and associated disciplinary processes were still ongoing at that date and continue to be ongoing at the time of writing this report. The Review did not request updated materials on an ongoing basis.

3.3.3 Routine Disclosure, JSAT and JRRT Data Sets

In addition to the material above, the Review requested and received copies of the Routine Disclosure and/or other related data sets at different points over the last two years. It is important to outline the reasons why the Review has been provided with different data sets at different times. These include:

- It provided the Review with early visibility and understanding of the State Service's management and reporting of matters of concern and prior to the granting of PIP exemptions and the passage of regulation to support the Review's access of COI records.
- It was in response and aligned to the Reviews Request For Information which was split into two parts.
- Noting that several disciplinary and other accountability mechanisms have been ongoing throughout its term, the Review has sought and been provided with updated information as progress on individual matters has occurred.
- The responsibility for preparing and reporting on consolidated information in relation to the management of matters of concern has shifted within the State Service across committees/entities over time.

These data sets are central to the Review's audit of the matters of concern and information related to the COI. The Review notes that the DPAC website publishes a Routine Disclosure in relation to child sexual abuse matters on the 30th of every month. This disclosure is comprised of three parts: ²⁹

²⁷ Employment Direction 4, Procedure for Suspension of State Service Employees With or Without Pay.

²⁸ Employment Direction 5, Procedures for the Investigation and Determination of whether an employee has breached the Code of Conduct.

²⁹ [Department of Premier and Cabinet](#) - Routine Disclosures.

- **Suspension Reports:** Since March 2021, reporting on the suspension of State Servants due to allegations of child sexual abuse.
- **Monthly Progress Updates:** From December 2023, publishing monthly updates relating to the assessment and actions by Heads of Agencies of all current and former employees referred to in the COI report.
- **JRRT Report:** From August 2024, a dataset to include information about the work of the Joint Referral Review Team (JRRT) in reviewing 'Matters of interest identified through the Commission of Inquiry'.

The Monthly Progress Updates and JRRT reports are central to the audit work of the Review. Consequentially, the Review has requested and received the JRRT data sets on the 5th May 2025 and the 19th September 2025. The Review notes that the majority of the data set in the JRRT data base is at a point in time – i.e., the outcomes in relation to accountability mechanisms are current as of 16 August 2024.

In addition to the above data sets the Review also received the following data and/or information from various entities across the State Service.

- **Named Employee Database:** in addition to the JRRT database the Review has also received a data set which is based upon the COI's current and draft reports which identifies individuals that were current state servants as at 6 November 23. The NED data set is a sub-set of the JRRT data set.
- **JSAT Report:** the Joint Safety and Accountability Team which was a multi-agency team comprised of law enforcement, regulatory and employment agencies was convened in 2023 with the express purpose of creating visibility of alleged perpetrators of child sexual abuse identified by the COI. The Review received a copy of the JSAT dataset as of the 20 September 2023 and accompanying report in response to its Request For Information.
- **HoA Update on Assessment of Action:** this data set was provided by the SSMO and was current as of 20 April 2024 and details the actions taken by agency heads to hold individuals to account at the time.
- **Data Sets supporting Routine Disclosures current as of 30th July 2025:** finally, in order to complete its audit so that it is as close to the conclusion of the Review report being finalised as possible the Review has received four data sets from the SSMO including:
 - The updated JRRT data set with outcomes current as of 30th July 2025
 - The HoA Assessments outlining all disciplinary matters underway for current state service employees (both alleged perpetrators and alleged non-perpetrators)
 - Information related to child sexual abuse related suspensions of State Servants (excludes information on matters not related to the COI)
 - Data set outlining details on the management of AYDC cases by the Shared Capability and Centralised Investigations Unit current as of 30th July 2025

3.3.4 Information Relating to Referrals to Regulatory and Law Enforcement Agencies

The Reviews Terms of Reference also require it to audit the accuracy of any referrals made by relevant state authorities to relevant regulatory, integrity or law enforcement bodies during the COI hearings and

upon publication of the Final Report. Therefore, the Review also requested State agencies and authorities to provide information on the referrals that they made or received from other sources related to COI matters of concern and information.

The Review notes that the Department of Police, Fire and Emergency Management (DPFEM) and TASPOL provided it with detailed information in relation to the section 34A referrals received by them from the COI. The information provided also contained details in relation to the status of the investigations undertaken by TASPOL in relation to the matters under their purview. This identified that some matters were subject to criminal proceedings and a range of other matters were filed because the referral was deemed not to have contained sufficient information to advance an investigation. This can occur in cases where no victim/offender is identified, no crime is disclosed/committed, the offences are out of statute, or the information provided was for intelligence purposes. The Review notes that a number of matters were identified where the victim survivor had either withdrawn their complaint after an investigation had commenced and/or the complainant may have passed away prior to a complaint being received.

The Review also notes that it received detailed chronologies from the TRB in relation to a range of individuals referred to it by either State authorities and/or directly from the COI. The information provided by the TRB was particularly helpful for the Review as it clearly outlined whether the matter had been referred to it by an agency after they had commenced a disciplinary process or the TRB had received it directly from the COI.

The JRRT data set included details on the referrals made by the COI to the RWVP. The JRRT team convened by the DOJ, contains members from TASPOL, RWVP, the TRB, Child Safety Services, the DOJ, the DOH, the DECYP and the SSMO. The information contained in the JRRT data set included information in relation to the current status of the registration for each person of interest, whether a risk assessment process had been undertaken and the outcome. The JRRT data set also contained information in relation to the source of the referrals, the mechanism for the referral, the dates the referral was received and the recipient entity. DOJ has ensured that the JRRT data set is a shared resource which enables the simultaneous real-time referral of information relating to persons of interest to all JRRT members.

3.3.5 Shared Capability and Centralised Investigations Unit

Finally, the Review notes that during the course of its audit, Ms Regina Weiss was engaged by the Head of the State Service to assist the Shared Capability and Centralised Investigations Unit housed within the SSMO, with managing 29 historical and contemporary matters associated with the AYDC. Ms Weiss has been working with numerous intermediaries and stakeholders to support the ongoing investigations into child sexual abuse allegations with a particular focus on AYDC. As identified above, the Review has received a copy of the data set related to the management of these matters as of the 30th July 2025.

3.4 AUDIT OF STATE SERVICE RECORDS AND REPORTS

This section outlines the Reviews approach to meeting its Terms of Reference in relation to **independently** auditing all matters of concern and information in relation to State Service employees and officers associated with the COI. Aligned to the high-level process described above, the first phase of the Reviews approach involved a comprehensive examination of the COI records including draft and final reports, statements and transcripts, notification logs, embargoed chapters, and notices and referrals to develop a consolidated list of all matters of concern and information. The key purpose of this exercise was to ensure that each matter of concern and/or information available to the COI was identified and that all persons of interest associated with that matter were accounted for.

The following section documents the processes undertaken to identify employees and officers related to matters of concern by the type of documentary instrument.

3.4.1 Search of the COI Records

The main aim of searching the COI Records was to identify and retrieve section 18 notices and withdrawals and section 34A referrals issued by the COI. The Review was also able to retrieve notification logs that recorded the notices and referrals issued by the COI and was able to use these to match the individual records it has been able to retrieve. These matters of concern and the names of persons of interest subject to the notices and referrals were placed onto a data set developed by the Review.

The Review also undertook a thorough review of the draft and final report to identify all named employees, individuals as well as any other matters of concern that were relevant to its Terms of Reference. These named and unnamed persons of interest were also added to the consolidated data set.

Additionally, the Review also examined the following instruments in order to identify matters of concern and information as well as persons of interest.

- Transcripts of the public hearings held in 2021 and 2022
- Witness statements
- Case studies and examples documented in the Final Report
- Submissions received and
- Restricted publication case study

For each category above, further filtering was undertaken to eliminate whole instruments or sections of instruments that did not name or otherwise mention individuals (and their conduct) as a State Service employee. For example, there are approximately 87 witness statements that do not reference individual conduct and/or specific incidents of alleged child abuse. These statements focused on providing context for the Tasmanian child-centred services, identifying systemic issues, providing information on broader youth-focused services and systems operating in Tasmania, providing expert opinion on various matters, detailing best practices, and solutions to current issues. For the purposes of this exercise these witness statements were excluded from this analysis. All information that provided cause for concern for the Review was placed onto the Review's data sets.

3.4.2 Development of a Data Set to Aid Comparison of Information

Based upon the above search, the Review generated its own independent data set comprising all the matters of concern and information and all named and unnamed individuals within the above documents.

The Review notes that in creating this data set it deliberately did not make a distinction between a section 18 notice or finding, a section 19 finding and a section 34A referral. In the context of the Reviews work, these categories were immaterial as it was tasked with examining whether the State Service had initiated relevant accountability mechanisms to hold employees and officers to account. The Review notes that once the COI had concluded, the categorisation of conduct issues based upon the provisions of the COI Act is in its view not relevant. This is because State Service personnel who were either the recipient of a section 18 notice, a section 19 finding and/or otherwise referred to in the report as a person of interest involved in a matter of concern and or in a section 34A referral notice, will be subject to the State Service's disciplinary framework. The SSA and the *Police Services Act 2003 (Tas)* contain code of conduct provisions that outline the expected behaviour of employees within the State Service. Therefore, all behaviour related to a matter of concern of any state service employee or officer needs to be assessed on the basis of the relevant code of conduct provision that applies to the individual employment arrangement.

In addition to the legislation identified above, the State Service employment framework also includes EDs issued by the Minister Administering the State Service Act (MASSA). These outline how Heads of Agencies can respond when they are concerned about either the conduct and/or the performance of a State Service employee or officer.

For reference, section 9 of the SSA³⁰ outlines the expected conduct of public servants. Similarly, Part 3, Division 1 of the PSA³¹ outlines the code of conduct for police officers in Tasmania.

Given that the Review's Terms of Reference restricted it to analysing the actions of the State Service in relation to State Service employees and officers, the Review eliminated from its consideration any matters and therefore persons of interest that were not likely to be State Service employees and officers.

Having created an independent data set, the Review then sought to compare this data set with the records and reports shared with it by the State Service and identified in section 3.3, 3.4 and 3.5.

The Review notes that its audit of the State Service records and reports was undertaken through comparing the following data sets:

1. Comparing the Review's consolidated matters of interest and employees and officers' data set with the JRRT data sets shared with the Review dated the 5th May 2025 and 19th September 2025. This comparison was focused on confirming that all named employees and officers that were on the Review's data set were also on the JRRT data set. It also focused on ensuring that any unnamed persons of interest related to a matter of concern that were likely to involve a State Service employee or officer were also on the JRRT data set.
2. Comparing the Review's consolidated data set with the JRRT data set to confirm that all matters of concern and/or allegations identified within the COI documents including the Section 34 A referral letters were fully matched.

The reason the Review has chosen to use the State Service records for its reporting is to ensure there is consistency between the public reporting of COI matters via the Routine Disclosures and the Reviews reporting. The Review does not wish to add to the confusion generated in the period following the COI report as different accounts, lists and numbers emerged in relation to different categories of findings and referrals within the COI report. The Review notes that it has highlighted any relevant variances within the state service records and reports vs its own analysis wherever that exists with an accompanying explanation for such a variation.

3.4.3 Audit of State Service Records/Data Sets and Insights

The consolidation of all matters of concern and information and inclusion of all associated named and unknown individuals on the consolidated list provided the following insights of relevance to the Reviews TOR.

3.4.3.1 Section 18 Notices

The COI issued section 18 notices to individuals only and in the main these were issued directly to the individuals concerned from April 2023 onwards. Section 18 notices were not provided to the State Service or the employer directly by the COI consistent with the provisions of the COI Act. Therefore, the State Service would have only become aware of section 18 notices if the individual advised them of

³⁰ https://classic.austlii.edu.au/au/legis/tas/consol_act/ssa2000155/s9.html

³¹ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2003-075>

this, where the individual sought financial aid for legal costs and/or where the State Service was advised by the COI that certain individuals may need welfare support.

Notwithstanding the above, the Review notes that it was able to identify all recipients of section 18 notices via the COI records. The Review further notes, that with the exception of one individual all employees and officers who were the recipients of the section 18 notices appear on the JRRT data sets provided to it. The Review confirms that the notice in relation to the individual who is not in the State Service list was withdrawn by the COI. The Review further notes that the individual was not the subject of a section 34A notice, was not an alleged perpetrator, was not the subject of an adverse comment or finding and therefore has not been included in the JRRT data set.

The Review notes that a number of section 18 notices were withdrawn by the COI as it progressively received and considered responses from the recipients. However, as noted the recipients of section 18 notices are still subject to the code of conduct requirements in the SSA and therefore maybe subject to potential disciplinary proceedings where the HoA has cause for concern.

As already stated, the Review notes that all employees and officers of the State Service are subject to the Code of Conduct requirements specified within the relevant legislation underpinning their employment arrangement. These requirements exist both prior to, during and post the COI proceedings. Conduct that may have been subject to scrutiny via the COI, may also be subject to disciplinary proceedings via the State Service Act. State Service accountability mechanisms are not suspended and/or superseded by COI accountability mechanisms. Their proper application continues and should be complimentary to the work of the COI. As later sections of this chapter will demonstrate, State Service agencies operated predominantly to ensure this was the case.

Finally, the Review notes that Dr. Renshaw was the only recipient of a misconduct finding by the COI.

3.4.3.2 Restricted Publication Order Chapter, Section 19 Findings and Review of Report and Case Study Material

In addition to the section 18 notices, the Review notes that it also accessed the chapter which the Commission placed under a Restricted Publication Order. The Review confirms that the JRRT data base includes the names and details of all employees and/or officers that are subject of matters of concern raised in that chapter.

The Review also notes that the Named Employees data set which is a sub-set of the JRRT data set includes the names of all employees and/or officers who were named and/or were otherwise identified in the COI Report including via adverse findings.

Finally, the Review notes that it was able to match the information it had extracted from its own review of the COI Report and case studies as well as other materials with information available via the JRRT data set and/or other material provided to it.

3.4.3.3 Section 34 A Referrals

The COI progressively issued section 34A referrals to agencies, authorities, regulators both within Tasmania and nationally from early October 2021 to August 2023. The COI often issued the same section 34A referral to the employment agency of an employee and officer and to a relevant regulator (such as RWVP/TRB) and/or a law enforcement agency on the same day or at least as closely together as possible. This is relevant in the context of the Reviews Terms of Reference requiring it to assess the timeliness of the State Service's response and actions in dealing with matters of concern.

During 2021, the recipients of the Section 34A referrals included, DCT, RWVP, TASPOL and Ahpra. Referrals continued to be issued to agencies throughout 2022 based upon the hearing schedule with the focus remaining largely on DCT and DOE in the early part of the year and from October 2022, being

replaced by the newly formed DECYP. Given the focus, the other recipients of the referrals included the TRB, RWVP and TASPOL. DOH received referrals in 2022 and 2023; however, a majority of the referrals were issued to the following agencies- DCT, DOE and DECYP and correspondingly to regulatory and law enforcement agencies.

The RWVP was the recipient of the largest proportion of notices given that a majority of matters referred to an employing agency were also issued to a relevant regulator.

The content of the referrals included an account of the allegations or matters of concern that had been raised with the COI and/or identified by the COI and where available names of employees and officers/and or other individuals outside the State Service who were involved in the matter.

The Review notes that while a majority of the referrals contained names of the person of interest, there were a proportion of referrals where the identity of the person of interest was either unknown, and/or the complainant was unclear about the individuals full name and/or the complainant was only able to recall the name that the individual may have been commonly known by.

Referral letters also sometimes contained limited details about the alleged events and given the historical nature of a number of matters the allegations referred to 'time periods' rather than specific dates/times. This is not unexpected given the significant trauma that the complainant/s are likely to have experienced and the historical nature of many matters. The Review also notes that in contrast to this, many referral letters had significant detail about the events/conduct of State Service employees and dates.

Referral letters also sometimes referred to organisations or entities both within and outside the State Service.

The COI issued multiple referrals in relation to a single person of interest where the allegations against the person varied by either date/time period and/or nature of allegation. Referral letters also contained the names of multiple persons of interest. Consequently, the number of referral letters does not directly correlate to the number of persons of interest on the JRRT lists.

The nature of concerns outlined in the referral letters also varied. The Review concurs with the JRRT categorisation³² of these into:

- Adverse comment
- Adverse finding
- Alleged abuse
- Alleged abuse and deficient police response
- Alleged abuse and failure to report
- Alleged abuser
- Alleged murder
- Contraband into AYDC
- Convicted abuser
- Failure to apologise

³² Note: Review has removed categories from this list included in the JRRT list such as fraud that are not child sexual abuse matters.

- Failure to report
- General
- Inciting assault
- Medical malpractice
- Misconduct finding

The Review notes that based on the 19 September 2025 updated JRRT list, the State Service has identified 214 section 34A notices that were issued to various agencies and authorities. The JRRT list also identifies that this includes 218 persons of interest with 102 of these being current and/or former state servants. Having conducted a thorough audit of the JRRT data base, the Review is able to confirm the accuracy and completeness of this record.

The Review further notes that the JRRT list includes data from a range of referral letters where the identity of the person of interest is unknown and continues to be unknown. This is consistent with the Review's own audit of the referral letters issued by the COI. The State Service has been able to identify/confirm the identity of some persons of interest, through the work undertaken by the JRRT team, and it maybe that over time the identity of others may be established. However, in the meantime, it is important to note that the numbers on the Routine Disclosures may therefore continue to vary. This should not be a cause for concern but rather a demonstration of the work that continues to occur through the State Service to identify and bring to account all those that may have been subject to a COI referral.

The key matter of note is that the State Service has a consolidated database which now contains details of all matters of concern identified through the COI.

3.4.4 Conclusion

The Review's audit of State Service records and reports sought to address the following question:

- ***Has the State Service identified all employees and officers associated with all matters of concern raised by the COI?***

Based on the audit of the State Service records, the Review can confirm that the JRRT data set which supports routine disclosures made by the State Service via the DPAC website, as of the 19th September 2025, includes the details of all relevant matters of concern and associated named officers and employees. The JRRT data set also includes details of matters of concern where the name of the employee or officer remains unknown.

The Review was also provided with two other data sets that are current as of the 30th July 2025. These include:

- Details on the management of AYDC cases that were transferred from DECYP to the SCCI
- A data set outlining all disciplinary matters underway for current state service employees (both alleged perpetrators and alleged non-perpetrators)

The Review notes that both data sets contain information that provides a point in time update on the current status of the disciplinary and/or other proceedings underway in relation to the conduct of a range of employees and officers. The Review confirms that it had received detailed information in relation to the actions undertaken by the State Service in response to the concerns raised about the conduct of these employees and officers from relevant agencies in 2024. While the Review has not requested detailed information since, the updated data set provides the Review with visibility of the progress that has occurred on these matters during that time. Therefore, the Review's analysis of the chronology and effectiveness of actions taken by the State Service is limited to the information it has available, noting

that such information remains relevant to its assessment of whether the actions taken initially were effective and timely.

3.5 EXAMINATION AND ANALYSIS OF CHRONOLOGY OF ACTIONS

The second phase of the Reviews report focused on the examination and analysis of the chronology of actions undertaken by the State Service in response to the matters of concern. As noted in section 2.2 of this chapter, the Review was specifically tasked with assessing the efficacy of the response with respect to both the assessment of the seriousness of harm as well as compliance. The Review was also required to assess the timeliness of the response and finally the timeliness and accuracy of any referrals made by relevant state authorities.

In order to undertake this analysis, the Review developed a simple framework aligned to its TOR to assess the response of the relevant agency/authority with respect to each matter of concern including actions taken to address conduct issues identified in relation to employees and officers. The framework was designed to assist the Review in undertaking its analysis on each case in a consistent manner as both the volume of cases and the complexity and volume of information received by the Review was very significant.

The main dimensions of the Reviews framework aligned to its TOR are discussed below. The detailed descriptions are provided as a guide to the Reviewers reflections on what constitutes best practice and why these dimensions are important in the consideration of decisions that impact employment arrangements.

3.5.1 Adherence to Legal, Policy and Procedural Standards

Adherence to legal, policy, and procedural standards in employment and disciplinary matters is essential to ensure decisions are legally defensible, procedurally sound, and protect the organisation from litigation or regulatory action. Employment decisions must comply with relevant legislation including Fair Work laws, anti-discrimination legislation, work health and safety obligations, privacy requirements, and sector-specific regulations such as Working with Vulnerable People legislation and mandatory reporting duties. Following established policies and procedures consistently ensures that employees receive procedural fairness and natural justice, reduces the risk of successful unfair dismissal claims, and demonstrates that the organisation has met its duty of care to all parties.

Non-compliance with procedural requirements—such as failing to conduct proper investigations, not providing opportunities to respond to allegations, or making decisions outside delegated authority—can render otherwise justified employment actions unlawful or unenforceable, potentially requiring reinstatement, compensation, or exposing the organisation to reputational damage. Additionally, adherence to standards ensures decisions withstand scrutiny from industrial tribunals, courts, oversight bodies, and public examination, while maintaining organisational integrity and demonstrating to staff, stakeholders, and the community that the organisation operates fairly, transparently, and within the rule of law. Proper documentation of compliance with each procedural step creates an auditable trail that supports the legitimacy of decisions and protects decision-makers who have acted appropriately within their authority.³³

³³ The ideas discussed in section 3.5.1 are partly synthesised by consideration of the following - *Fair Work Act 2009* (Cth), Part 3-2 Unfair Dismissal; *Work Health and Safety Act 2011* (Cth); *Privacy Act 1988* (Cth); State and Territory Working with Children Check legislation; Australian Human Rights Commission, *National Principles for Child Safe Organisations* (2019).

3.5.2 Fairness and Consistency

Ensuring fairness and consistency across employment decisions requires a structured approach that applies organisational frameworks, policies, and procedures equitably to all matters, regardless of the individual's position, tenure, relationships, or personal characteristics. Decision-makers must guard against bias—whether conscious or unconscious—by using standardised assessment criteria and documented decision-making processes. Consistency demands that similar conduct in similar circumstances attracts comparable responses, creating clear precedents while allowing flexibility for genuinely distinguishing factors such as severity, context, prior history, and mitigating circumstances.

Conflicts of interest must be actively identified and managed, with decision-makers recusing themselves where personal or professional relationships could compromise objectivity or create perceptions of bias. Procedural fairness requires that employees are provided natural justice—including being informed of allegations, given opportunities to respond (except where immediate safety concerns override this), and having access to support or representation—while maintaining appropriate confidentiality for all parties involved.

Regular audits of employment decisions, training for decision-makers on bias recognition and clear documentation of the rationale behind decisions all contribute to a system that is transparent, defensible and maintains organisational integrity and staff confidence in the process.³⁴

3.5.3 Consideration of Seriousness of Harm

When evaluating the seriousness of harm in child sexual abuse matters to inform employment decisions, decision-makers should consider both the nature of the conduct, and the level of risk posed. Direct perpetration of abuse, grooming behaviours, or active concealment of abuse represent the most severe category, typically warranting immediate suspension and termination upon substantiation.

Enabling behaviours—including failure to report known or suspected abuse, creating environments that facilitate abuse, or retaliating against reporters—while distinct from direct perpetration, constitute serious breaches of duty requiring significant consequences. Less severe but still concerning conduct includes inadequate supervision, failure to follow safeguarding protocols, or poor judgment around child safety. The assessment must weigh the immediacy of risk (i.e., does the person have current access to children?), the credibility and recency of allegations, and applicable legal obligations, while adhering to the fundamental principle that child safety is paramount.

Whilst employment decisions should be made on the balance of probabilities, the application of the Briginshaw test often requires a very high evidentiary standard. This evidentiary standard is focused on the rights of the employee but fails to recognise that sometimes protective action based on credible allegations is both appropriate and necessary, to protect children. This means that in appropriate circumstances suspension or temporary reassignment of duties should be considered, based on the magnitude of the risk and whether there are facts which indicate the risk, either present or future, is such that protective action needs to be taken.

This approach was adopted in the decision of *Isles v Nelissen* (2022) where the primary judge noted that the standard of proof about whether abuse has occurred in the past, was a fact-finding task determined on the balance of probabilities and requiring empirical evidence.³⁵ The judge in that case observed, however, that the question of whether there is an unacceptable risk was not subject to the

³⁴ The ideas discussed in section 3.5.2 are partly synthesised by consideration of the following - *Fair Work Act 2009* (Cth), s 387(a, h); Australian Human Rights Commission, *National Principles for Child Safe Organisations* (2019) (Principle 4, 9); Standards Australia, *8001-2021 Fraud and Corruption Control Standards* (2021).

³⁵ *Isles v Nelissen* (2022) FLC 94-092 [85-6], this decision was upheld on appeal.

same standard of proof, noting that unacceptable risk could be determined through a predictive and prospective analysis into the future on which past conduct may have weight.³⁶

3.5.4 Timeliness of Response

The timeliness of employment decisions in child safety matters must balance the urgency of protecting children from harm with the need for procedural fairness and proper consideration of evidence. Where credible allegations indicate an immediate or ongoing risk to children’s wellbeing, decision-makers must act swiftly—potentially within hours or days—to remove the employee from child contact through suspension or redeployment, recognising that delay in such circumstances prioritises process over protection and is indefensible.

However, timeliness does not mean haste without due consideration; initial risk-based decisions (such as suspension) should be made promptly on available information, while final employment determinations following investigation require sufficient time to gather evidence, allow the employee to respond, and properly weigh all factors. Unnecessary delays, whether through administrative inertia, avoidance of difficult decisions, or waiting for absolute certainty, can perpetuate risk, undermine organisational credibility, cause secondary trauma to victims and reporters, and signal that child safety is not genuinely prioritised.

Conversely, rushed decisions without adequate information or procedural fairness may be overturned on appeal, resulting in worse outcomes including potential reinstatement of unsuitable employees. Any decision-making framework should therefore establish clear timeframes for each stage: immediate risk assessment and protective action, commencement of investigation, regular reviews of suspension decisions, and final determination within reasonable timeframes that reflect the complexity of the matter while avoiding undue prolongation. Throughout, communication with all parties about expected timelines and any delays demonstrates respect for the process while maintaining the primacy of child safety.³⁷

3.5.5 Record Keeping

Comprehensive and accurate record keeping is essential to employment decision-making, providing an evidential foundation that demonstrates procedural fairness, supports the rationale for decisions and ensures accountability and organisational learning. Detailed documentation should capture all stages of the process, including initial reports or allegations, risk assessments and immediate actions taken, investigation activities and evidence gathered, correspondence with the employee and their responses, deliberations and options considered by decision-makers, the rationale for the final decision including how evidence was weighed and any reviews or appeals.

Quality records serve multiple critical purposes: they demonstrate compliance with legal and procedural requirements if decisions are challenged in industrial tribunals or courts; they provide transparency and accountability by showing that proper process was followed and decisions were evidence-based rather than arbitrary; they protect decision-makers who have acted appropriately by creating a contemporaneous account of their reasoning and actions; they enable organisational learning by identifying patterns, systemic issues, or gaps in policy that require attention; and they ensure continuity and consistency when multiple people are involved in managing a matter over time. Poor or absent

³⁶ This ideas discussed in section 3.5.3 are partly synthesised by consideration of the following - *Fair Work Act 2009* (Cth), s 387 and 396; Australian Human Rights Commission, *National Principles for Child Safe Organisations* (2019) (Principle 1, 1.5, 5, 6); Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017), Volume 7 and relevant recommendations on employment screening and suitability.

³⁷ The ideas discussed in section 3.5.4 are partly synthesised by consideration of the following - *Fair Work Act 2009* (Cth), s 387(f); Australian Human Rights Commission, *National Principles for Child Safe Organisations* (2019) (Principle 6 and 6.3); Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (2017), Volume 7.

record keeping—such as undocumented conversations, missing file notes, unclear decision rationales, or gaps in the chronology—creates vulnerability to legal challenge, makes it difficult to defend otherwise sound decisions, prevents proper oversight and quality assurance and can result in inconsistent treatment of similar matters because precedents cannot be reliably identified.

Records must be maintained securely with appropriate confidentiality protections. These protections do not mean that these records should not be shared among relevant institutions tasked with safeguarding children. The records should be sufficiently detailed so that an independent reviewer can understand what occurred, why decisions were made and whether proper process was followed. This helps to ensure that the organisation's handling of serious employment matters can withstand scrutiny and demonstrates the organisations commitment to procedural fairness, safety, and integrity.³⁸

3.5.6 Transparency and Investigation Quality

High-quality investigations and transparent decision-making processes are fundamental to ensuring employment and disciplinary decisions are credible, defensible, and maintain confidence in the integrity of the organisation's response to serious matters. Quality investigations require appropriately skilled and independent investigators who gather evidence systematically, interview relevant parties fairly, consider all available information objectively, test allegations against evidence rather than assumptions, and document findings thoroughly in a manner that can withstand external scrutiny.

Poor quality investigations—characterised by inadequate evidence gathering, interviewer bias, failure to pursue relevant lines of inquiry, or predetermined conclusions—undermine any subsequent employment decision regardless of its substantive merit, and may result in legal challenges, regulatory criticism, or unsafe outcomes if unsuitable employees are retained or appropriate action is not taken. Transparency, while respecting necessary confidentiality for those involved, means clearly communicating the process being followed, the standards being applied, how decisions will be made and by whom, and providing clear rationale for outcomes that demonstrate the evidence and reasoning underpinning any conclusions.

Assessing whether these principles are upheld requires examining whether investigators are appropriately qualified and free from conflicts of interest, whether terms of reference are clear and appropriate, whether all relevant evidence has been identified and considered, whether findings are supported by evidence rather than speculation, whether procedural fairness has been afforded at each stage, and whether decision-makers can articulate a clear, logical connection between investigation findings and employment outcomes. Transparency and quality together ensure that decisions can be explained and justified to affected employees, oversight bodies, courts, and the broader community, demonstrating that the organisation takes its responsibilities seriously and operates with integrity even in the most difficult circumstances.³⁹

3.5.7 Other Factors

The Review notes that its assessment of the matters of concern is based on the response and actions of the State Service from the moment the relevant agency would have become aware of the matter

³⁸ The ideas discussed in section 3.5.5 are partly synthesised by consideration of the following – *Privacy Act 1988* (Cth); Office of the Australian Information Commissioner, *Australian Privacy Principles*; Fair Work Commission, *Practise note: Unfair dismissal proceedings*; National Archives of Australia, *Information Management Standard (2015)*; Australian Human Rights Commission, *National Principles for Child Safe Organisations (2019)* (Principle 1.6, 7, and 10); Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report (2017)*, volume 8.

³⁹ The ideas discussed in section 3.5.6 are partly synthesised by consideration of the following - Australian Human Rights Commission, *National Principles for Child Safe Organisations (2019)* (Principle 1 and 6); Standards Australia, *8001-2021 Fraud and Corruption Control Standards (2021)*; *King v Freshmore Pty Ltd (2000)*, finding of unfair dismissal where investigations were inadequate or biased.

either through the COI proceedings and/or receipt of a section 34A referral and/or publication of the final report. The Review commentary in this section does not take account of past failures/issues or gaps in the management of the conduct of the employee other than where this is relevant in the context of how it has contributed to the State Service's ability to act in a timely and effective manner in dealing with any conduct issues following the COI.

The Review has also determined not to comment on the response by agency or individual case as a number of matters remain open. Further, the Review notes that the COI determined to protect the identity of individuals; therefore, the Review's approach is consistent with the approach taken by COI. Other reasons for the review not providing individual case by case commentary are:

- To protect the identity of victim survivors, people with lived experience and complainants who demonstrated courage to come forward with their concerns.
- To protect the integrity of ongoing legal and administrative processes; noting that not all matters have been closed out.

Finally, the Review notes that the purpose of the chronology analysis was for it to recommend actions to address non-compliance with policy, employment frameworks or legislation and the Review has undertaken analysis of the chronology of actions with this in mind.

3.6 REVIEW OBSERVATIONS

This section of the Review's report summarises the Review's observations emerging from its analysis of the detailed chronology of actions undertaken by agencies and authorities in response to matters of concern. The Review's examination and analysis of documents provided to it was undertaken based upon the framework above. Given this section of the Review's report is intended to be deliberately qualitative in nature and noting that a number of processes are still ongoing, the Review's observations are thematic in nature and based upon observed patterns across the material it has examined.

The Review emphasises that not all its observations applied to every case and also that not all cases could be analysed through every dimension of the framework. This was because based upon the nature of the matter, some dimensions may or may not have been relevant. For example, there are a number of cases where an investigation into the matter of concern was not required. Therefore, the Review will not have had any observations in relation to investigation quality in relation to that particular case.

The Review has also assumed the accuracy of the material supplied to it. The Review notes that it did not have investigative powers. For example, it has accepted briefings provided to the Secretary that outline that a process may have been paused due to the medical incapacity of key witnesses or the complainant. The Review has assumed that this information is correct and has not requested that evidence be provided in each case.

The Review notes that its approach to the examination and analysis is to identify trends, insights and lessons rather than to generate statistical significance.

3.6.1 Adherence to Legal, Policy and Procedural Standards

In examining and analysing the individual matters of concern and/or disciplinary processes the key underpinning legislation of relevance is the SSA. Section 9 of the SSA outlines the Code of Conduct for employees in the State Service emphasising the honesty, integrity, care, diligence, respect and compliance with applicable laws.⁴⁰ Employees are also expected to maintain confidentiality, avoid conflicts of interest and use government resources responsibly. Section 9 has fifteen different provisions

⁴⁰ *State Service Act 2000* (Tas), s 9.

encapsulating these requirements and while a majority of the code of conduct requirements apply during the course of employment, there are important exceptions including the following:

- An employee **must at all times** behave in a way that does not adversely affect the integrity and good reputation of the State Service.⁴¹
- An employee must behave honestly and with integrity **in the course of State Service employment.**⁴²

At the outset the Review notes that across the cases analysed, agencies struggled with the application of the Code of Conduct requirements where the conduct of concern occurred outside of employment. This is particularly relevant to cases of child sexual abuse and/or grooming where the inappropriate behaviour occurred primarily outside of the course of employment but where the relationship between the perpetrator and the child may have been formed during the course of employment. Briefing documents examined by the Review highlighted the significant challenges faced by Heads of Agencies in matters where the conduct occurred outside the course of employment. In such matters, the Heads of Agencies either had to rely on the existence of a professional conduct policy that clearly outlined requirements to maintain appropriate boundaries in professional relationships (for example teacher and student) and/or form a reasonable belief that there was a satisfactory nexus between the alleged conduct and demonstrating that it had adversely affected the integrity and good reputation of the service. Given the historical nature of some cases, it was highly likely that a professional conduct policy may not have been in place. In such cases, the Head of Agency (HoA) may have limited choice but to make a determination that a breach of the code of conduct had not occurred. While such cases clearly demonstrated compliance with existing provisions of the SSA, the Review notes that contemporary standards and practice across other jurisdictions suggest better alternative approaches.

Linked to the above, a significant proportion of code of conduct matters identified potential breaches of two provisions of the Code of Conduct namely:

- An employee must act with care and diligence in the course of State Service employment.⁴³
- An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.⁴⁴

It is noted that across the cases analysed, the Review struggled to understand what thresholds had been applied in relation to each section of the Code. As the Review was tasked with identifying that policy and/or procedural standards had been met, it had expected that Heads of Agencies would have been provided with detailed guidance in relation to the thresholds that applied to Code of Conduct breaches. However, the Review was advised by multiple agencies that no such guidance exists and therefore it was left to the risk tolerance level of each individual HoA to determine if a particular event should trigger a particular step in the disciplinary process. The articulation of clear standards relating to expected conduct across different agencies and authorities is important.

In the absence of detailed guidance around acceptable standards, the Review observed that briefing notes often relied on merely restating the provisions of the relevant ED, without presenting a detailed and considered rationale for the proposed recommendation for consideration by the relevant delegate. For example, multiple briefs sighted by the Review outlined that the HoA must take into consideration a range of factors prior to suspending an employee with a detailed list presented to the relevant delegate drawing on the contents of the relevant ED. As no detailed analysis was presented to support the

⁴¹ *State Service Act 2000* (Tas), s 9(14).

⁴² *Ibid*, s9(1).

⁴³ *Ibid*, s9(2).

⁴⁴ *Ibid*, s9(14).

recommended decision, the Review had to undertake its own interpretation of which set of factors had contributed to the recommended actions.

Separate to the above, the Review was surprised to find different approaches to the drafting of 'Minutes to the Secretary' in relation to Code of Conduct matters. Practice across agencies differed considerably. The Review saw examples where Heads of Agency had received detailed guidance that outlined the key issues identified in the investigation reports and provided a detailed analysis of issues. In other instances, the HoA was provided with relevant materials to arrive at their determinations based upon their own analysis and had to prepare a record of the rationale supporting their decision on each matter. This process is resource intensive for Heads of Agencies confronted with a significant volume of Code of Conduct matters due to the proceedings of the COI. The Review understands that this reflects the capability and resourcing constraints across agencies.

A repeated trend across investigation reports was employees responding in the course of investigation interviews to note that although their name appeared on a minute or briefing document that endorsed/approved a particular course of action, they were not accountable for the advice provided as they were not responsible for its substantive drafting. The Review has found this perplexing. The Review notes that responsibility and accountability for work is controlled via a chain of command within all public sector organisations. The rationale for documenting decisions, with a request to review and/or endorse/approve is done on the basis that the person drafting the note is genuinely seeking considered advice/guidance/input/approval. It is the responsibility of both the person being requested to review the briefing note and the person finalising it to ensure that before it goes to the decision maker the endorsement/approval is not recorded unless both parties are satisfied with the contents and there is clear agreement. As demonstrated by multiple matters, lack of such agreement and thorough process has resulted in unnecessary challenges to securing accountability for decisions across the service as individuals have denied the intent behind their endorsement.

The Review also wishes to highlight a few matters that while not representing broad trends across the service, nevertheless, did present complex issues that are worthy of reflection.

Given the multiplicity of matters, agencies have noted the significant impact that the volume of matters had on the resourcing within their HR functions. A particular issue has been the management of conflicts of interest, given that in some agencies, HR personnel were subject to disciplinary processes as a consequence of adverse findings or references within the COI report. This meant that agencies had to identify either alternative resourcing and or create alternative positions to ensure both business continuity and appropriate management of COI matters. Further, the Review notes that only a HoA has the delegation to make a determination to terminate an employment relationship. Where the HoA was unable to participate in such a determination due to a conflict of interest, an industrial risk would have arisen. While the issue of management of conflicts of interest is central to the dimension of fairness and consistency in decision making, the Review has dealt with it here because it illustrates the typical complexity encountered by delegates tasked with decision making on COI matters as they sought to balance legislative requirements (where authority and/or delegations vested) in particular roles vs meeting other principles.

Finally, the COI made multiple referrals in relation to the same individual outlining multiple allegations. Given these referrals were issued at different times, relevant disciplinary proceedings also commenced at different times. In a few cases, the Review observed that employees resigned as a consequence of determinations and/or processes relating to earlier allegations thereby impacting progress on investigations related to subsequent referrals. This at least in part explains the resulting outcomes from disciplinary processes.

3.6.2 Fairness and Consistency

Consistency in the application of organisational frameworks, policies and procedures is critical to ensuring fair and equitable outcomes. The Review notes that sanctions in relation to breaches of the Code of Conduct are determined on the basis of provisions contained within the SSA and the *Police Service Act 2003* (Tas). Section 10 of the SSA outlines a list of sanctions that maybe applicable where

a breach of the Code of Conduct has occurred.⁴⁵ Based on the provisions of the SSA which applied to a majority of cases, the determination of a breach of the Code of Conduct must be based on an investigation into the matter (as per current provisions of ED 5 (ED5)).

The Routine Disclosure information released by DPAC outlines the types of outcomes achieved from disciplinary processes. As per the July and August 2025 Routine Disclosures, only a few employees received a sanction of termination of employment after investigations established that a breach of the Code of Conduct had occurred.⁴⁶ The Routine Disclosure information also identified that a number of employees resigned and/or their contracts expired either during an ED5 process and/or prior to its commencement. A majority of alleged perpetrators of child sexual abuse who were subject to an ED5 process (a procedure that enables the investigation and determination of whether an employee has breached the State Service Code of Conduct) were either:

- Convicted of a criminal charge
- Terminated due to a breach determination
- And/or resigned/had their contract expire during and/or prior to the commencement of an ED5 process.

Of the ED5 processes that have concluded so far, there has only been one case where a sanction other than termination has been applied in relation to a breach determination for an alleged perpetrator. These outcomes are consistent with the severity of the allegations and associated breaches that were identified by the COI and examined by the Review.

The outcomes for the alleged perpetrators broadly mirror the outcomes for non-perpetrators of child sexual abuse. In a significant proportion of cases involving non-perpetrators, employees chose to leave the service during and/or upon completion of an ED5 process. In both cohorts, this was a decision made by the individual, not the employing agency.

The Review notes that the SSA provides for a range of sanctions including counselling, reprimand, deductions from salary, reassignment of duties, reduction in classification and termination. The Review found few instances where sanctions other than termination were applied, and most of these were clustered within one agency. It is clear from available information, that agencies would benefit from detailed guidance on the key thresholds for determining sanctions. Employees across the State Service would also benefit from understanding these guidelines.

The Review noted that in a few historical cases, the final determination of sanction was based on breach determinations that relied on policies and frameworks going back in time. The delegates responsible for the determinations have noted that they have relied on investigation techniques and outcomes as well as policy settings that have evolved considerably over time. In a very small number of cases the delegate has observed that a different outcome may have been achieved using contemporary frameworks, investigation techniques and policies. In these instances, the Review concurs with the delegates assessment of the anachronism. It has emphasised the need for detailed guidelines outlining thresholds for breaches and sanctions so that fairness and consistency can be maintained over time and variations explained where necessary.

A key factor in achieving fair and consistent outcomes is ensuring procedural fairness. The right of an employee to respond to allegations and evidence (or the right be heard) is enshrined in law and is aimed at ensuring a fair outcome. In normal circumstances this should be part of a rigorous investigation process, which is often also effective in differentiating between issues of a systemic nature and issues related to individual conduct.

⁴⁵ State Service Act 2000 (Tas), s 10.

⁴⁶ [Department of Premier and Cabinet](#) – Routine Disclosures, as at July 30 and August 30 2025.

The Review cannot help but note that had historical investigations been rigorous, the current public criticisms and delays caused by poor quality investigations may have been avoided. The Review is of the firm view that a well conducted investigation which carefully examines a range of documentary evidence and seeks to engage properly with multiple witnesses is very worthwhile. In the case of the COI, such investigations have revealed a range of systemic and individual conduct issues that would otherwise have gone unnoticed. Investigation reports relating to historical cases analysed by the Review, often revealed gaps in supervisory capability, lack of clear trigger points in stated policy for disciplinary action and poor practice and follow up on conduct issues. Without proper disciplinary investigation it is difficult for the system to understand the character and risks presented by serial perpetrators and to learn lessons from historical failures.

Finally, the Review wishes to highlight that in several high-profile cases, the provision of procedural fairness has meant that the progress of disciplinary processes has been considerably delayed. The Review observed multiple cases where the person of interest was not able to participate fully in an investigation due to medical incapacity and/or being on workers compensation related leave. The material provided in State Service records showed that in only a few instances was there any action taken to have these individual's medical incapacity assessed.

In contrast to the above, other documentary evidence shows that agencies had to seek central guidance on how to proceed on such cases. While some investigation processes have continued to progress in the absence of the employee from the workplace, bringing them to conclusion without the participation of the employee subject to the allegations has been challenging.

Several agencies responded to the Reviews examination of chronologies highlighting that the current EDs do not provide guidance on managing the interface between the following factors:

- conducting an investigation in a timely manner
- ensuring procedural fairness while adhering to the capacity restrictions of an employee as outlined in their workers compensation medical certificates and
- conducting an investigation in a trauma-informed manner.

As stated earlier, the Review has observed firsthand the challenges faced by Heads of Agencies as they have tried to uphold accountability using the current provisions of the SSA and the EDs. The Review makes further observations in relation to this matter in the Employment Framework chapter.

