

**PROGRESS REPORT AUGUST – NOVEMBER 2024**

**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*

**FINAL**

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**CONFIDENTIAL**

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# 1 CONTEXT AND INTRODUCTION

Following a groundswell of community concerns in 2019-2020 over child sexual abuse in Tasmanian Government institutions, the Tasmanian Government led by Premier Gutwein recommended the establishment of a Commission of Inquiry on 23 November 2020.

The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings was established by Order of the Governor on 15 March 2021. The Commission of Inquiry finalised its 3000-page report containing 191 recommendations and this was released in September 2023.

The Government accepted all the recommendations in the COI report and Premier Rockliff announced two further reviews including an *'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'*.

Peter Woolcott AO, the former Australian Public Service Commissioner was appointed by Premier Rockliff to lead the Independent Review in December 2023. Peter Woolcott formally commenced the review in mid-February 2024.

## 2 TERMS OF REFERENCE AND SCOPE OF THE REVIEW

### 2.1 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, time-frames and reporting requirements.

The Terms of Reference underscored that the final report of the Review will be made available to Parliament, and that three monthly progress reports should be provided in the meantime. This progress report forms the third of these three-monthly updates since the commencement of the Review in mid-February 2024 and covers the period of August to November 2024.

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

Based upon the Terms of Reference and following consultations with key stakeholders the Review has identified the following key objectives:

1. Examine and analyse the chronology and response to the concerns and information raised by the COI in its final report about Tasmanian 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 Tasmanian State Service.
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 Tasmanian State Service employees and officers.

5. Make recommendations in relation to any other systemic and cultural enablers that will ensure that the Tasmanian State Service is well equipped both now and into the future to ensure the safety and protection of children in its care.

The Review is committed to providing reassurance to the Tasmanian Government, Parliament and the public that all necessary and appropriate action has been undertaken by the Tasmanian State Service to address issues of concern and information raised by the COI. The review is also future focused, and analysis of previous events is 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.

## 3 CONDUCT OF THE REVIEW

The Review's first two progress updates provided substantive details in relation to its core activities. The main focus of these activities during the first six months can be summarised as:

- Analysing and interpreting the Review's Terms of Reference
- Determining the scope and coverage arising from the Terms of Reference
- Issuing requests for information and records relevant to its Terms of Reference
- Undertaking substantive engagement with all relevant stakeholders across Tasmania to understand their perspectives and
- Developing the Reviews methodology and conceptual and analytical frameworks

Both reports 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 Tasmanian State Service (TSS). It also identified specific information gaps in relation to the information requested by the Review.

Since its last progress update, the Review's activities have focused on research and analysis of the information received from stakeholders as well State agencies and authorities. The Review has continued to engage with the Tasmanian State Service to ensure that it receives all relevant information and records and closes the gaps identified in its last progress report. Additionally, the Review has sought and finalised access to legal advice during this phase.

At its commencement, the Review had anticipated submitting its final report by year end. This timeline was based upon the Review's assessment that it would receive all relevant information and records by mid-year. Recent developments have impacted the Review's ability to meet this self-determined timeline.

This progress report provides further details in relation to these developments and summarises briefly the other activities undertaken by the Review.

### 3.1 Access to COI Records and Information Gaps

The Review's second progress report noted that consistent with the provisions of the Commission of Inquiry Act 1995, the Review had considered and finalised definitions for '*matters of concern*' as well as '*information*'. This was necessary as the Review's Terms of Reference required it to '*examine and analyse the chronology and response to the concerns and information raised by the COI during its hearings and in its final report*'. The definitions were also essential to enabling the Review to independently identify and catalogue '*all matters of concern and information*' considered by the COI through accessing a range of relevant records and materials.

As stated previously, the Review expected to develop a single consolidated list of all matters of concern and information considered by the COI and/or referred by it to relevant agencies and authorities. Aligned to its Terms of Reference, the Review's methodology was then focused on analysing the chronology of actions undertaken by relevant agencies and authorities to deal with each individual matter of concern or information.

The Review expected that such analysis would generate insights in relation to misconduct processes within the TSS while also conclusively establishing that each matter of concern or information received by the COI had been carefully and comprehensively dealt with by the TSS. The latter was essential to providing assurance to the Tasmanian government, parliament, and community that the TSS had acted with due regard to ensuring accountability in relation to the conduct of its employees and officers. The Review notes that the TSS had stated that it was not aware of all matters of concern and information considered by the COI as it was not privy to, for example the Section 18 notices issued by the COI.

The following section outlines the issues encountered by the Review in accessing the records of the COI in order to develop a consolidated list of all matters of concern and information considered by it.

### 3.1.1 Background

The Review requested access to the COI Records via a written request on the 23<sup>rd</sup> May 2024. The Review was granted access to the COI Records in early June 2024. As outlined, the purpose of requesting access to the records was to develop a consolidated list of all matters of information and concerns considered by the COI.

On the 8<sup>th</sup> August 2024, the Review team was notified that based upon advice from the Solicitor-General of Tasmania, the Review team needed to return the COI Records. Retrieval of the COI Records occurred on the 9<sup>th</sup> August 2024.