3.6.3 Consideration of Seriousness of Harm

The Review was tasked with examining and analysing the matters of concern with a view to reviewing the efficacy of decisions, in relation to the seriousness of harm.

The Review requested agencies and authorities to provide copies of any frameworks they may have utilised when evaluating seriousness of harm in individual cases of potential misconduct. The Review received a variable response that highlighted ambiguity regarding the prioritisation of child safety when compared to other considerations that informed actions taken by agencies. The Review makes the following detailed observations in relation to this dimension.

The Review had expected three types of responses from decision-makers tasked with making decisions in relation to matters of concern around employee conduct. Firstly, the Review expected that agencies would take immediate action to address the risk to children by suspending individuals facing allegations of sexual assault or abuse, particularly after receiving referrals or hearing statements from the COI. Secondly, the Review anticipated agencies would refer individuals subject to allegations to the relevant regulatory and law enforcement authorities so that disciplinary and other accountability mechanisms could proceed. Thirdly, the Review expected that agencies would take prompt action to initiate disciplinary proceedings to bring individuals to account. This section focuses on the first of these two considerations, while the section on timeliness deals with the third. In addition to suspension, the Review expected that for those employees subject to allegations that may have constituted negligence

of duties, the actions taken may include re-assignment of duties until the matter was fully investigated and a determination of the breach of the code of conduct had been reached.

While suspension of employees subject to child sexual abuse allegations occurred promptly in most cases, the Review identified instances where agencies withheld disciplinary action until the COI report was completed. This limitation in action, despite the presence of allegations, was partially attributed to legal advice received by the agency. The Review also observed that once proceedings were initiated, agencies implemented appropriate measures such as suspension, reassignment, or transferring employees to non-child related roles.

The absence of a standard framework for assessing seriousness of harm led to inconsistencies in how agencies evaluated risk and determined appropriate responses. In one case, an agency applied the concept retrospectively, asserting that since no breaches had been found, no harm had occurred. This approach diverges from the Review's expectation that seriousness of harm should be assessed proactively, considering both the potential for future misconduct and its likely impact, among other factors.

The approach to evaluation of the seriousness of harm also varied considerably within the same agency. The Review found examples where decisions were based on the perceived lower severity of allegations, lack of direct contact between the accused employee and children and prior counselling of the employee.

In contrast, in another case, a suspension decision was recommended based on a list of factors that included the nature of the offence, and the consequences for other employees, as stipulated by current ED 4 provisions. The briefing noted that the disruptive behaviour of the employee was likely to persist and potentially interfere with ongoing investigations, prompting the recommendation for immediate suspension. Despite a history of allegations relating to inappropriate conduct involving children, the Review was concerned that more emphasis appeared to be placed on the impact on other staff rather than child safety.

Additional challenges arose from briefing notes that, although acknowledging risk assessments should be forward-looking, subsequently evaluated risk based on operational changes rather than the nature or severity of alleged conduct. These briefing notes provided no substantive evidence to support claims of reduced likelihood for recurring offences following operational improvements.

The Review recognises that the introduction of Tasmania's Reportable Conduct Scheme mitigates several of these risks. This scheme, which incorporates mandatory reporting and a broad definition of reportable conduct - including both criminal behaviour and sexual misconduct - serves to increase agency capability and awareness of the profound harm caused by child sexual abuse. It also emphasises the necessity of prompt, decisive action to protect children. The Review intends to propose further changes in subsequent chapters, informed by the observations and concerns set forth above.

The Review commends agencies that referred the employee facing the allegations immediately to a range of regulators including AHPRA, TRB, RWVP and TASPOL. The Review notes that in a majority of instances and certainly in the agency handling the largest volume of cases referrals occurred promptly and were accurate.

3.6.4 Timeliness of Response

The Review examined the timeliness of responses by agencies to allegations of child sexual abuse, focusing on the period from initial notification/awareness through to final determination and the imposition of any sanctions. The Review notes that agencies would have become aware of child sexual abuse allegations and conduct as the COI progressed its work, including through submissions and evidence they were asked to provide, witnesses who were called and gave evidence, referrals they were sent including draft chapters. It is certainly clear that agencies were aware of certain matters of concern due to prior reviews. For example, the prior reviews at the DOE would have alerted DECYP

that there were at least 21 prior matters of concern that may be subject to further examination by the COI.

In examining and analysing the timeliness of responses, it is important to understand the following contextual factors of relevance:

- Although the COI had been issuing section 34A referrals from 2021, as noted, a majority of these were issued to the DCT which was dis-established in 2022. The referrals issued in 2021 related to matters of concern involving the conduct of approximately a dozen individuals.
- DOE was the key recipient of section 34A referrals in the first half of 2022. DECYP received referrals from the COI upon its establishment in the second half of 2022 from about October 2022 onwards. Machinery of government changes meant that the referrals made in 2021, and the first half of 2022 were transferred to DECYP from both DOE and DCT upon its establishment. A few were also transferred to TASPOL and DOH.
- As already noted, section 18 referrals were not shared by the COI with the State Service. Therefore, aside from the COI hearings, submissions and draft chapters, agencies would only have become aware that there were matters of concern that required prompt action via the referrals.
- Notwithstanding the above, regulatory and law enforcement agencies such as Tasmania Police, TRB and the RWVP/AHPRA received referrals throughout 2021, 2022 and 2023. However, with the exception of TASPOL, they are not responsible for the initiation of disciplinary proceedings. This responsibility rests with the employing agency. Their role in relation to responding to the referrals they received is discussed in the next section.

The Reviews examination and analysis of the timeliness of response therefore needs to factor in when the agency or authority would have first become aware of the matters of concern and what it did to respond to them. Based on information submitted to the Review, while agencies were keen to proceed with disciplinary action as soon as they received information via a COI hearing, they were limited in their responsiveness due to the following legislative provisions:

- The Commission of Inquiry Act section 21 - Admissibility of evidence in other proceedings
- The Commission of Inquiry Act section 33 - Offences, particularly sections 33(3) and 33(4)
- The SSA section 10(3) which specifies that procedures must be established for "...the investigation and determination of whether an employee has breached the Code of Conduct", and
- Employment Direction No. 5 - Procedures for the Investigation and Determination of Whether an Employee has Breached the Code of Conduct.

DOH has noted that it sought advice from the Office of the Solicitor-General (OSG) regarding what steps the HoA could take based on the information that they heard or read as Commission evidence. DOH has noted that consistent with the advice it received in relation to sections 21 and 33 of the COI Act, where documented evidence was not available, no further action was taken pending the confirmation of evidence and findings in the Commission's final report. However, this was not the case across all matters. In some cases, agencies were determining sanctions as early as 2023, having commenced and concluded some investigations following COI hearings.

Accordingly, the assessment of the timeliness of response was at least dependent on the nature of the matter at hand, what information was provided at the hearings, its admissibility or otherwise in disciplinary proceedings and when the matter was notified to the relevant employing agency. What is clear is that the advice from the OSG, certainly had an impact on when a response occurred on some matters as per submissions from at least two agencies received by the Review.

Noting this, the Review also wishes to highlight that even if the analysis of the timeliness of the response was to be based on the date of the agency first becoming aware of the matter, in the case of some agencies (DCT and DOE) these processes or actions were truncated as they ceased to exist. Their successor agencies DECYP, DOH and TASPOL subsequently took carriage of these matters leading to a delay particularly as investigation methodology and approach differed across agencies. The Review also notes that in a few instances recipients of section 34A referrals in predecessor agencies were subject to disciplinary proceedings themselves as a consequence of concerns identified through the COI.

A majority of matters were referred out by the COI in 2022 and then a significant proportion in 2023. Therefore, it is to be expected that not all disciplinary proceedings would have occurred and/or concluded by the time that the COI report was finalised and released in September 2023. However, the Review notes that at least one agency was able to conclude disciplinary proceedings on matters that were within its sole purview prior to the finalisation of the COI report.

The Review also recognises that there are competing considerations in relation to whether timeliness should be the main driver for an agency's response. The Review agrees that acting swiftly to reduce risk of harm, for example through suspension, is important. However, the approach to **how** you conduct a disciplinary investigation may require consideration of factors other than timeliness. For example, where matters of concern involved the conduct of multiple individuals and multiple allegations over a period of time, in order to fully understand the nexus between these allegations there may be benefit in ensuring that disciplinary and/or criminal proceedings follow a carefully considered sequence. Of course, the risk of delaying investigations after public hearings have occurred is that evidence could be tampered and witnesses influenced. However, these are considerations that require careful balancing and trade-offs and therefore by their very nature are not swift decisions.

Timeliness encompasses both the immediate actions taken upon receiving an allegation and the duration of subsequent investigative and disciplinary processes, including the time required to establish whether allegations are substantiated and to determine appropriate sanctions if a breach of the code of conduct has occurred.

The Review identified multiple factors that significantly impacted response timeliness across agencies in relation to the second of these considerations. These included:

3.6.4.1 Resourcing Constraints

A critical issue was the severe resource constraints affecting agencies' capacity to conduct investigations. With the COI progressively referring matters to agencies, entities experienced cumulative effects from managing multiple concurrent investigations. This created a substantial bottleneck as agencies competed for limited investigators in the market, resulting in considerable delays in sourcing appropriate expertise to conduct code of conduct breach investigations. The Review was advised that while there were a small number of investigators operating across the State, not all were experienced in having carriage of matters with allegations of child sexual abuse or matters arising from National Redress Applications. This, combined with the increase in numbers of matters, contributed to an overall lack of timely investigations.

Further complications arose when HR teams themselves became subject to allegations or potential breach investigations. The necessary management of conflicts of interest required reassignment of work to other units within HR functions that lacked both the expertise and training to undertake this specialised work. The dual impact of reassignment to address conflicts and the capability gaps in receiving units generated additional delays in overseeing these critical processes, as this work fell outside their normal operational scope.

3.6.4.2 Absence of Guidelines and Frameworks

The absence of clear guidance and procedural frameworks contributed significantly to delays throughout the process. The EDs provided no clarity regarding appropriate timeframes for preliminary assessments or the distinction between such assessments and full investigations. This lack of definition resulted in preliminary assessments that resembled full investigations in scope and duration. Without prescribed time thresholds in the EDs, there were no mechanisms to drive timely responses. The Review observed considerable variation in the quality and format of information presented to the HoA's for decision-making, with no centralised templates to ensure consistency. Secretaries managing high volumes of cases devoted substantial time to working through the investigation report and documentary evidence and personally documenting decisions. The Review noted that all decisions, from suspension through to termination, escalated to HoA level, placing a disproportionate burden on senior leadership. While in the case of one agency this was a deliberate decision by the HoA to take personal accountability for securing outcomes, it nevertheless created unforeseen challenges as the volume of cases multiplied.

3.6.4.3 Access to Records

Access to records presented another substantial barrier to timely resolution of investigations and code of conduct breaches. Historical record-keeping practices were inadequate, and in the case of AYDC, records remained stored at the facility itself. The Review found it difficult to comprehend why transferring or digitising these records for disciplinary processes often required extended periods, including in one record an indication that this took two years.

3.6.4.4 Refusal by Witnesses to Participate in Proceedings

The investigative processes faced additional impediments when multiple witnesses refused to participate. With no mechanism to compel witness participation, investigators experienced delays in securing statements necessary to progress investigations. Medical incapacity further complicated matters, as both alleged perpetrators and other parties took workers' compensation or medical leave, preventing timely progression of investigations and determinations regarding code of conduct breaches.

3.6.4.5 ED5 Provisions

The Review also found that the requirements within the current ED5, which state that an agency 'must' investigate matters also created unnecessary issues particularly where the individual may have agreed to a breach when presented with an allegation.

3.6.4.6 Intersection With Other Proceedings

Finally, the Review notes that a few matters involved allegations of a criminal nature. Where this was the case, agencies would have been advised by TASPOL not to proceed with disciplinary investigations while they pursued the allegations of criminal conduct.

However, the Review notes that TASPOL has stated that pausing disciplinary proceedings whilst a criminal investigation is progressed is not always advisable. Therefore, the Review notes that in future instances, agencies should seek guidance and formal notification from TASPOL on Code of Conduct matters and proceedings prior to making a determination on whether or not to progress a disciplinary investigation.

The Review also notes that the restrictions in legislation with regards to using investigation reports generated through different mechanisms in Code of Conduct processes (such as misconduct investigations under the Reportable Conduct scheme) are unhelpful. The Review makes recommendations regarding these matters in subsequent chapters.

3.5.5 Record Keeping

In addition to the issues highlighted above, the Review notes that investigations into Code of Conduct issues have been hampered by lack of proper records and record keeping over time. In particular, where allegations of alleged misconduct spanned multiple years, the Review observed that investigators struggled to access documentary material including performance records, file notes, briefing notes that provided a consolidated view of 'case files'. In a few odd instances, file notes on particular incidents were drafted a few years after the incident.

While agencies have noted that records were destroyed and/or damaged due to variety of factors, the Review was concerned by limited record keeping in facilities where the risk to children was the most significant. Mobility of staff across agencies and machinery of government changes over time were also unhelpful in developing a complete account of allegations relating to incidents that had occurred over time. The Review identified that the best safeguards are good record keeping, routine analysis, monitoring of trends and reporting.

3.5.6 Investigation Quality and Transparency

The Review has identified a range of issues with investigations in relation to Code of Conduct breaches, including the challenge of securing investigators with the relevant skill sets, lack of witnesses and documentary evidence, lack of detailed guidance that differentiates between preliminary assessments and investigations in the EDs.

In addition to these factors, the Review also notes that the lack of detailed guidance in relation to specific provisions of the Code of Conduct means that when investigating breaches, investigators often relied on having to provide their own explanation in relation to what they believed constituted a breach of the code of conduct. For example, in assessing whether an individual had met the code of conduct requirements to exercise care and diligence in their role, the investigators had to define what they meant by 'care' and 'diligence'.

As there is no consistent template for drafting investigation reports, the format and quality of reports varied considerably. The Review often read lengthy investigation reports, which while comprehensive in detail, lacked careful analysis that tied the allegations to potential breaches of the Code of Conduct and the evidence in a succinct and clear manner. The Review expected to see a clear outline of the allegations being investigated, the scope of the investigation, the documentary and witness information that was relied upon, the transcripts from interviews and then careful analysis of all the available information along with application of relevant legal principles. There was limited consistency on these matters across reports.

A final and significant point the Review wishes to highlight is that where certain entities had a clustering of Code of Conduct issues, the Review was surprised to find investigation reports that had not fully considered the credibility of witnesses. While the Review understands that Code of Conduct investigations follow a linear path and focus on one allegation, the Review notes that the HR personnel reviewing investigation reports with an awareness of other conduct investigations should have an understanding of the credibility of certain witnesses compared to others.

3.7 REFERRALS

The final aspect of the Review's analysis in this chapter includes an examination of the referrals made by relevant state authorities to relevant regulatory, integrity or law enforcement bodies during the COI hearings and upon publication of the final report. The Review was tasked with examining the timeliness and accuracy of such referrals. Separately, the Review's TOR also required it to examine the timeliness of responses by state authorities to matters of concern received by them from the COI. The Review notes that given that a majority of matters referred to individual employment agencies were also referred

on the same day to relevant regulatory and law enforcement bodies by the COI, the first part of its TOR was straightforward as all potential persons of interest or matters of concern were referred out by the COI as appropriate. Nevertheless, in examining individual case files, the Review has noted that agencies have continued to refer matters to regulatory bodies in a timely manner and in some cases adopting the approach to refer matters out as soon as possible. The Review did not observe any inaccuracies in referrals from agencies and authorities.⁴⁷

The Review received detailed chronologies and data sets in relation to referrals received by the TRB and TASPOL. The Review also received the JRRT data set from DOJ which contains details of all persons of interest and the status of the disciplinary processes against them as well as the status of their professional registrations. The JRRT data set therefore includes details on all section 34A referrals sent by the COI to relevant regulatory and law enforcement authorities including the RWVP. The Review did not receive detailed chronologies for actions undertaken by the RWVP but does have visibility of the status of registrations with the RWVP for employees and officers of interest. The insights from the Review's examination and analysis of these records aligned to its TOR, are detailed in the sections below.

3.7.1 Teacher's Registration Board

Records accessed by the Review from the TRB indicate prompt and decisive action upon receipt of notifications from the COI and/or as a consequence of matters of concern arising from the COI proceedings.

Of the referrals and/or other matters within the purview of the TRB, the Review notes that a majority were examined and appropriately addressed by the TRB as of August 2024. The detailed files indicate that, as of that date only two matters were currently active (i.e., with one having active monitoring flagged and the other related to a dormant registration status). In the case of the first employee, the TRB was awaiting the outcome of an investigation.

The Review observed that the TRB actively followed up and tried to co-ordinate intelligence in relation to referrals received by it through engagement with DECYP, TASPOL and the RWVP. This process appears to have improved following changes initiated by TRB leadership and DOJ to develop constructive relationships between the RWVP and the TRB. Separately, the TRB also notes that its relationship with DECYP has improved markedly since the passage of the new Education regulation, bringing much needed role clarity.

The Review notes that a number of persons of interest appeared to have a dormant registration status with the TRB, having not renewed their registration for several years and/or where the teaching registration was suspended following the suspension by the RWVP.

3.7.2 Tasmania Police

The Review received details on the outcomes of the referrals received by TASPOL in 2024. Section 3.4 of this chapter summarises these outcomes. The Review notes that subsequent to this reporting, the State Service appointed Ms Regina Weiss to assist with managing ongoing investigations in relation to child sexual abuse cases. The Review further notes that Taskforce Artemis was established by TASPOL in July 2024 as a dedicated specialist investigative response to child abuse allegations raised during the COI. Since the establishment of the taskforce, there have been a number of recent significant arrests relating to child sexual abuse.

Taskforce investigators operate in a trauma-informed and victim-centred way, prioritising the safety, wellbeing and rights of all individuals who have experienced sexual trauma. The Taskforce works in close partnership with other government agencies, Sexual Support Services, Arch, survivor advocates and national counterparts. The Review commends TASPOL on the work it has undertaken to progress

⁴⁷ The Review notes referrals occur at a point in time and its data was also based upon a point in time submission.

these investigations. The Review makes no further comment in relation to the referrals received by TASPOL.

3.7.3 Registrar for Working with Vulnerable People

As noted, the RWVP received a majority of the section 34A referrals issued by the COI. As the key regulator responsible for operation of a preventative mechanism to reduce the risk of child sexual abuse, the Registrar has a very important role to play.

Based on the JRRT data set shared with the Review and taking account of all employees and officers who were persons of interest, the Review notes that nearly a third of the risk assessments being undertaken by the Registrar were still pending as of August 2024. Based on the fact sheet provided to the Review by the Registrar, the aim of the scheme is to:

- Deter people from applying to work with children where they have criminal histories that could indicate they pose a risk of harm to vulnerable people.
- Prevent those with such criminal records who do apply from gaining positions of trust when working with vulnerable people.
- Establish consistent standards for background screening for working with vulnerable people and the ethical use of such information.

The Risk Assessment is a critical procedure that enables the Registrar to determine whether or not a person should be granted a registration to work with children. The Review notes the lengthy time periods to conclude risk assessments. The Review further notes that the JRRT data set clearly indicates that multiple individuals with pending risk assessments had significant prior allegations of child sexual abuse including some going back several years.

The Review also notes that there were a few instances where the TRB had reached an outcome while the RWVP risk assessment remained open, notwithstanding the fact that both notifications had occurred at similar times.

The Review has been advised that the reason risk assessments are still pending is because the Registrar does not have investigative powers and therefore must rely on the outcomes of disciplinary and/ or criminal proceedings prior to finalising an assessment. The Review proposes a range of recommendations in relation to the RWVP scheme in subsequent chapters.

3.8 CONCLUSION

The Review opened this chapter with the following quote from the COI report:

*Equally, examining specific institutions' responses to child sexual abuse has enabled us to identify patterns of behaviour that have gone unaddressed. **In particular, we are concerned that a systemic problem in the Government's response to institutional child sexual abuse is a failure to deal with poor conduct or behaviour, including in relation to the conduct of individuals in responding to reports about the behaviour of others.***

*We have identified poor conduct and failures by institutions and by individuals where the evidence before us supported such a conclusion, with the goal of ensuring that **persistent and systemic issues are not perpetuated.***⁴⁸

The Review notes that systems are imperfect and systems that have the responsibility for caring for vulnerable populations will be targeted by individuals with predatory intent. There is a need for constant oversight, review, adaptation and adjustment to address the risks.

In reflecting back on its observations, the Review notes that the COI identified that dealing with allegations of misconduct was a systemic issue within the State Service. The Review's examination of the State Service handling of matters of concern highlighted the make-up of these systemic issues.

The very systemic settings that led to instances of child sexual abuse had not sufficiently changed as a consequence of the COI report. There is a particular need to revise the employment framework and directions that have been in place for over a decade.

Change requires time and it requires leadership. As the Review has observed over the course of nearly two years, while the initial handling of COI matters was less than satisfactory, there has been much progress. As the revised data sets, new convictions, formation of task forces indicate, the system is evolving. However, there is an ongoing need to continue to improve the systemic settings so that the system is future fit. The remaining chapters of the Review's report draw on the insights from the examination and analysis of these cases to propose necessary changes to both the employment and regulatory system in Tasmania as well as the culture of the State Service.

⁴⁸ COI Report Volume 2: Chapter 1, pg 9.

CHAPTER FOUR:

EMPLOYMENT FRAMEWORK AND EMPLOYMENT DIRECTIONS

4 CONTEXT AND INTRODUCTION

Chapter 20 of the COI's final report focused on the disciplinary processes used by the State Service (State Service) to deal with allegations of misconduct by individual employees. The chapter identified the central components of the State Service's disciplinary system, including the SSA, the State Service Code of Conduct (Code) and the EDs, which collectively relate to performance management, suspensions and termination of employment. The COI received evidence in relation to the problems with the State Service disciplinary system, particularly matters involving child sexual abuse or related conduct. On the basis of the evidence received, the COI made several recommendations to improve the State Service disciplinary system, including proposing changes to the disciplinary processes that Heads of Agencies can follow in response to concerning employee behaviour. The COI also proposed changes that sought to clarify and strengthen the articulation of expected and acceptable behaviour by state servants, including conduct outside of their employment.⁴⁹

Commensurate with the above, the Review was specifically tasked with examining and analysing the policy and legislative framework relevant to matters of misconduct in the State Service. The Review's approach to this examination and analysis has been multi-faceted. Firstly, the Review analysed individual cases to identify the common procedural, policy and legislative impediments that delay or limit accountability within the system. This analysis has reinforced the recommendations made by the COI. Secondly, the Review has supplemented its case analysis with extensive stakeholder consultations with State Service employees, specialist service providers, members of parliament, union leaders and public officials. These consultations have provided insights on the expectations that the community has for a State Service that is responsive, just, accountable and trustworthy. In particular, stakeholders have expressed the need for consistency in the application of employment principles. The feedback also indicated a strong desire for a nuanced approach to responding to complaints raised by children and using a trauma-informed approach when seeking their involvement in disciplinary proceedings. To assist the Review with its deliberations, a comparative analysis of employment and disciplinary frameworks, and accountability arrangements in other jurisdictions was also undertaken. This highlights the need for the State Service to embed high standards of governance and to promote a culture that requires employees to adhere to acceptable standards of behaviour at all times. Finally, the Review notes that its analysis and consultations have included examining the effects of other state legislation that impacts the conduct and behaviours of state service employees, managers and leaders. This includes legislation relating to criminal offences, working with vulnerable people and information sharing. The focus of this chapter is the SSA and EDs. Nevertheless, the proposed recommendations and changes to the ED's incorporate references to other legislation where such changes are necessary to strengthening the operation of the wider system to protect children.

This chapter commences with an outline of the purpose and effect of the current employment legislation and associated instruments in Tasmania in shaping the operations and culture of the State Service. The chapter also identifies key principles highlighted by stakeholders as being critical to the future ethos of the State Service. This includes responsiveness to both the government and the wider community. Noting this and acknowledging the issues identified in the case analysis, the Review recommends substantial changes to a selection of EDs, particularly as they relate to disciplinary processes. This includes EDs not directly identified by the COI but necessary to give effect to the changes proposed by the Review and consistent with the COI's observations. The Review also recommends changes to ED's relating to performance management.

The legislative and operational changes recommended here are aimed at improving accountability of the State Service. The Review recognises that a change in the SSA must be accompanied by wider

⁴⁹ COI Report Volume 8: Chapter 20, pg 152.

cultural change. This will have to be driven cohesively and comprehensively by the State Service leadership.

Subsequent chapters make recommendations to help ensure that the State Service is forward-looking in its approach, particularly in doing the right thing by the children and people of Tasmania.

4.1 STATE SERVICE EMPLOYMENT

4.1.1 Context and Purpose of Employment in the State Service

In the State Service, the main statutes that govern employment include the SSA and the Police Service Act 2003. This chapter focuses on the purpose and effect of the SSA and the associated instruments related to disciplinary processes - the EDs.

As background, the SSA was enacted in November 2000 following a review of the Tasmanian State Service Act 1984. The SSA is the enabling legislation that is supplemented by the State Service Regulations 2021 (the Regulations) and EDs.

Tasmania's system of government sets the primary context for employment in the State Service. This is derived from Westminster principles of responsible government based upon the rule of law. The purpose of employment in the State Service is to ensure that there is a workforce that delivers on behalf of government. This delivery includes a range of services and support for policy development and implementation which are designed to benefit the Tasmanian community. Embedded in the SSA are State Service Principles that promote good governance, through:

- accountability for actions and performance within the framework of Ministerial responsibility⁵⁰
- responsiveness to government priorities⁵¹ and
- performance of functions in an impartial, ethical and professional manner.⁵²

The SSA applies to Heads of Agencies, holders of prescribed offices, senior executives and employees. The requirement for Heads of Agencies to 'uphold, promote and comply with State Service Principles' is unambiguous in the SSA.⁵³

Throughout its consultations, the Review has heard arguments by some within the State Service that the existing employment legislation in Tasmania gives rise to important differences between being employed within the State Service versus being employed in another jurisdictional public service. It has been noted that the basis for this difference arises because in Tasmania under the existing provisions of the SSA the Premier is the employer by virtue of being the Minister Administering the State Service Act, unlike other jurisdictions where the employment legislation generally identifies the Head of an

⁵⁰ *State Service Act 2000* (Tas), s 7(1)(d).

⁵¹ *Ibid*, s 7(1)(ja)(ii).

⁵² *State Service Act 2000* (Tas), s 7(1)(a).

⁵³ *Ibid*, s 8.

Agency or the public service commissioner as the employer. The consequences of this view have been the subject of some debate amongst the Reviews interlocutors.

Separately, multiple stakeholders external to the State Service have argued that accountability within the State Service is not as robust as compared to other jurisdictions. Many in the State Service have sought to dispute this.

Additionally, the Review has noted that the public discourse in relation to the outcomes of allegations of child sexual abuse lays the blame for lack of action and accountability at the feet of government.

In the Review's opinion there are two material issues that define its focus:

- Firstly, ensuring that the culture of the State Service is grounded in service to the Tasmanian Government, Parliament and children and people of Tasmania; and
- Secondly, ensuring that the State Service is properly accountable for its actions.

Therefore, in the Review's view, recommending changes to who the employer is within the SSA is not a critical issue. What is critical, however, is examining whether the State Service has a clear purpose and effective accountability mechanisms. As such, the Review is not recommending changes to the SSA to change the actual employer of State Service employees.

Instead, in the sections below, the Review provides observations and recommendations in relation to the need to embed a purpose for the State Service within the SSA. It also identifies and proposes changes to key accountability mechanisms within the State Service.⁵⁴

4.1.2 State Service Act 2000: Embedding Clarity of Purpose

As already stated, the purposes for which the state or the employer (i.e. the Tasmanian Government) employs an individual is primarily to deliver services to the community. The Tasmanian Government also employs people to deliver and implement policy advice and decisions, laws and legislation, and to ensure that state assets and resources are managed efficiently and with accountability for decisions. In this sense employment in the State Service is no different to being employed in the Australian Public Service (APS) or another jurisdictional public service.

However, unlike the APSA the SSA does not contain a specific section that clearly defines the purpose of employment within the State Service. The APSA, which underpins employment within the Australian Public Service, describes the 'Objects of the Act' as:

- to establish an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public; and
- to provide a legal framework for the effective and fair employment, management and leadership of APS employees; and
- to define the powers, functions and responsibilities of Agency Heads, the Australian Public Service Commissioner and the Merit Protection Commissioner; and

⁵⁴ The ideas discussed in section 4.1.1 are partly synthesised by consideration of the following – Queensland Government, *A Fair and Responsive Public Service for All Report* 2019, pg 11-13, 22, 26-28.

- to establish rights and obligations of APS employees.⁵⁵

Embedded within the objects above is the purpose for which employment within the APS occurs; stated simply as 'serving the Government, the Parliament and the Australian Public'.⁵⁶

In contrast, the SSA contains 'State Service Principles' that combine employment principles describing the type of employer the State Service seeks to be with the purpose of employment in the State Service and the expectations of its multiple stakeholders. This is, at best, a confusing array of principles that seek to guide:

- the nature of the employment relationship the State Service should have with its employees
- the type of employer the State Service should aim to be; and
- the purpose of such employment.⁵⁷

This arrangement has, in the observation of the Review, had a detrimental impact on the ethos of the State Service. The absence in the SSA of a guiding purpose of employment that is distinct, explicit and gives primacy to serving the Tasmanian Government, Parliament and community is a gap that can lead to ambiguity and lower standards of accountability.

The current framing of the State Service Principles in the SSA means that the attributes that the State Service should have as an employer versus the purposes for which it employs people receive similar treatment. This is material in its impact as the State Service Principles relating to the former are primarily about 'providing a fair, flexible and safe workplace' whilst the State Service Principles related to the latter are about being 'accountable' to the Tasmanian Government, Parliament and the community.⁵⁸

The emphasis on accountability without a reference to an overarching purpose of serving the Tasmanian Government, Parliament and the community is a critical difference between the SSA and the APSA. Linked to this, section 8 of the SSA also emphasises that the HoA's are responsible for promoting, upholding and complying with the State Service Principles.⁵⁹ This appears to create the impression that the duty of complying with and upholding the State Service Principles as they are currently stated rests to a greater degree with HoA's as opposed to being a collective responsibility of everyone who serves within the State Service.

The consolidated effect of these State Service Principles is that the ethos of the State Service is not as firmly grounded in service to the community as it should be.

As a consequence, it is the Review's opinion that the purpose of State Service employment should be clearly identified in the SSA so that current and future employees have a sound basis for understanding the purpose of their employment (i.e. the rationale for why they are working in the State Service). The Review considers it necessary for the SSA to state that the purpose of such work is to serve the Tasmanian Government, the Parliament and the Tasmanian public which includes the children of Tasmania. It must be clear that the State Service does not exist for itself but rather to serve the

⁵⁵ *Public Service Act 1999* (Cth), s 3.

⁵⁶ *Ibid.*

⁵⁷ *State Service Act 2000* (Tas), s 7.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, s 8.

Tasmanian community which includes children. That the service is therefore also accountable to the Government, Parliament and the Tasmanian community for the delivery and achievement of its purpose follows.

Strategic Recommendation 4.1 (Part One)

The Review recommends amendments to the State Service Act 2000 which contain clear provisions outlining the purpose of State Service employment as serving the ‘Government, Parliament and the Tasmanian community’.

4.2 ACCOUNTABILITY FOR CONDUCT

4.2.1 Public and Individual Accountability

Within the State Service, there are a range of accountability mechanisms that ensure that the concept of responsible government and the chain of responsibility that connects the work of each individual employee to the mandate of their employing agency as overseen by the responsible Minister. These mechanisms can vary from parliamentary oversight through committees and questions to internal and external auditing, public interest disclosure laws, obligatory stakeholder engagement, document retention requirements, disclosure requirements under right to information laws and judicial review by the Supreme Court.⁶⁰ These mechanisms are primarily aimed at ensuring public accountability for actions taken by Tasmanian Government through reporting, transparency, grievance and complaints mechanisms and review and appeal mechanisms in instances where there is continuing dissatisfaction with a particular outcome. They provide important checks and balances to ensure that the exercise of power, the operations of the Tasmanian Government and the discharge of duties by individuals occurs in a lawful and ethical manner.

In addition to the public accountability mechanisms described above, the State Service is also subject to individual accountability mechanisms. These are given effect through the EDs including those relating to suspension and investigation of breaches of the code of conduct. The SSA specifies provisions in relation to Code of Conduct breaches and sanctions associated with such breaches.

4.2.2 Code of Conduct

Employees within the State Service are subject to the Code of Conduct which is embedded within the SSA. Section 9 of the SSA contains up to sixteen different elements that describe the duties and obligations of an employee and the behaviours that constitute acceptable and appropriate conduct.⁶¹

The case analysis undertaken by the Review combined with feedback from stakeholders identified key issues in relation to how the State Service deals with misconduct matters involving child sexual abuse. Issues relevant to the contents of this chapter are summarised briefly below and included:

⁶⁰ Queensland Government, *A Fair and Responsive Public Service for All Report 2019*, pg 27 (s 2.2.4 outlines different accountability mechanisms).

⁶¹ *State Service Act 2000* (Tas), s 9.

1. The State Service taking too long to resolve misconduct cases.
2. Lack of confidence that concerns raised would lead to appropriate and timely actions by the State Service.
3. The Code of Conduct process not taking account of repeated patterns of unacceptable behaviour by employees.
4. Insufficient support, including lack of guidance from the State Service Management Office to deal with Code of Conduct matters effectively; this includes dealing with serious disciplinary matters.
5. The lack of a definitional frame that separates serious misconduct from other misconduct and outlines how it should be dealt with.
6. Conduct occurring outside the course of employment not being regarded as misconduct.
7. Loss of essential role requirements (e.g. the registration with the TRB and/or the RWVP) due to inappropriate conduct having no material impact on employment status.
8. Lack of contemporary policy documents in relation to performance and disciplinary matters.
9. Over reliance on external investigators and no guidance on the approach to investigations and their monitoring to ensure standards are upheld and there is consistency in the approach.

The Review's case analysis identified that allegations of child sexual abuse often involved conduct that had occurred outside of employment and/or extended outside of employment and/or leveraged connections and relationships that were established during the course of employment. In such cases, the disciplinary processes required the relevant managers and decision makers to spend considerable time addressing the requirement to establish a nexus between employment within the State Service and the alleged conduct. This was notwithstanding the very serious nature of the alleged conduct and the risk of real and serious harm to children.

A majority of the fifteen elements of the current State Service Code of Conduct requirements, require employees to adhere to the code of conduct only during the course of their employment. Employees do not need to adhere to the Code of Conduct requirements at other times. The only exception to this rule is s9(14) of the Code of Conduct that requires that:

*'An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.'*⁶²

In the opinion of the Review, the State Service must act in an ethical and lawful manner at all times if it is to build public trust. This view is supported at the most senior levels in the State Service. The alternative view, that an employee is not subject to the Code of Conduct outside of employment hours, has in particular left children exposed and has been a complicating factor in managing disciplinary proceedings involving the grooming and exploitation of children. The Review has also found it difficult to reconcile elements of the Code of Conduct with each other. For example, it is difficult to accept that dishonest conduct by an employee outside of employment (permissible under s9(1)) will not adversely impact the integrity and good reputation of the State Service. These inherent contradictions in the wording of the legislation create ambiguity which is unnecessary and risk the reputation of the State Service and the confidence the community has in the State Service.

The Review has heard feedback from some stakeholders that changes to the Code of Conduct that require employees to adhere to the Code of Conduct at all times would be difficult to implement on a

⁶² *State Service Act 2000* (Tas), s 9.

practical basis. To address this, the Review has undertaken comparative jurisdictional analysis which has highlighted important points of difference between the Code of Conduct embedded in the SSA and codes of conduct applicable in other jurisdictions.⁶³

This analysis, which benchmarks the Code of Conduct across 9 Australian jurisdictions, reveals the following:

- Three jurisdictions (New South Wales, Northern Territory and the Australian Capital Territory) broadly require employees to adhere to all elements of their respective codes of conduct at all times including conduct outside of work hours where their conduct affects their employment.
- The code of conduct in Queensland, Western Australia and South Australia contains specific provisions in relation to conduct that occurs in an employee's private capacity that adversely impacts on the employee's public sector entity, has an impact on the employee's performance or is disgraceful or improper and adversely impacts on the public sector.
- Three jurisdictions (Victoria, Queensland and Western Australia) require employees to adhere to all elements of their respective codes of conduct during the course of their employment.

The Commonwealth or APS employment legislation also contains provisions that provide an overarching framework that governs employee conduct at all times. The APSA has codified values as well as principles within the legislation.⁶⁴ The APS Values include the following:

- **Commitment to Service:** a requirement to be professional, objective, innovative and collaborative to achieve the best results for the community and the government.
- **Ethical:** a requirement to demonstrate leadership, be trustworthy and act with integrity in all that the APS does.
- **Respectful:** a requirement to respect all people, including their rights and their heritage.
- **Accountable:** a requirement to be open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.
- **Impartial:** a requirement to be apolitical and provide the Government with advice that is frank, honest, timely and based on the best available evidence.
- **Stewardship:** a requirement to build its capability and institutional knowledge and support the public interest now and into the future, by understanding the long-term impacts of what it does.

Under s13(11) which deals with the APS Code of Conduct, APS employees are required at all times to behave in a way that upholds both the APS Values and APS Employment Principles, and the integrity and reputation of the employees' Agency and the APS.⁶⁵ This need to uphold values and principles at all times provides a pathway to ensuring that the reputation, trust and integrity of the APS is upheld at all times by all employees. It is an encompassing framework that aims to resolve the practical difficulties encountered by the State Service in extending the application of the Code of Conduct to 'all times'. It is

⁶³ The jurisdictional analysis undertaken involved consideration of the code of conduct of 9 jurisdictions across Australia, this includes but is not limited to the following – Victorian Public Sector Commission, *Code of conduct for Victorian public sector employees*; NSW Public Service Commission, *Code of Ethics and Conduct for NSW Government Sector Employees*; Queensland Public Service Commission, *Code of Conduct For the Queensland Public Service*.

⁶⁴ See *Public Service Act 1999* (Cth), s 10.

⁶⁵ *Ibid*, s 13(11).

instructive that the High Court has upheld this approach in the *Comcare v Banerji* (2019) case in recent times.⁶⁶

The comparative analysis indicates a clear trend across a majority of jurisdictions for employees to be required to adhere to the code of conduct in their professional and private capacity.

Based upon community sentiment and noting the requirements in other jurisdictions, the Review recommends that the State Service amend the legislation to ensure that employees are required to adhere to the Code of Conduct at all times. In putting forward this recommendation, the Review notes that implementation of this recommendation will require a commonsense approach across the State Service and careful initial management through assessment on a case-by-case basis.

Strategic Recommendation 4.1 (Part Two)

The Review recommends amendments to the State Service Act 2000 to ensure that employees must adhere to all elements of the Code of Conduct at all times.

4.2.3 Alignment in Definition of Misconduct Across Legislation

The Review notes that stakeholders within the service have identified the need for consistency and alignment in the definition of misconduct and/or breach of the code of conduct across different state legislation. In particular, it has been flagged that the SSA section relating to the code of conduct currently lacks provisions that unambiguously set out that conduct that constitutes misconduct as defined under the ICA (Integrity Commission Act) in Tasmania also constitutes a breach of the 'code of conduct' section within the SSA.⁶⁷

The Review is of the opinion that an effective disciplinary framework and oversight and education mechanisms require definitional consistency in relation to what constitutes misconduct and/or a breach of the code of conduct by a public official.

The Review notes that the definition of misconduct within the ICA includes '*a breach of the code of conduct applicable to the public officer*'.⁶⁸ Therefore, it is to be expected that a breach of the Code of Conduct under the SSA constitutes misconduct under the ICA. However, the SSA is currently lacking a similar provision whereby 'misconduct' as defined in the context of the ICA is also a 'breach of the code of conduct' within the SSA.

Therefore, the Review recommends that the SSA be amended to include an additional element that states that 'misconduct' as defined under the ICA also constitutes a breach of the Code of Conduct under the SSA.

⁶⁶ *Comcare v Banerji* (2019) HCA 23 - 267 CLR 373, Where the Department of Immigration and Citizenship terminated employment under s15 of APSA, on the basis that the employee used social media in breach of ss 13(1), 13(7) and 13(11) of APS Code of Conduct. The decision to terminate was upheld by the HC.

⁶⁷ *State Service Act 2000* (Tas), s 9; *Integrity Commission Act 2009* (Tas), s 4, Definition of misconduct.

⁶⁸ *Integrity Commission Act 2009* (Tas), s 4, Definition of misconduct.

Strategic Recommendation 4.1 (Part Three)

The Review recommends amendments to the State Service Act 2000 to ensure that 'misconduct' as defined under the Integrity Commission Act (Tas) 2009 also constitutes a breach of the code of conduct under the State Service Act.

4.2.4 Reportable Conduct

In 2023, the Tasmanian Parliament passed the CYSO Act, which implemented important recommendations of the National Royal Commission to create child safe organisations. The CYSO Act also introduced a Reportable Conduct Scheme, which requires the head of a relevant entity to notify the Independent Regulator on becoming aware of reportable conduct within their organisation.⁶⁹

Reportable conduct includes a range of sexual offences as well as sexual misconduct, which is defined to include inappropriate behaviour, physical contact and voyeurism when performed in a sexual manner or with a sexual intention.⁷⁰ The Independent Regulator is then responsible for monitoring the organisation's handling of the conduct and can audit that organisation's policies and procedures to assist them in improving their systems and practices relevant to responding to the conduct.⁷¹

The Reportable Conduct Scheme applies to a range of organisations including all government agencies, out-of-home care providers, police, youth justice, health services and schools.⁷² Noting this and acknowledging the COI's recommendation that the State Service consider establishing a mechanism that would link any reportable conduct by a State Service employee to be a breach of the Code of Conduct, the Review recommends that the SSA be amended to add an additional element that conduct by an employee at any time that is considered reportable conduct is considered to be a breach of the code of conduct.⁷³

Strategic Recommendation 4.1 (Part Four)

The Review recommends amendments to the State Service Act 2000 to ensure that any reportable conduct of an employee at any time is considered to be a breach of the Code of Conduct.

4.2.5 Professional Conduct Policies

In a complementary aspect to these recommendations, the COI also recommended (Recommendation 20.2) that all Heads of Agencies that provided services to children should develop professional conduct policies for the agency's employees that acknowledged the need to maintain professional boundaries in small communities. The COI noted that such policies should provide guidance on what behaviours

⁶⁹ *Child and Youth Safe Organisations Act 2023* (Tas), s 34.

⁷⁰ *Ibid*, s 7.

⁷¹ *Child and Youth Safe Organisations Act 2023* (Tas), s 22.

⁷² *Ibid*, Schedule 3.

⁷³ COI Report Volume 8: Chapter 20, pg 180 (Recommendation 20.3).

were acceptable, unacceptable and constituted misconduct or criminal conduct. The recommendation also noted that the policy should include provisions that

- *specify the penalties for a breach, including that a breach of the policy may be taken to be a breach of the State Service Code of Conduct without needing to assess whether a separate provision of the Code has been breached, and may result in disciplinary action (Recommendation 20.2h)*⁷⁴

The Review welcomes advice from the Head of State Service that amendments to the SSA to give effect to the enforcement of agency professional conduct policies for State Service employees (consistent with Recommendation 20.2 of the COI report) will be included in the COI Miscellaneous Bill due for tabling in Parliament next year. The Review has also been advised that further changes are also under consideration to ensure these provisions can be applied to contractors and volunteers. The Head of State Service has also noted that other components of this recommendation have been completed, such as the drafting of professional conduct policies in agencies and that the service was progressing amendments to legislation to give effect to these policies and the component of the recommendation which states that:

The Tasmanian Government should introduce legislation, or other binding mechanisms, to ensure:

a. a breach of a departmental professional conduct policy may be taken to be a breach of the State Service Code of Conduct, without needing to assess whether a separate provision of the Code has been breached

*b. such a breach does not have to be accompanied by a lawful and reasonable direction for there to be a breach of the Code of Conduct.*⁷⁵

Noting the Review recommendation in relation to the changes to the SSA, the Review further recommends that the section within the SSA dealing with Code of Conduct breaches should include a new element that states that conduct by an employee that is a breach of the departmental professional conduct policy at any time constitutes a breach of the State Service Code of Conduct.

Strategic Recommendation 4.1 (Part Five)

The Review recommends amendments to the State Service Act 2000 to ensure that a breach of the departmental professional conduct policy at any time constitutes a breach of the State Service Code of Conduct.

4.2.6 Stewardship

As noted above, the APS Values include the value of stewardship which is defined as *'building capability and institutional knowledge, and supporting public interest, by understanding the long-term impacts of what the APS does'*.⁷⁶ The aim is to ensure that all Australians benefit from a trusted, effective and

⁷⁴ Ibid, pg 178-179 (Recommendation 20.2).

⁷⁵ [COI_Full-Report.pdf](#) Volume 1: Recommendations pg 181.

⁷⁶ *Public Service Act 1999* (Cth), s 10(6).

sustainable public service that is well placed to deliver to community expectations now and into the future.

The Public Service Act and associated amendments make it the responsibility of all public servants to be stewards of the APS by striving to do a good job, finding ways to do things better and working to deliver better results and outcomes. The Australian Public Service Commission guidelines highlight the importance of developing the APS capability, supporting employees to undertake their responsibilities effectively and adapting to changing priorities. While the change to making the value applicable to all employees is recent, stewardship has been a core responsibility of Secretaries, the Secretaries Board and the Australian Public Service Commission and Commissioner for a long time. It has now been enshrined with the Public Service Act.

As demonstrated in the feedback received by the Review, the Tasmanian community has similar expectations of the State Service. The Review has been urged to reflect on the need for a trustworthy, sustainable and effective State Service by all stakeholders. Currently, the performance agreements of Heads of Agencies with the State Service include a commitment to stewardship of the service. The Review endorses this approach. The Review further recommends that a commitment to stewardship should also extend to the performance agreements between Heads of Agencies and their direct reports. This will be invaluable in driving cultural change within the State Service and ensuring that those charged with leadership responsibility of the system and its performance have an explicit commitment to leading in manner that ensures its integrity and reputation. The latter could be achieved through working collaboratively to achieve shared outcomes.

Tasmania faces considerable challenges over the next decade. To continue to meet the needs of the Tasmanian community, including its children, Tasmania needs a State Service that is future-oriented, can leverage the benefits of technological change, build a prosperous and positive economic outlook and maintain a cohesive social fabric. All future governments in Tasmania will benefit from State Service leaders that understand their responsibility to nurture a capable and effective State Service which works collaboratively and breaks down silos. While the commitment of State Service leaders to leading the service is doubtless, the opportunity for a continuing dialogue that enables both the government of the day and the Heads of Agencies to have a focused conversation about the future of the State Service and how this can be better supported is vital. Therefore, the Review recommends that the performance agreements of all executives within the State Service continue to include an explicit requirement to stewardship of the State Service which cascades down to those officers who directly report to Heads of Agency.⁷⁷

Operational Recommendation 4.1

The Review recommends that the performance agreements of all executives and their direct reports within the State Service include a commitment to stewardship of the State Service.

4.2.7 Public Interest

The Review has sighted multiple documents and indeed EDs that note that decisions made by public servants must be made based upon what is in the public interest. However, it was not able to access a knowledge base that outlined in detail the key considerations being used by public servants to justify

⁷⁷ The concept of stewardship presented in section 4.2.6 is partly synthesised by consideration of stewardship as discussed in the following - David Thodey AO, *Our Public Service, Our Future. Independent Review of the Australian Public Service Full Report (2019)*

decisions made in the public interest. Tasmania is not unique in this regard. The Review struggled to find such a document in other jurisdictions as well.

However, based upon the Review's analysis a range of considerations appeared to have been applied to assessing the public interest in various decisions relating to the handling of matters of concern. The Review has summarised these below, framing them as questions that it has distilled from the body of material it has examined, noting that the material often reflects competing considerations that are being assessed by the decision-maker. Given that other jurisdictions also lack a framework for 'public interest' the Review has refrained from recommending that Tasmania develop one at this stage. However, given the significant opportunity to learn from the COI, the Review observes that the SSMO in due course may well convene a working group to develop guidelines that eventually inform the development of such a framework. In the meantime, the Review offers up its distilled list of questions that are not intended to be comprehensive but reflect the nature of considerations that decision makers have had to account for in relation to COI matters.

- Does the decision align with the elected government's mandate and the preferences expressed by the people through democratic processes?
- Is this decision lawful? Does it respect constitutional principles, the rule of law, and the separation of powers?
- Is the decision based on accurate facts, robust analysis of evidence, and proper consideration of expert advice?
- Does this decision protect or undermine fundamental human rights, civil liberties, and individual freedoms?
- How will this decision affect those who are most vulnerable or have the least power to protect their interests?
- Is this decision economically sustainable? Will it deliver value for money? Does it respect the stewardship of public resources?
- Can this decision be explained and justified publicly? Or does it require secrecy or concealment to be acceptable?
- Does this decision serve short-term interests at the expense of long-term sustainability? Will it strengthen or weaken public institutions?
- Has this decision been made through a fair and transparent process? Have affected parties been heard?

4.2.8 Framework for the Amended State Service Act

The cumulative impact of the proposed changes to the SSA identified above and those arising from the suggested changes to the employment framework outlined below effectively create the need for a substantive revision and amendment to the existing legislation.

The Review has chosen not to provide draft changes. It is of the view that being prescriptive in relation to proposing such changes may be counterproductive given that changes to the EDs outlined below will require consequential changes to the existing legislation so that the former are properly anchored in the latter.

As such, the Review outlines the following framework to guide the drafting of amendments to SSA.

- **Embedding a clear purpose for the State Service:** as stated above any changes to the SSA should include a section that clearly outlines the purpose for which the State Service exists. This section and purpose should be distinct to the sections that:
 - outline the principles that guide the conduct of the State Service as a model employer (i.e. employment principles)
 - outline principles that relate to the how the State Service performs its functions to meet community expectations and its purpose; and
 - relate to the code of conduct that governs individual employee behaviour
- **Principles that guide the conduct of the State Service as an employer versus how it performs its functions:** commensurate with the above, the Review further recommends that the fifteen principles contained within section 7 of the SSA should be separated on the basis of whether they relate to the role of the State Service as an employer versus whether they relate to the way on which the State Service performs its functions in order to meet community expectations. For example, principle 7(b) which requires the public service to base employment decisions on merit is an employment principle. On the other hand, principle 7(a) which requires the state service to perform its functions in an impartial, ethical and professional manner relates to community expectations of the character of the State Service as a collective. In effect, this principle is about how the State Service fulfils and delivers on its purpose.⁷⁸
- **Code of Conduct:** should be a distinct section within the SSA with amendments proposed above incorporated into the updated legislation.

In not providing draft changes, the Review is also conscious of the recommendations made in the Watt Review (Recommendations 2 and 12) which deal with amending the SSA by re-writing the existing State Service principles and replacing them with a clear object, State Service values and State Service principles.⁷⁹ It also endorses stewardship as a key principle for the State Service. This is a big task, but it needs to be done.

4.3 EMPLOYMENT DIRECTIONS

The SSA has not been reviewed and substantially amended for over two decades. Changing legislation often requires extensive effort and the end result is not guaranteed. The Review recognises that legislative changes do not always keep pace with and respond to societal change. It notes that regulatory and other instruments do not require the same thresholds for approval. Therefore, directions and guidance instruments are often leveraged to respond to wider changes particularly where there is a need to drive cultural, behavioural and systemic change. This practice is prevalent and exercised to great effect in other jurisdictions. Unfortunately, the State Service appears to have struggled to follow a similar approach as changes to the SSA and associated directions and guidance have been infrequent.

The Review has heard from many stakeholders about the lengthy and inconclusive processes pursued by the State Service to amend regulatory and guidance instruments supporting the SSA. In particular, the Review found reference to requests for changes to EDs and guidance notes dating back to 2017. The Review, however, has observed significant change in pace, interest and intent in updating the suite of directions and guidance in relation to human resource management, as a consequence of change in

⁷⁸ *State Service Act 2000 (Tas)*, s 7.

⁷⁹ Dr Ian Watt AC, *Independent Review of the Tasmanian State Service Final Report (2021)*, pg 55, 81-82.

leadership within the DPAC. This is a welcome development, and the Review commends the new leadership on its approach.

The Review further notes that in July 2024, the SSMO led the development of revisions to Employment Direction 5 (ED5) in response to the COI recommendations and restricted to changes that could be made ahead of further changes that would require legislative amendments. This included updates whereby an employee that had been found to have committed reportable conduct under the CYSO Act could be determined to have breached the Code by a HoA without the need for investigation.

The SSA in Tasmania allows the employer to issue EDs relating to the administration of the State Service and employment matters relevant to the SSA. Noting that the SSA provides that the Employer is the Minister administering the SSA and further noting that the Minister administering the SSA is the Premier, it is within the powers of the Premier to amend ED's as necessary and upon advice from the Head of State Service. EDs are binding whereas a non-binding 'guideline' can be made in any way.⁸⁰

Given the multiple recommendations issued by the COI to amend EDs, the consistent and sustained feedback from across the service and external stakeholders, the support and significant positive engagement from unions and the evidence in the case analysis, the Review examined the body of current ED's and guidance material.⁸¹ The aim was to identify how best to compliment changes to the legislation to provide a flexible but clear set of rules that would assist the State Service to be effective in dealing with performance and disciplinary matters. The following observations arise from that examination.

- The current suite of EDs and guidance material does not provide a coherent set of rules and information to develop a contemporary employment culture and workforce.
- The EDs and guidance material provide limited information thereby constraining their effective application and utilisation.
- The lack of information can also contribute to different outcomes from disciplinary processes as decision-makers interpret the directions in multiple and inconsistent ways.
- The current EDs as drafted encourage risk aversion and a focus on process in dealing with conduct and disciplinary matters within the service.
- The current EDs would benefit from more precise language to aid consistency and improve efficiency in arriving at determinations.

As a consequence, the Review has re-drafted four EDs aligned to the recommendations arising from the COI. These re-drafted EDs have been developed through extensive rounds of consultations with the State Service, the unions, the IC, the Office of the Independent Regulator (OIR) and other external experts. They reflect benchmarking work undertaken by the Review. The Review expresses its thanks to all those who have so generously provided feedback on multiple drafts of these EDs.

In providing these revised and substantively updated recommendations the Review notes the following:

- These drafts align and incorporate changes based upon the recommendations made by the COI in relation to the employment framework. The Review notes that the government has accepted all recommendations made by the COI and that its Terms of Reference require it to

⁸⁰ *State Service Act 2000 (Tas)*, s 17.

⁸¹ COI Report Volume 8: Chapter 20, pg 182-208, Many recommendations from this part of the report were relevant for purposes of amending ED's, these have been considered throughout section 4.3 of the report.

adhere to the direction set by the COI. Therefore, these drafts reflect not just the insights gained from case analysis, feedback from consultations with stakeholders, but also the reflections/perspectives of the Reviewers on how best to give effect to the recommendations from the COI both in letter and in spirit.

- The Review is grateful to the Head of State Service and the State Service Management Office for providing copies of the revised ED 5 to it prior to its release in July 2024. The Review notes that the revised drafts attached to this report seek to build on the changes made to that direction noting that there was mutual agreement that further changes were not only expected but desirable given the complexities evident through the case analysis.
- The revised drafts also reflect best practice from other jurisdictions. While the Review has consulted extensively on these drafts, it recognises that in order to adopt these drafts fully the Head of State Service will need to undertake further consultations with key stakeholders within and outside the State Service prior to recommending the revised drafts for approval by the Premier. The Review also expects that the Head of State Service will wish to review these drafts in light of consequential changes to the SSA and vice versa. The Review notes that the drafts provide a rigorous and balanced approach to addressing the myriad issues in relation to disciplinary processes it has observed. Operational difficulties such as lack of resourcing should not hamper timely approvals or implementation of revised directions.

4.3.1 Employment Direction 5: Procedures for Investigation and Determination of Breach of the Code of Conduct

The COI made several recommendations in relation to the procedures for investigation and determination of breaches of the Code of Conduct. The thrust of the recommendations was to suggest improvements to the disciplinary processes related to alleged breaches of the Code of Conduct. Suggested improvements focused on:

- Ensuring there was a clear distinction between preliminary assessments undertaken when an alleged breach of the Code of Conduct had occurred versus an investigation. The COI noted the need for preliminary assessments to be swift and time-limited and ideally not involve interview with a child/children to limit the trauma they might suffer.
- Ensuring that investigations were conducted by experts with relevant trauma-informed training and practice, aligned to clear guidelines and where possible serious cases were referred to a shared capability unit with expertise in specialist practice.
- Ensuring that investigations were concluded in a timely manner and that requests for extensions were considered properly to ensure the impacts and need for extension were carefully assessed.
- Ensuring that disciplinary processes and investigations could take account of both prior unsubstantiated and untested, as well as substantiated behaviour. This responds to evidence from child sexual abuse matters that low-level behaviour transgressions often precede serious misconduct and abuse perpetrated by individuals.

Given the above recommendations the Review has revised ED 5 substantially.⁸²

⁸² Appendix C, Employment Direction 5.

The new draft version takes account of the main recommendations put forward by the COI and proposes the following changes.⁸³

1. Enabling the use of investigations conducted under the Reportable Conduct Scheme to be utilised to support disciplinary processes thus negating the need for multiple investigations.
2. Clear provision to ensure that all investigations related to child sexual abuse matters give primary consideration to the safety and wellbeing of the child.
3. Further provisions to ensure that any interviews or investigations involving children were conducted by appropriately trained personnel and in a trauma-informed manner.
4. Provisions to ensure that assessments and investigations involving child sexual abuse can take account of prior unsubstantiated and untested as well as substantiated conduct.
5. Recommending the appointment of separate breach and sanctions delegate to help ensure consistency in the application of sanctions against breaches. This directly addresses the inconsistencies observed in the application of sanctions during case analysis. It can also assist in ensuring objectivity.
6. Providing clear requirements and timelines for the conduct and completion of preliminary assessments.
7. Providing a new risk-based triage model to handle potential breaches of the Code of Conduct and drawing a distinction between a grievance, performance and/or a conduct issue.
8. Providing an option to not appoint an investigator and the process to be followed if the delegate determines that an investigation is not required but a possible breach may have occurred.

The Review has received feedback from some agencies that the separation of a breach and sanctions delegate is problematic as the person determining the sanction should have full context and history of the matter. The Review disagrees on the basis that maintaining objectivity in the process is paramount, so is ensuring consistency in the assessment of sanctions to ensure fairness and equity in the system. Spreading the responsibilities and creating a clear separation in duties is aligned to best practice and responds to the need to ensure fair and objective outcomes for individuals and the community given the sanctions delegate should also have clear regard to precedence.

The Review notes that separating the breach and sanctions delegate aims to ensure that the effective and timely conduct of the process is not dependent upon a single individual. The role of breach delegate should ideally be performed by the Human Resource team. The role of the sanctions delegate should be performed by an assigned senior level leader within the agency such as a Deputy Secretary and/or could be a Deputy Secretary from outside the agency. This allows the decision to terminate employment to continue to reside with the HoA but limits their need to be involved in every step of the disciplinary process. The new proforma seeks to empower different parts of the system rather than concentrating reliance and therefore risk in one role holder.

The Review has been urged by various observers to ensure that the updated EDs address the need for natural justice for both the employee who has alleged to have breached the code of conduct and the child/victim survivor. The concept of natural justice is complex and covers a vast set of arguments that are challenging to navigate for even those who are well versed in legal and ethical matters. The expectation that employees and managers will be able to successfully translate the concept into

⁸³ The Review notes that the updated ED5 includes changes to address the points in 1,2,3 and 8. The Review supports these changes and its draft version of ED5 includes these aligned to the TOR.

practical actions and decisions during disciplinary processes in order to satisfy the need for natural justice, while a worthy aim, is not easily achievable.

However, the Review notes that the essential requirements within the concept of natural justice are that any decision-making process is objective and free from bias and that decision makers have no personal interest in the matter being decided. Additionally, upholding natural justice requires that all individuals involved in the process are informed of the decisions and have the opportunity to present their case prior to a decision being made.

As far as possible the Review has sought to ensure that this approach is reflected in the design of the disciplinary processes described in all four revised EDs.

COI recommendation 20.8 was of particular concern to the Review, it proposed that “.....the Tasmanian Government should amend *Employment Direction No. 5 — Breach of Code of Conduct*, as it relates to child sexual abuse or related conduct, to ensure people making a complaint and children or young people who have been abused have the right to:

- i. reply to any factual matters put forward by the alleged abuser*
- ii. know the outcome of an investigation*
- iii. seek a review of decisions in an appropriate forum”⁸⁴*

With respect to 20.8(i), ED 5 has been amended to ensure that during the investigation the complainant can make comment on the allegations that are to be put to the employee for a response. Legal concerns have been raised about the impact of sharing the employee’s response to allegations with the complainant, this is because:

- a) it is circular and confuses the right that the employee has to procedural fairness, with concerns that a complainant has to be satisfied that their allegations have been properly investigated; and
- b) it potentially raises issues with respect to a successful criminal prosecution, noting that a complainant’s evidence may be challenged on the basis that they have had an opportunity to revise it following receipt of the employee’s response. (*The issues are addressed in detail in the attached appendices*).

With respect to 20.8 (ii) and (iii) respectively, it is proposed that there be legislative amendments to:

- a) authorise the release of the relevant determination (as opposed to investigation) but prohibit its publication both to protect the complainant and the employee, as well as any factual matters relevant to a referral to the police for a criminal investigation; and
- b) to allow a complainant to seek that the Tasmanian Commissioner for Children and Young People consider if the process followed in an investigation was fair and adequate, and if not, to remit the complaint to the employer for reconsideration.

The COI recommends that unsubstantiated and untested allegations be considered as part of the investigation. This has been included in ED 5, however the Review suggests that there be clear guidance on how these matters should be tested during an investigation, and the weight they are given

⁸⁴ COI Report Volume 8: Chapter 20, pg 203 (Recommendation 20.8).

by the decision maker so that the employee is not treated unfairly (*This issue is also discussed in the appendices*).⁸⁵ Finally, almost all stakeholders have been unanimous in expressing the need for separating performance management/development from disciplinary matters. This is on the basis that the approach and the interventions in each case are fundamentally different. Based upon the feedback received, it is the Review's view that confusing these two elements within the employment framework creates a tension within the system that both impedes performance and erodes and undermines any disciplinary processes. Therefore, the Review recommends a substantially revised approach to performance development and management. This involves separating out discipline so that it is focused on breaches of the Code of Conduct. The Review recommends that the State Service provide extensive training and support to managers and employees across the service to ensure the distinction between these two elements of this ED are clear and well understood.

4.3.2 Employment Direction 4: Procedure for Suspension of State Service Employee With or Without pay

The COI recommended that the Tasmanian Government amend ED 4 to enable the immediate suspension of employees alleged to have engaged in child sexual abuse or related conduct.⁸⁶ The COI also recommended that such suspension could occur before the start of any disciplinary processes including preliminary assessments. Additionally, the COI recommended that the HoA take into account child safety when deliberating on a decision to suspend an employee.

Aligned to the above recommendations the revised ED 4 enables the HoA to suspend an employee for potential breaches of the Code of Conduct either with or without pay for additional reasons than currently available, including:

- If they do not possess the essential requirements to perform their role such as a registration/licence
- If they are unable to perform their duties to a required standard; and/or
- Where their continuing presence poses a risk to the safety of others.⁸⁷

Detailed guidance is now included in the direction on factors to consider when suspending an employee with or without pay. A specified duration for the suspension is also mandated with a requirement to review the decision once the duration has elapsed (suggested time period is 60 days). Any proposed return to work after a suspension also requires consultation with the SSMO.

Another critical change made in ED 4 is to enable the HoA to make a determination in relation to suspending the employee without pay. This decision previously resided with the Head of State Service. Based upon case analysis and noting that in cases where the potential breach involves criminal conduct, and/or conduct that has led to the suspension of a mandatory registration or licence, it appears unnecessary to require the Head of State Service to make this decision. In such instances, the HoA is likely to be informed of criminal charges ahead of any advice being provided to the Head of State Service. Given the potential for serious harm if the employee remains in the workforce during the period

⁸⁵ Appendix F.

⁸⁶ COI Report Volume 8: Chapter 20, pg 193 (Recommendation 20.6).

⁸⁷ Appendix B, Employment Direction 4.

when the matter is escalated to the Head of State Service for decision, it is advisable that this delegation is changed to enable the HoA to make the decision after due process.

4.3.2.1 Suspensions in the Event of Loss of Mandatory Qualifications or Employment Prerequisites

The COI report established that certain roles within the State Service could only be undertaken provided the employee was formally qualified and/or had met the requirements for the role including professional accreditation or registration requirements. Examples of such roles include a teacher, medical practitioner or registered allied health practitioner, engineer, or veterinary surgeon.

The revised EDs provides that in the event an employee loses their mandatory qualification and or employment pre-requisite such as registration with the TRB, the AHPRA or RWVP, this would constitute a breach of the contract of employment and constitute grounds for immediate suspension of employment.

In such events it is important that the rationale or justification for suspension is clearly outlined.

4.3.3 Revised Employment Direction 6: Procedure to Investigate Whether an Employee is Able to Efficiently and Effectively Perform Their Duties

The COI recommended that the Tasmanian government introduce changes to ED 6 to enable the immediate termination of a person's employment if the employee no longer met an employment requirement for working with children or young people.⁸⁸ The COI suggested that the process leading to a termination decision be as simple as noting the serious risk of harm to children.

As noted earlier, the provision to suspend an employee if they lose a pre-requisite requirement such as a registration or licence is already provided for in ED 4.

The revised ED 6 goes further and clarifies the actions to be taken by the HoA where an employee is unable to perform their duties due to an inability.⁸⁹ It outlines detailed guidance in relation to the investigation process and determination reached thereof. Under this revised direction, the HoA can terminate employment immediately if an employee no longer meets the essential employment requirements for their role (such as a registration under the RWVP Act). In doing so, it provides the HoA with the necessary authority to act decisively when necessary and where there is a serious risk of harm to children.

4.3.4 Revised Employment Direction 26: Managing Performance in the State Service

The EDs described above deal primarily with misconduct within the State Service. However, the Review emphasises that breaches of the Code of Conduct only impact a small proportion of the State Service

⁸⁸ COI Report Volume 8: Chapter 20, pg 206 (Recommendation 20.12).

⁸⁹ Appendix D, Employment Direction 6.

workforce. A majority of State Service employees undertake their day-to-day roles with integrity, and professionalism. Managers and leaders charged with delivery of outcomes for the community also discharge their complex responsibilities to ensure that the Tasmanian community benefits from the work undertaken by the service. Their role in ensuring that the State Service has the necessary capability to deliver to the needs of Government and community is paramount. To this end, an effective performance development and management cycle is crucial.

In the Review's opinion, while the inclusion of the stewardship principle is designed to enable the Heads of Agencies to give due regard to capability in the long term, there is also a need to ensure that leaders and managers are supported to harness the extensive talent, expertise and skills of employees and teams. The need to manage performance extends beyond managing breaches of the Code to Conduct to ensuring that all employees benefit from support to develop their full capabilities through appropriate learning and development opportunities and recognition for contributing to the achievement of outcomes.

The Review has been struck by the public narrative that has inevitably focused on the conduct of a small minority of employees. The great majority of staff within the State Service look to do the right thing. People perform well when those that they work with and who they seek to serve display confidence in their abilities and achievements. Public commentary on the State Service might best emphasise a positive dialogue to overcome any flaws and deficits the State Service might have.

The basic premise within ED 26 is to define and outline the purpose and value of a performance management system and its embedded elements – a performance management cycle and assessments. The Review recognises that managing others is a skill where expertise builds over time. Dealing with absence, underperformance, misconduct require different approaches from a manager. Aligning performance to the strategic direction of the organisation through effective job design and assignment of talent to roles requires experienced leaders and managers. Good management practice is underpinned by a consistency of approach as well as giving managers the skills of working with people through challenges, life events and change.

The revised ED 26 contains detailed guidance on not only the roles and responsibilities of leaders and managers, but also the approach and tools to managing performance.⁹⁰ The intention is to provide new guidance on when informal management intervention should occur versus when performance correction and/or sanctioning should take place to address poor performance. The Review notes that individual managers do not necessarily develop management skills merely by assignment to management roles. Rather, that mature and successful employment systems are characterised by having clear guidance and tools on how to manage performance and support employee development and take responsibility for developing a management cadre seriously.

Aligned to the above, the Review has provided extensive information and guidance on the performance management cycle and planning, including templates and checklists for performance discussion. The Review has also developed performance improvement templates. Finally, the new ED 26, recommends that managers should acknowledge the performance of their employees. Building a positive culture takes time and collective effort. Without appropriate recognition mechanisms, the State Service will struggle to build positive momentum and profile for its work. While recognition is important for employee motivation, the Review also notes that they are critical tools for showcasing the work of the service as it rises to meet ever increasing challenges and deliver to the needs of the Tasmanian community. The Review encourages leaders and Heads of Agencies to establish effective mechanisms to recognise and celebrate employee and team achievement and performance.

⁹⁰ Appendix E, Employment Direction 26.

Strategic Recommendation 4.2

The Review recommends that the Head of State Service review the attached employment directions and undertake further consultation with relevant stakeholders to finalise revised drafts for approval by the Premier.

4.4 OTHER ACTIONS TO STRENGTHEN THE EMPLOYMENT

SYSTEM

4.4.1 Investigations Capability and Guidance

Performance systems need to deal with both underperformance as well as misconduct. In the case of the latter, disciplinary processes including preliminary assessments and investigations need to be undertaken speedily and effectively. The Review's analysis of individual cases demonstrated the State Service's heavy reliance on using external firms to investigate disciplinary matters. The Review was advised by some interlocutors that such a reliance arose from the lack of internal capability and resources and that developing in-house capability was cost prohibitive. The Review has also been advised that current provisions within the disciplinary framework require the use of external investigators. The Review challenges aspects of this advice for several reasons.

Firstly, the State Service, whilst relatively small in size compared to other jurisdictions, is large enough to warrant an in-built capacity to investigate and act upon delicate and high-risk employment issues immediately. The Review notes that the lack of such an in-built capacity has hindered the capacity of the State Service to respond to matters such as those arising from the COI in a timely manner.

Secondly, the Review has identified several deficiencies and significant inconsistencies in the conduct of investigations by external firms. These include:

- Poor quality investigations that lacked focus and an understanding of the Code of Conduct.
- Inconsistencies in understanding of what conduct constitutes a breach of the Code of Conduct.
- Investigation reports that reflected narrative/information that could be construed as advocacy of the individual as opposed to objective evaluation of the evidence.
- Lack of an ethical and/or trauma-informed approach to conducting investigations.
- Poor analytical skills as reflected in analysis and reconciliation of all available material including conflicting statements and views by witnesses.
- Lack of legal knowledge and understanding which would assist in ensuring that breach and sanction determinations could stand up to scrutiny and challenge.
- Lack of clarity on whether an appropriate conflict of interest process had been undertaken prior to the appointment of the investigator.

Thirdly, noting the clustering of alleged offences in particular work units and agencies such as is the case with AYDC, the State Service needs the capability, capacity and mechanisms to investigate alleged misconduct where there are signs of collusion within and between employees and/or where there are signs of embedded and significant cultural issues. In such instances, the State Service needs to be able

to refer all related matters out to a single unit so that information, intelligence and evidence can be dealt with in a legal and ethical manner with safeguards in place.

Acknowledging these challenges, the Review endorses the establishment of the Shared Capability and Centralised Investigations (SCCI) unit within and as part of the SSMO. Noting that the Review has recommended that all serious misconduct matters should be referred out to a Shared Capability Unit, it wants to acknowledge that the Head of the State Service has appointed an external expert, Ms Regina Weiss, in July 2024 to assist with the development of material to support investigatory processes and to support investigations in the most complex cases. For background, the Review notes that while the SCCI was initially established to investigate and manage all code of conduct matters leading to termination, its role has been significantly strengthened and enhanced post COI. Specifically, the SCCI has been focused on accelerating the Code of Conduct matters related to historical child sexual abuse allegations at the AYDC. As at August 2025, the SCCI unit has case managed 29 historical and contemporary matters, of which it was investigating 17 and had finalised four. The Review commends the approach while offering the following guidance for incorporation into the advice being prepared by Ms Weiss and/or for action by the Head of State Service.

- The Head of State Service should develop detailed guidance on the conduct of workplace investigations emphasising that external investigations should be minimised, and that serious misconduct should be referred to the Shared Capability and Investigations unit.
- The panel arrangement established by the DECYP as a whole of government panel for the selection and use of external investigators should result in a list of approved providers with agency heads seeking to use a different provider being required to consult with the Head of State Service prior to doing so.
- The Head of State Service should report annually on the use of external investigators reflecting the value and cost of such investigations.
- Prior to being appointed to conduct an external investigation, the investigator must be asked to complete a conflict-of-interest declaration including responding to specific questions on whether their appointment may raise concerns, their relationships if any with people involved in the matter.
- The investigator should not be involved in subsequent decisions relating to that matter.
- The investigator should provide an investigation plan consisting of the Terms of Reference for investigation, the provisional time-frame to conduct the investigation, the policies and procedures that they expect to review and follow, the issues or potential breaches of the code of conduct that need to be explored/clarified, the sources of evidence and the persons who they wish to approach for interviews, the format of their interim and final reports.

The Review offers the following input into the development of detailed guidance in relation to the conduct of workplace investigations. These notes supplement the information already included in the relevant EDs and therefore should be read in conjunction with them.

- Information on how to handle an investigation meeting: such information should make clear that an investigation meeting is merely a discussion to gather information on the matter under investigation. It is not a disciplinary meeting.
- Records of an investigation meeting should include the date and place of interview and who was present but also any refusal to answer a question, details of any adjournments and should have no gaps (gaps should not be filled in afterwards).
- Investigation meetings should include questions to the employee about any matters they feel maybe relevant, names of any other employees they believe should be interviewed and why.

- Investigators should be trained in investigation skills including the use of different questioning approaches- open, closed or specific questions, probing questions and questions that deal with feelings. The investigator should also provide a summary of the information verbally enabling the interviewee to correct the record as needed.
- The investigator should avoid asking interrogative questions, leading questions and or multiple questions. In particular the Review has seen far too many reports with multiple questions that make it difficult to seek accurate and precise information.
- The investigator should be able to articulate their strategies to deal with reluctant witnesses. The Review was not able to ascertain in multiple reports whether an investigator had sought to understand why employees were unwilling to be interviewed and how to allay and address their concerns.

The State Service also needs to address the issue of employees refusing to attend meetings with an investigator. While employees cannot be compelled to provide witness statements (i.e. written/signed statements), their refusal to attend meetings with investigators following a lawful and reasonable direction to attend a meeting should be seen as refusing to obey a lawful and reasonable direction that may result in disciplinary action. This guidance needs to be clearly provided to investigators.

The Review separately notes that notwithstanding the provisions above with the commencement of the Reportable Conduct Scheme, all employees within the State Service have a mandatory obligation to report any conduct that may constitute reportable conduct.⁹¹ Therefore, in the event that employees who have refused to participate in investigation processes are found to have breached their obligations to report conduct that constitutes Reportable Conduct, the Review suggests that the Head of State Service consider undertaking disciplinary action.

The guidance to investigators should include templates for investigation reports, the need to summarise key evidence, details of the investigation process (i.e. balance of probabilities test applied, information considered and witnesses interviewed), the facts that have been established, the facts that remain disputed, whether there are any mitigating factors that need to be considered, cross-references to evidence that supports findings, and the recommendations related to the matter.

The guidance to investigators should include templates for investigation reports, the need to summarise key evidence, the facts that have been established, the facts that remain disputed, whether there are any mitigating factors that need to be considered, and the recommendations related to the matter.

Operational Recommendation 4.2

The Review recommends that the Head of State Service develop detailed guidance and templates for the conduct of workplace investigations.

4.4.2 Case Management

As previous sections have highlighted, dealing with child sexual abuse and holding perpetrators to account requires effective case management. Given that staff within the State Service can move to pursue employment opportunities in other agencies, it is important that their record of performance travels with them and is available to all future employers/managers. The lack of visibility of previous performance issues limits the ability of the State Service to take account of the pattern of behaviour over time.

⁹¹ *Child and Youth Safe Organisations Act 2023* (Tas).

The COI also recognised this as an issue and strongly recommended that the State Service implement an approach to case management of disciplinary matters particularly as they relate to child sexual abuse and related conduct through maintaining and overseeing a 'single file' for concerns and allegations about staff.

In this regard the Review endorses the Tasmanian Government's investment into the development of a Human Resource Information System (HRIS) to support the case management approach identified above. The Review notes that the Government's response to the COI provided an initial investment in the State Service Human Resource Transformation Program (the Program). This investment followed recommendation 34 of the Tasmanian State Service Review (TSSR) that the DOH continue to develop the Human Resource Information System (HRIS) to provide the foundation for a whole-of-government system, with clear whole-of-government business requirements.

The Review notes that the Program provides the foundation that enables the State Service to address many recommendations from the COI. The Program will enable the State Service to develop a single source of truth data set in relation to all employment information on all-State Service employees. This should enable the capturing, tracking and acting on risks posed from or to the workforce within the State Service. Over time, consistency of data will support consistent reporting thus improving decision making.

The Review understands that further to this work outlined above, the Program has taken the Human Resource Case Management System (HRCMS) developed by the DOH and is currently deploying it across all other State Service agencies. The deployment of the HRCMS thus supports a case management approach. The HRCMS aligns approaches to capturing employment cases and, ultimately, cases will be linked to an employee record within the new HRIS and events with multiple cases or employees will be linked for visibility. Furthermore, standardising case management processes provides the basis for creating, extracting and analysing data across the State Service including identifying behavioural trends, patterns and contributing factors.

The Review firmly endorses the above developments noting that the implementation of the new system will assist in the future design of services, and underpin data driven decision making to ensure the State Service is better positioned to protect the children of Tasmania.

4.4.3 Case Law and Guidance on Disciplinary Matters

The Review has analysed a large amount of material in relation to individual disciplinary cases. This includes material and arguments from legal firms representing employees in disciplinary matters and material supporting decisions made by the Tasmanian Industrial Commission (TIC). The Review is struck by the fact that a small number of private firms and Crown Law are extensively engaged on a bulk of the matters and therefore have information and knowledge of relevance to employment disputes. However, the knowledge gained through these matters is not effectively translated into improved guidance for those employees, managers and decision-makers handling employment cases related to the SSA. The Review believes that making this knowledge available through specific guidance developed by the SSMO would improve the conduct of disciplinary matters relating to the SSA. Serious consideration should be given to the SSMO reviewing and publishing information from notable cases that have been reviewed by the TIC and to incorporate on an ongoing basis any lessons into guidance for state service managers and employees handling disciplinary action.⁹²

⁹² Queensland Government, *A Fair and Responsive Public Service for All Report 2019*.

Operational Recommendation 4.3

The State Service Management Office should prepare and publish detailed guidance to managers and decision makers about employment matters including the conduct of investigations, review of suspension and termination decisions and appeals by the Tasmanian Industrial Commission as a means of developing the ongoing capability of managers and leaders.

4.4.4 Templates for Sanctions

The Review has been urged by some interlocutors to reflect on the use of template letters in disciplinary matters. The unions including the CPSU have highlighted that the use of template letters can lead to escalation of tensions and enhanced probability of prolonged litigation because the letters often reflect the full list of sanctions available to a HoA under the SSA as opposed to a careful selection of sanctions that may be applied based upon an assessment of the facts of the matter.

The Review understands that the threat of suspension or dismissal occurs as a matter of course due to the use of template letters rather than because careful consideration of the allegations has occurred. The use of dismissal provisions should only occur where the HoA genuinely believes this option is likely to be triggered based upon the material available to them.⁹³

Operational Recommendation 4.4

The State Service Management Office should develop guidance on the use of template letters ensuring that potential sanctions identified in the letter align to seriousness of the alleged conduct.

4.5 CONCLUSION

This chapter deals exclusively with the employment framework underpinning employment within the State Service. The aim of the changes proposed here is to improve employment law and management practices to deliver a fair, responsive and trustworthy State Service that is better equipped to prevent child sexual abuse. The Review has recommended changes to the SSA to ensure that the Code of Conduct applies at all time. Given that several cases analysed by the Review included unacceptable conduct that occurred both within the bounds of state service employment and extended outside of it, there is a need to change the employment legislation.

To develop a fit for purpose State Service that can nurture and protect the children of Tasmania, the Review proposes alignment of the SSA with the Reportable Conduct Scheme via the CYSO Act. The Review also proposes changes to EDs to improve the effectiveness of disciplinary processes.

In proposing these recommendations, the Review notes that most of the changes outlined here do not require significant additional resources. However, some do, and the Review encourages government

⁹³ Queensland Government, *A Fair and Responsive Public Service for All Report 2019*.

to align resources over time to deliver the improvements identified in this chapter. Without these additional resources being allocated over time, change will be hard to achieve.

4.6 SUMMARY OF RECOMMENDATIONS

4.6.1 Strategic Recommendations

Strategic Recommendation 4.1

The Review recommends amendments to the State Service Act 2000 which contain clear provisions:

- outlining the purpose of State Service employment as serving the ‘Government, Parliament and the Tasmanian community’.
- to ensure that employees must adhere to all elements of the Code of Conduct at all times.
- to ensure that ‘misconduct’ as defined under the Integrity Commission Act (Tas) 2009 also constitutes a breach of the code of conduct under the State Service Act.
- to ensure that any reportable conduct of an employee at any time is considered to be a breach of the Code of Conduct.
- to ensure that a breach of the departmental professional conduct policy at any time constitutes a breach of the State Service Code of Conduct.

Strategic Recommendation 4.2

The Review recommends that the Head of State Service review the attached EDs and undertake further consultation with relevant stakeholders to finalise revised drafts for approval by the Premier.

4.6.2 Operational Recommendations

Operational Recommendation 4.1

The Review recommends that the performance agreements of all executives and their direct reports within the State Service include a commitment to stewardship of the State Service.

Operational Recommendation 4.2

The Review recommends that the Head of State Service develop detailed guidance and templates for the conduct of workplace investigations.

Operational Recommendation 4.3

The State Service Management Office should prepare and publish detailed guidance to managers and decision makers about employment matters including the conduct of investigations, review of

suspension and termination decisions and appeals by the Tasmanian Industrial Commission as a means of developing the ongoing capability of managers and leaders.

Operational Recommendation 4.4

The State Service Management Office should develop guidance on the use of template letters ensuring that potential sanctions identified in the letter align to seriousness of the alleged conduct.

CHAPTER FIVE: CULTURE

5 CONTEXT AND INTRODUCTION

The Review understood that if it was to make a long-term difference to the governance of Tasmania and the safety of children then it needs to closely examine the cultural factors at work in the State Service. A public service system can have the best laws and regulations, but unless the right culture of service and accountability is developed and maintained then it will fall well short of public expectations and trust.

The Review has not sought to duplicate the excellent work done by Dr Ian Watt AC and the Independent Watt Review. The Tasmanian Government had asked Dr Watt to consider whether the State Service was fit for purpose for Tasmania today and into the future. In accordance with its TOR, the Watt Review focused on capability, technology and service delivery and set out to identify structural, legislative and administrative improvements to deliver a more efficient and effective public service. The Watt Review outlined 77 recommendations with five reform domains: principles and values, leadership, capability, workforce and service delivery.

On receipt of the Watt Review in November 2021, the Tasmanian Government announced that it supported, or supported-in-principle, all 77 recommendations. Reform implementation commenced in 2022 with the establishment of the Secretaries Board chaired by the Secretary of DPAC.

This Review endorses the recommendations set out in the Watt Review and the direction in which it seeks to take the State Service. This Review has not delved into capability issues. It has looked at the cultural dimensions predominant in the State Service particularly, where they intersect with the recommendations arising from the COI and other initiatives to keep children safe.

The COI recommendations regarding State Service disciplinary frameworks concluded with a recommendation that the Tasmanian Government allocate funding for initiatives aimed at cultural change and awareness raising.⁹⁴ The aim was to promote a shared understanding and application of disciplinary processes across the State Service in a manner that ensured the safety and well-being of children at risk of child sexual abuse or related conduct. In making the recommendation the COI noted that besides legislative and policy framework reforms, it was critical that:

- There was a cultural shift in the State Service's interpretation and application of disciplinary processes.
- Employees reporting improper conduct felt supported, safe and encouraged.
- Employees both understood the disciplinary process and proposed reforms as well as actively and willingly fostered a culture that promoted the safety and protection of children.⁹⁵

Previous chapters of this report propose a range of changes to the State Service disciplinary framework, including legislation, EDs and performance development and management systems. They also include a focus on reporting misconduct and information sharing to ensure the safety and wellbeing of children in Tasmania. These recommendations are primarily aimed at remediating and resetting the areas of concern related to the identification, reporting and addressing of disciplinary matters that arose from the COI hearings and report. This reflects an approach to improving operational management within the State Service. A second approach, which is the focus of this chapter, is to improve the organisational culture within which such changes must be implemented and must succeed.

The Review's commencement in February 2024 was marked by a difficult period for the State Service. Public commentary, media coverage, parliamentary scrutiny and general stakeholder feedback and reflections by senior leaders all depicted a public service struggling to come to terms with allegations

⁹⁴ COI Report Vol 8: Chapter 20, pg 209 (Recommendation 20.14).

⁹⁵ Ibid, pg 208-209.

of serious and systemic misconduct. This scrutiny also pointed to concerns regarding compliance and accountability.

The State Service's ability to effectively implement the necessary changes arising from the COI and its recommendations was seen by the community and the Parliament as problematic. The Review recognised these concerns and observed that the need for reform and modernisation of systems and practice would be essential in positioning the State Service to tackle the many challenges in the emerging strategic environment.

Against this backdrop, the Review was tasked by the Tasmanian Government to *'make any recommendations in addition to and not contrary to those made by the COI to improve the system to responding to concerns about the conduct of State Service employees'* and provide *'advice on any matter relating to the actions of government agencies or other relevant authorities that the Independent Reviewer determined relevant'*.⁹⁶

Noting the COI's recommendation on the need for cultural change to include strengthening leadership and accountability arrangements,⁹⁷ the Review has consulted widely on the challenges and opportunities that the State Service needs to tackle so that Tasmanian children and the community are well served for coming decades. The cultural changes recommended will also have wider benefits for the State Service and the Tasmanian community.

All State institutions face the challenge of building and maintaining trust. Trust is built and maintained by efficiently delivering services and products, and by behaving with integrity - by not just avoiding doing the wrong thing but by doing the right thing. It is the culture of the State Service which, to a large part, determines its approach to public service and the public good. Public trust erodes quickly when the State Service is perceived to have fallen short in enforcing and following laws and regulations which protect the public good. This is particularly so when they relate to the safety and welfare of children. And this has been the case in Tasmania.

The Review examines and recommends changes to the culture of the State Service across a range of broad themes including governance, accountability, transparency, leadership and collaboration. The Review recognises that culture is hard to shift. It requires concerted leadership, and it takes time. It is crucial, however, that it is done.

The Review acknowledges the significant efforts made to shift the culture of the State Service since the commencement of its work as a consequence of new leadership at HoA level. This has been a positive springboard for change. It will require, however, enduring, strong leadership at the centre and collaboration from the wider State Service leadership to embed the reform and modernisation program into the ethos and culture of the service.