Given the unforeseen withdrawal of the COI Records, the Independent Reviewer requested the Secretary of the Department of the Premier and Cabinet to share the reasons behind the withdrawal of the Records. On the 10<sup>th</sup> August 2024, the Review received correspondence from the Acting Secretary, Department of Justice attaching advice received by them from the Solicitor-General of Tasmania in relation to the provision of information requested and accessed by the Review including specifically:

- Access to the COI Records
- Access to information on actions taken by the Registrar for Working with Vulnerable People on referrals received by them from the COI

The Solicitor General of Tasmania raised concerns that:

- the Review commissioned by the Premier was not cloaked with any compulsive powers, operated under the Crown prerogative and was being conducted outside any legislative framework <sup>1</sup>
- correspondence should be generated to advise the Independent Reviewer that they should return these records immediately and
- records of the COI may be subject to several protections including specific provisions under the following legislation and each record needed to be considered independently prior to its release:
  - Commissions of Inquiry Act 1995
  - Children Young Persons and their Families Act 1997
  - Youth Justice Act 1997
  - Personal Information Protection Act 1997

Supplementary Advice provided by the Solicitor-General on the 6<sup>th</sup> August 2024, acknowledged that the Review had been granted exemptions by the Attorney-General under the Personal Information Protection Act and that this enabled the provision of personal information being provided to the Review by the Government Departments identified in the State Service Act 2000.

On the 11<sup>th</sup> August 2024, the Independent Reviewer wrote to the Secretary of the Department of Premier and Cabinet, providing a comprehensive response in relation to the concerns raised by the Solicitor-General. The response noted, that the Reviewer had returned all the records to the State Archivist on the 9<sup>th</sup> August 2024 and that the Review had not disclosed any protected or other information and was committed to maintaining the confidentiality of all information.

On the 11<sup>th</sup> September 2024, the Independent Reviewer received confirmation that the Commission of Inquiry did not apply for any warrants under the *Commissions of Inquiry Act 1995* (Tas) thus negating any breaches associated with these provisions of the Act.

### 3.1.2 Summary of the Solicitor General of Tasmania's advice in relation to the records held by the RWVP

Consistent with its Terms of Reference, which require it to review *'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'*, the Review requested information from the Registrar for Working with Vulnerable People on the 21<sup>st</sup> May 2024.

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<sup>1</sup> Privilege was waived by the Attorney-General the Hon. Guy Barnett on the advice provided by the Solicitor-General in relation to accessing the above information

Subsequent correspondence and engagement with the Registrar and Department of Justice indicated that there were legislative barriers to the Review accessing information from the Registrar. The Review was advised that the Registrar was unable to share information on the actions taken by them on the referrals sent to them from the COI.

As background, the Review notes that the Commission was empowered by s 34A of the Commissions of Inquiry Act 1995 to communicate certain information in specified circumstances. Under these provisions, the Commission was able to communicate information related to the safety and protection of children *'to a person or organisation with responsibility for the oversight, registration, approval or any other endorsement of persons in the same occupation, industry or recreational activity as the person to whom the information related'*. On this basis, the COI referred a number of matters of concern or information to the Registrar for Working with Vulnerable People during the course of its inquiries.

Noting, the legislative barriers the Review wrote to the Registrar for Working with Vulnerable People again on the 1<sup>st</sup> August 2024, emphasising the public interest and the need to access the information on the actions taken by the authority to deal with the referrals it had received.

On the 24<sup>th</sup> June 2024, the Registrar had received advice from the Solicitor-General of Tasmania noting that based upon the combined and existing provisions of the *Commissions of Inquiry Act 1995* and the *Registrar for Working with Vulnerable People Act*, the Registrar did not have a sound legislative basis to disclose information to the Review.

### 3.2 Impact on Review Timelines

Given the above developments, the Review was faced with two issues. Firstly, it could no longer access the COI records. Secondly, the Review could not obtain any information from the Registrar in relation to its request. Therefore, the Review's work to finalise its analysis and draft its final report received a significant setback.

### 3.3 Government Response

The Premier and Attorney-General were advised of the events of the 8-11<sup>th</sup> August 2024 by the Secretary Department of Premier and Cabinet and considered these on the 12<sup>th</sup> August 2024. The Premier and cabinet resolved to address immediately any barriers to the Review accessing the information needed by it to conclude its work and reiterated full support and confidence in the Review.

Based upon instructions from the Attorney-General, the Department of Justice was able to identify a solution to enable the Review to access information from both the Commission of Inquiry as well as the Registrar for Working with Vulnerable People.

An amendment regulation under the *Child and Youth Safe Organisations Act 2023* was proposed and approved by the Executive Council in the week of the 18<sup>th</sup> November 2024. The amendment regulation prescribed the Review as an 'information sharing entity' under the said Act thus enabling the sharing of information with other entities.

The Review notes its deep gratitude to the Premier and the Attorney-General as well as the wider cabinet for their unwavering support and commitment to ensuring that the Review could fully undertake its work in accordance with its TOR. The Premier and the Attorney-General have demonstrated extraordinary personal commitment and leadership to resolve the issues of access faced by the Review.