This Review also proposes structural changes to the role and positioning of the SSMO. This will be crucial as the State Service manages the complex dynamics of embedding a range of recommendations from the COI and other reviews, while also developing and maintaining a range of specialist capabilities that are needed at a time of great strategic and technological change.

This Review notes that the reform effort will continue for years. The risk is that the reform effort loses momentum over time and becomes consumed by short term issues.

⁹⁶ Independent Review terms of Reference. [Reviews | Keeping Children Safe](#)

⁹⁷ COI Report Vol 8: Chapter 20, pg 208-209.

5.1 PUBLIC TRUST IN THE STATE SERVICE

Throughout its consultations the Review heard consistently from community groups that they had been disappointed with the State Service ‘as it circled the wagons’ leading up to the establishment of the COI and its hearings. The State Service was seen as being defensive and legally focused in its response to matters of concern. In their view there was a failure to appreciate the extent of the issue and act in the wider public interest. This disappointment has been echoed by elements within the State Service.

The community’s disappointment in the role of the State Service arises from the findings in the COI report of systemic child sexual abuse in Tasmanian state institutions over a prolonged period. From a community perspective this demonstrated that the State Service has failed to protect the children of Tasmania. The fact that accounts of child sexual abuse had circulated in their view prior to the COI and that they had remained unaddressed indicates that the State Service did not always prioritise actions that would promote the welfare of the children of Tasmania. The Review’s conversations with community groups also highlighted the plight of many victim survivors as they fought to secure justice for the harm done to them under State care.

Separately, in reviewing the documentation provided to the Review, it has been clear that the State Service struggled to develop a whole of service strategic response to anticipating the diversity of issues that would arise from the COI and preparing to address these in an effective manner. Specifically, the Review notes, that a whole of service strategic response, which incorporated insights from the referrals being provided by the COI was needed given the volume and complexity of disciplinary matters that were likely to arise, the need for external investigators and managing conflicts and capacity issues in Human Resource teams that were handling the issues and the need for improved EDs. This would have helped the State Service to avoid the perception that it was struggling to address the matters of concern from the COI in the early months following the release of the COI report.

The Review recognises that the response to COVID 19 had left the State Service tired and pressured. While that might partly explain its actions, it does not justify the failings of culture, processes and capability in addressing the abuse of children in state institutions.

Elected representatives and unelected public officials have a common set of responsibilities to protect the citizenry, promote their welfare and ensure justice. These responsibilities underpin the legitimacy of governments. The public trusts that governments will uphold these responsibilities and as noted by a Royal Commission, *‘this trust is the condition upon which power is given to the institutions of government and to officials-elected and appointed alike’*. Actions that breach this trust erode the legitimacy of governments.

Maintaining the community’s trust is an essential objective for a public service. To maintain the trust and confidence of the community, public officials must act with integrity and be transparent, accountable, and open to critical scrutiny. In a similar reflection, the National Commission of Audit 1996 emphasised the importance of setting and maintaining *‘a powerful set of principles governing public service ethics. These include probity, integrity, a commitment to the community, responsiveness to government, a commitment to accountability, a focus on results, continuous improvement.’*⁹⁸ In the Review’s opinion the culture and ethos of the public service should be framed by these principles. They provide the essential and enduring link between the ethical conduct of a State Service official, community expectations, institutional structures and organisational culture.

The Review proposes a range of institutional and procedural changes in the sections that follow. These changes are organised into four broad themes: accountability, transparency, collaboration and leadership.

⁹⁸ Robert Officer, *National Commission of Audit report to the Commonwealth Government* (1996).

5.2 ACCOUNTABILITY

Accountability mechanisms ensure that public officials and agencies/authorities are answerable to the people for the actions they take on their behalf. Accountability to the public is a fundamental aspect of our system of government.

Understandably, the public has expectations of the institutions and its public officials that have been entrusted with the use of this power. Fundamentally, they include an expectation that the State Service will comply with the law and the Constitution, that it will adhere to codes of conduct and that it will serve the public interest with integrity and diligence. Other measures of accountability that may vary over time relate to the specific manner in which programs and policies are developed and implemented. In either context, mechanisms for public accountability provide a basis for the public to assess how the State Service is striving to meet expectations.

Previous chapters have outlined mechanisms for public accountability including, that in the Westminster model, formal public accountability is vested in the Minister responsible with public officials being accountable to their supervisors. The Review has also noted various other mechanisms for accountability including that public officials are accountable to a range of external institutions such as the Parliament and its committees, oversight and integrity agencies such as the Ombudsman and the IC and the courts.

In addition, public officials and institutions also report on their performance through published annual reports, cultural surveys and other information that are released to the public. Whilst noting the obligation on public officials to provide an account of their conduct, it is also important to recognise that those seeking an account often have a responsibility to do so. Requesting access to information and seeking a review and/or investigation are legitimate mechanisms to achieve accountability.

In this regard, the Review reiterates the importance of accurate record keeping. It promotes efficiency and better decision making. It can also help hold agencies and public officials to account.⁹⁹

5.2.1 The Tasmanian and COI Context

The Review sought responses from agencies and authorities across Tasmania regarding the accountability mechanisms they were subjected to, including any previous reviews in relation to child safety over the past five years. DOH and DECYP reported instances of recent reviews into child sexual abuse. DOH also noted that it had implemented 92 recommendations of the Child Safe Governance Review during the Review's tenure. Separately, the Review also received submissions from oversight agencies that identified various external reviews regarding child sexual abuse allegations, including several reports prepared by the Ombudsman on the AYDC. The submissions and documents analysed by the Review included publicly available annual reports of various agencies and authorities. The annual reports provided details on performance measures, performance audits, Public Interest Disclosure complaints, Right to Information requests, Routine Disclosures and internal and external reviews that involved the agency. Concurrent to this Review, the Tasmanian Government also initiated other reviews related to the COI including the Weiss Independent Review into Paul Reynolds (Weiss Review).¹⁰⁰ Finally, the Review notes the substantial work of the Parliamentary Scrutiny Committee on the

⁹⁹ This ideas discussed in section 5.2 and all subsequent subsections relevant to accountability, are partly synthesised by consideration of the following - Queensland Government, *A Fair and Responsive Public Service for All Report 2019*, pg 27 (s 2.2.4 outlines different accountability mechanisms); Afghanistan Inquiry Implementation Oversight Panel, *Final Report to the Deputy Prime Minister and Minister of Defence*, pg 33-41; Australian Public Service Commission, *Centralised Code of Conduct Inquiry Taskforce Final Report (2024)*.

¹⁰⁰ Regina Weiss, *Weiss Independent Review into Paul Reynolds Final Report (2024)*.

'Recommendations of Final Report of the Commission of Inquiry' in seeking responses on implementation progress of the COI recommendations.

Collectively, the feedback received by the Review indicated a robust regime of accountability mechanisms including external reviews, investigations by oversight agencies, annual reports and active mechanisms for parliamentary oversight. Despite this, the Review notes that its establishment was anchored on the perception that these mechanisms of oversight needed to be further supported in order to provide greater insights into the functioning of the child safety and protection system in Tasmania and how it could be enhanced.

The Review notes that the system of accountability in Tasmania can be strengthened through simple but crucial measures. These include measures identified in the COI report as well as the Weiss Review in relation to strengthening the role of the oversight agencies – the IC and the Ombudsman. In particular, the Review recommends that the government prioritise consideration of Recommendation 5 of the Weiss Review which would enable the IC to independently and robustly investigate all allegations of grooming and sexual abuse by TASPOL employees¹⁰¹. As outlined above, one of the key mechanisms for achieving public accountability is through the investigative role played by independent oversight agencies. Noting the serious offences by Paul Reynolds over many years, and the failure to detect these offences by the agency that has statewide responsibility for law enforcement indicates that the in-built safeguards within the system of accountability are lacking. Strengthening the role of the IC as identified by the Weiss Review is important so that any future abuse of official power and position can be effectively scrutinised by an independent body.

The Review has been advised that the State Service is in the final stages of drafting legislative change to the ICA which will incorporate Recommendation 5 of the Weiss Review.¹⁰² The Review welcomes this change and notes that, in its opinion, this will go a long way to addressing the early concerns raised with it by external stakeholders.

Strategic Recommendation 5.1

The Review recommends and supports the Tasmanian Government's proposed implementation of Recommendation 5 of the Weiss Review to amend the Integrity Commission Act (Tas) 2009 to ensure all notifications made to the Integrity Commission in respect of Tasmania Police officials who are alleged to have groomed and/or sexually abused persons [serious misconduct] can be investigated independently by the Integrity Commission through enhanced powers and remit as outlined in the report.

The Review also highlights inconsistencies in reporting on misconduct issues across agencies and authorities. Many of the Review's interlocutors highlighted that data on individual employee conduct cases was not readily available in agency and authority annual reports. Although all agencies report the number of Public Interest Disclosures received, not all agencies report publicly on the number of alleged breaches of the State Service code of conduct (Code) in their annual reports. Since the introduction of the Reportable Conduct Scheme, agencies have now adopted reporting on the notifications made to the Office of the Independent Regulator of a reportable allegation or conviction of an employee. By ensuring that all agencies report on the number of employee conduct matters under consideration in any given year, perceptions about the lack of accountability for breaches of the code of conduct by individual employees would be dispelled. This is a simple change which the Review believes will deliver benefits in building trust in the State Service. By reporting on the number of Code breaches, the State Service will provide visibility not only of the size of the problem (i.e. a very small proportion of staff breach the code of conduct), but also the steps it is taking to ensure that when misconduct does occur it is dealt with swiftly and decisively. The Review notes and welcomes the substantially improved reporting in relation to child sexual abuse matters via the DPAC Routine Disclosure website.

¹⁰¹ Ibid, pg 65.

¹⁰² Regina Weiss, Weiss Independent Review into Paul Reynolds Final Report (2024), pg 8.

Operational Recommendation 5.1

The Review recommends that all agencies and authorities include data on employee conduct including Code of Conduct matters and the reportable conduct scheme in their annual reports.

5.2.2 Review Observations

Two further perspectives were shared with the Review regarding the State Service's culture and its failings for children in state institutions by various interlocutors. The Review's observations in relation to these perspectives are outlined below.

5.2.2.1 Leadership Accountability for Systemic and Organisational Failure/s

Of the many observations shared with the Review, perhaps the most concerning has been the notion that, given the size and nature of agencies and authorities, the leadership could not possibly have known about the conduct of individual staff and therefore is not accountable for misconduct that occurred during their tenure.

The Review disagrees. This sentiment misreads where the leadership's responsibility lies. The role of leaders is to ensure that there are appropriate oversight, governance and reporting arrangements in place to identify and address misconduct. In essence, they are responsible for the design and operation of systems, including appropriate risk management processes to address the risk of child sexual abuse, noting the vulnerability of children. Leaders are also responsible for the strength and effectiveness of these systems.

Leaders make decisions and strategic choices with such decisions often balancing competing interests. These decisions require judgement and can sometimes be an 'on balance' decision. The complexity inherent in these decisions means that they can go wrong, and lead to unintended consequences. Yet leaders remain accountable for their contribution to such decisions reinforcing the importance of character and integrity.

The Review commends the new Secretary of DPAC for explicitly taking responsibility for endorsing, overseeing, coordinating and reporting on 'Change for Children'.

The Review notes that the narrative on leadership accountability would benefit from strengthening the performance framework for the State Service. The current performance management framework for the State Service is driven largely through the provisions of the SSA. In its current form, the focus of this framework is to improve performance management within the service through clearly outlining the roles, responsibilities and accountability arrangements for individual employee performance within the service. As observed in previous chapters, this is important, and the Review has proposed improvements to the same. However, a leader's primary responsibility is to align their teams' efforts and resources with the organisation's strategic priorities and goals, ensuring that day to day operations and individual employee performance plans support broader organisational goals. The decisions leaders make support the achievement of these goals and priorities. Therefore, effective leadership accountability requires transparent performance metrics for the systems and entities under a leader's stewardship. It is difficult to fairly evaluate or hold a leader accountable without clear visibility of the outcomes they are responsible for delivering.

The Review commends the State Service for therefore swiftly implementing the COI recommendations (Recommendation 19.4) on:

- Performance agreements of Heads of Agencies reflecting their responsibilities for reforms under the child sexual abuse reform strategy and action plan.
- Executive responsibilities also reflecting child sexual abuse reform priorities.

- Statements of duties for relevant departmental staff referring to their responsibilities in relation to the strategy and action plan.

These changes combined with the amendments to the SSA and ED26, proposed by the Review, will strengthen systemic accountability by addressing both structural and procedural elements of the performance management framework. The mechanisms described above are focused on establishing robust hierarchical accountability mechanisms that connect the executive leadership through direct reports to all levels of the organisation.

5.2.2.2 Accountability for Failing to Act

The second observation shared with the Review is that certain individuals, publications and media sources have a propensity to make false allegations or make allegations without substance. The Review is concerned by the sceptical manner in which certain narratives and sources have been perceived. The Review recognises that the media landscape is increasingly fractured, and the anonymity and pervasiveness of social media means that it is difficult to assess the accuracy or veracity of information. However, when it comes to the protection of children, the State Service needs to give due regard to concerns when they are raised, regardless of source. A number of the cases in the COI report are testimony to this.

The Review also notes that the State Service is likely to see increased reporting as a consequence of the Reportable Conduct Scheme, and an enhanced awareness regarding inappropriate behaviours. This will need to be managed carefully and without presumption.

5.2.2.3 Creating and Supporting a Reporting Culture

Cases of child sexual abuse identified in the COI report could potentially have been prevented had the State Service fostered a culture where reporting misconduct was encouraged and where risk management approaches were adjusted in response to increased instances of reports regarding potential misconduct.

Additionally, the Review notes that inaction in relation to poor or inappropriate behaviour by those in supervisory positions lies at the heart of some of the cases/concerns received by the COI. Embedding a culture of accountability will take time and it will be crucial to demonstrate accountability at all levels within the State Service if the culture is to be shifted.

The Review once again commends the new leadership within the State Service for bringing a strong focus on accountability. This is seen in the reporting on COI cases provided to the Parliamentary Oversight Committee (substantial improvement in data provided via Routine Disclosures) as well as the active efforts undertaken to ensure the timely and firm enforcement of actions against those who have been alleged to have breached the Code. These efforts also include the strengthening of the capability within the Shared Capability and Central Investigations Unit as well as the appointment of Ms Regina Weiss to assist with investigations relating to the most complex matters.

The increase over the past year in the quality and rigour behind the reporting on disciplinary processes has contributed to a change in the tone and nature of the Parliamentary Scrutiny Committee hearings, as well as the accompanying media commentary. This highlights an important lesson for the State Service. Regular self-assessment and quality reporting can limit the need for extensive external oversight, because the reporting provides the community with assurance that tangible actions are being undertaken to address systemic issues. It also highlights the value of training and education to improve child safety outcomes. The Review was particularly pleased to note that as of 30 April 2025, a significant proportion of employees had completed child safety training (agency level details are provided in the table below). This is a critical step towards improving child safety across Tasmania and the Review commends every State Service employee who has made the effort to undertake this training.

Table – Child safety training data by agency (30 April 2025)

Agency	Total staff	Number of staff who have completed training (2025)	Percentage of agency staff who have completed training (2025)
DPAC	677	597	88%
DECYP	12,933	11,953	92.4%*¹⁰³
DOH	16,566	13,199	79.7%
DOJ	1249	666	53.3%
DPFEM	3122	2993	96.4%
NRE	1537	1506	99.0%

5.2.2.4 Integrity Training

Integrity in the State Service is about high standards of professionalism. It is vital for public trust in the State Service.

The Review notes that the concepts identified in this chapter such as trust and the public good, and dealing with conflicts of interests, require both ethical judgement and understanding of the law. Ethical judgement is required at all levels of the public service and should be an essential skill for all public officials.

Acting with integrity requires courage and a values-based approach to how a State Service employee does their work.

The Review recommends that all employees in a management position within the State Service should undergo training on integrity as an essential component of their learning and development. The training should include workshops that focus on ethical situational challenges that test the ability of employees to apply the right judgement. This will assist in building a pro-integrity culture.

Noting that the IC in Tasmania delivers training modules on ‘integrity in the public service’ and ‘practical ethics for managers’, the Review encourages the SSMO to work in partnership with the IC to ensure

¹⁰³ *DECYP notes: It is important to note that a further 2.5 per cent of people have been on “*long leave*” and required to complete their training within two weeks of their return to work. Employees on “*long leave*” include those who have been on leave since the training was released on 3 February this includes those on long service leave, maternity leave, workers compensation, and those employees with relevant workplace relation matters.

that all state service managers undertake this training and that participation numbers are monitored and reported on as part of the annual report of agencies and authorities.

The Review notes that based upon the IC's Annual Report, in 2023-24, 251 public officers from 17 public authorities across the State completed the module on integrity. Of these, 75 attendees were categorised as State Service employees and the others were employed by Local Government, Government Business Enterprises and/or a state-owned company. This is a relatively small number of staff for a workforce of 30,000+ employees.¹⁰⁴

5.2.2.5 Conflict of Interest Declaration and Management

One of the central tenets of our system of government is that public officials must give primacy to the public interest over their own personal interests and those of their associates. Few things are more detrimental to public confidence and trust in government than the perception that public officials are favouring their own interests. A public official will have a conflict of interests where, by their position, they are able to favour their own or an associate's interest. While it may well be the case in such situations that the public officials act with the necessary propriety, the community is still entitled to be reassured that its interests have not been sacrificed to those of others.

The Review notes that when reviewing documentation provided to it by agencies and authorities, it was not always apparent that an appropriate declaration of a conflict had been made. Moreover, when a conflict was declared, the Review could not always identify mechanisms in place to manage the conflict. The Review also heard from multiple stakeholders that the relatively small size of Tasmania meant that this was a live issue and required considered management.

There are now a number of measures that are commonly used across other public institutions to manage conflicts of interest. This can be achieved by ensuring appropriate disclosure of personal relationship/s (and in the wider context the divestment of personal interests). Managing such conflicts can also occur through re-assignment of duties, responsibilities and decisions.

The Review has been advised that agencies across the State Service have Conflict of Interest Management Policies and Procedures. The Review also notes that the IC has a range of resources available on managing conflicts of interests on its website. The Review recommends that these existing provisions are strengthened through Secretaries Board emphasising the obligation of officials to disclose in writing to the relevant authority both their pecuniary interests and other relevant interests. The Review also recommends that the SSMO supplement the above guidance offered by the IC, through developing and delivering training in relation to management of Conflicts of Interest. Such training should be mandatory for all officials and particularly those with decision-making authority on a regular basis.

Operational Recommendation 5.2

The Review recommends that the SSMO:

- ***work in partnership with the Integrity Commission to roll out mandatory training on ethical decision-making and integrity for all State Service employees in a management position. The Head of each Agency report on participation as part of the agency's annual report.***
- ***develop and deliver mandatory training regarding the management of Conflicts of Interest for all officials and particularly those with delegated decision-making authority on a regular basis.***

¹⁰⁴ Integrity Commission Tasmania, *Integrity Commission Annual Report 2023-2024*, pg 39.

5.2.2.6 State Service Response to Cultural Challenges

In highlighting the gaps and challenges above, the Review also wishes to note that State Service agencies and authorities have sought to respond to these cultural issues through a variety of strategic and programmatic initiatives. These targeted initiatives are aimed at changing the culture regarding child safety and protection, both within the service and more widely within the community.

The Review received submissions from most agencies and authorities outlining the work program that has been initiated in response to the cultural issues that emerged from the COI. While it is not possible to outline all of the initiatives underway, the Review does wish to highlight the following:

- **One Health Culture Program (DOH):** this program was launched as part of DOH's comprehensive response to the COI findings. The program focused on five areas to improve the culture in relation to child safety issues in Tasmania's health system. This included a focus on leadership accountability, building capability, workplace values, behaviours, health safety and wellbeing, and systems and processes. The statewide impact of this program is evident throughout this report, and many of the individual initiatives, such as the HRIS system, which emerged from the program, are now being rolled out across the service. The Review welcomed the clarity of purpose, outcomes focus, transparency on targets and measures that is evident through the program material. Importantly, the Review was able to observe firsthand the changes this has brought about at Launceston General Hospital.¹⁰⁵ The Review was pleased to note that nearly 935 senior and supervisory staff across DOH had undertaken the program as of 2025.
- **DPFEM:** DPFEM established both structural, policy and interagency initiatives in response to the COI. Specifically, the Child Sexual Assault Joint Review Team was formed to assess structural reform and best practice models in response to COI matters. As a consequence, new guidelines such as 'Initial Notification and Investigation of Child Sexual Abuse Guidelines' were introduced. Further a specialist statewide command unit 'Family and Sexual Violence Command' was formed. The Review also welcomed the establishment of the Arch Multidisciplinary Centres that provide co-ordinated, trauma informed and victim centred support for children and people affected by sexual harm, in partnership with other agencies and community organisations.

5.2.2.7 Broader Government Response

In addition to the in-house and proactive strategies described above, the Tasmanian Government has also implemented a comprehensive reform program in response to the COI. This includes the 'Change for Children Strategy' with significant funding to implement recommendations from the COI, including \$55.1 million for initial reforms in 2023-24, and an additional \$425 million in the 2024-25 Budget.

The Tasmanian Government has also progressed at pace the establishment of a new institutional framework as evidenced by the establishment of new bodies and frameworks including the:

- Child Youth and Safe Organisations Framework.
- Independent Monitor: appointment of an independent person to monitor and report directly to Parliament on the progress and effectiveness of the reform program.
- OIR: which oversees the implementation of the Child Youth and Safe Organisations Framework.

¹⁰⁵ [one health culture program annual report 2023.pdf](#)

- The draft Bill on establishment and functions of a new Commission for Children and Young people.

The reforms represent a comprehensive, multi-agency approach to cultural change across Tasmania's Government and further observations in relation to these improvements are outlined in the next chapter.

5.3 TRANSPARENCY

The sharing of information among interested Agencies and wider transparency is essential to good government. Good public administration relies upon public officials making decisions based on the relevant available information and within the bounds of the responsibilities vested in their roles. Such decisions need to be documented so that there is clarity as to why those decisions were made and whether they meet the public interest tests. Transparency and good record keeping are indispensable attributes of sound public administration practice and accountability.

Previous chapters of this report provide an analysis of issues concerning record keeping and facilitating public accountability through regular reporting to the Parliament. This section focuses on the issue of transparency within government related to the sharing of data and information¹⁰⁶ held by various agencies and authorities within the State Service with each other.

The Review itself has been slowed by both the legal and regulatory complexities around access to the COI records and the generally poor state of record keeping in relation to disciplinary matters across the State Service. The Review considers this to be symptomatic of the wider issues faced by the State Service as it sought to address the issues raised by the COI, and as outlined in Section 2 above.

The Review notes that at its commencement in February 2024, the Head of State Service was publicly issuing Routine Disclosures in relation to child sexual abuse matters on a regular basis. However, the Review struggled to secure access to the detailed information sitting behind the data released by the SSMO due to the provisions of the PIP Act. It was not until PIP Act exemptions were granted to the Review and the Review had issued a formal request for information to agency heads that it was able to access detailed employee level information from the State Service. This occurred in early June 2024, some six months after the Review had been commissioned.

The Review also notes that State Service agencies and authorities were unable to share detailed insights into individual employees and allegations with each other until the formation of the Joint Referral Review Team (JRRT) in May 2024. This is several months after the release of the COI Report in September 2023 and even at this stage JRRT members who were drawn exclusively from within the State Service were required to execute Non-Disclosure Deeds in order to access the information. Whilst the Review recognises the need for due diligence, appropriate controls and rigorous process, it does note that the current legislative regime in terms of information and data sharing between agencies appears to impede the sharing of information. The fact that it takes public officials working with the best of intentions several months to access critical information and data owned by government agencies in order to systematically report on disciplinary processes in relation to alleged perpetrators of child sexual abuse after two plus years of a public inquiry is troubling.

The COI made several recommendations regarding enhancing the access to information across whole of government. This included empowering regulatory authorities to compel information from relevant entities, creating of shared datasets and removing barriers to information access. Under new leadership the Secretaries Board in February 2025, commenced work to address the Review's difficulties in accessing data and information. The Review welcomes the establishment of an Information and Data Governance Group (IDGG) to lead work in relation to key data and information related COI

¹⁰⁶ The Review notes that it distinguishes between raw unorganised facts, figures, observations, numbers (data) vs processed, organised, contextualised, interpreted 'information'.

recommendations. The IDGG consists of Subject Matter Experts and the Tasmanian Government's most senior data and information officers with a deep understanding of the issues in relation to data and information management and sharing.

Preliminary work undertaken by the IDGG identifies that *'information sharing, and use is often challenged by a wide range of considerations including legal obligations, internal processes, individual's capacity and ability, historical actions and decisions, and unclear decisions and processes. These can be further affected by agency or business unit culture, corporate knowledge or experience and other contextual factors.'*

The Review agrees. To address the challenges identified above and progress the implementation of COI recommendations, a governance arrangement has been agreed with the IDGG reporting to the Child and Youth Safety and Wellbeing Coordinating Group which in turns report to Secretaries Board. In early work to address the challenges the IDGG at the request of the Secretaries Board, has attempted to surface the key challenges to legal and ethical sharing of information. This identifies challenges across four domains:

- legislation
- administration
- culture and knowledge and
- capability and capacity.

In the Review's opinion, the issues related to administration, culture, knowledge, capability and capacity can be addressed by the IDGG under the purview of the Secretaries Board. However, the issues related to legislative interpretation and legislative barriers are more difficult to resolve. In part, this is because advice in relation to the interpretation of legislation can be contentious.

In an attempt to understand the legislative barriers to information sharing, the DOJ advised us in August/September 2025, that the Department was not aware of any specific information sharing barriers that cannot be overcome within the current statutory frameworks. DOJ noted that it recognised that while there may be information sharing problems in the State Service, the evidence available to the Department suggested that those barriers were primarily the result of cultural factors, deficiencies in education and training, complexity or a lack of compatibility between information and communication technologies, and similar matters. DOJ further noted that, it had sought further information on whether other Agencies or entities were aware of statutory barriers within the legislation administered by the Department that created barriers to information sharing and as of the time of writing it appeared none had been identified.

The Review welcomes this work and notes the perspective that the legislative barriers to information sharing may not be the actual issue. But from the Review's perspective it remains cloudy and in need of clarification. As such, for example the Review proposes changes to the PIP Act to make it clear that it should not be a legislative barrier to sharing of information in relation to child sexual abuse matters.

The Review notes that a number of its recommendations rely upon an effective data and information sharing regime in relation to child sexual abuse matters across all agencies and regulatory and law enforcement bodies. The investment in systems such as HRIS, a shared capability unit and an investigation function within the SSMO requires data and information sharing to be effective.

Therefore, the Review recommends that the DOJ prioritise the identification of any legislative barriers to the sharing of information regarding child sexual abuse matters across law enforcement, regulatory and other agencies and authorities as a priority. The Review makes this recommendation particularly with reference to the implementation of the HRIS, noting that for the system to provide access to employee data across agencies, any legislative issues including those relating to the Evidence Act and the PIP Act will need to be addressed. The Review notes that DPAC is developing guidelines by 1 July 2026, to guide information sharing across agencies. However, the Review emphasises that stronger

and more urgent action is necessary and should include the removal of any legislative barriers to information sharing, including through already proposed changes to the TRB Act and changes to funding agreements covering out of home care providers.

The Review also recommends that the Attorney-General direct the Solicitor-General to provide transparent advice on the interpretation of legislation in relation to sharing of information related to child sexual abuse matters across agencies and authorities. This advice should be published and accessible by anyone. Whilst advice on specific matters will be legally privileged the Review suggests that the Solicitor-General may wish to follow the example of the Commonwealth Attorney-General's Department which provides detailed guidelines on Family Law Information Sharing on its website. This includes guidance on the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems. The Review notes that it has been advised that the Office of the Solicitor-General 'is, as always ready, willing and able to advise on legal considerations concerning the sharing of information'.

By strengthening the provision of information and data sharing within government, the Review believes transparency will be enhanced. The community, the Parliament and oversight bodies all depend upon this provision of information to undertake their accountability roles.

Strategic Recommendation 5.2

The Review recommends that the Department of Justice should prioritise the development of legislation that would enable the sharing of information regarding child sexual abuse matters across law enforcement, regulatory and other agencies and authorities as a priority with a view to ensuring the effective implementation of the HRIS system.

Strategic Recommendation 5.3

The Review recommends that the Attorney-General direct the Solicitor-General to provide transparent advice on the interpretation of legislation regarding sharing of information related to child sexual abuse matters across agencies and authorities.

5.4 LEADERSHIP AND WHOLE OF GOVERNMENT

Dr Watt in his Review put it succinctly: *"The TSS is held back by its current design. It is too siloed and too rigid in structure. It has limited capability in many areas, and it finds it difficult to share capability across the service. Like most public services, it is often too risk adverse and has compounded process and red tape to attempt to manage risk."*¹⁰⁷

In this Review's opinion many of these same traits characterised the State Service's approach to managing the proceedings of the COI. This includes the lack of central engagement in managing the proceedings and eventual outcome of the COI. The absence of guidance on a system wide approach to the work of the COI, the conservative approach to the sharing of information and inconsistencies around the approach to Code inquiries and risk levels were striking.

For the State Service to succeed in transforming itself culturally and to position itself as a more capable and transparent organisation - strong leadership, a much more joined up approach to sharing information and resolving complex issues is required. Contemporary public administration requires managing across organisational boundaries and sectors and this often means drawing on the capabilities of other organisations.

The Review has talked elsewhere about the lack of information sharing, the diverse approaches to disciplinary proceedings and to risk. As a general point, the Review wants to stress the importance of

¹⁰⁷ Dr Ian Watt AC, Independent Review of the Tasmanian State Service Final Report (2021), pg 7-8.

collegiality within the State Service. Like other public services it is essentially a hierarchical organisation, and Agencies can have a tendency to work in silos and eschew any sense of a common enterprise. Public administration is increasingly complex and requires a culture of cooperation and communication. It is for the Head of DPAC and the Secretaries Board to see themselves as stewards of the wider system and drive such cultural change. Change needs to be driven by a cohort of leaders working from the same play sheet if it is to be successful.

The Review has observed that the impact of allegations into child sexual abuse has unsettled the State Service at multiple levels. The morale of the State Service is, in the Review's view, one of the critical success factors to achieving enduring change within the service. Leadership within the State Service has the challenge, of confronting the issues presented in a transparent and forthright manner whilst being optimistic about the future.

The key leadership and governance settings regarding child sexual abuse matters within the State Service include the Secretaries Board, comprised of all Heads of Agencies, the *Child and Youth Safety and Wellbeing Subcommittee* comprised of Secretaries of lead agencies and the *Child and Youth Safety and Wellbeing Steering Committee (comprising deputy and associate secretary-level representatives)*. These governance and leadership arrangements were established or activated with the intention of providing strong oversight and direction for the implementation of the COI recommendations. Throughout the course of the Review, these settings have been reviewed and revised on a continuing basis, either as a consequence of leadership changes and/or in response to other emerging developments. The Review notes that the intentions driving the change reflect a desire by the system to improve and discard arrangements and approaches that are unable to drive reform and therefore deliver value.

The Review acknowledges the significant change in momentum, clarity of direction and accountability that has occurred. The leadership's current focus on accountability and low tolerance for employee misconduct is welcome. It is the Review's opinion that to maintain momentum and ensure key reforms are implemented swiftly and effectively, a refreshed central capability that can drive whole of government change across the service is required.

5.4.1 Role of the State Service Management Office

Tasmania as with other states public services within the Federation is facing a period of immense technological change and disruption where expectations of Government have never been higher. The effectiveness of the State Service in meeting these challenges depends upon its expertise and capabilities particularly when it comes to integrating data at scale with rapidly developing technology, such as artificial intelligence and embedding a culture that values institutional integrity and leadership behaviours.

This requires extensive leadership and direction from the centre and specifically the State Service Management Office (SSMO) working closely with the Secretary of DPAC and the Secretaries Board.

Multiple interlocutors that have engaged with the Review have been critical of the lack of support, guidance and agility demonstrated by the SSMO in helping the State Service prepare for and respond to the issues identified by the COI. The Review notes that while the criticisms are valid, context is also important. The reality is that the SSMO had neither the authority, the resources nor the licence to play the central role demanded by the scale, complexity and seriousness of the allegations of child sexual abuse and officer misconduct that may have occurred.

A smoothly functioning SSMO would have provided detailed guidance on:

- the State Service disciplinary framework and its application to potential cases of child sexual abuse matters
- resourcing requirements within agencies including guidance on the types of expertise, skills and capabilities required in human resources professionals within agencies

- how to manage conflicts of interest where there was only a small number of human resources professionals within the agency,
- development of a single framework to capture all information in relation to potential misconduct cases including how to track progress through stage gates and how to report these matters publicly
- wellbeing support for human resources professionals dealing with serious allegations
- escalation pathways to understand, assess and provide solutions regarding difficult to resolve matters
- ongoing facilitation of the core group across all agencies dealing with COI matters to ensure transfer of learning, capability, and information
- the mechanisms to foster cross-agency collaboration through convening a cross-agency group with the right mix of authorities, expertise, operational and legal know-how to prepare the service for what was to come
- what could be learnt from other jurisdictions that had handled similar challenges before by seeking external expertise and advice through approaching other public sector commission.

The SSMO should have known that the State Service disciplinary framework and the EDs were ill equipped to deal with the volume and complexity of disciplinary matters, given that no progress had been made on updating the instruments since 2017 despite the identification of various gaps through multiple rounds of consultation and feedback. Moreover, the SSMO did not assist the State Service in developing and implementing a plan to harness the necessary capabilities across key agencies who were overwhelmed by the complex case load.¹⁰⁸

The Review has heard a strong chorus from internal and external interlocutors that it needs to review the role of the SSMO and consider recommendations to establish a more independent Public Service Commission which can play an effective, strategic and coordinating role. This would follow the examples of other jurisdictions across Australia.

Tasmania did have a State Service Commissioner until 2013, when amendments to the SSA abolished the role and transferred the authority to the employer with automatic delegated authority to the Head of State Service. The reasons for abolishing the role of the State Service Commissioner focussed on its ineffectiveness, its minuscule resource base and the sense that the State Service was smaller and more cohesive than its counterparts and the view that the State Service Commissioner created unnecessary complexity within the system. The view at the time was that its work could more usefully be incorporated within DPAC.

Much has changed since then. The COI exposed some of the shortcomings in the system's architecture. The issue, however, is bigger than that if the State Service is to succeed in reforming and modernising itself in the face of increasing complexity and rapid change.

The Review recommends that the Tasmanian Government reconfigure the role of the Head of the State Service Management Office to increase its authority and stature whilst ensuring it works to and in alignment with the Head of DPAC. This approach is set out in detail below.

¹⁰⁸ The Review notes changes were made to ED5 by the SSMO in mid-2024.

5.4.2 Establishing a State Service Commissioner and State Service Stewardship Office

The Watt Review outlined the role of the employer within the State Service as being focused on strategic matters, system design, and ensuring that consistent standards and frameworks were applied across the service.¹⁰⁹ We would add other responsibilities to this set, including driving continuous improvement, integrity and ensuring appropriate internal monitoring and accountability for the application of the employment framework.

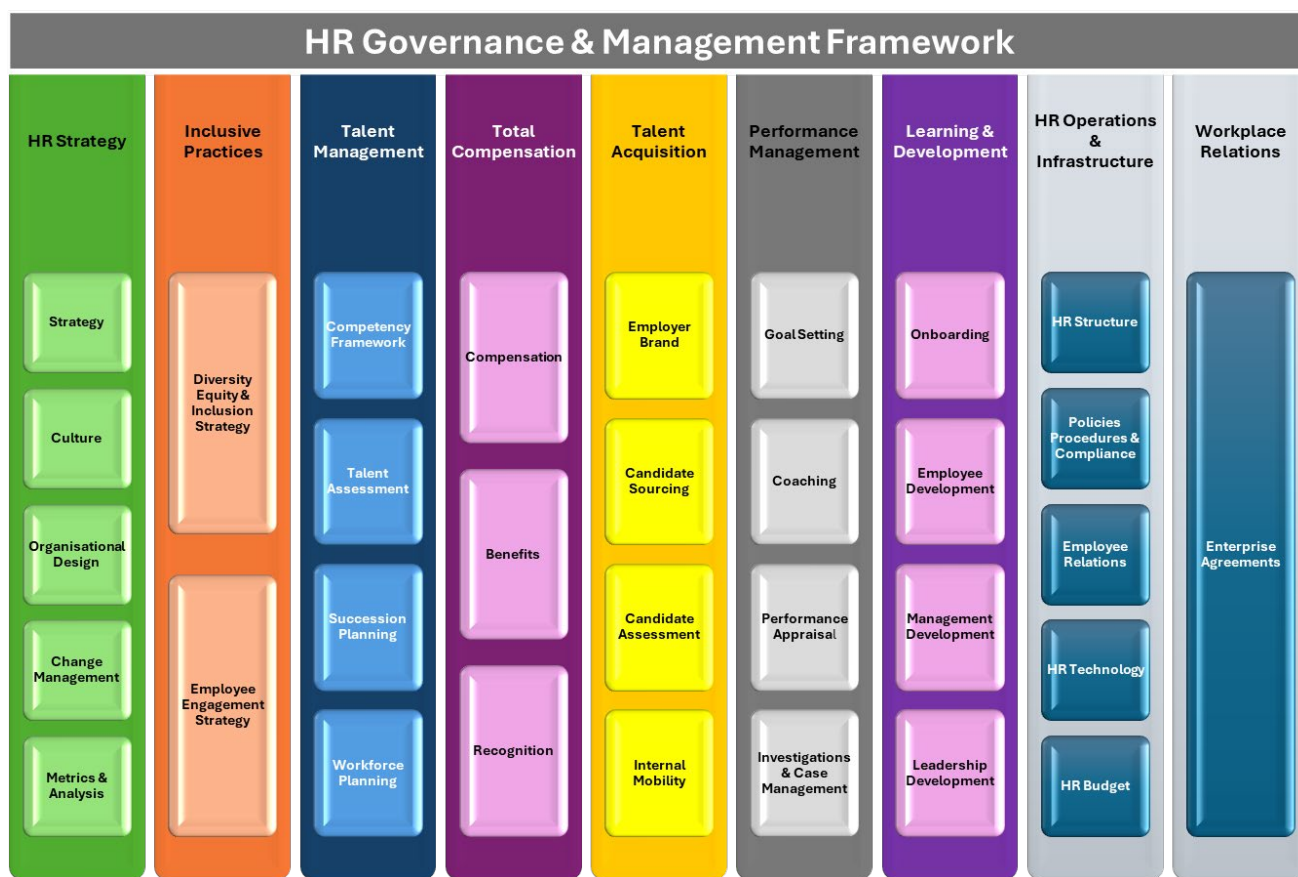
The Review recommends the SSMO be strengthened and revamped, so it becomes the steward of the system. In this new form, the SSMO would be responsible for embedding high standards of public administration through a clear focus on strategic and operational human resource leadership and management and upholding the standards of ethical and professional conduct expected by the community. As the organisational unit that is located within the DPAC, a revitalised SSMO should play an effective stewardship role through being able to:

- anticipate, plan and deliver the strategic workforce needs of the State Service
- design and implement continuous improvement initiatives related to the employment framework to improve the operational effectiveness of the State Service
- coordinate action on capability uplift and development
- act as the custodian of the values and culture through setting standards across the service whilst also upholding them
- conducting internal monitoring and reporting on compliance with the employment framework.

The specific functional areas where the SSMO should be seeking to work closely with agencies to define a consistent approach through legislation, policies, rules, capability development and strategic initiatives is illustrated in the graphic below. It is not intended to be a comprehensive functional map, but illustrative of one possible approach to clustering priority focus areas.

¹⁰⁹ Dr Ian Watt AC, Independent Review of the Tasmanian State Service Final Report (2021).

Fig.1: Functional Areas where the revamped SSMO may focus its efforts¹¹⁰



In each of the areas identified above, it is expected that the revamped SSMO should set the standards for the whole State Service, with individual agencies and authorities adapting these to their specific context but with strong alignment to the original intent. In seeking to identify opportunities for continuous improvement the SSMO should be harnessing its connections with individual HR units within each of the agencies and authorities across the State Service. A consistent and agreed approach to prioritisation of strategic initiatives across the State Service will help build focus and momentum for reform with the ability to transfer learnings across the whole service.

While much of the above was explicitly referenced in the Watt Review and was the intended outcome from the 2013 changes to the SSA, the challenge as noted by the Watt Review has been that in the decade since the legislative changes, there has been limited progress in embedding these changes into the system.¹¹¹ The Review believes that this has primarily been due to how the role of the SSMO has been conceptualised, resourced and perceived within the system.

To address the above issues, the Review recommends that the current SSMO needs dramatic re-positioning and re-profiling. To achieve this, two changes are necessary:

¹¹⁰ [HR Research for HR Professionals | McLean & Company](#)

¹¹¹ Dr Ian Watt AC, Independent Review of the Tasmanian State Service Final Report (2021), pg 155-166.

- The SSMO should be revamped and rebadged with a clear statement of its role and functions/accountabilities as well as resourcing to reflect the capabilities that it needs to deliver its priorities.
- The Head of the revamped SSMO should be re-titled the State Service Commissioner and be appointed by the Premier to reflect their enhanced authority. The Commissioner would work to the Head of DPAC, ensuring close coordination between the Head of the State Service and what would essentially be the Chief Operating Officer of the State Service.

The Commissioner leading the new unit should be responsible for designing the organisational structure to reflect functional accountabilities and be a person of eminence with relevant experience in one or more areas of functional accountability within the for-purpose sector. The Commissioner should be a member of the Secretaries Board with responsibility for whole of service human resources policies and practices. This is vitally important so that the Commissioner can work with key leaders across the State Service to address the challenges and harness the opportunities holistically.

The Review is not recommending at this time the establishment of an independent statutory State Service Commission. It has thought long and hard about the merits of this and has heard a range of thoughtful views from senior interlocutors. It is conscious of Tasmania's current fiscal and budgetary environment, of the potential disruption from a major change to the architecture of the State Service, the need to move quickly in reforming and modernising the State Service, and finally the importance of working in close coordination with DPAC and the Secretaries Board on this task.

The Review regards this recommendation as a practical and possible interim step. It positions the current SSMO in the direction of longer-term change should the Tasmanian Government wish to establish a substantially resourced and independent State Service Commission in the future.

The Review also recommends that the newly revamped SSMO should be rebadged to reflect its reinvigoration and repositioning within the system. The Review is agnostic about the name change itself, but it will be important to distinguish it from the existing unit. One possibility is to rename the new structural unit as the 'State Service Stewardship Office'.

The functions of the revamped SSMO should include managing integrity, capability, workplace relations, human resource operations and infrastructure (including the roll out of HRIS) as well as workforce strategy and culture and performance management. The domains where the revamped SSMO would have a role in system design and standard setting should be clearly identified and published.

It is expected that the existing resourcing levels within the SSMO will be remapped into the revamped unit with a new structure designed and implemented to reflect functional accountabilities. The Review also recommends that the new structure should also clearly identify the core capabilities required within the revamped SSMO in light of the transformation program it must lead and implement.

The Review also recommends that the Commissioner chair the Corporate and Workforce Sub-Committee (a sub-committee of Secretaries Board), which currently has representation from all Corporate Deputy Secretaries across the State Service. This Committee should provide the coordination mechanism to drive all transformation initiatives from design through to implementation. It should present to the Secretaries Board on the outcome of its work twice a year or as often as necessary.

The Committee would provide a key mechanism to ensure that when the revamped SSMO performs its role in terms of overall policy decision-making it does so through harnessing key strategic and operational insights and inputs from across the State Service. It is envisaged that this Committee would also provide a mechanism for enhanced co-ordination and accountability as currently this appears diffused across the service. The Committee could help bridge, centralised strategic co-ordination with de-centralised execution. This would enable individual agencies and authorities to implement key priorities while maintaining unified oversight.

In recommending these changes the Review is of the opinion that changes to the wider system and culture of the State Service are essential to achieving a stronger focus on the wellbeing and outcomes for the children of Tasmania. The changes will also have a much wider benefit.

In concluding, the Review notes that in the current arrangement, the human resources functions identified above have historically been undertaken by each agency. It is the Review's intention that the changes it is proposing build a shared service function where the SSMO is positioned as a functional leader and sets the standard for each component of the focus and capability identified above.

The Review further notes and acknowledges that this is a big change for the State Service to undertake and undergo in one go. Therefore, the Review strongly recommends that the SSMO focus its efforts on a few areas initially with a view to embedding standards and best practice and then working to prioritise others. Based upon the Review's experience and noting the COI recommendations, these priority areas include the focus areas identified under the HR Operations and Infrastructure pillar as well as the HR Strategy and Culture pillar. These areas align well with the Review's recommendations to address the change to the ED's and professional conduct policies as well as work already underway for example to implement a one HR system across the service. From a practical perspective, lifting the HR Operations and Infrastructure will be critical in enabling the work across other pillars in due course.

Given the possibility of moving towards a State Service Commission, the Review recommends that the proposed model identified above be reviewed at the end of three years to assess its effectiveness and the value of moving to the establishment of a State Service Commission.

Strategic Recommendation 5.4

The Review recommends that the Tasmanian Government:

- ***Working through the Secretary of Department of Premier and Cabinet, revamp and rebadge the State Service Management Office by clearly defining its role as a system steward with accountabilities for capability, culture, integrity and performance amongst other accountabilities. As system steward, the role of the State Service Stewardship Office should be to act at all times as the custodian of the values which inform the conduct and operations of the whole State Service.***
- ***Establish a new role of Commissioner of the State Service appointed by the Premier and working to the Head of State Service and that the changes enable the Commissioner to be a full member of Secretaries Board.***
- ***Review the arrangements at the end of three years with a view to a possible decision on moving towards a public sector commission model.***

Operational Recommendation 5.3

The Review recommends that the Commissioner of the State Service chair the Corporate and Workforce Sub-Committee to identify, progress and report on key transformation priorities related to the strategy, culture and operations of the Tasmanian State Service.

5.5 COLLABORATION

To improve the effectiveness of the system in relation to child safety and wellbeing the State Service needs to work with a wide group of external organisations. These include those involved in research and education on child safety and wellbeing matters as well as those involved in the delivery of essential

services to government - whether that be in youth detention, health care, out of home care settings or those involved in delivering services to Tasmanian Aboriginal communities.

The Review asked multiple agencies and authorities to respond to two questions:

- Does the agency/authority share best practice in relation to child safety strategic, policies, plans and initiatives with other agencies within Tasmania? Nationally? Internationally? If so with whom?
- Has the agency/authority collaborated with other institutions/organisations in relation to improving child safety through understanding the expectations of key stakeholders and users of its services, analysing key patterns and trends, including international and regulatory trends that may impact its services in the future? Please provide an outline of relevant initiatives or documents and what changes the agency has made or proposes to make to address the above?

The aim was to understand whether the State Service was keeping pace with best practice into child safety and wellbeing by learning from other jurisdictions and institutions, as well as whether it had established networks to draw feedback and insights from those organisations that were involved in service delivery within Tasmania.

DECYP and DOH identified mechanisms for engagement with national strategic initiatives, such as the National Strategy to Prevent and Respond to Child Sexual Abuse Senior Oversight Group and its sub-groups, as well as mechanisms to engage across agencies via interagency collaboration forums such as the working group on implementation of the Child Youth Safe Organisations Framework for Tasmania.

The Review welcomed the advice provided by DOH that it was advocating at a national level regarding inclusion of the National Principles for Child Safe Organisations as a requirement for accrediting health services.

DECYP, DOH and NRE advised the Review that relevant staff regularly attended webinars and forums with external organisations to keep up to date with national, international and regulatory trends. The information obtained in these webinars was utilised to inform the 2024 safeguarding training modules delivered by DECYP. DOH also identified the establishment of various advisory panels and groups comprised of child safety experts and consumer representatives nationally and within Tasmania, to develop child safety and wellbeing service projects, such as establishing resources for children on child and youth safe behaviours.

The work undertaken by DOH in connecting with the wider community sector is commendable and the Review found there was strong evidence of engagement and genuine consultation to understand the needs, support the rights and bring awareness on child safety matters in relation to the children of Tasmania.

However, the Review also heard directly from community organisations actively engaged with the State Service, including Tasmania's lead organisations with responsibility for supporting the wellbeing of Tasmanian Aboriginal communities. While the community sector in Tasmania noted the strong shift in terms of the interest to engage with them on child safety issues, they also observed the following:

- Too often requests for consultation were landed at short notice and indicated a lack of understanding of the limited resources available in-service focused organisations which often made it difficult for them to engage meaningfully.
- Regular changes to personnel and roles and responsibilities within the State Service made it difficult to build relationships, ensure buy-in and commitment towards mid to long term reform.
- Lack of a key account management approach to relationships with key community organisations, noting that the tapestry of community and for purpose organisations within

Tasmania remains largely unaltered over time. This should encourage and enable agencies and authorities to collaborate with each other and identify a lead agency to engage with the relevant organisation and identify and build synergies around key shared priorities.

- While the intent to consult was genuine, including through requesting participation on panels and advisory bodies, too often the intent did not translate to action as the timelines, decision-making processes around resource allocation and budgeting and decision-making authority remained opaque and difficult to navigate.
- Lack of coordination amongst agencies and poor alignment between workplans and government priorities were also identified as key blockers to progress.

The Review sensed some weariness on the part of community organisations who felt that, while the State Service did approach them with the intent to understand key insights, they were carrying a considerable amount of the burden in educating the State Service.

The Review heard from lead Aboriginal community organisations in Tasmania including a submission from the Tasmanian Aboriginal Centre. They echoed the comments identified above and noted their frustration at the pace of reform in relation to progressing the recommendations arising from the COI.

It is worth reflecting on one of the key components of the 2019 Thodey Review into the Australian Public Service.¹¹² It stressed the need for the APS to develop partnerships and collaboration not only across government and the states and territories, but with civil society, business and academia. To quote - *“the APS is most effective when it works in partnership with others. A partnership model ensures that community needs are fully understood, people have a genuine sense of control over their lives, and the best outcomes are built together”*.¹¹³

The reality is that few public services are comfortable with the concept of genuine partnership. They are more comfortable dealing within their own systems as genuine partnership involves an element of risk around whether they have a licence for such engagement given that it involves surrendering some of their authority and knowledge.

The Review believes that in many areas of government, a genuine partnership with others is crucial in the development of effective policy and trust. This is particularly so when it comes to the protection and safety of children which is an issue going to the heart of society.

Noting the above, the Review recommends that the Secretaries Board develop a clear framework to engage and partner with community organisations in relation to child safety matters in Tasmania. Such a framework should identify the purpose and objectives of the engagement, the mutual benefits to be gained, the mechanisms for engagement, the representation from all parties, the decision-making processes and timelines for all parties including where it relates to allocation of resources, a feedback loop and accountability through clearly reporting on progress.

Additionally, the Secretaries Board should identify the key list of community organisations it wishes to engage and partner with on a continuing basis and the lead agency and individual representatives tasked with advancing work on common goals and priorities. The Secretaries Board should also consider what mechanisms can be put into place to ensure that Relationship Managers within the lead agency remain in the role for longer periods, to ensure there is sufficient time to advance the agenda via providing resourcing stability. This will also reduce transactional engagement costs for the service and increase both efficiency and effectiveness in terms of developing solutions collaboratively.

Finally, the Review recommends that the Tasmanian government and the State Service prioritise the actions recommended in the COI report regarding the establishment of the role of ‘Executive Director

¹¹² David Thodey AO, *Our Public Service, Our Future. Independent Review of the Australian Public Service Full Report (2019)*.

¹¹³ *Ibid*, pg 116.

for Aboriginal Children and Young People'. The COI and collaboration report recommended that DECYP establish the role of Executive Director for Aboriginal Children and Young People supported by an Office of Aboriginal Policy and Practice (Recommendation 9.7).¹¹⁴ The implementation of this recommendation needs to be a priority given the over representation of Aboriginal Children in youth detention in Tasmania.

Similarly, the COI recommendation to establish a properly resourced Office of Aboriginal Policy and Practice should be prioritised in order to support the implementation of a range of other recommendations within the COI report, including overseeing and reporting on the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and facilitating departmental engagement and building partnerships with Tasmanian Aboriginal communities. It is also consistent with the Reviews recommendations in relation to the wider partnership approach the State Service should consider.

While it goes beyond the remit of the Review, the Thodey Review called on the APS to Develop a Charter of Partnerships to guide APS engagement with people and communities.¹¹⁵ This is something well worth considering by Secretaries Board in the State Service.

Operational Recommendation 5.4

The Review recommends that the Secretaries Board develop and publish an engagement and partnership framework for engagement with relevant community-based organisations responsible for child safety and wellbeing services across Tasmania and nationally.

Operational Recommendation 5.5

The Review recommends that the Secretaries Board develop a key account management approach to managing relationships with key community organisations in the child safety and wellbeing sector in Tasmania identifying and reporting on priorities for collaboration against a joint plan of action to address shared child safety and wellbeing goals. This should include identification of lead agencies to manage the full relationship across the State Service. Reporting on progress should occur to Secretaries Board and publicly.

Operational Recommendation 5.6

The Review recommends that DECYP prioritise the establishment of the role of 'Executive Director for Aboriginal Children and Young People' as identified in the COI. The Review further recommends that DECYP prioritise the establishment of the Office of Aboriginal Policy and Practice in accordance the recommendations of the COI report.

¹¹⁴ COI Report Volume 4: Chapter 19, pg 115-116 (Recommendation 9.7).

¹¹⁵ David Thodey AO, *Our Public Service, Our Future. Independent Review of the Australian Public Service Full Report (2019)*, pg 122.

5.6 SUMMARY OF RECOMMENDATIONS

5.6.1 Strategic Recommendations

Strategic Recommendation 5.1

The Review recommends and supports the Tasmanian Government's proposed implementation of Recommendation 5 of the Weiss Review to amend the Integrity Commission Act (Tas) 2009 to ensure all notifications made to the Integrity Commission in respect of TASPOL officials who are alleged to have groomed and/or sexually abused persons [serious misconduct] can be investigated independently by the Integrity Commission through enhanced powers and remit as outlined in the report.

Strategic Recommendation 5.2

The Review recommends that the Department of Justice should prioritise the development of legislation that would enable the sharing of information regarding child sexual abuse matters across law enforcement, regulatory and other agencies and authorities as a priority with a view to ensuring the effective implementation of the HRIS system.

Strategic Recommendation 5.3

The Review recommends that the Attorney-General direct the Solicitor-General to provide transparent advice on the interpretation of legislation regarding sharing of information related to child sexual abuse matters across agencies and authorities.

Strategic Recommendation 5.4

The Review recommends that the Tasmanian Government:

- Working through the Secretary of Department of Premier and Cabinet, revamp and rebadge the State Service Management Office by clearly defining its role as a system steward with accountabilities for capability, culture, integrity and performance amongst other accountabilities. As system steward, the role of the State Service Stewardship Office should be to act at all times as the custodian of the values which inform the conduct and operations of the whole State Service.
- Establish a new role of Commissioner of the State Service appointed by the Premier and working to the Head of State Service and that the changes enable the Commissioner to be a full member of Secretaries Board.
- Review the arrangements at the end of three years with a view to a possible decision on moving towards a public sector commission model.

5.6.2 Operational Recommendations

Operational Recommendation 5.1

The Review recommends that all agencies and authorities include data on employee conduct including Code of Conduct matters and the reportable conduct scheme in their annual reports.

Operational Recommendation 5.2

The Review recommends that the SSMO:

- work in partnership with the Integrity Commission to roll out mandatory training on ethical decision-making and integrity for all State Service employees in a management position. The Head of each Agency report on participation as part of the agency's annual report.
- develop and deliver mandatory training regarding the management of Conflicts of Interest for all officials and particularly those with delegated decision-making authority on a regular basis.

Operational Recommendation 5.3

The Review recommends that the Commissioner of the State Service chair the Corporate and Workforce Sub-Committee to identify, progress and report on key transformation priorities related to the strategy, culture and operations of the Tasmanian State Service.

Operational Recommendation 5.4

The Review recommends that the Secretaries Board develop and publish an engagement and partnership framework for engagement with relevant community-based organisations responsible for child safety and wellbeing services across Tasmania and nationally.

Operational Recommendation 5.5

The Review recommends that the Secretaries Board develop a key account management approach to managing relationships with key community organisations in the child safety and wellbeing sector in Tasmania identifying and reporting on priorities for collaboration against a joint plan of action to address shared child safety and wellbeing goals. This should include identification of lead agencies to manage the full relationship across the State Service. Reporting on progress should occur to Secretaries Board and publicly.

Operational Recommendation 5.6

The Review recommends that DECYP prioritise the establishment of the role of 'Executive Director for Aboriginal Children and Young People' as identified in the COI. The Review further recommends that DECYP prioritise the establishment of the Office of Aboriginal Policy and Practice in accordance the recommendations of the COI report.

CHAPTER SIX: OVERSIGHT AND REGULATORY AGENCIES

6 CONTEXT AND INTRODUCTION

The Terms of Reference for the Independent Review, enable the Review to *‘make any recommendations, in addition to and not contrary to those made by the COI about policy, legislative and operational changes to improve the system for responding to information or concerns about the conduct of TSS employees and officers of the type raised by the COI’*.¹¹⁶

Volume 8 of the COI Report focuses on how the Tasmanian Government can better coordinate and strengthen its approach to addressing child sexual abuse. The recommendations within this volume seek to strengthen the regulatory, information sharing and institutional framework that underpins child safety in Tasmania. The COI recommendations aim to formalise and clarify the functional roles of various existing and proposed child safety focused institutions. Complimentary to this, the recommendations also seek to ensure that these institutions can operate effectively drawing on best practice from other jurisdictions. From the Review’s perspective these recommendations are vital to ensuring that the systemic response to child sexual abuse concerns and risks is robust, anchored in sound intelligence and insights, well-co-ordinated, transparent and responsive to the needs of children.

In framing the recommendations within this Volume, the COI emphasises the need to embed the principle of ‘independence’ into institutional design particularly as it relates to future institutions.¹¹⁷ The COI’s commentary and recommendations also seek to enhance information sharing across the group of oversight and regulatory agencies that collectively constitute the child sexual abuse institutional landscape in Tasmania.

Related to the above, the Review welcomed the progress the Tasmanian Government has made in implementing recommendations to establish the OIR and the Office of the Implementation Monitor (OIM), developments that occurred during the course of its inquiry. These are important institutional arrangements that were carefully designed to provide two distinct oversight functions: the Independent Regulator operates the ongoing child safety regulatory framework while the Reform Implementation Monitor ensures the government implements the Commission’s recommendations for systemic change. Together they were designed to create a comprehensive independent oversight architecture covering both ongoing compliance and reform implementation.

The Review notes that implementation is often hard. While the above developments indicate a positive start the Review notes there is still considerable work to do.

This chapter draws on insights from the consultations and submissions the Review has held and received with multiple regulatory and other oversight agencies including the Ombudsman, IC, the RWVP, the TRB, the OIR and the OIM.

These insights lead to three critical reflections and associated recommendations which form the focus of this chapter. The reflections are:

- The principle of ‘independence’ has multiple and intersecting dimensions that should be legislatively enshrined in the design of child sexual abuse oversight and regulatory institutions.
- In a digital age where AI is set to transform how public services operate, it is important that institutions that are involved in delivering services to/or caring for children can harness shared intelligence, data, knowledge and information to improve their understanding of problems and risks to children. The principle and practice of sharing intelligence as widely as possible between regulatory and oversight institutions is not ‘nice to have’ – it should be an essential

¹¹⁶ Appendix A.

¹¹⁷ COI Report Volume 8: Chapter 18, pg 61-65.

attribute and responsibility of each institution that exists and collects data and information that relates to child sexual abuse matters.

- The legislative regime in relation to information sharing and access is difficult to navigate. The Review was struck by the lack of a shared understanding in the TSS of the legislative enablers and barriers to information sharing in relation to child sexual abuse matters. With the best of intentions multiple institutions can become stalled by the complexity of navigating their way through the process on the basis of advice received.

In the Review's opinion, solving this issue requires a return to first principles and a robust understanding of contemporary tools for information sharing, access, analysis, reporting and institutional architecture. This is a crucial policy question related to child sexual abuse matters facing Tasmania. Without intelligence based upon robust data and information analytics the Tasmanian Government cannot develop strategies, analyse patterns and trends and develop better solutions. In practice this remains a conundrum. Tasmania has an opportunity to lead, in striking a balance that respects the rights of children to lead a safe life and access justice, and the rights of individuals to their privacy.

This chapter therefore proposes changes to the legislative and regulatory arrangements that support the functions of key oversight and regulatory agencies in Tasmania.

6.1 COI AND OVERVIEW OF OVERSIGHT AND REGULATORY

LANDSCAPE IN TASMANIA

As referenced above, Volume 8 of the COI report establishes the framework for comprehensive oversight of child safety matters through several key mechanisms and bodies. These include:

- **The Child and Youth Safe Organisations Act 2023 (CYSO Act)** which establishes the Child and Youth Safe Standards (mirroring the National Principles for Child Safe Organisations) which are intended to assist organisations to prevent, respond to and report child abuse thus embedding regard for child safety in their operational practices. The CYSO Act also establishes the Reportable Conduct Scheme requiring mandatory reporting of concerning conduct involving children.
- **Independent Regulator (OIR)** with comprehensive functions including education, compliance oversight, enforcement powers, information sharing, data collection, and public reporting for both the Child and Youth Safe Standards and Reportable Conduct Scheme.
- **Reform Implementation Monitor (IM)** designed to oversee the implementation of the Commission's recommendations.
- **Commission for Children and Young People (CCYP)** which based upon the COI's recommendations was to subsume the Commissioner for Children and the Independent Regulator thus assuming the dual roles of advocacy and enforcement within a single body. The COI expected that the new Commission would protect and promote children's rights, amplifying children's voices, research and policy influence whilst overseeing compliance with Child and Youth Safe Standards, administering the Reportable Conduct Scheme, investigating breaches, and imposing penalties.

In outlining its expectations regarding the legislative and other operational frameworks underpinning the establishment of these institutions, the COI drew on best practice examples from other jurisdictions. The COI emphasised that establishing effective independent oversight entities required careful consideration of how to structure and protect the independence of such entities. Drawing on inter-state exemplars the COI identified specific mechanisms/design features that enabled regulatory and

oversight agencies in these jurisdictions to act independently. These insights are invaluable as they give practical effect to the principle of independence.

The section below draws on these insights and outlines the multiple dimensions of the principle of independence as it relates to the design and establishment of oversight and regulatory agencies. The aim is to summarise the key lessons that can be learnt from these exemplars so that this informs the current and proposed legislative and operational arrangements of existing and proposed entities.

6.1.1 Principle of Independence

Independence from Ministerial Direction and Control

For regulatory and oversight agencies to act independently, impartially, and in the public interest, they should be free from ministerial direction and control. When such regulators are subject to ministerial direction, there is an inherent risk that political considerations, electoral cycles, or government policy priorities may influence regulatory decisions that should be based solely on evidence, law, and public interest considerations.

Independence from ministerial direction ensures that oversight agencies can pursue their mandate and enable them to make difficult decisions, issue critical findings, and hold powerful institutions accountable regardless of the potential political ramifications. This independence is essential for maintaining public confidence in the regulatory system and ensuring that oversight functions serve the broader public interest.

Structural, Budgetary and Operational Independence

In addition, the institutional independence of regulatory and oversight agencies relies on funding arrangements that are independent of the departments they oversee. The agencies should not be reliant for their funding and financial resources on departments that are subject to their oversight and/or scrutiny. Funding mechanisms should be designed to prevent situations where funding decisions could compromise regulatory independence or create leverage for departments to influence oversight activities.¹¹⁸

Structural independence is also integral to the independence of these agencies and regulators. Making agencies or regulators directly accountable to Parliament rather than to the departments they regulate, avoids both perceived and actual conflicts of interest inherent in being answerable to the very entities that the agencies are meant to oversee.

Together, these three pillars of independence—budgetary, structural, and operational—ensure that regulatory and oversight agencies can fulfill their public interest mandate without being constrained by the institutional interests of those they are charged with monitoring and regulating.

6.2 TASMANIA POLICE AND THE CHILD AND YOUTH SAFE

ORGANISATIONS ACT 2023: THE CASE FOR INCLUSION

6.2.1 The Commission's Vision for Comprehensive Oversight

As stated above, the COI report envisioned a comprehensive child safety framework under the CYSO Act that would create uniform standards and accountability mechanisms across all government entities that engage with children and young people. The Commission's design of the CYSO Act reflected a

¹¹⁸ COI Report Volume 8: Chapter 18, pg 61-65.

fundamental principle that no organisation—regardless of its status or function—should be exempt from the highest standards of child protection when it operates in contexts involving children and young people.

The Commission understood that effective child protection requires a “whole-of-government” approach where every agency that comes into contact with children must be subject to the same rigorous oversight, standards, and accountability mechanisms. This comprehensive coverage was intended to eliminate gaps in protection and ensure consistent application of child-safe practices across Tasmania’s public institutions. Specifically, the COI noted that:

‘We are particularly pleased that TASPOL will become a regulated entity for the Child Youth Safe Standards and Reportable Conduct scheme. We consider this appropriate, as police occupy unique positions of trust within the community and can wield significant power and authority over children and young people.’¹¹⁹

6.2.2 The Critical Role of Tasmania Police in Child Protection

The Review concurs with the above view. TASPOL occupies a unique and critical position in the state’s child protection ecosystem. As the primary law enforcement agency, TASPOL:

- Investigates allegations of child sexual abuse and other crimes against children.
- Responds to child protection concerns and works closely with Child Safety Services.
- Operates youth programs and community engagement initiatives.
- Employs officers who regularly interact with vulnerable children in crisis situations.
- Serves as the enforcement mechanism for child protection legislation, including potentially the CYSO Act itself.

The Review notes that TASPOL’s extensive contact with children and young people—often in highly vulnerable circumstances—necessitates the same rigorous child-safe standards that apply to other government agencies. Police officers frequently encounter children as victim survivors, witnesses, or in other circumstances where professional boundaries and child-safe practices are paramount.

Therefore, the Review has noted recent correspondence from TASPOL stating that whilst undertaking a review of its procedures under the CYSO Act and developing protocols in relation to the disclosure of information for the purpose of the Reportable Conduct Scheme in Part 4 of the Act, it had been determined that TASPOL is not an ‘entity’ for the purposes of the Act. TASPOL acknowledged that this was a departure from the previously held position when the legislation first commenced. Based upon this revised assessment, it is noted that TASPOL is not required by the Act to make notifications to the Independent Regulator in relation to reportable conduct matters. Despite the above discovery, the Commissioner of Police determined that – in support of the Act’s intention to protect and promote the best interests of children – TASPOL would continue to make de-identified notifications to the OIR in relation to reportable conduct.

The Review has consulted with TASPOL on the above change. TASPOL has noted that it is one arm of the broader DPFEM, which also encompasses the Tasmania Fire Service, State Emergency Service, Business and Executive Services and Forensic Science Service Tasmania. DPFEM and TASPOL are distinct entities – given that police are appointed under the Police Service Act 2003 – and TASPOL is not an ‘entity’ for the purposes of the CYSO Act.¹²⁰

¹¹⁹ COI Report Volume 8: Chapter 18, pg 45 (Overseeing child safe organisations).

¹²⁰ *Child and Youth Safe Organisations Act 2023* (Tas).

As a consequence, having recognised that the exclusion of Tasmanian Police from the CYSO Act was not intentional, TASPOL supports the Reviews recommendation as outlined below to amend the legislation so that it is subject to the CYSO Act.

The Review's rationale for proposing the amendment is as follows:

In the Review's opinion, the exclusion of TASPOL from the CYSO Act creates a public interest concern regarding the integrity of Tasmania's child protection framework. Several critical issues arise:

1. Enforcement Credibility Gap

TASPOL, as the primary enforcement agency for child protection laws, would face a credibility challenge when it enforces standards upon other organisations while remaining exempt from the same requirements. The public rightfully expects that those who enforce the law should be subject to the highest standards of compliance with that same law. The Review notes that there is no suggestion that the original omission was deliberate but rather emphasising that an amendment is vital.

2. Accountability Asymmetry

Every other government agency in Tasmania—from schools to health services to local councils—must comply with Child and Youth Safe Standards and participate in the Reportable Conduct Scheme. The exclusion of TASPOL raises an accountability question where the state's law enforcement agency operates under different oversight arrangements than every other public body that interacts with children.

3. Systemic Risk to Public Trust

Police services across Australia have faced scrutiny regarding institutional responses to misconduct, including conduct involving children and young people. Public trust in policing depends significantly on transparency, accountability, and adherence to the highest ethical standards.

Risks of Exclusion from the Reportable Conduct Scheme

The exclusion of TASPOL from the Reportable Conduct Scheme creates particular risks:

- **Information Gaps and Silos**

The Reportable Conduct Scheme is designed to create a centralised repository of information about concerning conduct involving children across government and non-government organisations. Without TASPOL participation, the Independent Regulator lacks visibility of potential patterns of concerning behaviour within the police service, potentially missing systemic issues or individuals who pose risks across multiple contexts.

- **Compromised Independent Oversight**

The Reportable Conduct Scheme provides independent oversight of how organisations investigate and respond to allegations of misconduct involving children. TASPOL's exclusion would mean that its internal investigation processes remain largely opaque to independent scrutiny.

- **Inconsistent Standards of Investigation**

The Reportable Conduct Scheme establishes consistent, evidence-based standards for investigating allegations involving children, including trauma-informed approaches to interviewing children and requirements for independent investigations where appropriate. TASPOL's exclusion would mean that it is not subject to these standards when investigating police conduct.

- **Barriers to Information Sharing**

The CYSO Act's information-sharing provisions are designed to ensure relevant child protection information flows between agencies to protect children. TASPOL's exclusion would create

barriers to this information sharing and may prevent the Independent Regulator from obtaining crucial information about risks to children.

Strategic Recommendation 6.1:

The Review recommends that the Tasmanian Government amend the Child and Youth Safe Organisations Act 2023 Schedule 2 and 3 to explicitly include Tasmania Police as a regulated entity subject to both the Child and Youth Safe Standards and the Reportable Conduct Scheme, ensuring that Tasmania's premier law enforcement agency is held to the same child protection standards and accountability mechanisms as every other government organisation that engages with children and young people.

6.3 COLLABORATION AND INFORMATION SHARING ACROSS

REGULATORY AND OVERSIGHT AGENCIES

6.3.1 Role of the Registrar for Working with Vulnerable People

The COI recognised the important role of the Registrar of the RWVP Scheme amongst the regulatory and oversight bodies in the Tasmanian child safety system. The COI Report noted that the registration requirements to work with vulnerable people are an important regulatory safeguard as they provide for screening and monitoring of staff and volunteers who work with vulnerable people including children.¹²¹ The COI also suggested important reforms to the Registration for Working with Vulnerable People Act 2013 to enable the government to:

- provide statutory guidance to the Registrar regarding factors for consideration when conducting risk assessments and
- support the Tasmanian Civil and Administrative Tribunal members to undertake an administrative review of decisions.

The Review concurs with the COI Recommendations and notes that while the proposed changes to legislation and regulation will strengthen the risk assessment process, there is also a complimentary need for strengthening accountability arrangements.¹²²

As noted by the COI, the Registrar provides one of the most important regulatory safeguards in relation to child sexual abuse matters. The data and information held by the Registrar on those individuals that seek to work with children and the risk assessment process that assesses their fitness to continue to engage with children, are integral to child safety in Tasmania.

Given the critical nature of this service, the Review recommends strengthening accountability of the Registrar. The current legislation lacks specific accountability and reporting arrangements for the Registrar and the scheme. The legislation has no requirements for example for the production of an annual performance report that outlines the:

- processing times for applications for registration/renewal of registration and
- data on scheme effectiveness in preventing harm.

¹²¹ COI Report Volume 8: Chapter 18, Pg 71.

¹²² COI Report Volume 8: Chapter 18, pg 71-76.

While the Review was able to sight an independent review report for the scheme, the legislative provision that would enable a regular review of the scheme was difficult to identify.

The Review was also concerned about the capacity and therefore the ability of the RWVP unit within DOJ to respond to any accountability mechanisms that required it to be transparent about its decision-making processes. Whilst supported by the Registrar in principle, the Review's requests for additional data on COI referrals were unable to be progressed based upon legal advice. Eventually a special regulation had to be passed by Parliament to enable the Review to receive this data.

The engagement with the Registrar also demonstrated to the Review that notwithstanding the integrity and professionalism of the incumbent, the legislation does not empower the role holder to act with the degree of authority that might be expected given the criticality and sensitivity of the role. The Review believes that this is in part related to the appointment processes for the statutory office of the Registrar. Based upon current legislation, the appointment of the Registrar is a decision for the Secretary of the DOJ and any State Service employee maybe appointed by the Secretary to the role of the Registrar. This approach lacks the same level of institutional weight and legitimacy available in the other regulatory appointments identified above and does not position the role at a suitable level of seniority that aligns with the significant level of strategic risk that rests with the scheme.

Therefore, the Review proposes a range of changes to the existing legislation and/or new regulations to achieve the following:

1. Amend the role of Registrar to Commissioner of the RWVP scheme and ensure that the appointment is made by the Governor in Council. This will mean that the role holder is appointed by the Governor acting on the advice of Executive Council, thus imbuing the role and the role holder with the stature and authority required to act independently.
2. Amend and activate the current provisions of s12 of the RWVP Act 2013, to ensure that the Minister and Registrar/Commissioner receives independent advice from an advisory committee at least once a year, regarding the effectiveness of the scheme through a review of a sample of positive and negative risk assessments, with the outcomes being included in the annual report. The Review notes that the current legislation enables the Minister to establish an advisory committee to advise them and/or the Registrar on any matter in relation to the administration of the Act. This can be activated to enable the advice to be provided to the Commissioner subject to the changes identified above.¹²³
3. The Registrar/Commissioner is required to publish an annual performance report to be tabled in Parliament containing information on the strategic effectiveness of the scheme in preventing harm as well as its operational effectiveness based upon service level standards.

Strategic Recommendation 6.2

The Review recommends that the Tasmanian Government amend the Registration to Work with Vulnerable People Act 2013 and associated regulation to:

- ***Ensure that the appointment of the Registrar is made by the Governor in Council and that the Registrar has similar stature as a Commissioner, although reporting lines to remain with the Secretary of Department of Justice.***
- ***Establish an expert advisory body (aligned to existing legislation) to provide advice to the Minister and the Registrar on the Registrar's decision-making processes via reviewing positive and negative risk assessments and reporting on the results at least once a year.***

¹²³ Registration to Work with Vulnerable People Act 2013, s 12.

- **Introduce a provision for an annual performance report to be tabled to Parliament on the strategic and operational performance of the scheme.**

6.3.2 Collaboration and Information Sharing

The TOR for the Review required it to access information from a range of agencies and authorities regarding the actions they undertook in response to matters of concern raised with and by the COI including those outlined in its final report. Elsewhere in this report the Review has highlighted the difficulties it encountered in this regard including the legislative provisions that inhibited access to information. These difficulties do not appear to be unique to the Review. The Review has heard from other stakeholders about similar concerns they have faced when trying to navigate the information sharing regime regarding child safety and protection in Tasmania.

While the Review understands the need for safeguarding sensitive information regarding child safety concerns and protecting the privacy and rights of individuals, the Review notes that strategies and solutions to enhance child safety measures in Tasmania can only be effective if they are based upon data, information, analytics and a strong evidence base.

The Review notes that we are moving into the age of Artificial Intelligence (AI). The role of technology in society will continue to grow. A recent report by ICMEC Australia notes that the prospective and remarkable capabilities of GenAI, exemplified by large language models (LLMs) like ChatGPT and image generators like Stable Diffusion, have demonstrated potential for significant societal benefit. The report also identifies that these technologies present new avenues for misuse.¹²⁴ Global research suggests that child sex offenders are already manipulating AI to scale their abuse, from generating child sexual abuse material (CSAM) to orchestrating grooming and sextortion. The statistics in relation to child sexual abuse concerns across Australia are alarming and highlight the need for innovative solutions. These solutions need to include use of AI to combat this crisis. While AI can be used to harm children, its power can also be used to safeguard children. The ICMEC report lists a range of AI driven initiatives that could be used to combat child sexual abuse including:

- Research and consequential development of Ai-powered tools designed to detect and prevent Online Child Sexual Exploitation (OCSE).
- Leveraging AI to analyse Child Sexual Abuse Material (CSAM) faster, without human eyes in the first instance.
- Ongoing collaboration between tech companies, law enforcement, schools, and child protection organisations to develop and implement AI-driven protections.
- Training for law enforcement and child protection professionals on the latest available AI technologies (and their applications) in preventing and investigating CSE.¹²⁵

While the report highlights the opportunity for Australia to become a global leader in use of AI to prevent child sexual abuse, it notes the need for cross-sector collaboration to tackling this scourge. Of the select examples of innovative solutions to tackle child sexual abuse that were highlighted by the report, the Review was pleased to note the inclusion of ‘rethink Chatbot’ – a groundbreaking trial program aimed at combatting CSAM on pornography websites, that was recently conducted on Pornhub UK’s platform in collaboration with UK-based child protection organisations and the University of Tasmania.

The Review believes that Tasmania has the intellectual expertise, research capability, institutional fabric and government commitment to drive change and set best practice. However, this requires collaboration

¹²⁴ ICMEC Australia and Safer AI for Children Coalition, *Artificial Intelligence and Child Protection: A Collaborative Approach to a Safer Future Discussion Paper*.

¹²⁵ Ibid

across the institutional fabric, including an information and data sharing regime across the child safety system and between regulatory and oversight agencies.

In considering the issue of information sharing, the COI had identified that the CYSO Act included several provisions designed to facilitate appropriate information sharing between agencies. The COI noted that these provisions were drafted to empower the Independent Regulator to obtain, record, disclose and otherwise use information for a broad range of purposes, including for:

- promoting and protecting the safety of children
- supporting investigations by law enforcement; and
- employment and disciplinary processes.

The COI also identified information sharing provisions across a range of other legislation to enable child protection including:

- Children, Young Persons and Their Families Act 1997
- Ombudsman Act 1978
- Integrity Commission Act 2009; and
- Registration to Work with Vulnerable People Act 2013.

In identifying these provisions, the COI made the following recommendation (Recommendation 18.15):

'The Commission for Children and Young People, the Integrity Commission, the Ombudsman and the Registrar of the Registration to Work with Vulnerable People Scheme should develop a formal memorandum of understanding relating to the management and oversight of reports, complaints and concerns relating to child sexual abuse and information sharing'.¹²⁶

The Review welcomes the development of memoranda of understanding between the above entities.
¹²⁷

Furthermore, and based upon consultations with oversight and regulatory agencies, the Review identifies the following improvements to information sharing in relation to child sexual abuse matters. The Review notes that the change is proposed to ensure clarity in relation to sharing of information regarding child sexual abuse matters.

1. Changes to the Personal Information Protection Act 2004 (PIP Act)

The Review notes that Schedule 1 Clause 2 of the PIP Act outlines the exemptions that allow for the exchange of information. Currently Clause 2(1)(d) provides for the following:

(1) A personal information custodian must not use or disclose personal information about an individual for a purpose other than the purpose for which it was collected unless –

(d) the personal information custodian reasonably believes that the use or disclosure is necessary to lessen or prevent –

(i) a serious threat to an individual's life, health, safety or welfare; or

¹²⁶ COI Report Volume 8: Chapter 18, pg 80.

¹²⁷ [New agreement strengthens oversight of child safety in Tasmania | Department of Justice](#)

*(ii) a serious threat to public health or public safety; or*¹²⁸

Similarly, Clause 2(1)(g) lists a range of exemptions related to supporting law enforcement agencies to achieve their functions of preventing, detecting, investigating, prosecuting or punishing criminal offences or breaches of a law.¹²⁹

The Review believes that the current wording of both sections could be enhanced to provide for an explicit reference that enables the sharing and disclosure of information related to child sexual abuse matters and reportable conduct. For example, the Schedule 1 Clause 2(d) could be amended to include references to children and vulnerable people and the reportable conduct scheme and the reference to law enforcement agencies could be removed to enable sharing of information across all agencies and authorities within the State Service.

Specifically, the Review recommends that the PIP Act be amended to incorporate the following changes:

Schedule 1 Clause 2(d) to incorporate additional provisions as identified in italicised and bold text below:

(1) A personal information custodian must not use or disclose personal information about an individual for a purpose other than the purpose for which it was collected unless –

(d) the personal information custodian reasonably believes that the use or disclosure is necessary to lessen or prevent –

(i) a serious threat to an individual's life, health, safety or welfare; or

(ii) a serious threat to public health or public safety; or

*(iii) the emotional or physical abuse of a child or vulnerable person as defined in the RWVP ACT 2013; or*¹³⁰

(iv) reportable conduct as defined in the CYSO Act 2023

Schedule 1 Clause 2(1)(g) to be amended to read as follows:

(1) A personal information custodian must not use or disclose personal information about an individual for a purpose other than the purpose for which it was collected unless –

*(g) the personal information custodian reasonably believes that the use or disclosure is reasonably necessary for any of the following purposes by or **on behalf of agencies and authorities identified in the State Service Act 2000, and all regulatory and law enforcement agencies in Tasmania.***¹³¹

2. Develop and implement a roadmap to enhance information sharing between the Independent Regulator, the RWVP, TASPOL, the Ombudsman, the TRB and the IC.

The Review notes that legislative changes identified above should be accompanied by corresponding changes to culture and practice, risk assessment frameworks used by regulatory agencies and integration of data sets to provide real time intelligence and patterns that support decision making.

¹²⁸ *Personal Information Protection Act 2004*, Schedule 1, Clause 2(1).

¹²⁹ *Ibid*, Clause 2(1)(g).

¹³⁰ To note, comparable exemption in Victoria - *Privacy and Data Protection Act 2014* (Vic), s15B (Exemption-information sharing under the Child Wellbeing and Safety Act).

¹³¹ *Personal Information Protection Act 2004*, Schedule 1, Clause 2(1)(g).

An agreed roadmap will help accelerate the changes in culture and practice. Therefore, the Review recommends that the Independent Regulator and the RWVP work jointly to develop a roadmap to enhance information sharing across Tasmania's law enforcement and regulatory agencies. The roadmap could consider and address the following improvements:

- Identify the changes necessary to move to a more proactive information sharing regime between regulatory, oversight and law enforcement agencies. For example, this could include system integration that establishes a continuous information feed from the Independent Regulator to the Registrar.
- Enhance the information feed accessed by the Registrar to include information about boundary violations and grooming behaviours identified through organisational investigations.
- Ability to analyse information across data sets to support pattern recognition across multiple organisations and time periods.
- Create feedback loops and learning systems that support post incident analysis when registered individuals commit offenses, establish system improvement protocols based upon missed warning signals, outcome tracking to assess risk prediction accuracy and regular review of information sharing effectiveness.
- Address cultural and systemic barriers through implementing training programs for information sharing across agencies, clear protocols for overcoming privacy concerns that inhibit appropriate sharing, performance metrics to incentivise proactive information sharing and leadership commitment to collaborative child safety approaches.

These changes should over time transform the current information sharing regime to a dynamic, intelligence-led child protection mechanism that leverages the full range of child safety information available across Tasmania's regulatory landscape. The roadmap should focus on moving from siloed decision-making to integrated risk assessment and management across all child-facing sectors.

Consistent with the above recommendations, the Review believes that TASPOL, the IM, the OIR/CCYP and the RWVP could work together to use the COI and other child sexual abuse data, statistics and records to create an intra-agency initiative that undertakes comprehensive use case analysis of historical records to better understand child related criminal activity, offender typologies and behavioural ranges and develop enhanced intelligence-sharing protocols. A use case approach provides benefits in that it enables the regulatory and law enforcement agencies to:

- undertake a historical case review and categorisation of relevant records, building on the excellent work already done in creating the JRRT record data set
- develop a shared analytical methodology to identify common activity patterns and characteristics
- create secure information sharing protocols; and
- establish coordination mechanisms.

The use case approach may be particularly beneficial for Tasmania given the over decade and a half history of significant investigation into child sexual abuse matters.

Strategic Recommendation 6.3

The Review recommends:

- ***Changes to the Personal Information Protection Act 2004 to include additional provisions to enable the sharing of information across all government agencies, regulatory and law enforcement authorities/entities in relation to child sexual abuse concerns and reportable conduct.***

Operational Recommendation 6.1

The Review recommends:

The Independent Regulator and the Registrar for Working with Vulnerable People, develop and implement a roadmap to enhance information sharing between the Independent Regulator, the Registrar for Working with Vulnerable People, the Teacher's Registration Board, Tasmania Police, the Ombudsman and the Integrity Commission taking account of:

- **the benefits of new technology to analyse patterns and trends to develop risk-based strategies and solutions**
- **the need for cultural and systemic change**
- **the benefit of feedback loops and learning systems; and**
- **the value of undertaking a use case analysis using historical records.**

6.4 SUMMARY OF RECOMMENDATIONS

Strategic Recommendation 6.1

The Review recommends that the Tasmanian Government amend the Child and Youth Safe Organisations Act 2023 Schedule 2 and 3 to explicitly include TASPOL as a regulated entity subject to both the Child and Youth Safe Standards and the Reportable Conduct Scheme, ensuring that Tasmania's premier law enforcement agency is held to the same child protection standards and accountability mechanisms as every other government organisation that engages with children and young people.

Strategic Recommendation 6.2

The Review recommends that the Tasmanian Government amend the Registration to Work with Vulnerable People Act 2013 and associated regulation to:

- Ensure that the appointment of the Registrar is made by the Governor in Council and that the Registrar has similar stature as a Commissioner, although reporting lines to remain with the Secretary of Department of Justice.
- Establish an expert advisory body (aligned to existing legislation) to provide advice to the Minister and the Registrar on the Registrar's decision-making processes via reviewing positive and negative risk assessments and reporting on the results at least once a year.
- Introduce a provision for an annual performance report to be tabled to Parliament on the strategic and operational performance of the scheme.

Strategic Recommendation 6.3

The Review recommends:

- Changes to the Personal information Protection Act 2004 to include additional provisions to enable the sharing of information across all government agencies, regulatory and law enforcement authorities/entities in relation to child sexual abuse concerns and reportable conduct.

6.4.2 Operational Recommendations

Operational Recommendation 6.1

The Review recommends:

The Independent Regulator and the Registrar for Working with Vulnerable People, develop and implement a roadmap to enhance information sharing between the Independent Regulator, the Registrar for Working with Vulnerable People, the Teacher's Registration Board, Tasmania Police, the Ombudsman and the Integrity Commission taking account of:

- the benefits of new technology to analyse patterns and trends to develop risk-based strategies and solutions
- the need for cultural and systemic change
- the benefit of feedback loops and learning systems; and
- the value of undertaking a use case analysis using historical records.

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APPENDICES

Appendix A – Woolcott Independent Review, Terms of Reference

Independent Review

Independent Review into the actions taken in response to the information and concerns raised by the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

Background

The Tasmanian Government is committed to ensuring that strong action has been taken and will continue to be taken to ensure that Tasmanian children and young people are safe and well, in its care.

An Independent Review (Review) will consider the actions, and effectiveness of those actions, by government agencies and other relevant state authorities, including Tasmania Police, taken in response to the information and concerns raised in the final report of the Tasmanian Commission of Inquiry into Child Sexual Abuse in Institutional Settings (hereafter referred to as the COI) about Tasmanian State Service employees and officers.

The Independent Review will be conducted in a trauma-informed way, with a clear focus on ensuring that respect for child sexual victim-survivors remains at the centre.