The Review also notes that it has received positive support at all times from the Registrar for Working with Vulnerable People who has made every effort possible to cooperate with the Review within legislative boundaries. Finally, the Review thanks the Secretary Department of Premier and Cabinet for her prompt attention and shepherding of the issues faced by the Review. The Review also extends its thanks to the team at the Department of Justice particularly the Acting Secretary for their significant efforts in supporting the Reviews work.

### 3.4 Access to COI and Other Records

Access to relevant COI Records and the records requested from the RWVP were finally granted to the Review on the 11<sup>th</sup> December 2024 and the 29<sup>th</sup> November 2024 respectively.

In addition, the Review also notes that it has received further updated information from Tasmania Police in relation to the referrals received by it from the COI.

The Review has commenced analysis of all the information it has received and will request further information as needed.

### 3.5 Targeted Stakeholder Consultations

In addition to the Request for Information issued to agencies and authorities, the Review has continued to conduct monthly targeted stakeholder consultations in Hobart and online. These stakeholder consultations covered a range of themes of relevance to the Reviews Terms of Reference. The information received from these sessions will inform the deliberations of the Review as it progresses.

The table below provides details in relation to the stakeholder consultations held by the Review since the last Progress Report delivered in August 2024.\*

Date	No of Participants	Location	Organisation
29 August 2024	1	Hobart	Department of Justice
30 August 2024	2	Hobart	Reynolds Review
30 August 2024	1	Hobart	Department of Premier and Cabinet
30 August 2024	1	Hobart	Department of Premier and Cabinet
30 August 2024	1	Hobart	Department of Premier and Cabinet
30 August 2024	2	Hobart	Department of Justice
09 September 2024	1	Melbourne	Corrs Chambers Westgarth
19 September 2024	3	Online	Department of Premier and Cabinet Department of Justice
01 October 2024	5	Hobart	Department of Justice Department of Justice Commission of Inquiry Response Unit Minister Barnett's Office Office of the Attorney General
01 October 2024	1	Hobart	Department of Premier and Cabinet
01 October 2024	1	Hobart	Department of Premier and Cabinet
01 October 2024	2	Hobart	Department of Premier and Cabinet
02 October 2024	2	Hobart	Department of Health
02 October 2024	2	Hobart	Department of Premier and Cabinet
01 November 2024	1	Online	Laurel House

\*this does not reflect all conversations held by the Review but captures the principal conversations held by the Review

### 3.6 Analysis of Written Submissions and Information Requests

As noted previously, in addition to stakeholder consultations the Review had also issued targeted calls for submissions to a range of organisations. Written submissions had been requested 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 previous reports have provided details on the submissions it has received.

Over the last quarter, while the Review has waited for access to records, it has devoted its efforts to reviewing and analysing the submissions received from a wide range of agencies, authorities and other organisations. Follow up discussions have also been held in relation to the information that has been provided to the Review.

The Review notes that since its last report it has received submissions from the Tasmanian Aboriginal Centre and the Commissioner for Children and Young People.

### 3.7 Employment Framework

The Review has devoted a significant proportion of its time and resources over the last quarter to commence preliminary analysis of the chronology of actions undertaken by government agencies and authorities in relation to the matters of concern and information considered by the COI. Whilst this work will only be finalised upon receipt of the COI records and other information, the preliminary analysis has been beneficial in refining the conceptual and legal frameworks being used by the Review. The analysis has also been useful in identifying improvements to the employment framework in Tasmania. This has been complimented by extensive consultations with unions, agencies and authorities and other stakeholders in relation to amendments to the following:

- State Service Act 2000
- Employment Direction 4: Procedure for Suspension of State Service Employee with or without pay
- Employment Direction 5: Procedure for Investigation and Determination of whether an employee has breached the Code of Conduct
- Employment Direction 6: Procedures for the Investigation and Determination of whether an employee is able to efficiently and effectively perform their duties;
- Employment Direction 26: Managing Performance in the State Service

The Review has developed draft documents with proposed amendments to each of the above instruments over the last quarter. The Review aims to consult further on these prior to finalising the amendments as part of its final report.

### 3.8 Draft Final Report Structure

The Review has developed a draft structure for its final report and reflected on the key themes, topics and observations that it proposes to include in its final report.

Critical analysis and deliberation on the many inputs, materials, perspectives that have been generously shared with the Review has been the key focus of attention over the last few months. The Review is committed to ensuring that its final commentary and recommendations are evidence based, future focused and pragmatic. This requires careful reflection and weighing up the benefits of various options for reform.

The Review is also working closely with its legal advisors to ensure that its commentary and disclosures are legally compliant.

### 3.9 Research

The Review has undertaken extensive research over the last quarter on other comparable reviews in other jurisdictions. These have provided valuable insights on issues of accountability, trust in the public service, risk management, systemic settings relating to child safety and wellbeing. The Review's final report will be informed by these considerations.

## 4. CONCLUSION

Since the 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 work will be informed by the feedback and insights shared by stakeholders, submissions provided to it, research accessed by it, site visits, future engagement sessions including with indigenous 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.