Terms of Reference

The Terms of Reference for this Review include:

1. The examination and analysis of the policy and legislative framework relevant to matters of misconduct in the Tasmanian State Service. This will include providing a clear overview of the reporting requirements of government agencies and other relevant authorities as it relates to information and concerns raised by the COI.
2. The chronology and response to the concerns and information raised by the COI about Tasmanian State Service employees and officers including but not limited to:
 - i. The efficacy of decisions and actions, with respect to the assessment of seriousness of harm and non-compliance with policy, employment frameworks or legislation as they relate to the information and concerns raised by the COI regarding Tasmanian State Service employees and officers;
 - ii. The timeliness in which concerns, and information were considered and acted upon by government agencies or other relevant state authorities;
 - iii. The timeliness and accuracy of any referrals made by relevant state authorities to relevant regulatory, integrity or law enforcement bodies during the Commission of Inquiry Hearings and upon the publication of the Final Report.;

3. Recommending actions where the Independent Reviewer identifies non-compliance with policy, employment frameworks or legislation, as part of its review and in respect to items 2 i, 2ii, and 2iii above.
4. Making any recommendations, in addition to and not contrary to those made by the COI about policy, legislative and operational changes to improve the system for responding to information or concerns about the conduct of Tasmanian State Service employees and officers of the type raised by the COI.
5. Advice on any other matter relating to the actions of government agencies or other relevant authorities about concerns and information raised by the COI about Tasmanian State Service employees and officers that the Independent Auditor determines relevant.

Matters of process

The Independent Auditor will:

1. Provide an opportunity to persons to make submissions, or to be heard personally, as the Independent Reviewer considers it necessary, in relation the matters under Review;
2. Engage with one or more former Commissioners to ensure that all matters referred to in the COI's final report as matters where findings were unable to be made (Volume 1, Chapter 5.1 *Challenges we faced*), are fully considered by the Independent Reviewer;
3. Ensure that the Review process is trauma-informed and respectful of the experiences of victim-survivors;
4. Ensure that where necessary appropriate confidentiality arrangements are made for persons assisting the Review; and
5. Provide a detailed report of the findings to the Premier as soon as is reasonably practicable, with status reports provided at three monthly intervals.

Out of Scope

The Audit will not include matters which are subject to separate independent review, including:

- The application of ED16 policy in granting legal assistance to Public Officers;
- The assessment of administrative matters of concern and adverse commentary in relation to Heads of Agency.
- The review of the *Commissions of Inquiry Act 1995* in relation particularly to sections 18 and 19, and Section 194K of the *Evidence Act 2001*.

Appointment of Auditor and Reporting Requirements

An independent person of eminent standing and experience will conduct the Review. The Review will commence in mid-January 2024, with its final report made available to the Parliament.

Three-monthly status reports will be provided throughout the review period.

The final report should include findings in accordance with the scope and the outcomes of the review and audit, and the recommendations will be made public.

ENDS

Appendix B – Employment Directions No. 4

DRAFT OPTION: COMPLETELY NEW ED 4

**EMPLOYMENT DIRECTION NO. 4
PROCEDURES FOR THE SUSPENSION OF STATE SERVICE
EMPLOYEES WITH OR WITHOUT PAY BY HEAD OF AGENCY**

Directive

Pursuant to Section 17 of the *State Service Act 2000* (Tas), I hereby direct that the arrangements and requirements set out in this Employment Direction are to apply.

Signed

Issued by authority of the Minister administering the *State Service Act 2000* (Tas).

Date:

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1. Purpose

- 1.1 The purpose of this Direction is to set out the procedural requirements for suspension of State Service employees with or without pay.

2. Application

- 2.1 This Direction is to apply to all State Service Agencies and officers and employees within those agencies.
- 2.2 The Head of Agency may delegate a function or power to be exercised in accordance with this Direction. The Head of Agency will otherwise be responsible for exercising any function or power set out in this Direction.

3. Definitions

- 3.1 Where words and phrases used in this Direction are defined in the *State Service Act 2000* (Tas) the same meaning applies.
- 3.2 **'Agency'** means a Government Department, or a State Authority or other organisation specified in Column 1 of Part 1 and Part 2 of Schedule 1 of the Act.
- 3.3 **'Agency clients'** means any key stakeholders, customers, volunteers, contractors, child or young person that interacts with the Agency.
- 3.4 **'Full pay'** means the salary or wage and other allowances that the employee would ordinarily receive if they were at work, *and where applicable*, in accordance with their instrument of appointment. Full pay excludes pay for additional hours or overtime that may have been undertaken by the employee.

4. Legislation/Award Basis and Related Documents

- 4.1 *State Service Act 2000* (Tas), section 43 (Suspension).
- 4.2 Employment Direction No. 5 - Procedures for the Investigation and Determination of whether an Employee has Breached the Code of Conduct.
- 4.3 Employment Direction No. 6 - Procedures for the Investigation and Determination of whether an Employee is able to Efficiently and Effectively Perform their Duties.

5. Date of Operation

- 5.1 This Direction will take effect from the date of issue and will remain in force until varied or revoked.
- 5.2 If any applicable legislative obligations come into effect that are inconsistent with this Direction, the relevant legislation will apply to the extent of any inconsistency. Where a suspension has commenced under the previous Employment Direction and remains in

effect once this Direction is in force, the suspension will instead be managed in accordance with this Direction.

6. Direction

- 6.1 With respect to complaints or concerns of child sexual abuse or related conduct a Head of Agency may suspend an employee based upon an assessment of the risk of harm to a child/children.
- 6.2 Save with respect to child sexual abuse or related conduct a Head of Agency may suspend an employee if the Head of Agency believes on reasonable grounds that it is in the public interest, or the Agency's interest,¹ to do so.
- 6.3 It may be in the public interest or the Agency's interest to suspend an employee from duty where their continued presence in the workplace creates a risk, for example:
- a. that the conduct may be repeated;
 - b. to the integrity of any investigation;
 - c. to the integrity of data held by the Agency, including data about members of the public;
 - d. to the integrity of the Agency's resources, including the public revenue – for example, where any allegations of misconduct relate to fraud or misappropriation;
 - e. public confidence;
 - f. to the health and safety of themselves, other employees or members of the public, including Agency Clients.
- 6.4 It may also be in the public interest or the Agency's interest to suspend an employee from duty where:
- a. the employee has, or may have, breached the Code of Conduct in such a manner that the employee should not continue in the performance of his/her duties
 - b. the employee has been charged in Tasmania with an offence punishable by imprisonment for a term exceeding six (6) months or has been charged outside of Tasmania with an offence punishable by imprisonment for a term exceeding six (6) months
- 6.5 A Head of Agency who suspends an employee can do so prior to the commencement of any assessments, investigations or related processes regarding those circumstances. This will specifically be the case in circumstances whereby an employee does not possess the essential requirements or registrations required to perform their assigned duties, for example, registration to work with people under the *Registration to Work with Vulnerable People Act 2013* (Tas), teachers' registration under the *Teachers Registration Act 2000* (Tas) and health practitioner registrations delivered by the Australian Health Practitioner Agency under the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022*. This may also be the case whereby an employee is charged with an offence punishable by imprisonment for a term exceeding six (6) months.

¹ Consideration needs to be given to defining 'public interest'.

7. Suspension with pay

7.1 Where appropriate, a Head of Agency who has reasonable grounds to suspend an employee can do so by providing an employee with payment of their Full Pay. The paid suspension will only take effect after the Head of Agency informs the employee, in writing, of the agency's intention to suspend them and the reasons for this proposal.

8. Suspension without pay

8.1 A Head of Agency who has reasonable grounds to suspend an employee without pay can do so:

- a. after informing the employee, in writing, of the agency's preliminary intention to suspend them and the reasons for this proposal; and
- b. after giving the employee a reasonable opportunity to respond before any decision to suspend without pay is taken and after consideration of the response.

8.2 A Head of Agency can suspend an employee, with pay, while they await the response of an employee and can change this to suspension without pay at any time once a final decision is made.

9. Factors for Consideration in Suspending Employees

9.1 In determining whether or not to suspend an employee with or without pay, a Head of Agency will have regard to:

- a. why suspension is in the public interest except with respect to child sexual abuse or related conduct;
- b. the nature and severity of any alleged conduct;
- c. any consideration of the employee's response to the proposal to suspend them without pay;
- d. the risks and likelihood of any risks being realised and their impact on the safety and wellbeing of children, if the employee remains in the workplace;
- e. the risks and likelihood of any risks being realised and their impact on the safety and wellbeing of other employees or members of the public, including Agency Clients, if the employee remains in the workplace;
- f. the effect on the employee;
- g. the effect on the workplace; and
- h. consideration of any alternatives to suspension.

9.2 A decision to suspend an employee is to be taken on a case-by-case basis.

10. Fairness to employees

10.1 Advice to the employee about a suspension decision will make clear that the decision is not a prejudgment of whether they have breached the Code of Conduct, or that they have engaged in any other unlawful conduct.

10.2 Regardless of whether the suspension is with or without pay, the Head of Agency will keep the employee informed of any investigation into their conduct.

10.3 Any suspension needs to specify a duration for the suspension period. This can be specified as a block of time and can be reassessed at any stage during the suspension.

- 10.4 A Head of Agency must review a suspension decision prior to expiry of the duration specified above. A review of the suspension should be based upon an examination of whether the suspension from duty is to continue from the time of the review decision. It does not involve a reconsideration of the original decision to suspend the person under investigation.
- 10.5 In reviewing a current suspension, the Head of Agency must give regard to any change of circumstances including the risks posed by the person's presence in the workplace and whether suspension remains the most effective way to mitigate these risks and/or whether there is an opportunity to support the employee returning to the workplace.
- 10.6 If it becomes practicable to return the employee to the workplace, either within the original Agency or elsewhere within the State Service, then this should be considered.
- 10.7 Consultation with the Director, State Service Management Office is required if return to work in another Agency is being considered.
- 10.8 When the Head of Agency suspends an employee without pay and the case against the employee is not proven, then the employee may be entitled to a full reimbursement of all salary owing to them for the period of the suspension.
- 10.9 Generally, suspension without pay will not exceed sixty (60) days. It is only under exceptional circumstances that the Head of Agency will suspend an employee without pay for a greater period of time.
- 10.10 Exceptional circumstances may include:
- a. where a strong prima facie case of serious misconduct is apparent, and the regulatory risk assessment is yet to be completed;
 - b. where a finding has been made of a serious breach of the Code of Conduct and a sanction is yet to be imposed—any delay between a determination and imposing a sanction should be minimised.
 - c. where the person under investigation has been charged with a criminal offence and is waiting to have the charge heard and determined.
 - d. where the person under investigation has appealed against a criminal conviction and is waiting to have the appeal heard.
- 10.11 The Head of Agency is to immediately end the suspension with or without pay if they no longer believe on reasonable grounds that:
- a. the employee's suspension is in the public interest or the Agency's interest.
 - b. the employee has breached the Code of Conduct.
 - c. the employee is unable to perform the duties assigned to the employee
 - d. the continuing presence of the employee in the workplace and/or the continuing performance by the employee of their duties places the safety and wellbeing of other employees or members of the public, including children and Agency Clients, at risk.
 - e. the employee does not have the essential requirements or registrations required to perform their assigned duties, or
 - f. the Head of Agency has imposed a sanction or action in relation to Employment Direction No.5, Employment Direction No. 6 or Employment Direction No. 26.

11. Factors for Consideration in Relation to Suspension With or Without Pay

11.1 A Head of Agency may consider the following factors when deciding whether to suspend an employee with or without pay:

- a. the seriousness of the alleged misconduct: a suspension without pay may be appropriate where the sanction imposed might be termination of employment.
- b. the nature of the alleged misconduct: a suspension without pay maybe appropriate where the employee is alleged to have breached the provisions in the code of conduct related to the proper use and management of public resources.
- c. the estimated duration of the misconduct action.
- d. the likely financial hardship if any for the employee. the onus to substantiate a claim of hardship rests with the employee and must be appropriately supported through providing evidence to support their position or case.

11.2 There are limited circumstances where a suspension should be without pay, and a Head of Agency should seek legal advice if they are unsure about whether to pay an employee while they are suspended.

12. Suspension Without Notice

12.1 In exercising the suspension procedures outlined above, the Head of Agency must have due regard to procedural fairness, unless they believe, on reasonable grounds, that it would not be appropriate to do so in the particular circumstances.

12.2 Cases where the decision-maker believes that it is not appropriate to have regard to procedural fairness are likely to be unusual. It may be considered where there is a need to act urgently due to safety concerns or a risk that evidence will be destroyed, or where there is some other overriding public interest.

12.3 A Head of Agency may suspend an employee without pay, and without firstly providing a notice of suspension in exceptional circumstances. An employee who is suspended without pay, and without first being given an opportunity to comment should be advised of the reasons for the suspension decision, and for proceeding without seeking their comments.

12.4 In these exceptional circumstances outlined above, suspension can occur immediately without the need for preliminary assessment.

12.5 A Head of Agency can immediately suspend an employee, where the allegation is related to child sexual abuse or reportable conduct, without the need to form a reasonable belief that a breach of the Code of Conduct has occurred. ²

² As per recommendation 20.6 of the COI

13. Reporting and Monitoring

13.1 The Head of State Service should monitor and publicly report annually on the management of potential code of conduct of breaches related to child sexual abuse or related conduct.

13.2 This includes the number and duration of suspensions related to child sexual abuse matters and related conduct.

14. Review

14.1 This Direction will be reviewed by [insert date].

Appendix C – Employment Directions No. 5

DRAFT OPTION B: COMPLETELY NEW ED 5

**EMPLOYMENT DIRECTION NO. 5
PROCEDURES FOR THE INVESTIGATION AND DETERMINATION
OF WHETHER AN EMPLOYEE HAS BREACHED THE CODE OF
CONDUCT**

Directive

Pursuant to Section 17 of the *State Service Act 2000* (Tas), I hereby direct that the arrangements and requirements set out in this Employment Direction are to apply.

Signed

Issued by authority of the Minister administering the *State Service Act 2000* (Tas).

Date:

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1. Purpose

- 1.1 In accordance with section 10(3) of the *State Service Act 2000* (Tas) (**Act**), the Minister (**Employer**) is required to establish procedures for the investigation and determination of whether an employee has breached the Code of Conduct (**Code**). The purpose of this Direction is to provide such procedures.
- 1.2 This Direction applies to an employee, senior executive, equivalent specialist, or prescribed officer (hereinafter referred to as an employee).
- 1.3 These procedures must be complied with, inclusive of the attached *Handling Breaches of the Code of Conduct Policy*.

2. Application

- 2.1 This Direction is to apply to State Service Agencies as per Schedule 1 of the Act.
- 2.2 The Minister may delegate their function or power to be exercised in accordance with this Direction. From this point onwards all references to the Minister includes their delegates.
- 2.3 These procedures do not apply to alleged breaches of the Code by Heads of Agencies. The terms and conditions of a Head of Agency employment are within their individual Instruments of Appointment. This includes obligations to uphold and promote the State Service Principles and compliance with the Code.

3. Definitions

- 3.1 Where words and phrases used in this Direction are defined in the Act (or any replacement legislation), the same meaning applies.
 - **'Authorised Delegate'** refers to the Breach and/or Sanctions Delegate
 - **'Breach Delegate'** is the person appointed to determine whether or not an employee has breached the Code
 - **'Code'** means Code of Conduct
 - **'CYSOA'** means the *Child and Youth Safe Organisations Act 2023* (Tas)
 - **'Reportable conduct'** means reportable conduct in accordance with section 7 of the CYSOA
 - **'Regulations'** means the *State Service Regulations 2021* (Tas)
 - **'Sanction Delegate'** is the person appointed to determine a sanction imposed on an employee once a determination has been made by a breach delegate. A Breach Delegate and a Sanction Delegate can be the same office/person
 - **'TSS'** means the Tasmanian State Service

4. Legislation/Award Basis and Related Documents

- *State Service Act 2000*, sections 9, 10, 14, 15, 16, 17, 20, 21, 31, 34, 37 and 50.
- *State Service Regulations 2021*, regulation 31(4).
- Practice Procedure & Standard (PPS) No. 5 – *Register for Tasmanian State Service Code of Conduct Breaches resulting in or that would have resulted in termination.*

5. Operative Date

- 5.1 This Direction will take effect from the date of issue and will remain in force until varied or revoked.
- 5.2 Any procedure commenced under the previous Employment Direction (ED) No. 5 is to continue and be finalised in accordance with this Direction as far as is possible. Any modification the Head of Agency considers to be necessary or appropriate is to ensure that procedural fairness is afforded to the employee.

6. Complainant

- 6.1 If an individual makes a complaint that another employee has breached the Code, their complaint should be acknowledged as soon as is possible. They should also be informed as to what process will be followed to address their complaint, as per this policy.

7. Safety and Protection of Children

- 7.1 The protection and safety of children is to be a primary consideration when managing alleged breaches of the Code that involve children.
- 7.2 An investigation under these procedures that relates to Reportable Conduct may be combined with, or constitute, an investigation under the CYSOA and vice versa. Similarly, an investigation undertaken by the Integrity Commission may constitute an investigation for the purposes of this direction.
- 7.3 Where an investigation of an allegation of a breach of the Code is likely to require interviewing a child, the Breach Delegate must ensure that the processes involving the child are sensitive and appropriate bearing in mind the age, maturity, and personal circumstances of the child. Children should be interviewed by a skilled interviewer with appropriate training. Before interviewing a child, consideration must be given to such issues as the permission of the parent or guardian, the child being accompanied by a parent, guardian, or support person and, where appropriate keeping the child informed of the progress of the investigation.
- 7.4 Assessments and investigations related to child sexual abuse or related conduct, should take into account any history of any substantiated, untested and unsubstantiated complaints, allegations and disciplinary action. All processes should be undertaken with a trauma informed approach.

8. Decision Makers

- 8.1 After a suspected breach of the Code has been identified and considered as a serious breach and to be treated according to this Direction, the Minister will appoint a Breach Delegate to make a determination under these procedures.
- 8.2 The role of the Breach Delegate is to determine (in writing) whether a breach of the Code has occurred.
- 8.3 The Breach Delegate may seek the assistance of an external investigator to investigate any alleged breach, gather evidence and/or provide a report of recommended factual findings to the Breach Delegate.
- 8.4 Separately, a Sanction Delegate will be appointed by the Minister, if the Breach Delegate determines on the balance of probabilities, that an employee has breached the Code and therefore that a sanction may need to be imposed.
- 8.5 While these procedures do not prevent the Breach Delegate from being the Sanction Delegate in the same matter, good practice should entail an independent Sanction Delegate.
- 8.6 Authorised Delegates for making breach or sanction determinations must be independent and unbiased with no real or perceived bias or conflicts of interest. The breach and sanction delegates must advise the Head of Agency (in writing) if they consider they may not be perceived to be independent and unbiased, e.g. if they are a witness in the matter, or the respondent's line manager.
- 8.7 Where a suspension from duties is being considered appointing a separate delegate from the Breach delegate is preferable.

9. Breach Determination Process

- 9.1 Section 9 of the Act establishes the Code. The Code complements the State Service Principles, and any Agency-specific standing orders made under section 34(2) of the Act.
- 9.2 Where concerns are raised that an employee may have breached the Code, the concerns will be referred to a Breach Delegate. The Breach Delegate will then decide whether to:
 - a. conduct a preliminary assessment (whether through an independent third party or otherwise);
 - b. conduct an investigation (whether through an independent third party or otherwise);
 - c. take any other action deemed appropriate; or
 - d. take no further action.
- 9.3 The process itself must follow procedural fairness:
 - a. a delegate is impartial, and free from actual or apprehended bias (the bias rule).
 - b. a person whose interests will be affected by a proposed decision receives a fair hearing, including the opportunity to respond to any adverse material that could influence the decision (the hearing rule).
 - c. findings are based on evidence that is relevant and logically capable of supporting the findings made (the evidence rule).

9.4 When a suspected breach of the Code has been raised, and the matter assigned to a Breach Delegate, the Breach Delegate should aim to conduct their initial (preliminary) assessment within ten working days.

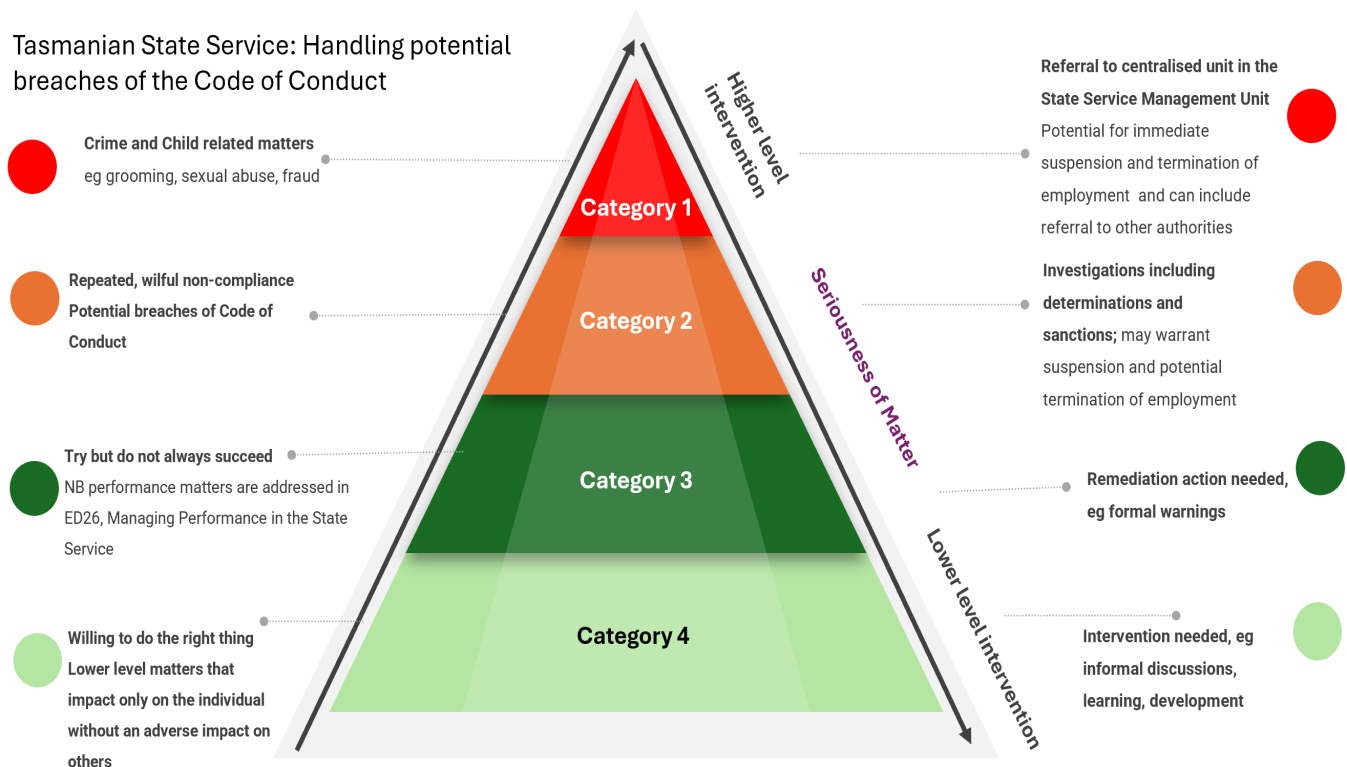
10. Preliminary Assessment

- 10.1 If a Breach Delegate considers there to be insufficient information for allegations to be properly particularised and put to an employee, then a preliminary assessment will be undertaken. A preliminary assessment is a separate process to an investigation and will be undertaken in the most timely manner possible, (whether it is undertaken by an external assessor or the Breach Delegate).
- 10.2 The purpose of the preliminary assessment is to determine whether there is sufficient information available to put formal allegations to an employee that they may have breached the Code and to warrant an investigation.
- 10.3 The preliminary assessment should inform the Breach Delegate as to whether an investigation is needed or whether any other further action should be taken in relation to the alleged breach.
- 10.4 During a preliminary assessment, victim-survivors and child witnesses should only be interviewed in exceptional circumstances. Such interviews should be conducted in a trauma-informed manner, consistent with the guidance in this document.
- 10.5 At any time during the processes in accordance with this Direction, the Breach Delegate may decide to take no further action in relation to the allegation(s). In such a case the employee must be advised in writing of this decision, including the reasons for the decision, as soon as practicable after the decision is made.
- 10.6 In considering the need for a preliminary assessment in matters involving child sexual abuse, the Breach Delegate should take account of all prior substantiated allegations and breaches of the code as well as unsubstantiated and untested allegations. The Breach Delegate should move to an investigation where there are prior allegations both substantiated and unsubstantiated and untested in matters related to child sexual abuse.

11. Triage Model

- 11.1 The model below can be used to help triage issues as they are received. Consideration of a matter is based on risk, impact and seriousness of the matter. Additional guidance is provided in the Appendix to this Direction.

Tasmanian State Service: Handling potential breaches of the Code of Conduct



11.2 Authorised Delegates can consider matters and decide on the most appropriate way to deal with them, proportionate to the risks raised and impacts on people and the organization.

11.3 The seniority of the employee should be taken into account when determining appropriate next steps.

12. Reporting to external organisations

12.1 Any alleged conduct that may involve possible criminal offences should be reported to Tasmania Police. The internal process should continue to determine whether a breach of the Code has occurred, subject to any restrictions imposed by Tasmania Police (that is, Tasmania Police may direct an employer to pause an internal investigation while it undertakes its own investigation).

12.2 Where a reasonable belief is formed that an employee has engaged in reportable conduct, this must be reported to the Independent Regulator. More information about when a report is necessary is set out in [##insert title of reportable conduct scheme policy].

12.3 Allegations of a serious nature need to be referred to the centralised unit in the State Services Management Office. A serious matter would involve the employee behaving in a way that causes serious and imminent risk to the health and safety of a person or to the reputation and integrity of their employer. For example, any allegations related to theft, fraud, assault, sexual harassment or reportable conduct.

12.4 The Breach Delegate should also consider whether any other external reports are necessary (such as to regulatory bodies).

13.13. Decision to Commence an internal Investigation

13.1 The Breach Delegate may decide to commence an investigation into alleged breaches of the Code, without an external investigator, and on their own accord, as a first step or following a preliminary assessment, if:

- a. evidence capable of proving the alleged facts is already available (this may include facts and information provided by an external authority such as the Integrity Commission);
- b. the employee is in agreement that the alleged breach occurred;
- c. the employee has been convicted of a crime or an offence in Tasmania which is punishable by imprisonment for a term of 6 months or more or has been convicted in a state other than Tasmania of a crime or an offence which, if committed in Tasmania, would be a crime or an offence so punishable; and/or
- d. the employee has been found to have committed reportable conduct, noting in these circumstances, a Code process will continue to a determination of breach of the Code.

13.2 At this point, the employee suspected of a breach must be informed in writing of:

- a. the allegations
- b. the provision(s) of the Code alleged to have been breached;
- c. the intention to investigate the alleged breach;
- d. who will investigate the alleged breach;
- e. the possible sanctions that may be imposed in accordance with section 10 of the Act if the matter proceeds to a determination that the employee has breached the Code; and
- f. that the employee can be supported by a person of their choice – unless there is a conflict - throughout the process.

13.3 It is recommended that agencies use a consistent template provided by the State Service Management Office to inform employees of suspected breaches.

13.4 In these circumstances, a case manager would assist in collating the facts and evidence and preparing information for the Breach Delegate. It is still necessary to properly construct written allegations, afford procedural fairness to the employee and ensure they have the right to respond to the allegations and the evidence being relied upon to determine whether or not a breach has occurred.

13.5 The employee must be given the opportunity to make a written and/or oral statement and/or provide evidence in relation to the suspected breach. Fourteen (14) days will be allowed for this response, in appropriate circumstances.

13.6 If, during the course of an investigation, it becomes evident that there is a material variation in the nature or extent of the alleged breach notified to the employee, the employee must be

notified in writing of the variation and any variation in the range of sanctions that may be imposed if the employee is found to have breached the Code.

13.7 If, during the course of a Code process, the Breach Delegate has reasonable grounds to believe that the employee may have committed further breaches of the Code, they may combine these allegations with the process underway, deal with them as a separate process or decide to deal with them otherwise. If they intend to deal with them as breaches of the Code, they must inform the employee of those further allegations.

13.8 The employee will be provided with a further opportunity to respond to any additional allegations made during the course of the investigation and where appropriate, will be given fourteen (14) calendar days to make a further statement or provide further evidence before a determination is made.

13.9 The Breach Delegate who conducts the investigation will make findings as to whether the employee has breached the Code, following the investigation.

13.10 The Breach Delegate will inform the employee of the findings.

14. Decision to commence an external investigation

14.1 Where appropriate, the Breach Delegate may appoint an external investigator to conduct an external investigation into alleged breaches of the Code. This may occur in the first instance or following a preliminary assessment. The Breach Delegate may decide to appoint an external investigator through a legal representative.

14.2 If an external investigation is undertaken, the employee suspected of a breach must be informed in writing of:

- a. the allegations
- b. previously substantiated and unsubstantiated and untested allegations in matters relating to child sexual abuse only
- c. the provision(s) of the Code alleged to have been breached;
 - a. the intention to investigate the alleged breach;
 - b. who will investigate the alleged breach;
 - c. the possible sanctions that may be imposed in accordance with section 10 of the Act if the matter proceeds to a determination that the employee has breached the Code; and
- d. that the employee can be supported by a person of their choice – unless there is a conflict - throughout the process.

14.3 The employee will be given the opportunity to speak with the investigator and to provide a response to any alleged breaches of the Code. The employee will also be able to provide any evidence/documents they think to be relevant and/or the names of relevant witnesses who they would like the investigator to meet with. Where the alleged breaches relate to child sexual abuse, the investigator must provide the complainant with details of the allegations to be put to the employee and let them to comment on whether they properly reflect their complaint and the matters to be put to the employee.

- 14.4 If, during the course of an investigation, it becomes evident that there is a material variation in the nature or extent of the alleged breach notified to the employee, the employee must be notified in writing of the variation and any variation in the range of sanctions that may be imposed if the employee is found to have breached the Code.
- 14.5 If, during the course of a Code process, the Breach Delegate has reasonable grounds to believe that the employee may have committed further breaches of the Code, they may combine these allegations with the process underway, deal with them as a separate process or decide to deal with them otherwise. If they intend to deal with them as breaches of the Code, they must inform the employee of those further allegations.
- 14.6 The employee will be provided with a further opportunity to respond to any additional allegations made during the course of the investigation
- 14.7 The Breach Delegate will still have the overall responsibility of determining whether a breach of the Code has occurred. In making this determination, the Breach Delegate will consider the investigator's report in relation to the investigation. In determining a matter where an investigator has been appointed, the employee must be provided with a summary of the investigator's report(s) and provided with an opportunity to respond. The employee may choose to provide this response in writing and may provide any other relevant evidence in any form. The Breach Delegate must take any response into account before determining the matter.

15. Standard of proof

A determination of whether there has been a breach of the Code is to be made on the balance of probabilities – that is, the decision maker is satisfied that it is more probable than not that the alleged conduct occurred.

16. Where an Investigator is not Appointed

- 16.1 In the event that an investigator is not appointed, the Authorised Delegate must advise the employee in writing of the:
- a. the allegations
 - b. the provision(s) of the Code alleged to have been breached
 - c. the reasons and evidence relied upon to determine a breach
 - d. the opportunity to respond to the facts, evidence and determination
- 16.2 In these circumstances, a case manager would assist in collating the facts and evidence and preparing information for the Breach Delegate. The employee must be provided with procedural fairness as per the approach identified above.
- 16.3 Where a breach is determined, a decision in relation to any appropriate sanction(s) consistent with the requirements of ED No. 5, still needs to be made and the employee has the right to respond to that decision in the same way.

17. Reassignment of Duties or Suspension from Duty

17.1 A current TSS employee who is under investigation for a suspected breach of the Code may be:

- a. reassigned to alternative duties for a fixed-term period;
- b. suspended from duty by a suspension delegate (see Employment Direction No. 4 for procedures on suspension with or without pay); and/or
- c. have relevant workplace restrictions imposed.

18. Sanctions

18.1 The sanction process must be consistent with the principles of procedural fairness.

18.2 The sanctions that can be imposed for breaches of the Code are set out in section 10 of the Act. Under this section, the Employer may impose one or more of the following sanctions on an employee who is found to have breached the Code:

- a. counselling;
- b. a reprimand;
- c. deductions from salary by way of fine not exceeding 20 penalty units;
- d. reduction in salary within the range of salary applicable to the employee;
- e. reassignment of duties;
- f. reduction in classification; and/or
- g. termination of employment in accordance with section 44 or 45 of the Act.

18.3 Where there is a finding that an employee has breached the Code, and that breach involves child sexual abuse, any proposed sanction may *only* take into account any prior *substantiated* complaints, allegations and disciplinary action, in addition to the substantiated misconduct considered during the investigation

18.4 If a determination is made that a current TSS employee has breached the Code, a sanction may not be imposed on the employee unless the employee has been informed of:

- a. the determination that has been made;
- b. the sanction/s that are under consideration; and
- c. the factors that are under consideration in determining any sanction to be imposed.

18.5 The employee must be given the opportunity to make a written and/or oral statement in relation to the sanction or sanctions under consideration, within seven calendar days (where appropriate).

18.6 The final decision as to which sanction is appropriate, will be made by the Sanctions Delegate.

18.7 The employee will be advised in writing of the final determination and their review rights.

19. Record of Determination and Sanctions

19.1 If a determination is made in relation to a suspected breach of the Code by a current or former TSS employee, a written record must be made of:

- a. the suspected breach;
- b. the determination regarding the breach;
- c. in the case of current TSS employee, any sanctions imposed as a result of a determination that the employee breached the Code; and
- d. if a statement of reasons was given to the employee or former employee regarding the determination or the sanctions – that statement of reasons.

19.2 Records relating to misconduct should be retained on file, both in the repository for matters of misconduct and on the TSS employee's personal file.

20. Movement Between Agencies

20.1 If an ongoing employee is suspected of having breached the Code and has been informed of the process underway where the matter has not yet been resolved, any movement between agencies cannot take effect until a determination is made or when it is decided a determination is not necessary. Employees must disclose any disciplinary processes under way as part of the application process to move roles or agencies.

21. Advice to Complainants

21.1 Advice to complainants about the outcomes of investigations into suspected breaches of the Code will be consistent with the requirements of the *Privacy Act 1988* (Cth) or *Personal Information Protection Act 2004* (Tas) and any applicable guidance from the TSS.

21.2 Child complainants should be informed of the outcomes of the investigation regarding the outcomes of investigations into suspected breaches of the Code consistent with any legislative requirements.

22. Any other action

22.1 The Breach Delegate may at any stage determine not to take any action in relation to alleged breaches of the Code (depending on the circumstances).

22.2 The Breach Delegate may also decide that neither an investigation nor a preliminary assessment is appropriate to address an alleged breach and may address any breach of the

Code informally or through other means (such as a mediation between two or more parties, if appropriate).

23. Review Rights

23.1 An employee has the right to seek review for any State Service action, other than termination of employment, in accordance with section 50(1)(b) of the Act, and in accordance with timeframes for review as prescribed in the Regulations.

23.2 If the sanction imposed is termination of employment, a dispute can be raised with the Tasmanian Industrial Commission in accordance with the *Industrial Relations Act 1984* (Tas).

24. Sharing of Information

24.1 Agencies must ensure any information provided to any parties in accordance with this Direction is compliant with the provisions of *Personal Information Protection Act 2004* (Tas).

25. Requirement to Keep Records

25.1 The Head of Agency must keep a true and accurate record of all proceedings under this Direction, including:

- a. determinations where it was found that an employee (whether former or current) had breached the Code;
- b. determinations where it was found that no breach of the Code had occurred;
- c. discontinued Code matters and the reasons for discontinuation (including if the matter was discontinued because the employee left their employment);
- d. details of the appointment of any investigator;
- e. any investigations conducted under this Direction;
- f. all relevant hard copy, handwritten and electronic correspondence relating to the matter that informed the determination including a record of the employee's response; and
- g. any sanction imposed in accordance with section 10 of the Act.

25.2 These records must be made available to the Head of the State Service as and when requested.

25.3 These records must be stored in accordance with applicable legislation.

26. Review

26.1 This Direction will be reviewed by XXXXX.

Appendix

MANAGING MISCONDUCT POLICY

TASMANIAN STATE SERVICE

1. Introduction

- 1.1 This policy forms part of Employment Direction No. 5 and it is intended that Tasmanian State Service (TSS) agencies follow the detailed process to respond effectively and proportionately to employee conduct that does not meet expectations, consistent with the purpose of the TSS conduct and disciplinary framework.

2. Legislation

- *State Service Act 2000* (the Act), sections 9, 10, 14, 15, 16, 17, 20, 21, 31, 34, 37 and 50.
- *State Service Regulations 2021* (the Regulations), section 31(4).
- Practice Procedure & Standard (PPS) No. 5 – Register for Tasmanian State Service Code of Conduct Breaches resulting in or that would have resulted in termination.

3. Abbreviations

Code	State Service Code of Conduct, <i>State Service Act 2000</i> (Tas), Part 2, section 9. The Code of Conduct provisions reinforce and uphold the State Service Principles by establishing standards of behaviour and conduct that apply to all employees, including Officers and Heads of Agencies.
COI	Commission of Inquiry.
CYSOA	<i>Child and Youth Safe Organisations Act 2023</i> (Tas).
ED	Employment Directions relate to the administration of the State Service and employment matters relevant to the Act.
HOA	Head of Agency.
HSS	Head of the State Service. The Premier has appointed the Secretary, Department of Premier and Cabinet to be the Head of the State Service.
Principles	<i>State Service Act 2000</i> (Tas), Part 2, section 7. The State Service Principles ensure we effectively manage workplaces, provide opportunities for employees based on equity and fairness, and deliver a high standard of services to the Government and Community.
Regulations	<i>The State Service Regulations 2021</i> (Tas) supplement the <i>State Service Act 2000</i> (Tas) and, alongside and Employment Directions are a key component of the legislative framework supporting the operation of the State Service.
Reportable Conduct	'Reportable conduct' means reportable conduct in accordance with section 7 of the <i>Child and Youth Safe Organisations Act 2023</i> (Tas) (CYSOA).
SSMO	State Service Management Office, Department of Premier and Cabinet.

Serious breach Conduct that is considered a serious breach of the code of conduct by an employee includes:

- Wilful or deliberate behaviour that is inconsistent with the continuation of the contract of employment
- Conduct that causes serious or imminent risk to the health and safety of a child, children or a person
- The reputation of the employer
- Involves theft, fraud, assault, or sexual harassment
- Bullying, discrimination and offensive personal behaviour
- Being intoxicated at work, and
- Refusing to carry out a lawful and reasonable instruction that is consistent with the contract of employment and has serious consequences.

The employer Minister administering the *State Service Act 2000* (Tas).

TSS Tasmanian State Service.

The Act *State Service Act 2000* (Tas).

4. Terminology

4.1 Terms used in this guide have the same meanings as set out in the Act the subject of an investigation under procedures to determine whether they have breached the Code.

4.2 **'Breach Delegate'** is the person appointed to determine whether or not an employee has breached the Code.

4.3 **'Reportable conduct'** means reportable conduct in accordance with section 7 of the *Child and Youth Safe Organisations Act 2023* (CYSOA).

4.4 **'Sanction Delegate'** is the person appointed to determine a sanction imposed on an employee once a determination has been made by a breach delegate. A Breach Delegate and a Sanction Delegate can be the same office/person.

5. General Provisions

- 5.1 Under section 9 of the Act, the Code establishes the conduct requirements for all employees. The Code complements the State Service Principles, and any Agency specific standing orders made under section 34(2) of the Act.
- 5.2 The purpose of an investigation is to gather all relevant information to make findings of fact in relation to allegation(s) in order for an Breach Delegate to determine whether or not there has been a breach of the Code.
- 5.3 A determination of whether there has been a breach of the Code is to be made on the civil standard of proof, i.e. on the balance of probabilities.
- 5.4 Processes relating to alleged Code breaches, where possible, are to be completed within the timeframes outlined within ED No. 5 and included in this policy.
- 5.5 Allegations subject to a Code process that may involve possible criminal offences, should be reported to Tasmania Police and other relevant regulators, such as the Teachers Registration Board. Allegations related to serious misconduct including theft, fraud, physical assault, reportable conduct, sexual harassment and refusal to follow lawful and reasonable direction with serious consequences should be referred to the Shared Capability Unit within the SSMO for further action.

6. Specific Provisions

Safety and Protection of Children

- 6.1 An investigation under these procedures that relates to reportable conduct may be combined with, or constitute, an investigation under the CYSOA. This removes the need to undertake duplicate investigations.
- 6.2 Allegations involving a child in relation to child sexual abuse or related conduct are to be taken seriously and must be investigated. The investigation may take into account any prior substantiated, untested and unsubstantiated complaints, allegations and disciplinary actions, in addition to the immediately alleged misconduct in relation to child sexual abuse matters. The weight given to this evidence should be commensurate, in line with the number of untested and unsubstantiated allegations, similarities in the nature and type of allegations, and other contextually relevant considerations. Care should be taken to ensure that procedural fairness is provided to the employee.
- 6.3 Where an investigation is likely to require interviewing a child, the processes involving the child should ensure sensitivity and be tailored appropriately, bearing in mind the age, maturity, and personal circumstances of the child. Before interviewing a child, consideration must be given to such issues as the permission of the parent or guardian, the child being accompanied by a parent, guardian, or support person and, where appropriate keeping the child informed of the progress of the investigation. The process must ensure that witnesses have to be reinterviewed only where absolutely necessary.
- 6.4 All processes should be undertaken with a trauma informed approach and information shared as much as possible within the law and as quickly as possible. For example, where a Breach Delegate forms a reasonable belief in relation to an employee's conduct with a child or young person pertaining to child sexual abuse or related conduct, this should be treated in a way that if substantiated would be a breach of the Code and imposition of a sanction such as termination is likely.

6.5 Any investigations relating to reportable conduct progressed by the agency must occur after liaison with the independent regulator and agreement on the scope to ensure there is no duplication of effort and resource.

7. Clarification of Possible Criminal Offences

7.1 Allegations that are a potential breach of the Code that may involve possible criminal offences are to be reported to police as soon as possible.

7.2 ED No.5 and police investigations are separate processes. Subject to consultation with police, ED No. 5 processes should continue notwithstanding that criminal charges and police investigations may ensue. There may be times when police request that the ED No. 5 investigation process be suspended in the interest of protecting evidence, but this should usually be limited and for short time periods.

7.3 Where such suspension is expected or is likely to impact on the timeliness of an ED No. 5 investigation, regular communication and liaison with police is to be maintained to ensure any delays are minimised as much as possible.

7.4 A referral to the police alone is not a reason to not continue or delay the ED No. 5 process unless the police specifically requests to do so, noting that the standard for Code matters is on the balance of probabilities and does not require the same standard of proof as required in criminal matters.

7.5 In liaising with police when a referral is made, discussions with police are to include reference to the ED No.5 process and timeframes to ensure the police investigation is not compromised and so that a coordinated approach can be undertaken to ensure both processes can be undertaken in as timely a manner as possible.

7.6 The ED No. 5 investigation is to continue unless police request that it is paused. These discussions should be ongoing, so that any delays if required in the ED No. 5 process can be kept to a minimum.

8. What is Misconduct?

8.1 Generally, misconduct is behaviour that threatens or has a negative impact on the employment relationship. It is sometimes motivated by an improper purpose and may include a blatant failure to perform a duty.

8.2 There may be specific definitions of misconduct that apply to particular agencies. Under the *Integrity Commission Act 2009* (Tas), misconduct means conduct, or an attempt to engage in conduct that is or involves:

- a. a breach of a Code of Conduct;
- b. the performance of functions or the exercise of powers in a way that is dishonest or improper;
- c. a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers; or
- d. a misuse of public resources in connection with the performance of functions or the exercise of powers.

- e. It may also be conduct, or an attempt to engage in conduct, that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer.

8.3 Serious misconduct is defined under section 4 of the *Integrity Commission Act 2009 (Tas)* as serious misconduct of any public officer that could, if proved, be –

(a) a crime or an offence of a serious nature; or

(b) misconduct providing reasonable grounds for terminating the public officer's appointment. Examples of this include child-related matters, theft, fraud, assault, being intoxicated at work, and refusing to carry out a lawful and reasonable instruction that is consistent with the contract of employment.

8.4 Alleged misconduct may be hard to distinguish from, and may overlap with, other matters such as:

- a. performance issues
- b. complaints
- c. grievances
- d. organisational issues
- e. criminal and other offences
- f. whistle-blower disclosures (this may affect how the matter is dealt with under whistle-blower legislation).

9. Raising Behavioural Concerns and Reporting Suspected Misconduct

9.1 There are a range of avenues for people to raise concerns about behaviour, report suspected breaches of the Code or make public interest disclosures. Such avenues may include:

- a. line managers;
- b. agency contact officers;
- c. central conduct or integrity units;
- d. nominated individuals or teams in HR, including employee advice units or hotlines, or fraud prevention and control units or hotlines;
- e. email reporting addresses; and
- f. Authorised Officers who receive protected disclosures.

9.2 Agencies should ensure employees are aware of these options and have easy access to them.

9.3 Agencies should also ensure that employees understand that reporting concerning behaviour can be as simple as a workplace conversation and will not automatically trigger a formal investigation.

9.4 Agencies may wish to provide guidance to employees on what to do if they have witnessed concerning behaviour. This may include:

- a. making notes about what they have seen or heard (as close to verbatim as possible);

- b. keeping any relevant documents and not making any written annotations on them;
and
 - c. reporting the matter through the appropriate channels but otherwise keeping it confidential.
- 9.5 It is not the complainant's role to decide how their complaint will be addressed, including whether misconduct action will be taken. However, it is not uncommon for a complainant to have preferences about the handling of their complaint, especially if they have been personally affected. A complainant may, for instance, prefer a matter to be handled informally if they simply would like the behaviour to stop – or, conversely, they may believe the behaviour to be so serious that it can only be addressed through formal misconduct action. In such cases, the complainant's views may be taken into account but should not determine the agency's response.
- 9.6 Agency decisions should have regard to factors such as the apparent seriousness of the reported conduct, the availability of prima facie evidence, the agency's statutory obligations (such as those under the *Work Health and Safety Act 2012* (Tas) or the *Public Interest Disclosures Act 2002* (Tas) (**PID Act**)) and the potential impact on public confidence in the State Service.
- 9.7 Agencies should ensure they have measures in place for protecting complainants and witnesses from adverse consequences as a result of coming forward with concerns and/or information and should ensure complainants and witnesses are made aware of these, and of the support available to them.
- 9.8 In cases where suspected misconduct is reported under the PID Act, agencies must take into account the specific protections in the PID Act for disclosers and should seek legal advice if in doubt.

10. Process Overview

- 10.1 The process overview for handling potential breaches of the Code is provided at the end of this policy.

11. Understand the Circumstances

- 11.1 When allegations or suspicions are raised, the Agency needs to take immediate action. The Agency may also need to take action during or after a preliminary assessment. Types of action that may be necessary, depending on the circumstances and the seriousness of the allegations, may include:
- a. reporting the allegations to police or other external bodies;
 - b. referral of serious matters to the State Service Management Office;
 - c. offering support to one or more affected parties;
 - d. imposing a suspension;
 - e. moving or altering the duties or physical location of involved parties in the short term;
 - f. blocking or restricting access to data;

- g. ensuring the safety of others; and/or
- h. securing evidence.

11.2 There is discretion for an Breach Delegate to determine how to deal with specific behaviour or conduct. Flexibility can be used when the conduct or behaviour is of a less serious or lower risk in nature within the broader disciplinary framework.

12. Preliminary Assessment

12.1 If a Breach Delegate considers there to be insufficient information for allegations to be properly particularised and put to an employee, then a preliminary assessment will be undertaken. A formal misconduct process (ED No. 5) is one option available to agencies when behaviour does not meet expectations, but it will not be a suitable or proportionate response in every case. Instead, a preliminary consideration of a conduct concern may need to be taken in order to understand the nature of the issues and to formulate the best pathway forward for dealing with the alleged misconduct.

12.2 Gathering further evidence to inform a decision about how to proceed is distinct from that of a formal investigation. Preliminary fact-findings and assessments do not establish whether the alleged conduct occurred and should be undertaken only to the extent necessary for the agency to make a sound decision about how the matter should be handled and whether allegations of misconduct can be put to an employee for response and formal investigation. It is equally as important that any preliminary assessment be completed quickly.

12.3 Agencies should ensure this process of assessment and deliberation is kept as short as possible without compromising the quality of the work undertaken and should seek to avoid duplicating a misconduct investigation prior to deciding whether to notify the employee of an alleged breach of the Code.

12.4 While a single incident or allegation may indicate improper behaviour by an individual, consideration should also be given to factors that might have led to or underpinned the behaviour and which may need to be addressed to prevent recurrence, support workplace harmony, or maintain or restore public confidence in the State Service. These factors may include:

- a. Personal – an incident may indicate that an employee needs additional support, training, or supervision, or that issues outside work may be affecting their behaviour that need to be addressed either with agency support (such as referral to an employee assistance program or use of flexible work arrangements), or, if this is not appropriate or possible, outside the work context.
- b. Interpersonal – an incident of poor behaviour by an individual may arise from a dispute between employees and could indicate relationships that need to be repaired or managed with agency support or intervention.
- c. Institutional – an individual's behaviour may indicate systems, practices, or norms that do not support employees to meet their behavioural obligations. In such cases, institutional or cultural change may be needed.

12.5 In some cases, an employee's behaviour may be so serious, or its impact so severe, that it may be appropriate for an agency to take misconduct action notwithstanding these additional factors.

12.6 In such cases, it may be appropriate to take other management or restorative action in addition to the misconduct process – for example, to mend workplace relationships or address systemic issues.

13. Grievance, Performance or Conduct?

13.1 It may be hard to differentiate between potential breach of the code of conduct, grievances or performance issues.

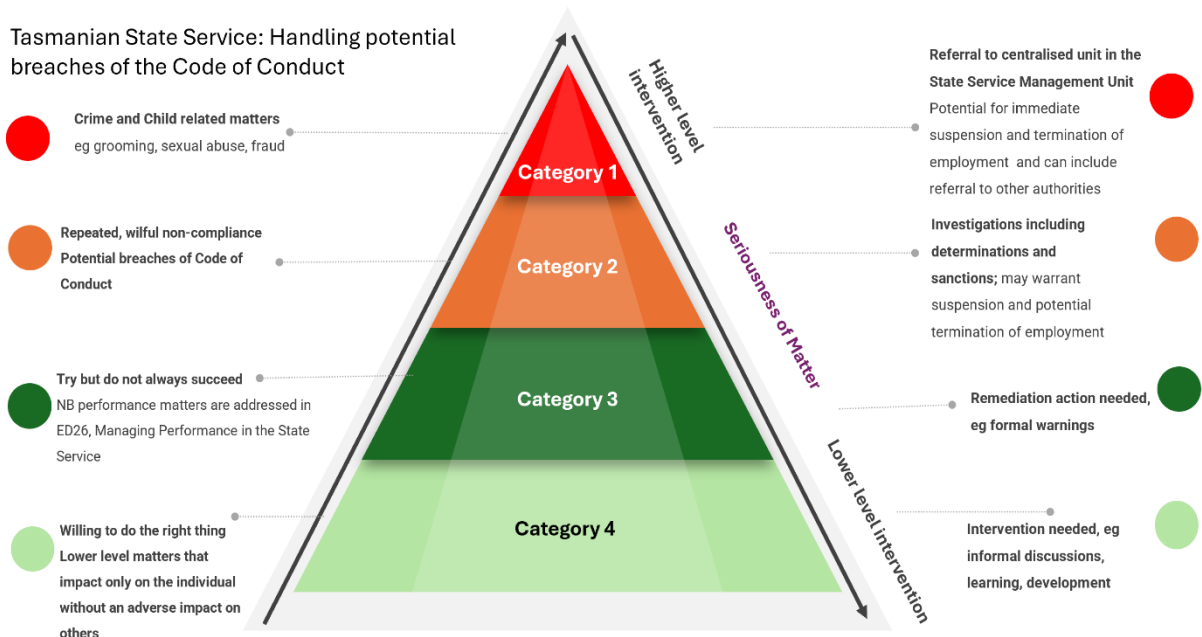
13.2 A grievance usually involves interpersonal issues between colleagues that do not necessarily involve any alleged misconduct. Performance issues relate to how an employee does their job.

13.3 Performance is understood to be more than the completion of assigned tasks and duties – effective performance lies not only in what we do but also in how we do it. As such, agencies are expected to embed behavioural requirements in employees’ performance expectations – for example, by including statements in performance agreements of how an employee will demonstrate aspects of the State Service Principles and Code in undertaking their duties.

13.4 The overlap between conduct and performance expectations means that there will not always be a clear distinction between a failure to meet performance standards and a failure to comply with expected behaviours. Performance matters are to follow the processes within ED No. 26, *Managing Performance in the State Service*.

13.5 Risk-based Triage

- The model below can be used to help agencies triage issues as they are received.



- Breach Delegates can consider matters and decide on the most appropriate way to deal with them, proportionate to the risks raised, impacts on people and the organisation, and seriousness of the matter.
- Seniority of the employee should be considered both in the context of the allegations (i.e. where they demonstrate a misuse of power and authority by a senior employee) as well as when considering the sanctions awarded (i.e. consideration should be given to the requirement for senior managers to uphold standards).

- Appropriate records should be kept in all circumstances, consistent with information management requirements. Information should include a record of decisions about the process, reasons for decisions and resolution of matters.

See examples below.

Examples

<p>Category 4</p>	<p>Lower risk level conduct or behaviour that impacts on the individual only without an adverse impact on others, e.g. condescending behavior, undermining or eroding confidence in others. This needs intervention to correct behaviour, e.g. manager discussion to ensure the person is aware of policies and procedures, reminder of individual obligations, induction, learning and development.</p>
<p>Category 3</p>	<p>Low risk level conduct or behaviour e.g. inappropriate remarks or humor. This needs intervention, e.g. manager discussions, coaching and training.</p> <p>Performance issues such as missing deadlines, lack of focus on outcomes should be addressed through ED No. 26, <i>Managing Performance in the State Service</i>.</p>
<p>Category 2</p>	<p>Non-compliant conduct or behaviour are serious and need to be addressed as part of the disciplinary framework and situations may give rise to potential ED No. 5 breaches of the Code of Conduct processes, e.g. making repeated derogatory statements, improper use of information, contravention of policies for bullying, harassment, equity, diversity, conflicts of interest. This category of willful non-compliant conduct or behaviour also includes repeated lower-level behaviour where it seems an individual has not improved with attempts at lower-level remediation.</p>
<p>Category 1</p>	<p>High risk conduct and behaviour warrants serious intervention. This category includes criminal offences and behaviour that risks the protection and safety of children, e.g. grooming, sexual abuse, family violence.</p> <p>Alleged conduct of a serious or higher risk nature is to be dealt with through the ED No. 5 process.</p> <p>Where an Authorised Delegate forms a reasonable belief in relation to an employee's conduct with a child or young person pertaining to child sexual abuse or related conduct (such as grooming or a boundary violation), this would clearly be a potential serious breach of the Code of Conduct and could not be dealt with in any way other than as a potential breach of the Code.</p> <p>Reportable Conduct obligations apply for this category.</p>

14. Options for Managing Lower-Risk Behaviours

14.1 As part of the broader disciplinary framework, disciplinary action or other management action may be considered where agencies have assessed an employee to have engaged in inappropriate conduct or behaviour, but where this substantiated conduct does not warrant termination of employment. For example, a manager may address this conduct by:

- management discussions and formal counselling;
- assisting the employee with learning and development;
- coaching or mentoring;
- alternative dispute resolution;
- mediation;
- workplace conferencing; and/or
- providing the employee with a warning or direction.

14.2 These options are set out in detail below.

14.3 Agencies should empower managers to address lower risk matters constructively, and as quickly as possible.

15. Management Discussions and Formal Counselling

15.1 Managerial discussions are different from a counselling under the Act (section 10a). With behaviour that constitutes less risk, impact and seriousness, it may be appropriate that a manager speaks with their employee to bring to attention the concerns about their behaviour, remind them of the disciplinary framework and their obligations, makes plans for avoiding recurrence, and advises them of action that may be taken should the behaviour continue.

15.2 Care should be taken to avoid expressing a view that the employee has breached or is suspected of breaching the Code. However, it should be noted that managerial discussions and Formal Counselling are both part of the disciplinary framework. Managerial discussions should be framed as an opportunity to improve or change behaviour, rather than as a punishment.

15.3 Effective managerial discussions are more of a conversation than a lecture – employees are more likely to change their behaviour if they feel they have been heard and have taken an active part in planning how they will behave differently in the future. An interactive approach to managerial discussions also helps ensure the employee feels safe to ask questions or seek clarification and feels supported in making the needed changes.

15.4 Management discussions may take the form of a single conversation about expected behaviours but could also include a follow-up with the employee to check their understanding over the longer term and facilitate reflection.

16. Learning and Development

16.1 In some cases, a failure to meet expectations may indicate a gap in an employee's knowledge or skill. Remediating gaps of this kind should generally form part of an agency's approach.

16.2 Learning and development is not limited to formal training, though this can be useful in addressing specific skill or information gaps. Training programs should be supplemented with on-the-job training, self-directed learning, and ongoing development work supported by the employee's manager, to integrate the employee's learning into their role and check their understanding and development over the longer term.

17. Coaching or Mentoring

17.1 Coaching and mentoring are more targeted development tools that can help employees meet expectations and can support them over the longer term to demonstrate the required skills and attributes.

18. Alternative Dispute Resolution

18.1 Alternative Dispute Resolution (ADR) is a relatively informal, though structured, approach to managing interpersonal disputes. It encompasses a range of processes in which an impartial person assists those in dispute to resolve the issues between them.

19. Mediation

19.1 Mediation is generally a voluntary process in which the parties to a dispute, with the assistance of a neutral third party (the mediator), identify issues, consider alternatives, develop options and try to reach agreement. The mediator has no advisory or determinative role regarding the content or outcome of the dispute but may advise on the process for resolving it.

20. Workplace Conferencing

20.1 Workplace conferencing brings a group of colleagues together with a neutral and qualified facilitator in situations where there is conflict in the workplace or past disputes that have not been adequately resolved. The intention of the conference is to enable everyone affected by the dispute to consider what happened, the impact it has had, and the best way forward to resolve the issue.

21. Warnings and Directions

21.1 A warning or direction may be used on its own, in conjunction with any of the above options, or after implementing one or more options where behaviour has not improved. If an agency is seeking to respond to an employee's behaviour with a warning or direction, consideration should be given to accompanying that with a manager discussion, if this has not been done already. This can help the employee understand why they need to change their behaviour, as well as bringing to light any underlying issues that need specific intervention.

21.2 A written warning should be accompanied by a conversation with the employee to ensure they understand its purpose and the consequences of failing to comply. If a verbal warning is given in the first instance, a written record should be made, and a copy provided to the employee.

21.3 An agency may wish to direct an employee to do, or to refrain from doing, a specific thing. This can occur immediately or if after repeated warnings an employee fails to address the concerns raised. A failure to comply with a written direction can be considered as a potential to instigate an ED No. 5 process as a breach of the Code in itself.

22. Reporting to external organisations

22.1 Any alleged conduct that may involve possible criminal offences should be reported to Tasmania Police. The internal process should continue to determine whether a breach of the Code has occurred, subject to any restrictions imposed by Tasmania Police (that is, Tasmania Police may direct an employer to pause an internal investigation while it undertakes its own investigation).

22.2 Where a reasonable belief is formed that an employee has engaged in reportable conduct, this must be reported to the Independent Regulator. More information about when a report is necessary is set out in **[##insert title of reportable conduct scheme policy]**.

22.3 Allegations of a serious nature must be referred to the centralised unit in the State Services Management Office. A serious matter would involve the employee behaving in a way that causes serious and imminent risk to the health and safety of a person or to the reputation and integrity of their employer. For example, any allegations related to theft, fraud, assault, sexual harassment or reportable conduct.

22.4 The Breach Delegate should also consider whether any other external reports are necessary (such as to regulatory bodies).

23. Commencement of Code Processes

23.1 When an Authorised Delegate has reasonable grounds to believe that a breach of the Code may have occurred, they may determine to commence a process in accordance with ED No. 5. They should also consider whether suspension is warranted (see ED No. 4 procedure for suspension of State Service Employees with or without pay).

23.2 Note, if there are grounds to suspend the employee, this should be done as soon as possible. This may be at the beginning of the process or at a later point of an investigation. If the matter is a protected or public interest disclosure under the PID Act this may impact on the ability to suspend an employee. Further advice should be sought in these circumstances.

24. Decision to Commence an internal Investigation

24.1 The Breach Delegate may decide to commence an investigation into alleged breaches of the Code, without an external investigator, and on their own accord, as a first step or following a preliminary assessment, if:

- a. evidence capable of proving the alleged facts is already available (this may include facts and information provided by an external authority such as the Integrity Commission);
- b. the employee is in agreement that the alleged breach occurred;

- c. the employee has been convicted of a crime or an offence in Tasmania which is punishable by imprisonment for a term of 6 months or more or has been convicted in a state other than Tasmania of a crime or an offence which, if committed in Tasmania, would be a crime or an offence so punishable; and/or
- d. the employee has been found to have committed reportable conduct, noting in these circumstances, a Code process will continue to a determination of breach of the Code.

24.2 At this point, the employee suspected of a breach must be informed in writing of:

- a. the allegations
- b. the provision(s) of the Code alleged to have been breached;
- c. the intention to investigate the alleged breach;
- d. who will investigate the alleged breach;
- e. the possible sanctions that may be imposed in accordance with section 10 of the Act if the matter proceeds to a determination that the employee has breached the Code; and
- f. that the employee can be supported by a person of their choice – unless there is a conflict - throughout the process.

24.3 It is recommended that agencies use a consistent template provided by the State Service Management Office to inform employees of suspected breaches.

24.4 In these circumstances, a case manager would assist in collating the facts and evidence and preparing information for the Breach Delegate. It is still necessary to properly construct written allegations, afford procedural fairness to the employee and ensure they have the right to respond to the allegations and the evidence being relied upon to determine whether or not a breach has occurred.

24.5 The employee must be given the opportunity to make a written and/or oral statement and/or provide evidence in relation to the suspected breach. Fourteen (14) days will be allowed for this response, in appropriate circumstances.

24.6 If, during the course of an investigation, it becomes evident that there is a material variation in the nature or extent of the alleged breach notified to the employee, the employee must be notified in writing of the variation and any variation in the range of sanctions that may be imposed if the employee is found to have breached the Code.

24.7 If, during the course of a Code process, the Breach Delegate has reasonable grounds to believe that the employee may have committed further breaches of the Code, they may combine these allegations with the process underway, deal with them as a separate process or decide to deal with them otherwise. If they intend to deal with them as breaches of the Code, they must inform the employee of those further allegations.

24.8 The employee will be provided with a further opportunity to respond to any additional allegations made during the course of the investigation and where appropriate, will be given fourteen (14) calendar days to make a further statement or provide further evidence before a determination is made.

24.9 The Breach Delegate who conducts the investigation will make findings as to whether the employee has breached the Code, following the investigation.

24.10 The Breach Delegate will inform the employee of the findings.

25. Decision to commence an external investigation

25.1 Where appropriate, the Breach Delegate may appoint an external investigator to conduct an external investigation into alleged breaches of the Code. This may occur in the first instance or following a preliminary assessment. The Breach Delegate may decide to appoint an external investigator through a legal representative.

25.2 If an external investigation is undertaken, the employee suspected of a breach must be informed in writing of:

- a. the allegations
- b. the provision(s) of the Code alleged to have been breached;
- c. the intention to investigate the alleged breach;
- d. who will investigate the alleged breach;
- e. the possible sanctions that may be imposed in accordance with section 10 of the Act if the matter proceeds to a determination that the employee has breached the Code; and
- f. that the employee can be supported by a person of their choice – unless there is a conflict - throughout the process.

25.3 The employee will be given the opportunity to speak with the investigator and to provide a response to any alleged breaches of the Code within fourteen days. The employee will also be able to provide any evidence/documents they think to be relevant and/or the names of relevant witnesses who they would like the investigator to meet with.

25.4 Before being interviewed, it should be made clear to the employee that anything said may be used as evidence if the matter proceeds to determination.

25.5 If, during the course of an investigation, it becomes evident that there is a material variation in the nature or extent of the alleged breach notified to the employee, the employee must be notified in writing of the variation and any variation in the range of sanctions that may be imposed if the employee is found to have breached the Code.

25.6 If, during the course of an investigation, the Breach Delegate has reasonable grounds to believe that the employee may have committed further breaches of the Code, they may combine these allegations with the process underway, deal with them as a separate process or decide to deal with them otherwise. If they intend to deal with them as breaches of the Code, they must inform the employee of those further allegations.

25.7 The employee will be provided with up to fourteen (14) calendar days as a further opportunity to respond to any additional allegations made during the course of the investigation.

25.8 At any time during the processes in accordance with this Direction, the Breach Delegate may decide to take no further action on the allegation(s) or to deal with it otherwise than as an alleged breach of the Code. In such a case the employee must be advised in writing of this decision, including the reasons for the decision, as soon as practicable after the decision is taken.

25.9 The Breach Delegate will still have the overall responsibility of determining whether a breach of the Code has occurred. In making this determination, the Breach Delegate will consider the investigator's report in relation to the investigation. In determining a matter where an investigator has been appointed, the employee must be provided with a summary of the investigator's report(s) and provided with an opportunity to respond. The employee may

choose to provide this response in writing and may provide any other relevant evidence in any form. The Breach Delegate must take any response into account before determining the matter.

26. Where an Investigator is Not Appointed

- 26.1 Where an investigator is not appointed, an Authorised Delegate must still advise the employee of the allegation(s), advise the employee of the reasons and evidence relied upon in determining whether a breach has occurred, and give the employee the opportunity to respond to the facts, evidence and determination.
- 26.2 Where a breach is determined, a decision in relation to any appropriate sanction(s) consistent with the requirements of ED No. 5, still needs to be made and the employee has the right to respond to that decision in the same way.
- 26.3 There will be matters where an employee admits to certain behaviour but, due to the nature of the matter, it still may be appropriate to investigate by the appointment of a formal investigator i.e. where the allegations may be of higher risk in nature such as that related to child sexual abuse or involves dishonesty such as fraud-related behaviour.
- 26.4 Where an Authorised Delegate becomes aware that an employee has been convicted of a crime, they may, after affording the employee procedural fairness, determine whether the Code has been breached without the need for an investigation.
- 26.5 Any admission by an employee must be fully documented. It is important that the Authorised Delegate is satisfied that the employee understands the nature of what is being alleged and understands the consequence of making an admission. An Authorised Delegate should also consider whether an employee is admitting to less than what has occurred to avoid a thorough investigation.
- 26.6 It remains important that proper records are kept and stored appropriately, and that the employee is afforded procedural fairness.

27. Standard of proof

A determination of whether there has been a breach of the Code is to be made on the balance of probabilities – that is, the decision maker is satisfied that it is more probable than not that the alleged conduct occurred.

28. Circumstances of No Further Action

- 28.1 At any time during the processes an Authorised Delegate may decide to take no further action in relation to the allegation(s) or to deal with it otherwise than as an alleged breach of the Code. In such a case the Agency must advise the employee in writing of this decision, including the reasons for the decision.

29. Reassignment of Duties or Suspension from Duty

- 29.1 A current TSS employee who is under investigation for a suspected breach of the Code may be:
- a. reassigned to alternative duties; and/or
 - b. suspended from duty by a suspension delegate (see Employment Direction No. 4 for procedures on suspension with or without pay).

30. Sanctions

31. The sanction process must be consistent with the principles of procedural fairness.

31.1 The Sanctions Delegate must consult with the Director, SSMO, if the potential sanction is termination of employment.

31.2 The sanctions that can be imposed for breaches of the Code are set out in section 10 of the Act. Under this section, the Employer may impose one or more of the following sanctions on an employee who is found to have breached the Code:

- a. counselling;
- b. a reprimand;
- c. deductions from salary by way of fine not exceeding 20 penalty units;
- d. reduction in salary within the range of salary applicable to the employee;
- e. reassignment of duties;
- f. reduction in classification; and/or
- g. termination of employment in accordance with section 44 or 45 of the Act.

31.3 Where there is a finding that an employee has breached the Code, and that breach involves the ill treatment of a child, any proposed sanction should take into account any prior substantiated or untested complaints, allegations and disciplinary action, in addition to the substantiated misconduct.

31.4 If a determination is made that a current TSS employee has breached the Code, a sanction may not be imposed on employee unless the employee has been informed of:

- a. the determination that has been made;
- b. the sanction/s that are under consideration; and
- c. the factors that are under consideration in determining any sanction to be imposed.

31.5 The employee must be given the opportunity to make a written and/or oral statement in relation to the sanction or sanctions under consideration within seven (7) calendar days, (where appropriate).

31.6 The final decision, as to which sanction is appropriate, is made by the Sanctions Delegate.

31.7 The employee will be advised in writing of the final determination and their review rights.

32. Timeframes

32.1 Timeframes are an important criterion for Heads of Agencies and Authorised Delegates to comply with in completing ED No. 5 processes. However, there are times where adherence

to timeframes is not appropriate and cannot be undertaken (for example, this may be because a matter is particularly complex with a large number of documents or witnesses).

32.2 Unreasonable or extended delays in ED No. 5 processes can have an additional impact on the employee, the workplace and other parties. As such, Heads of Agencies and Authorised Delegates will work to try and meet the below timeframes, where possible.

32.3

Initial Handling:	Three (3) working days up to one (1) week.
Preliminary assessment and decision on whether to investigate:	Up to two (2) weeks (including approximately three (3) working days for the preliminary assessment and approximately three (3) working days for the decision on whether to investigate)
Simple Investigation:	Up to three (3) months.
More serious or complex investigation:	Between three (3) to ideally six (6) months.
Decision making and finalising the matter:	Ideally up to two (2) months, depending on the seriousness and nature of the outcomes and the number of parties involved.

33. Review Rights

33.1 An employee has the right to seek review for any State Service Action, other than termination of employment, in accordance with section 50(1)(b) of the Act, and in accordance with timeframes as prescribed in the Regulations.

33.2 If the sanction imposed is termination of employment, a dispute can be raised with the Tasmanian Industrial Commission in accordance with the *Industrial Relations Act 1984* (Tas).

34. Sharing of Information

34.1 Agencies are to ensure any information provided to any parties in accordance with this Direction is compliant with the provisions of the *Personal Information Protection Act 2004* (Tas) (**PIP Act**).

34.2 The PIP Act prevents advising anyone other than the respondent employee of the outcome of the ED No. 5 process, including complainants/victim-survivors.

34.3 However, this does not preclude providing regular updates to complainants/victim-survivors as the matter progresses, so they are aware of what stage the ED No. 5 process/investigation may be at, and when it may be finalised.

34.4 Where timeframes are anticipated, these may be provided to the employee and the complainant, where this is relevant. Similarly, any unexpected delays should also be communicated.

34.5 Additionally, where an Authorised Delegate decides not to take formal action in relation to a complaint, both the employee and complainant/victim-survivor could be informed of this, noting the detail of any further action may be considered personal information subject to the PIP Act and only shared with the employee.

34.6 Where there is specific authority provided in legislation that enables the sharing of information between relevant regulatory organisations and the Employer, then this also supports the sharing of information e.g. Australian Health Practitioner Regulation Agency (AHPRA), Teachers Registration Board Tasmania (TRB), Working with Vulnerable People (WWVP), Office of the Independent Regulator (OIR), Reportable Conduct Scheme, Integrity Commission.

34.7 Where relevant, Agencies (as part of the Tasmanian State Service) are able to share information with each other, as it relates to employee information.

35. Requirement to Keep Records

35.1 The Head of Agency must keep a true and accurate record of all proceedings under this Direction, including:

- a. determinations where it was found that an employee (whether former or current) had breached the Code;
- b. determinations where it was found that no breach of the Code had occurred ;
- c. discontinued Code matters and the reasons for discontinuation (including if the matter was discontinued because the employee left their employment);
- d. details of the appointment of any investigator;
- e. any investigations conducted under this ED No. 5;
- f. all relevant hard copy, handwritten and electronic correspondence relating to the matter that informed the determination including a record of the employee's response; and
- g. any sanction imposed in accordance with section 10 of the Act.

35.2 These records must be made available to the Head of the State Service as and when requested.

35.3 These records must be stored in accordance with applicable legislation.

35.4 Further the Head of the State Service Management Office should maintain a central cross-government register of misconduct concerning complaints and concerns about child sexual abuse and related conduct. This register should contain records of substantiated and unsubstantiated matters, including those that did not proceed to investigation.

36. Reporting and Monitoring

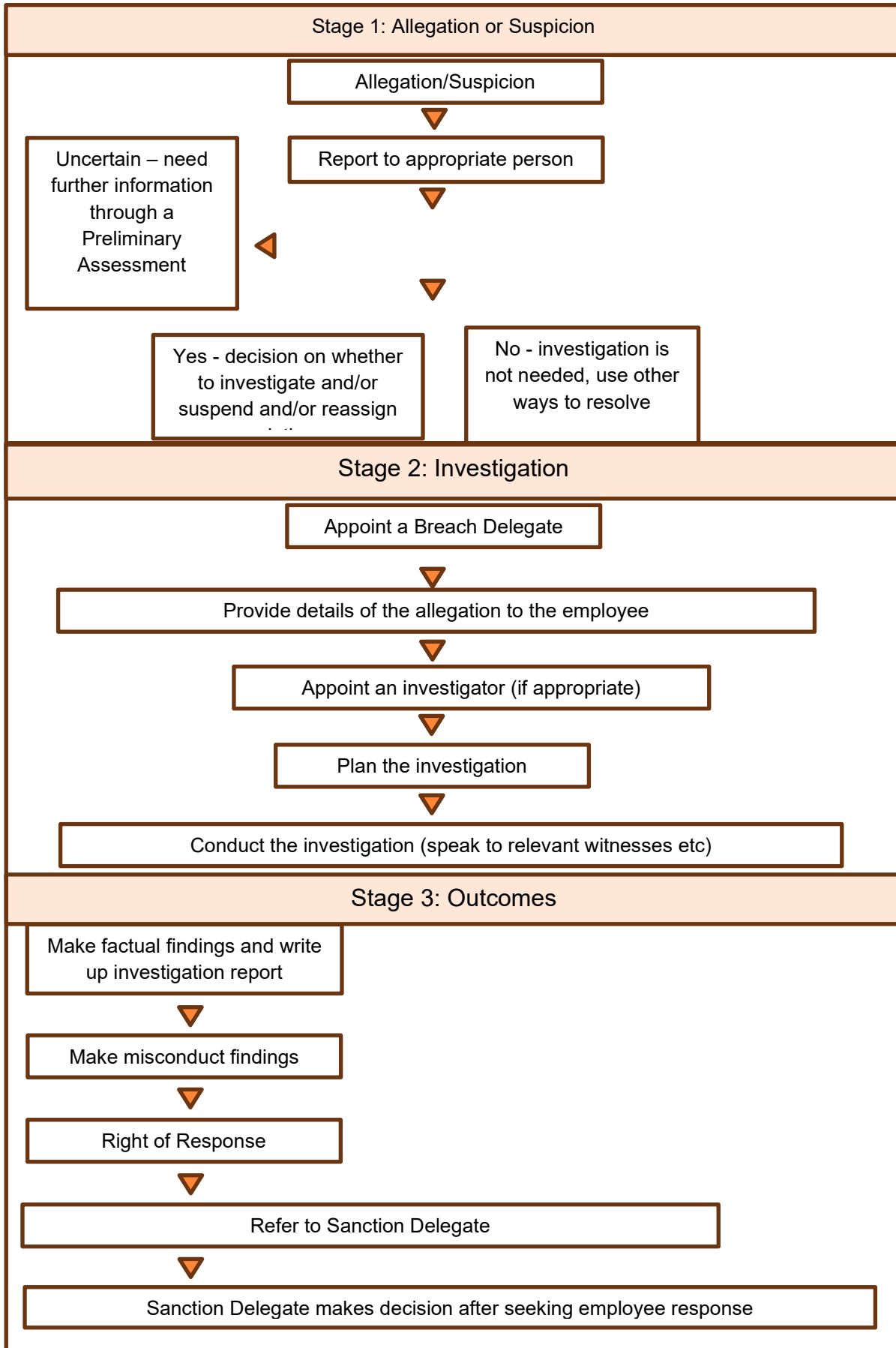
All Heads of Agencies should report quarterly to the Head of the State Service on all misconduct matters covered within the purview of this employment direction related to child sexual abuse or related conduct, substantiated and unsubstantiated.

the Head of the State Service should monitor and publicly report annually on the management of misconduct matters related to child sexual abuse or related conduct undertaken within the purview of this Employment direction.

More information can be found in the *Guide to Managing Misconduct in the Tasmanian Public Sector*, developed by the Integrity Commission, Tasmania, September 20

ATTACHMENT

EMPLOYMENT DIRECTION NO. 5: PROCESS FOR INVESTIGATION AND DETERMINATION OF POTENTIAL BREACHES OF THE TSS CODE OF CONDUCT



Appendix D – Employment Directions No. 6

DRAFT OPTION: COMPLETELY NEW ED 6

**EMPLOYMENT DIRECTION NO. 6
PROCEDURES FOR THE INVESTIGATION AND DETERMINATION OF
WHETHER AN EMPLOYEE IS ABLE TO EFFICIENTLY AND EFFECTIVELY
PERFORM THEIR DUTIES**

Directive

Pursuant to Section 17 of the *State Service Act 2000* (Tas), I hereby direct that the arrangements and requirements set out in this Employment Direction are to apply.

Signed

Issued by authority of the Minister administering the *State Service Act 2000* (Tas).

Date:

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1. Purpose

- 1.1 In accordance with section 48(3) of the Act, the Minister establishes in this Direction the procedures for the investigation and determination of whether an employee, senior executive, equivalent specialist or Prescribed Officer (hereinafter referred to as an employee) is able to efficiently and effectively perform their duties.
- 1.2 A finding that an employee is unable to efficiently and effectively perform their duties (the inability determination) may only be made in accordance with these procedures.
- 1.3 These procedures do not apply to the ability of Heads of Agencies. The terms of Heads of Agency employment are provided for in their individual Instrument of Appointment. This includes obligations to uphold and promote the State Service Principles and compliance with the Code of Conduct.

2. Application

- 2.1 This Direction is to apply to all State Service Agencies and officers and employees within those Agencies.

3. Definitions

- 3.2 '**The Act**' means the State Service Act 2000 (Tas).
- 3.3 '**The Minister**' means the Minister administering the Act.
- 3.4 '**Employee**' means a permanent or fixed-term employee appointed under section 37 of the Act.
- 3.5 '**Officer**' means a person appointed as a holder of a prescribed office, senior executive or equivalent specialist in accordance with section 3(1) of the Act.
- 3.6 '**Head of Agency**' is the person holding that office for the purposes of the Act in accordance with section 30 of the Act.
- 3.7 '**The Employer**' is the Minister administering the Act in accordance with section 14 of the Act.
- 3.8 '**Employment Direction**' means an Employment Direction relating to the administration of the State Service and employment matters as issued by the Employer in accordance with section 17 of the Act.
- 3.9 '**Head of the State Service**' means the person appointed by the Premier to perform the functions and powers of the Employer, other than the power to issue Employment Directions, in accordance with section 20 of the Act.

4. Legislation/Award Basis and Related Documents

4.1 State Service Act 2000 (Tas) Part 4 (sections 14,15,16) and sections 17, 20, 21, 31, 37, 44, 48 and 50.

5. Date of Operation

5.1 This Direction will take effect from the date of issue and will remain in force until varied or revoked.

5.2 Any process which commenced under the previous Direction and has not been completed as of [insert date] is to be finalised in accordance with this Direction.

6. Direction

6.1 The Minister may take one or more actions in accordance with section 48(1) of the Act in relation to an employee who is found, under these procedures, to be unable to efficiently and effectively perform their duties (inability). The Minister may delegate this power.

6.2 A Head of Agency must not delegate the powers and functions conferred by this Direction to another person or persons.

6.3 These procedures are to be applied with procedural fairness and in a timely manner.

7. Safety and Protection of Children

7.1 The protection and safety of children is a primary consideration when managing any investigations under this direction.

7.2 An investigation under these procedures that relates to Reportable Conduct may be combined with, or constitute, an investigation under the CYSOA and vice versa. Similarly, an investigation undertaken by the Integrity Commission may constitute an investigation for the purposes of this direction.

7.3 Where an investigation under this direction is likely to require interviewing a child, the Head of Agency must ensure that the processes involving the child are sensitive and appropriate bearing in mind the age, maturity, and personal circumstances of the child. Children should be interviewed by a skilled interviewer with appropriate training. Before interviewing a child, consideration must be given to such issues as the permission of the parent or guardian, the child being accompanied by a parent, guardian, or support person and, where appropriate keeping the child informed of the progress of the investigation.

7.4 Assessments and investigations related to child sexual abuse or related conduct, should take into account as part of the overall context any history of any substantiated, untested and unsubstantiated complaints, allegations and disciplinary action. All processes should

be undertaken with a trauma informed approach and information shared as much as possible within the law and as quickly as possible.

8. Circumstances in Which Inability May Arise

8.1 Where an employee is unable to effectively and efficiently perform their role because of a failure to hold a relevant registration, license, qualification, or similar, the matter should be dealt with under this employment direction.

8.2 ED No. 26 should be used when the employee cannot perform the duties listed in their statement of duties.

8.3 An employee's inability to effectively perform their duties can arise from circumstances including, but not limited to:

- a) an employee no longer holding any required registration or licence requirement associated with the position;
- b) an employee no longer meeting an essential requirement associated with the position; for example professional accreditations requirements or
- c) an employee has been convicted of a criminal offence, and the conviction impacts on the employee's ability to hold any requisite licences or perform their duties.
- d) An employee no longer meeting the enduring character requirements of the role.

9. Process

9.1 Should a Head of Agency:

- a) have reasonable grounds to believe that an employee is unable to efficiently and effectively perform their duties, because they no longer hold mandatory qualifications or registrations (for example, no registration under the Registration to Work with Vulnerable People Act 2013 (Tas) or the Teachers Registration Board), when an employee is required to work with children as part of their role); and
- b) be satisfied that the failure to hold such a mandatory licence or registration does not "frustrate" the contract,
- c) then the Head of Agency should write to the employee to inform them that:
- d) the agency is concerned the employee no longer has the ability to perform their role;
- e) the reasons for this assessment;
- f) the employee is suspended (with or without pay); and

g) pending a response from the employee, the Agency is considering terminating their employment.

9.2 The employee should be given the opportunity to respond to the suggestion that they are unable to efficiently and effectively perform their duties and the preliminary decision to terminate their employment.

9.3 The Head of Agency should consider any response before proceeding with taking any necessary disciplinary action, including terminating the employee's employment.

9.4 If the Head of Agency believes that the contract of employment may have been frustrated, the Head of Agency should seek legal advice before taking any further steps.

10. Investigation

10.1 If a Head of Agency is not certain that an employee is unable to efficiently and effectively perform their duties, because they no longer hold mandatory qualifications or registrations, instead of taking the above steps, the Head of Agency may instead appoint, in writing, a person (whether an external or internal person) (Investigator) to conduct an investigation. The Investigator must be impartial.

10.2 Prior to the commencement of the investigation the Head of Agency must inform, in writing, the employee who is to be subject to the inability procedure:

- a) of the substance of the alleged inability;
- b) who will investigate the alleged inability;
- c) that the employee may seek their own advice and can be supported by a person of the employee's choice – provided there is no conflict - throughout the process; and
- d) of the possible implications for the employee if the matter proceeds to a determination by the Head of Agency that the employee is unable to efficiently and effectively perform their duties.

10.3 During the course of the investigation, the employee who is subject to the inability procedure is to be given the opportunity to be interviewed and, if they wish, to provide documentary evidence to the Investigator.

10.4 The employee is to be given the option of having another person of the employee's choice present at any interview to support the employee through the process. The person providing support should not have a conflict in this situation.

10.5 At any time during the investigation the Head of Agency may decide to take no further action on the matter or to deal with it differently to inability. In such a case the Head of Agency shall advise the employee in writing of this decision including the reasons for the decision.

10.6 The Investigator must provide a written report(s) to the Head of Agency on the outcome of the investigation.

10.7 The report(s) must:

- a) provide evidence (if any), relevant to the circumstances relating to the alleged inability;
- b) include as attachments any relevant submissions, statements, records of interview or other documentary material; and
- c) only include those matters relevant to the substance of the alleged inability.

10.8 The Head of Agency will provide the employee with a summary copy of the Investigator's report(s) and provide the employee with an opportunity to respond to the outcome adopted by the Head of Agency, including any proposed disciplinary outcome. The employee may choose to provide this response in writing or otherwise and may provide any other relevant documentary evidence. This response must be provided to the Head of Agency within a period determined by the Head of Agency. Where appropriate, this period will be for not less than fourteen (14) days.

10.9 If the response provided by the employee contains information/evidence not previously known, and/or information/evidence which is viewed by the Head of Agency as being of relevance to their determination, the Head of Agency may request the Investigator to undertake further investigations in relation to those matters, and to provide a further report concerning them within a reasonable time.

10.10 An investigation is not necessary where an employee accepts that they are subject to the inability or lack the capacity to undertake the role. The Head of Agency can then progress next steps as per the outline below.

11. Determination by the Head of Agency Following an Investigation

11.1 If an investigation is undertaken, the Head of Agency must make a determination as to whether or not an employee is able to efficiently and effectively perform their duties.

11.2 When required to make a determination as to whether or not an employee is able to efficiently and effectively perform their duties, the Head of Agency must:

- a) consider the Investigator's report(s);
- b) consider the employee's response;
- c) act fairly and without bias; and
- d) ensure at all times during this process that the employee receives procedural fairness.

12. Action Taken

12.1 If the Head of Agency determines that the employee is unable to efficiently and effectively perform his/her duties, the Head of Agency (as the Minister's delegate) may take an action in accordance with section 48(1) of the Act.

13. Notification of Determination

13.1 If a determination is made in accordance with clause 9, the Head of Agency must advise the employee in writing of the determination made and the reasons for that determination.

14. Inability to Perform Duties Because of Physical or Mental Incapacity

14.1 Termination of employment due to an inability to perform duties because of physical or mental incapacity raises complex issues. Agencies are advised to give consideration to any relevant provisions in the governing industrial, anti-discrimination and superannuation legislation before proceeding with termination of employment in these circumstances and encouraged to seek further advice where necessary.

14.2 Where it is considered that an alleged inability may be caused by a medical condition, a Head of Agency may direct the employee to undergo a medical examination by one or more medical practitioners nominated by the Head of Agency. An employee must attend such examination(s). The agency must cover the costs associated with the examination.

14.3 Where the medical practitioner nominated by the Head of Agency requires the employee to submit to a further examination(s) by another person(s) having, in the medical practitioner's opinion, relevant qualifications, the employee must attend the examination(s). The agency must cover the costs associated with the examination.

15. Review of Decisions

15.1 If the Head of Agency determines the employee has an inability and is unable to efficiently and effectively perform his/her duties, and they exercise the powers under section 48 (1) of the Act; then:

- a) if the employee is terminated (section 48(l)) a dispute will be dealt with by the appropriate industrial tribunal; or
- b) in all other circumstances, the employee has a right to a review pursuant to section 50 (l) (b) of the Act and in accordance with Commissioner's Direction No 7.

15.2 In a review pursuant to section 50(l)(b) of the Act, the onus is on the applicant to establish that the determination was flawed and/or the action taken under s 48(1) was not commensurate with the inability.

16. Reporting and Monitoring

16.1 The Head of State Service will regularly monitor and report publicly annually on matters related to this employment direction.

17. Requirement to Keep Records

17.1 The Head of Agency must keep true and accurate record of all proceedings under this Direction.

18. Review of Direction

18.1 This Direction will be reviewed by [insert date].

Appendix E – Employment Directions No. 26

DRAFT OPTION: COMPLETELY NEW ED 26

**EMPLOYMENT DIRECTION NO. 26
MANAGING PERFORMANCE IN THE STATE SERVICE**

Directive

Pursuant to Section 17 of the *State Service Act 2000* (Tas), I hereby direct that the arrangements and requirements set out in this Employment Direction are to apply.

Signed

Issued by authority of the Minister administering the *State Service Act 2000* (Tas).

Date:

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ATTACHMENT 4 – MANAGING UNDERPERFORMANCE IMPROVEMENT PLAN34

1. Purpose

- 1.1 This Employment Direction ensures that the State Service has performance management policies and processes that support a high-performance culture; proactively identifies, fosters and develops State Service employees to fulfil their potential; and provides for effective performance management that is fair, open and clearly communicated.
- 1.2 *This Employment Direction must be complied with, inclusive of consideration of the attached Managing Performance Guide, Tasmanian State Service ('the guide').*

2. Application

- 2.1 This Employment Direction applies to the development, implementation and evaluation of performance management of all employees appointed under the *State Service Act 2000* (Tas), but does not apply to Heads of Agency, Prescribed Officers or Officers of the Senior Executive Service (SES) Officers appointed under section 3 (1) of the *State Service Act 2000* (Tas).
- 2.2 The performance management for Heads of Agency, Prescribed Officers and SES Officers are outlined in separate instruments.

3. Legislation/Award Basis and Related Documents

- 3.1 The following sections of the *State Service Act 2000* (Tas) provide the legislative basis for this Employment Direction;
 - Section 7(j) & (ja) State Service Principles
 - Section 34(g), (ga) & (i) Functions and Powers of Heads of Agency
 - Section 36(1)(ba) Annual Reports by Heads of Agency
 - Section 44(3)(c) Termination of Employment of Officers/Employees, and
 - Part 7A Managing for Performance.
- 3.2 Also of relevance to this Employment Direction is *Employment Direction No. 17 - Senior Executive Officers and Equivalent Specialist Officers Administrative Arrangements and Conditions of Service*.

4. Authority

- 4.1 Issued by authority of the Minister administering the *State Service Act 2000* (Tas) pursuant to section 17(1).

5. Date of Operation

- 5.1 This Employment Direction will take effect from the date of issue *or* date of proclamation of the *State Service Act 2000* (Tas), whichever occurs later and will remain in force until a replacement Ministerial Direction is issued, or this Direction is rescinded.

6. Direction

6.1 Pursuant to section 17 of the *State Service Act 2000* (Tas), I hereby direct that the administrative requirements outlined in the attached guide apply to the management of performance, recognition of performance and management of underperformance of employees to whom this Employment Direction applies.

7. Review

7.1 This Direction will be reviewed by [insert date].

Appendix

MANAGING PERFORMANCE GUIDE – TASMANIAN STATE SERVICE

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1. Introduction

1.1 This guide is aimed at assisting Tasmanian State Service agencies to develop performance management practices that will sustain a high-performance culture. It aims to build organisational capability to achieve outcomes expected by the Government and the Tasmanian community.

2. Employment Direction No. 26 (ED No. 26)

2.1 The *State Service Act 2000* (Tas) (**Act**) was amended in 2011 to include additional provisions regarding the management of employees. These additions are as follows:

- Section 3 (1) Interpretation - definition of *performance management plan*
- Section 7 (j) & (ja) State Service Principles
- Section 34 (g), (ga) & (i) Functions and Powers of Heads of Agency
- Section 36(1) (ba) Annual Reports by Heads of Agency
- Section 44(3) (c) Termination of Employment of Officers/Employees, and
- Part 7A Managing for Performance.

2.2 All agencies are required to reassess their existing Performance Management System to ensure consistency with these guidelines that cover the minimum standards contained in ED No. 26 and the Act.

3. Probation (refer also to ED No. 1 Employment in the State Service)

3.1 Probation enables agencies to assess whether a person is suited to the State Service, the agency and the job. A period of probation that is effectively managed supports the State Service capability by delivering a workforce that has the required skills and attributes to undertake their roles now and into the future.

3.2 Within the probation period, an employee is provided with clear expectations of performance and behaviour and can learn about the job and the work environment.

3.3 Probation should be used to confirm that new employees can perform effectively in their roles and will be productive participants in the State Service workforce. If probation is not used effectively, it can result in the need to manage underperformance in the future.

4. Roles and Responsibilities

4.1 Under the Act and ED No. 26, all employees across the State Service share responsibility for managing their own performance and for contributing to agency and State Service performance.

4.2 Agency Heads must ensure the agency has:

- effective performance management policies and processes;
- clear statements of the performance and behaviours expected of employees;
- opportunities for open performance discussions;

- performance management processes that are used to guide salary movement; and
- clear and fair unsatisfactory performance processes.

5. Senior Leaders

- 5.1 Senior leaders in an agency foster the right culture to encourage best behaviours. They are responsible for promoting a culture in which performance is at the forefront – even before the employment relationship begins, through effective job design and recruitment – and in which employees and supervisors feel safe to have the vulnerable and sometimes difficult conversations that build a high-performing organisation.
- 5.2 Leaders should create an environment in which employees feel safe and motivated to voice their ambitions and aspirations, to set stretch targets and goals without fear of penalty, and to engage in performance improvement processes in good faith. Leaders are responsible for building a culture in which supervisors are supported and motivated to identify and reward high performers – and supported to manage underperformance with sensitivity and skill.
- 5.3 Senior leaders set the right cultural tone by expressing and demonstrating their support for a high-performance culture, including by ensuring that supervisors and the agency’s Human Resources (HR) area are supported to identify and nurture talent, get the best from all employees, and manage underperformance effectively. Leaders are responsible for identifying and managing talent – not only for the benefit of their own agency, but for the whole of the State Service.

6. Managers/Supervisors

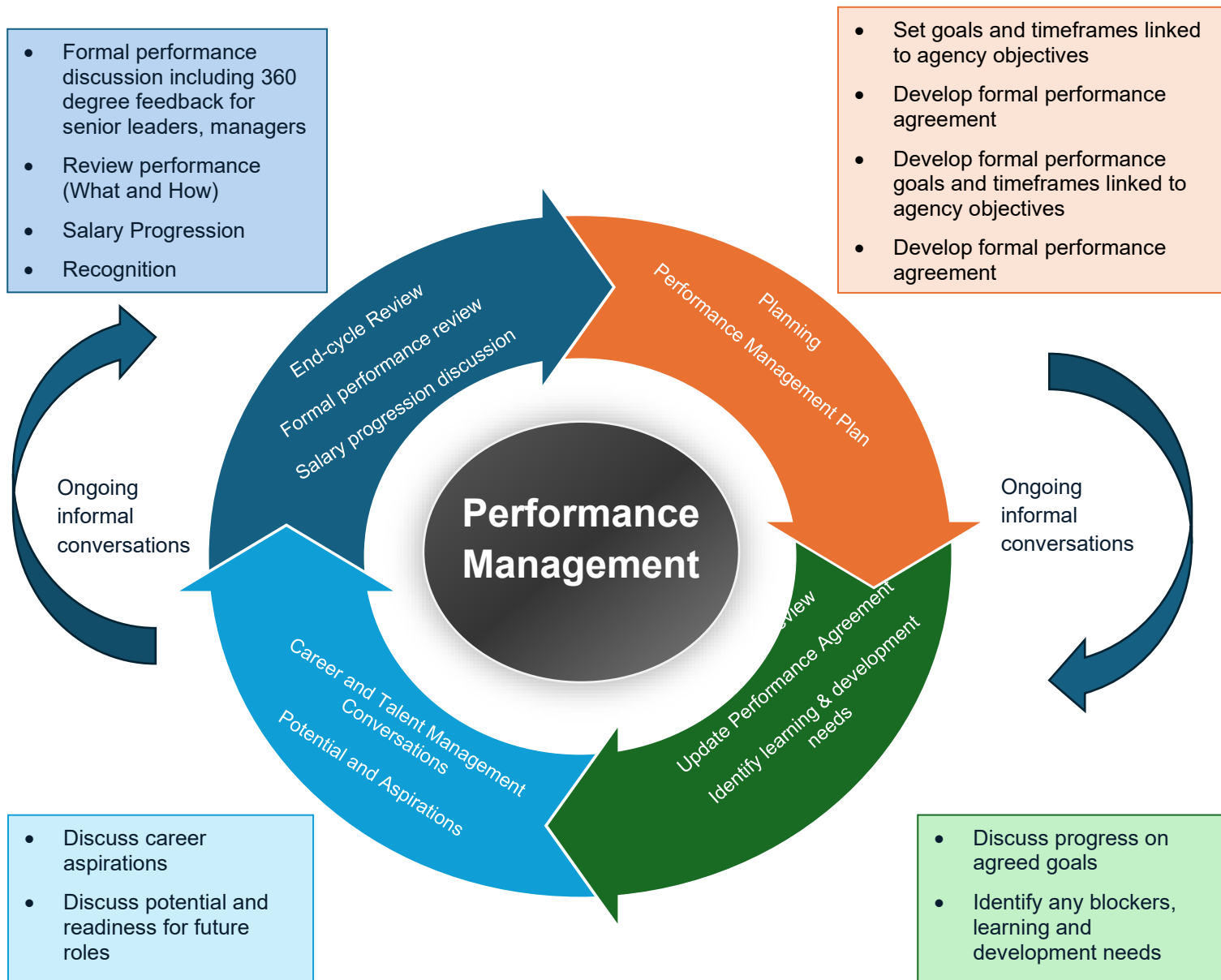
- 6.1 Supervisors must:
- promote and foster effective performance of team members;
 - at least annually: conduct career conversations that deal with an employee’s performance, potential, aspirations and organisational fit and future opportunities.
 - ensure that an employee has a performance agreement that is consistent with the agency’s strategies, business plan and work level standards for the employee’s classifications.
 - ensure that employees’ performance is aligned to the agency’s performance management policies and procedures.
 - ensure they are equipped to carry out their roles and responsibilities in the performance management cycle.
 - actively manage unsatisfactory performance as promptly as possible.

7. All Employees

- 7.1 All employees must:
- strive to perform to the best of their ability, consistent with work level standards and accepted performance agreements.

- engage constructively with their supervisor to clarify work expectations and what is needed to perform effectively.
- participate constructively in the agency's performance management processes.
- participate actively in career conversations.
- be open to receiving feedback and acting on it in a timely manner.
- seek opportunities to improve individual and team performance.
- undertake any necessary training or remedial and corrective measures identified.

8. A Good Performance Management System



- 8.1 A high-performance culture is a system that promotes and incentivises effective performance and fosters talent. It has clear performance expectations; a focus on performance improvement; prevention of underperformance and active management of performance issues. It requires mutual accountability for achieving effective performance.
- 8.2 Employees at all levels need to consider the principle that behaviours are as important as outcomes and both must be assessed as part of performance management. Excellence in delivering outcomes cannot be used to offset or minimise behavioural concerns.

9. Planning

- 9.1 When linked to an agency's strategic and business planning systems, effective performance management systems provide the means to continually improve individual, agency and whole-of-service performance.
- 9.2 This is achieved by aligning and integrating individual, team and agency outcomes as well as strategic objectives, with the direction and priorities of the Government of the day.
- 9.3 In effect, these two interlinked systems provide a 'line of sight', or alignment between the agency's objectives and direction, and its relationship with what the divisions', team and the individuals' roles are in the team where they work or for which they are responsible. This applies to all employees, regardless of the role performed or level of responsibility.
- 9.4 Together, these two systems clearly articulate:
 - what is to be achieved organisationally in meeting Government objectives, how and why
 - how Business/Divisional Units are to achieve their outcomes
 - where individuals' roles, outputs and their team fit, and
 - what is required, how and why.

10. Performance Management Plan

Fundamental to the principles of shared responsibility and the focus on performance in the Act and ED No. 26, is the development of a meaningful and relevant Performance Management Plan.

The Performance Management Plan serves as the map that guides performance and its assessment, the record of achievement for employees/teams and the foundation for employee learning and development action plans.

It provides a record for both the employee and the manager to refer to, should any misunderstandings arise in regard to expectations, requirements and standards of performance.

It records the assessment process, details changing priorities, conditions and resources that have impacted the achievement of outcomes/objectives. It also identifies the learning and development priorities for the employee to provide them with the required capabilities.

Every employee, in line with agency procedures, is expected to complete a Performance Management Plan with their manager.

10.1 Writing a Performance Management Plan

10.1.1 On commencement in a new role, an employee must develop a Performance Management Plan for discussion and agreement with their manager. Some of the consideration could be:

- How do the duties of my role contribute to the goals of the agency?
- What do I need to achieve in the next twelve (12) months?
- What are the outcomes/result areas that relate to the role?
- What capabilities (knowledge, expertise, behaviours), strengths, experience will I need?
- What resources need to be allocated to achieve the identified outcomes?
- How can I contribute to making the work environment effective and harmonious?

10.1.2 A suggested approach (currently in use in some agencies across the State Service), is based on the 'SMART' principles in designing the performance outcomes/objectives for a Performance Management Plan.

10.1.3 SMART Principles for Designing Performance Outcomes/Objectives

Specific

Be specific in what is being required. Leave no room for ambiguity or confusion, be consistent with band level requirements

Measurable

What is to be measured in relation to what is required and what types of measurements will be used?

Achievable

Can the requirement be achieved or not, given the nature of the task?

Realistic

Can the outcomes/objectives (goals) realistically be achieved, i.e. are they clear, do the resources exist, and are the desired outcomes in line with overall direction of the team and Agency?

Time based

What are the time imperatives and is their enough time to complete the goals/targets in order for the desired outcome to be achieved?

11. Mid-cycle Review

- 11.1 Managers and employees are encouraged to have ongoing conversations about performance and development matters – this can include conversations occurring outside of formal sessions. Everyone needs to know what is expected of them and how they are progressing throughout the year, as well as asking for help, learning or development along the way.
- 11.2 Open and constructive communication is the most powerful tool in building and/or sustaining a positive performance culture. This form of communication allows people to understand how they are doing in their role as well as providing the mechanisms to recognise and reward good performance and manage underperformance issues as they arise.
- 11.3 The mid-cycle point is a time identified for formal discussion between managers and employees, to talk about the employee's progress over the last six (6) months, as well as what might be needed to help support the achievement of outcomes agreed upon in the Performance Management Plan. This may include addressing any perceived blockers, learning or development needs. Where something has been identified as needing to be addressed, this process may involve some adjustments to the employee's Performance Management Plan and/or identification of a Learning and Development Plan.

- 11.4 An employee's learning and development goals that focus on the development of skills and knowledge should be aligned to their performance goals which focus on outcomes or end results. An employee's learning and development should be a part of their performance plan; with the performance plan cascading from the business plan for the unit.
- 11.5 Targeted learning and development require ongoing identification of the employee's immediate and longer-term development needs. Learning a new skill or capability can be achieved through various methods.
- 11.6 Choosing the right learning and development method will involve different approaches, not just classroom or virtual learning events. Different approaches include coaching and mentoring, either one-on-one or in small groups in the workplace, conferences or forums, workplace projects, special assignments, job shadowing, job rotation or work placements.

Agency Level

- 11.7 An agency should collate learning and development needs for the organisation through the performance management process. Annual agency learning and development plans could be considered across the agency depending on demand.

12. Career and Talent Management

- 12.1 Prior to End-cycle reviews, managers and employees should have a career management conversation. Employees will generally have future aspirations in mind, e.g. they may want to stay at their level and consolidate their skills and experience, others may be looking for advancement opportunities or a side-ways move within their level to broaden their knowledge and skills.
- 12.2 At the same time, managers need to actively manage succession planning for their teams and have deliberate plans and timeframes to properly support employees to realise their full potential and aspirations during their career journey.
- 12.3 Managers also need to be conscious of identifying people with talent and the potential to fill other roles across their agency or State Service. This includes people with the potential to act at higher levels or fill critical job roles.

Agency Level

- 12.4 For an agency, identifying talent and people with potential for different work experiences helps build a picture of their workforce, strengths and pockets of development needed. Agencies can also develop workforce and succession management plans.

13. End-cycle Reviews

- 13.1 The formal End-cycle review point is when managers and employees have an open discussion about performance (Outcomes and Behaviours). It is the yearly wrap-up that may include results of 360-degree feedback mechanisms.
- 13.2 360-degree feedback is also known as multi-source feedback. It is a process where an employee gets feedback from others – direct reports, peers, colleagues, managers and clients. This approach can be compared with downward feedback from supervisors through traditional performance assessment. There are various ways 360 feedback processes can be used, e.g. anonymous written feedback, informal conversations.

- 13.3 The formal End-cycle performance discussion between a manager and employee results in a preliminary assessment of performance (Outcomes and Behaviours) and may include substantiation of any salary progression recommendation for relevant employees.
- 13.4 The State Service Principles (Refer to Employment Direction No. 2) and State Service Code of Conduct reflect this approach and represent the minimum requirements for expected behaviour across the State Service. Other expectations of employee behaviour are determined by agency values.

14. Rating Scale

- 14.1 A rating scale is usually used by agencies when evaluating performance against defined expected key outcomes. When utilised, employees must be given an assessment of whether they are on track or not on track in achieving the key outcomes, why they achieved that rating and what is required for improvement. Rating scales should factor in both performance outcomes as well as adherence to behavioural standards as reflected by the principles within the Act.
- 14.2 Rating scales are to have two points of assessment, satisfactory (on track) and not satisfactory (not on track), with clear explanation for both employees and managers of each rating.
- 14.3 Reasons for the assessment need to include a finer level of detail and more clearly identify learning and development needs.

15. Validation of Assessment

- 15.1 Depending on the agency's HR policies and procedures, performance assessments and salary recommendations may need final clearance, and employees should be advised about final outcomes including reasons for final decisions ratified by executive leadership teams.

16. Salary Progression and Advancement Assessment Points

- 16.1 For the best results, and wherever possible, salary progression and Advancement Assessment Points (**AAP**) Award provisions should occur and be integrated with the timing of the performance management plan's development, discussion and evaluation process.
- 16.2 The focus of salary progression is the assessment of whether the employee has met the desired performance outcomes in relation to their role, the team and division in which they work within an agency. This replaces annual increments, which to a large degree had been previously principally based on time progression, rather than on actual performance achievement.
- 16.3 As with salary progression, AAP have been introduced into General Stream Bands 5, 6, 7 and 8 of the Tasmanian State Service Award as a mechanism to recognise demonstrated performance at the upper end of that which can be expected at the classification band.
- 16.4 AAP Performance requirements are more challenging, and the assessment criteria are more explicit and rigorous than those that apply to salary progression.
- 16.5 As both salary progression and advanced assessment focus on effective performance, wherever possible, the two processes should be aligned and if possible, integrated in the agency's performance management cycle.

Agency Level

- 16.6 For an agency, it is important that the Executive leadership team acknowledges key issues of performance for individual employees and the agency overall, along with potential risks to achieving outcomes at the agency level and below.
- 16.7 An effective performance management system is underpinned by interlinked evaluation, reporting processes, procedures and approaches. These should be seen as part of the overall performance management system, rather than as an extra system that operates in isolation.
- 16.8 Whole-of-system performance management is an essential feature to review achievement and continually improve results.

17. Recognition

- 17.1 It is important for a manager to acknowledge effort and show genuine appreciation for individual employee and team achievements and their contributions.
- 17.2 While this should happen regularly, the performance assessment discussion is an opportunity for the manager and the employee to reflect on what has been achieved.
- 17.3 Recognition strategies may vary from team to team, and even between individual employees. These strategies should be flexible in responding to what employees' value in terms of recognition and reward, however, it is essential that agencies recognise employees for their efforts, a job well done and where performance improvement is made.
- 17.4 Managers should consider:
 - thanking the employee for a specific achievement which has demonstrated excellence and/or hard work.
 - acknowledging efforts in consistently working towards performance goals in the face of challenges.
 - talking with the employee about how their achievements have helped progress agency and/or division/team outcomes/objectives.
 - openly and publicly valuing contributions.
 - showing appreciation where an employee has really made a difference or demonstrated agency values (where relevant) to an exceptional level, e.g. certificates.
 - identifying another way of celebrating achievement and success within the team.

Agency Level

- 17.5 For an agency, consideration should be given to establishing simple but impactful recognition schemes, e.g. public shout-outs, internal awards, acknowledgement opportunities. This provides people with recognition for their efforts and good work. It also provides incentives and helps create a positive, respectful culture.

18. Managing Underperformance

- 18.1 When performance issues are not addressed early, they can have implications for the employee, their manager, the immediate work area as well as the agency workplace more broadly where the issue/s have an impact on productivity. It can also negatively impact on external stakeholders and lead to a lack of confidence in the State Service.
- 18.2 Dealing with underperformance can be challenging and confronting for managers and employees alike, but it does need to be addressed immediately by both parties. Often issues that arise and are immediately addressed can be easily discussed in an open and constructive manner and lead to a satisfactory resolution. If not addressed promptly, misunderstandings can occur, mistrust may develop, and communication can be impacted. The longer poor performance is allowed to continue, the more difficult it becomes to achieve a satisfactory solution.

19. Informal Approaches

- 19.1 A manager may informally address underperformance issues in a number of ways, such as:
 - having an early conversation about performance
 - giving the employee an informal notice that their performance is not meeting requirements, or
 - an early conversation and dedicated support for the employee may be sufficient in addressing underperformance.
- 19.2 If the manager gives the employee an informal notice, the employee should be given reasonable time and the opportunity to arrange a meeting to discuss the issue.
- 19.3 The employee should be given the opportunity to respond to the performance issues identified. If a reasonable explanation of the underperformance is provided, there is no further action needed. If no such explanation is provided, details of the meeting should be noted, dated, signed and filed by the manager.
- 19.4 Managers must retain records of the informal approaches followed
- 19.5 Managers must ensure that where each of the above steps are taken, the employee is accorded procedural fairness, both before and during the meeting.
- 19.6 Not every performance issue needs a structured informal process, however, where an informal process occurs, the employee should be supported and encouraged to improve and reach the standards of performance previously identified in the performance management plan that they generated for themselves.
- 19.7 Potential Options to Initially Resolve Issues of Underperformance
 - on-the-job training
 - knowledge uplift
 - coaching
 - mentoring
 - more regular feedback conversations
 - job design, e.g. part-time hours
 - job re-assignment

20. Formal Approaches

- 20.1 Where an informal process fails to address the performance issue or is deemed inappropriate as a first step, a formal and documented process should be followed.
- 20.2 In this instance, and as a prelude or in conjunction with the development of the Performance Improvement Plan, the manager may provide a written formal notice to the employee concerning their performance.
- 20.3 If a formal notice is provided, it will provide the details of the employee's underperformance, and of the required performance, including where behaviours, fall short of the standard expected. Typically, this will include:
- a statement concerning the performance issue/s, and the corrective action required
 - intended actions if the employee does not correct his/her performance
 - if relevant, refer to previous dialogue regarding the same issue/s and their dates
 - refer to when the issue/s was raised and give some details of that incident
 - be signed and dated by either the manager present at the discussion, or all parties, and
 - be retained by the agency (a copy should be given to the employee involved).
- 20.4 The employee should be given the opportunity to respond and should be given the option of having a support person present during any meeting where a performance notice is provided. If the employee's explanation is reasonable, then the action may cease, and the employee may continue in the normal performance management cycle.
- 20.5 If not, all details should be noted, dated, signed by all parties (and by any witnesses) and filed. The employee should be given a copy of the notice. If the employee refuses to sign the notice, it should still be kept on file and the employee should still be given a copy.

21. Performance Improvement Plan

- 21.1 Where poor performance is identified and a Performance Improvement Plan is required, it should be developed through a constructive two-way discussion between the manager and the employee in consultation with the Human Resources area.
- 21.2 If this is done well, the Performance Improvement Plan can be a positive mechanism to improve an employee's performance. Importantly, it can mitigate the need for further, formal processes as it formally signals to the employee that:
- performance improvement is required;
 - poor performance is not an option;
 - there are consequences of poor performance; and
 - the formal process has commenced, which may include a formal warning that possible termination of employment can occur.
- 21.3 It is important for both the employee and the manager that everything related to the requirements of improved performance expected of the employee is:

- discussed and documented clearly with particular attention given to specification of what performance is required, (i.e. specific work requirements and behaviours expected);
 - how performance will be measured (the performance measures);
 - the expected timeframes for delivery of milestones; and
 - learning and development opportunities, both informal and formal that will be made available to improve the employee's capability to meet the required outcomes.
- 21.4 At all stages during this process, any documentation produced is to be signed by both parties. If an employee fails to sign, then the relevant documentation will still need to be adhered to and will be placed on the employee's personnel file.
- 21.5 If an employee's performance improves, they return to the general performance management cycle.
- 21.6 If, in the agreed timeframes, the employee's performance does not improve, the manager, in consultation with the Human Resources area may choose to:
- extend the time to allow the employee to demonstrate improved performance; and/or
 - take disciplinary action (this may include a number of options aimed at improving capability and competency development, or include a formal reminder, lawful directive or a recommendation to the Minister that the employee's employment is to be terminated under section 44(3)(ca) of the Act) or a variation of employment will occur or a reassignment of duties.

22. Termination of Employment

- 22.1 The decision to terminate an employee's employment is not taken lightly and only occurs when they have been given the opportunity to rectify their lack of performance, it is evident that their performance will not improve and they have been warned about the consequences of ongoing unsatisfactory performance.
- 22.2 If termination of employment is being considered, the employee is to be advised in writing and given the reasons for this decision.
- 22.3 Procedural fairness is to be provided and, as such, the employee is to have a minimum of fourteen (14) calendar days to respond. Where appropriate, this timeframe may be less or more.
- 22.4 It is only after this response is received, or the time period has elapsed, that any recommendation to terminate the employee's employment can occur. If this recommendation is made, the employee will be advised in writing, together with the reason for this action.
- 22.5 ED No. 26 provides for further procedural fairness and review through submission of the recommendation to the Director, State Service Management Office, before the relevant Head of Agency is advised of the final decision.
- 22.6 If the recommendation is upheld, the employee is to be advised by their Head of Agency of this decision and their rights of appeal.

23. Grievance and Dispute Resolution Processes

- 23.1 This document details the processes to be undertaken to resolve performance disputes. This supplements processes already in place in relation to dispute and grievance resolution processes.

- 23.2 Where issues arise, wherever possible they are best managed through an honest and objective exchange. However, there are times despite the best efforts of both parties, resolution at the local level may not be achievable. If this is the case, the agency HR area is to convene a meeting of all parties to the grievance/dispute to clarify the matters that are not agreed upon in an attempt to resolve the dispute.
- 23.3 Full disclosure by the parties of all the particulars of the grievance/dispute is required for the meeting such as:
- the current Statement of Duties;
 - copy of the Performance Assessment and managers comments;
 - copy of any notice provided to the employee in writing;
 - response to the assessment/notice; and
 - witness statements, if applicable.
- 23.4 Employees currently have right of appeal at any time with the Tasmanian Industrial Commission under section 50(1)(b) of the Act of any state service action by the Tasmanian Industrial Commission other than termination of employment.

24. Agency Reporting Requirements

- 24.1 It is essential to know that Performance Management Systems are working effectively. ED No. 26 requires agencies to report in their Annual Report on activities and effectiveness of their Performance Management System in relation to the following three key categories:
- Alignment: establishing performance management systems which work within the culture of the agency.
 - Operation and credibility: establishing performance management systems that operate effectively and are valued by employees as being simple, effective and fair.
 - Integration: establishing performance management systems that are part of agency operational planning.
- 24.2 In terms of standard reporting requirements agencies should refer to the Department of Treasury and Finance and the *Financial Management Audit Act 1990* (Tas).

CHECKLISTS AND TEMPLATES

ATTACHMENT 1 – PERFORMANCE DISCUSSION

Performance review discussion plan template

You can use this template to help you prepare for a performance review, stay focused, let the employee know how well you think they've performed against their individual performance goals and agree on goals for the next performance cycle.

A performance system will allow you to set clear goals and expectations for your employees. It also provides a process for ongoing feedback and discussion.

Suggested steps for developing a performance review discussion plan

Step 1: Before the discussion

Before the performance discussion, use the plan template to record:

- Your employee's individual performance goals for this performance cycle, and how you think they've performed against their goals.
- What you think your employee has done well.
- What you think your employee could do better.

Step 2: During the discussion

During the meeting, use the plan template to record:

- How your employee thinks they've performed against each of their goals.
- Any feedback or concerns that your employee has.
- Any discussion about the employee's career goals or future within your business.
- Any goals that you and the employee agree on for the next performance cycle, and the support that you'll provide to help the employee meet their goals (e.g. training).

In addition, note when you and the employee will next meet to review their performance, as well as any next steps for you and/or the employee.

You can use the information that you record in the plan to develop the employee's performance agreement for the next performance cycle.

What are the next steps?

For you:

For your employee:

ATTACHMENT 2 – MANAGING UNDERPERFORMANCE

Managing Underperformance: Initial Steps

The following checklist has been created to help you manage underperformance.

Step 1: Identify the issue

- Start by writing down specific examples of your employee's performance that's causing an issue, and when it's occurring. Gather any documents that demonstrate the issue (eg. work examples, complaints or performance statistics).
- Write down why the poor performance is an issue – it may be affecting your business, other employees, customers or the safety of the workplace.
- Write down how the performance needs to change.

Step 2: Assess the issue

- Before you meet with your employee, think about how serious the issue is and how long it has existed.
- Assess how wide the gap is between what you expect of your employee and what they're doing.
- Think about the possible cause of the issue – make sure you keep an open mind.

Step 3: Meet with your employee

- Discuss the issue with your employee as soon as possible – ignoring it is likely to make it worse.
- Arrange to meet with your employee at a time and in a place where you won't be interrupted, overheard or rushed.
- Let your employee know in advance what the discussion will be about so they don't feel ambushed.
- Clearly describe the issue, using examples, along with how it's affecting the business.
- Invite your employee to respond.
- Explore the issue and possible causes by asking open questions.
- Make sure the employee understands the change required.

- Think about the impression that your body language gives – face the employee, adopt an open posture, maintain good eye contact and try to be relaxed.

Step 4: Jointly devise a solution

- Explore possible solutions by asking open questions.
- Invite your employee to suggest solutions.
- Agree on a way to resolve the issue.
- Offer appropriate support (e.g. training).
- Agree on a time for your employee to improve their performance and set a date for review.

Step 5: Monitor performance

- Make sure you follow through with any training or other support that you offered to your employee.
- Monitor your employee's progress and provide ongoing feedback – be very clear.
- Meet with the employee to review their performance at the agreed time.
- If your employee's performance has improved, acknowledge that the issue has been resolved and discuss how to maintain the improvements – continue to offer support and encouragement.
- If your employee's performance hasn't improved, extend or repeat the process, or consider progressing to disciplinary action.

Step 6: Keep records

- Keep notes of your discussions with your employee and the outcome of the process.

ATTACHMENT 3 – MANAGING UNDERPERFORMANCE IMPROVEMENT PLAN

Performance Improvement Plan

You can use this template to help you develop a performance improvement plan with your employee.

A performance improvement plan is a document that sets out what the problem is with your employee's performance and what they need to do to improve.

Suggested steps for developing a performance improvement plan

Step 1: Plan

- Use the template to prepare a performance improvement plan for your employee.
- Begin by clearly identifying the specific area or areas in which the employee needs to improve their performance.

Step 2: Meet with your employee

- Next, explain what your employee needs to do to improve their performance and how they can do this, along with what support you'll provide to them (e.g. training). Also explain to them what their responsibilities are, and what your responsibilities are. A HR representative should also participate in the meeting at this stage. This is particularly helpful as they can assist with identifying any learning and development support.
- Give your employee a reasonable time to improve their performance and set a date or dates for further review.
- Finally, explain what will happen if your employee's performance doesn't improve.
- Both you and your employee should sign and keep a copy of the plan. If an employee refuses to sign the plan, this should not affect the implementation of the plan.

Step 3: Monitor

- Monitor your employee's performance while the plan is in place. Regularly check-in with your employee over that period to discuss their progress.

Step 4: Review

- Meet at the times set out in the plan to review your employee's performance. Before these meetings, both you and your employee should assess their performance. After these meetings, you should update the plan to make sure it stays current (e.g. to explain what your employee still needs to improve, and any further support that you'll provide).

PERFORMANCE IMPROVEMENT PLAN

Details	
Employee name	
Employee position and level	
Manager name	
Manager position	
Date of plan	
Period of plan	<p><insert start date> to <insert end date></p> <p><i>Typically six (6) – eight (8) weeks</i></p>
Interim review date	<interim review date>
Final review date	<final review date>
<p>Performance improvement objective: <Objective></p> <p><i>Describe the specific area in which the employee's performance needs to improve.</i></p> <p><i>e.g. – Objective: Timely and accurate processing of customer orders</i></p>	
Required outcomes	<p><required outcomes></p> <p><i>Describe what the employee needs to do to improve their performance to the required standard. The required outcomes should be specific, measurable and realistic. In most cases, the required outcomes should be described as a measurement of quality, quantity or timeliness.</i></p>

Details	
	<p>e.g.</p> <p><i>Process all customer orders within 48 hours of receipt.</i></p> <p><i>Process at least 15 orders each day.</i></p> <p><i>Complete order-related paperwork neatly and accurately.</i></p>
Strategies	<p><strategies></p> <p><i>Describe how the employee is going to meet the required outcomes.</i></p> <p>e.g.</p> <p><i>Your priority task at all times will be processing customer orders.</i></p> <p><i>If you have any questions (e.g. you're not sure how to complete a task, or if you're asked to complete a different task), you must immediately raise this with your manager.</i></p>
Support	<p><supports></p> <p><i>Describe what support you're going to provide to the employee to meet the required outcomes.</i></p> <p>e.g.</p> <p><i>Your manager will provide you with refresher training on the order software.</i></p> <p><i>Your manager will meet with you each Monday to provide you with feedback on your progress against the required outcomes.</i></p>
Responsibilities	<p><responsibilities of all relevant parties></p> <p><i>Describe the responsibilities of the employee, their manager and any other relevant parties.</i></p>

Details	
	<p>e.g.</p> <p><i>Employee:</i></p> <ul style="list-style-type: none"> • <i>to meet the required outcomes by the final review date.</i> • <i>to participate in refresher training on the order software and weekly feedback meetings with your manager, as well as any other training or development activities that your manager considers appropriate.</i> <p><i>Manager:</i></p> <ul style="list-style-type: none"> • <i>to provide you with on-the-job support.</i> • <i>to provide you with refresher training on the order software.</i> • <i>to conduct weekly feedback meetings.</i>
Consequences	<p><consequences ></p> <p><i>Describe the consequences if the employee doesn't meet the required outcomes by the final review date.</i></p> <p><i>e.g. If you fail to meet the required outcomes by the review date, without a reasonable excuse, you will be given a final written warning.</i></p>
Performance improvement objective: <objective> <i>Repeat for additional objectives</i>	
Required outcomes	<required outcomes>
Strategies	<strategies>
Supports	<supports>
Responsibilities	<responsibilities of all relevant parties>

Details	
Consequences	<consequences>

Manager signature:

Employee signature:

Print name:

Print name:

Date:

Date:

Employee self-assessment

Employee to complete before the interim and final review meeting.

How do you think you have performed against each of your performance improvement objectives?

<Employee comments>

Other comments:

<Employee comments>

Employee signature:

Print name:

Date:

Manager assessment

Manager to complete before the interim and final review meeting.

How do you think the employee has performed against each of their performance improvement objectives?

<Manager comments>

Other comments:

<Manager comments>

Manager signature:

Employee signature:

Print name:

Print name:

Date:

Date:

ATTACHMENT 4 – MANAGING UNDERPERFORMANCE IMPROVEMENT PLAN

Managing Underperformance: Formal Steps

If you have followed the 'initial steps' and your employee's performance hasn't improved, it may be time to move to the 'formal steps' part of the process. The Performance Improvement Plan identified above is an integral part of this stage of the process. Typically, the steps outlined below would be initiated if there is no improvement in the employee's performance following the completion of the performance improvement plan.

The following checklist has been created to help you plan and conduct a formal underperformance meeting with your employee and document the issue.

Before the meeting

- Arrange to meet with the employee at a time and in a place where you won't be interrupted, overheard or rushed. Recommend having an HR representative to attend as a witness and note-taker.
- Tell the employee why you want to meet with them and who will be at the meeting.
- Allow the employee to bring a support person of their choice to the meeting, if they want to.
A support person may be a co-worker, family member, friend or union representative. Their role is to support the employee during the meeting, not to speak or advocate for them.
- Carefully plan what you want to say at the meeting.
- Gather relevant paperwork (e.g. the employee's performance agreement, job description and any performance improvement plan) and any documents that demonstrate the underperformance (e.g. work examples, complaints or performance statistics).

During the meeting

- Clearly explain why you're meeting with the employee.
- Describe the underperformance in issue and clearly explain why it's an issue, using specific examples and focusing on facts.
- Set out any steps you've taken so far to resolve the issue (e.g. feedback and warnings as well as the Performance Improvement Plan) as well as the support you've provided (e.g. training).
- Invite the employee to respond to what you've said and to explain their performance and ask them what they think can be done to improve it.
- Consider what the employee has said.
If you need more time to think about or look into what the employee has said, close the meeting and agree to meet again in a day or two.
- Decide on a way forward with the employee, including if you'll provide any further assistance or support or make any adjustments.
- Tell the employee if you'll be issuing a verbal or written warning.
- Explain what will happen next if the employee's performance doesn't improve (e.g. a further warning or possible termination of employment).

After the meeting

- Confirm the outcome of the meeting in writing and invite the employee to respond. Include:

1. What was discussed (including any issues raised by the employee).
 2. What the employee needs to do to improve their performance.
 3. Any support or assistance you'll provide.
 4. Whether a verbal or written warning was, or will be, issued.
 5. What will happen next if the employee's performance doesn't improve.
- Keep thorough notes of the meeting and copies of any letters, emails or warnings, and sign and date these documents. Ask the employee and any witnesses to do the same. If the employee refuses, make a record of the refusal.
 - Give the employee a reasonable period of time to improve their performance (typically six (6)-eight (8) weeks).
 - Regularly check-in with the employee over that period to discuss how they're progressing.
 - Formally meet with the employee again at the end of the period to review their performance.
 - If the employee's performance has improved enough, close the process. Follow up in writing and clearly explain that they must maintain the improvement.
 - If the employee's performance hasn't improved, consider taking further action.

Appendix F – Chapter Five – Employment Directions

This Annex relates to Employment Framework Chapter Section 4.3.1

Use of prior substantiated, untested and unsubstantiated complaints, allegations and disciplinary action, in addition to the immediately alleged conduct

1. Prior substantiated conduct

- 1.1 Evidence of prior substantiated conduct should generally only be relevant to considerations about the appropriate sanction to be imposed where new allegations are substantiated. However, the fact of a prior substantiated findings should not on its own be used to make findings substantiating new allegations.
- 1.2 In a disciplinary processes (i.e. non-criminal processes) evidence of prior substantiated conduct of a similar nature may be given some weight in determining whether new allegations are substantiated. The more similar the offending conduct, the more weight that may be applied to the prior substantiated conduct, especially where the conduct has unique characteristics or involved strikingly similar behaviour (**Similar Fact Evidence**).
- 1.3 Similar Fact Evidence is used to identify evidence of prior conduct to show a pattern of conduct indicating a propensity for a person to engage in similar behaviour.
- 1.4 Similar Fact Evidence can be appropriately used in disciplinary processes (and in limited situations in civil and criminal proceedings). The purpose of Similar Fact Evidence is to establish consistent patterns of behaviour (i.e. the manner in which the offending is alleged to have occurred) to add weight to a finding by inferring that the conduct was so similar that it had to have been the same person.
- 1.5 In order to be relied upon, Similar Fact Evidence must:
 - 1.5.1 have a high degree of probative value by showing that the current conduct is much more likely to have occurred than not;
 - 1.5.2 show a striking similarity of conduct, suggesting a specific or unique pattern of behaviour that is more than merely coincidental.
- 1.6 If an investigator takes into account prior substantiated conduct, they should carefully note:
 - 1.6.1 the purpose of considering the evidence;
 - 1.6.2 how the evidence was assessed or tested;
 - 1.6.3 exactly what information was considered;
 - 1.6.4 why it was deemed relevant and necessary (i.e. specify the similarities);
 - 1.6.5 what weight was given to it in reaching findings; and
 - 1.6.6 how it informed the ultimate finding(s).

2. Prior untested or unsubstantiated complaints, allegations and disciplinary action

- 2.1 Evidence of untested or unsubstantiated conduct will generally carry very little weight in determining findings about fresh separate allegations. Normally, the potential for prejudicial impact upon the findings will far outweigh any potential benefit that could be gained from including such information when making findings about allegations.

- 2.2 However, there may be times where specific information of prior untested or unsubstantiated conduct is relevant and capable of assisting investigators to reach findings by providing evidence of a propensity to engage in the relevant conduct. The key considerations when contemplating use of information from prior untested or unsubstantiated complaints are proof of the information and accuracy of decision making. If the information cannot be relied upon and/or does not accurately inform decision making, it should not be considered.
- 2.3 If information about untested or unsubstantiated conduct is available to an investigator considering new/separate conduct, they should first assess why the conduct was untested or unsubstantiated (e.g. witnesses failed to provide information) before determining how the information can be used in the new investigation. That is, can the previous information be retested or otherwise verified, or is an avenue for planning the investigation. For example, having regard to the information from prior untested or unsubstantiated complaints and using that information to guide interview questions and collection of evidence.
- 2.4 As with prior substantiated findings, there may be an argument for inclusion of Similar Fact Evidence, even where complaints were untested or unsubstantiated. Whilst this scenario is far less likely to satisfy the 'high probative value' requirement. However, careful analysis of the prior conduct may enable identification of whether 'conduct', as opposed to it being proven 'misconduct', can be relied upon as Similar Fact Evidence and be relied upon to support findings of substantiated conduct.
- 2.5 If investigators seek to have regard to information about prior untested or unsubstantiated matters, they should be very careful to clearly document why that information was relevant (e.g. striking similarity or unique characteristics of conduct) and what weight was given to that prior conduct when making findings.
- 2.6 Consideration of such information when making findings should only be used when essential to enable findings to be reached, and clear analysis of the information identifies which aspects of the untested or unsubstantiated matters influenced findings. If such information is considered and does inform findings, the decision maker should clearly document:
- 2.6.1 the purpose of considering the evidence;
 - 2.6.2 how the evidence was assessed or tested;
 - 2.6.3 exactly what information was considered;
 - 2.6.4 why it was deemed relevant and necessary (i.e. specify the similarities);
 - 2.6.5 what weight was given to it in reaching findings; and
 - 2.6.6 how it informed the ultimate finding(s).

3. Testing the evidence from prior findings

- 3.1 Information from prior findings relied upon to inform new investigation findings should be tested and assessed for reliability. In testing evidence of prior substantiated or unsubstantiated conduct, investigators should assess the evidence that was relied upon by the original decision maker. This will include:
- 3.1.1 review of accounts provided by witnesses to identify similar observations and the reliability of those accounts, including whether they are supported by other evidence;
 - 3.1.2 and accounts provided by respondents, including whether any admissions were made and if so, whether admissions were made to conduct or actions that is strikingly similar to the conduct being investigated; and

3.1.3 independent assessment of other available evidence relied upon in the prior substantiated findings.

