

Confidential

Assessment for the Premier of Tasmania

**Did any or all of six selected Secretaries potentially
breach the Code of Conduct?**

**Addendum to my report to the Premier dated 28
March 2024**

Mike Blake AM

16 June 2024

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Hon Jeremy Rockliff MP
Premier of Tasmania
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Dear Premier,

Addendum to the Blake report dated 28 March 2024 titled “Assessment for the Premier of Tasmania – Did any or all of six selected Secretaries potentially breach the Code of Conduct?” (the 28 March 2024 report)

Summary

This addendum to my report to you dated 28 March 2024 (this addendum) reports the outcome of my assessment of additional relevant information I have considered to reassure myself regarding my conclusions in the 28 March 2024 report.

In the 28 March 2024 report I concluded, based on the assessments that I carried out as outlined in detail in that report, that:

Firstly, the conduct of these persons (that is the Secretaries) does not, potentially, breach the Tasmanian State Service Code of Conduct or, in the case of the Commissioner, neither the Tasmanian State Service Code of Conduct nor the code of conduct outlined in the *Police Service Act 2003*.

Secondly, that in relation to the persons mentioned in Chapter 5 (of the 28 March 2024 report) who acted for periods as Secretary of any of the above departments (including the Department of Communities), the conduct of these persons, working in their capacity as Secretary, does not, potentially, breach the Tasmanian State Service Code of Conduct.

In addition, I note that, for reasons set out in Chapter 5, I am unwilling to conclude in respect of actions by the former occupants of the above Offices.

Thirdly, in relation to all matters in the COI’s final report where findings were unable to be made (Volume 1, Chapter 5.1 Challenges we faced), I fully considered all matters and this did not change the conclusions that I arrived at as outlined above but resulted, for the reasons outlined in Chapters 4 and 6, in my Recommendations 1, 4 and 5. When considering the challenges faced, I also took into account Chapter 23 in Volume 8 Afterword.

As a result of the additional work that I considered necessary to reassure myself as outlined in this addendum, my first and second conclusions remain appropriate and therefore unchanged.

Regarding my third conclusion, resulting from the briefing I provided to members of parliament on 17 April 2024 (the Briefing), I wrote to the Commission asking them – “Would the Commission, but for the challenges it faced as described in its report, have identified a finding of misconduct against any of the Secretaries?” They responded as follows:

The former Commissioners consider the sentence from their previous letter to you which you identify answers this, namely: “the Commission did not identify any specific

findings of misconduct against any specific person that it would otherwise have intended to make but for the challenges presented by the Act¹.”

When finalising the March 2024 report, my interpretation of this sentence was that, despite the challenges faced, no specific findings of misconduct had been or would have been made. However, in view of the uncertainty expressed during the Briefing, I sought independent advice as to the meaning of this sentence.

That advice, which considered the full submission (all of Appendix B in the March 2024 report) from the Commission, and drew my particular attention to the final paragraph at page 3 of the Commission’s submission (my underlining for emphasis), is:

It was for all these reasons that the Commission’s report notes that the broader interpretation of misconduct put forward by the State on behalf of individuals made it difficult, and in some cases impossible, for the Commission to make some of the findings it might otherwise have made (Executive Summary, page 25). At the same time the Commission did not identify any specific findings of misconduct against any specific person that it would otherwise have intended to make but for the challenges presented by the Act.

Therefore, my interpretation of this sentence in the March 2024 report was incorrect. Instead, I now believe that:

- what the Commission stated is that, on the evidence before them, they did not identify allegations of any² specific misconduct against any specific persons (including the Secretaries);
- it is supposition as to whether any findings of misconduct against any specific person would have been made if the Commission had adopted a different procedural fairness process; and
- it is supposition to infer that the Commission, had it not been faced with the challenges presented by the Act, might have, or might not have, made an allegation of a finding of misconduct against any Secretary.

I repeat the first recommendation made in the March 2024 report:

That Government take note of the matters raised by the Commissioners as these relate to changes needed to the COI Act and initiate changes to this Act to address these.

As a result of the additional work that I have carried out as outlined in section 10 of this addendum, I saw no need to read the transcripts and witness statements brought to my attention during the Briefing and discussed in section 4 of this addendum. It is my opinion that doing so would effectively be re-examining, including the possible holding of hearings, and therefore re-prosecuting all the work carried out by the Commission and then undergoing problems like those they experienced as outlined in Volume 1 of their report. Despite this, and as already noted, I remain confident that my conclusions as outlined in 1 and 2 above remain appropriate and therefore unchanged.

¹ *Commissions of Inquiry Act 1995* (the Act).

² Other than the one finding of misconduct referred to in Volume 6 of their report – refer page 14 in Chapter 1 Establishment, scope and conduct in Volume 2 of the COI report. Of relevance was the Commission’s advice to me that this one finding did not relate to any Secretaries.

1. Introduction

I refer to your letter to me dated 18 April 2024 in which you supported me to identify and access whatever additional relevant information I feel necessary to reassure myself. Your letter was in response to my concern that following my briefing to Members of the House of Assembly and of the Legislative Council (the Members) on 17 April 2024 (the Briefing) that I did not have access to some material that may have been relevant to my terms of reference.

I have now completed the additional work that I considered necessary to reassure myself as outlined in this addendum to you. The Briefing referred to above raised several matters not all of which I regard as relevant to reassuring myself. As a result, this addendum focusses only on those matters that I regard as relevant to the 28 March 2024 report and to my original terms of reference.

2. Confidentiality

This opportunity is taken to note from my original terms of reference – refer Appendix A in the 28 March 2024 report – clause 3 under the heading ‘Matters of process’ that I was to ‘ensure that where necessary appropriate confidentiality arrangements are made for persons assisting the review³’. In this respect, unless otherwise stated, all my dealings with the Secretaries who were the subject of my assessment and my engagement with the Commission⁴ were confidential unless explicitly noted otherwise.

3. Conclusions

This addendum concludes by reference to the primary conclusions reached in the 28 March 2024 report and any other relevant matters considered in this addendum.

4. Transcripts and witness statements about which I was unaware

During the Briefing I became aware of transcripts and witness statements that were no longer on the website established by the Department of Premier and Cabinet (DPAC) for matters to do with the work of the Commission. I have confirmed with the Commission which those transcripts and statements were⁵. That is, in response to my request of the Commission to access these, the Commission, through their former General Counsel, advised me that:

Regrettably, the former Commissioners have no legal basis upon which to provide these materials to you. We recommend you request the Tasmanian Government, which now has custody of the Commission of Inquiry’s records, to provide these extracts of the transcripts or the witness statements. We confirm you are welcome to use the summary table we provided to you, which was based on publicly available information, [and provide it] to the Tasmanian Government to make the identification and provision of these witness statements easier.

On further reflection, and as discussed in section 10 in this addendum, I decided that I would not seek access from the Tasmanian Government for these documents.

³ My assessment.

⁴ That is, the Commissioners of the Commission of Inquiry into the Tasmanian Government’s response to child sexual abuse in institutional settings regarding the actions of (selected) Heads of Agency (the Commission).

⁵ Details have been provided to my contact at DPAC.

5. The second Bowen report

During the Briefing, mention was made of a second Bowen report. I was unaware that there were two Bowen reports. I have now been briefed on the second Bowen report from which I concluded the matter investigated was not relevant to my terms of reference. For privacy reasons I did not seek a copy.

6. Findings in the Bartlett and Bowen reports

During the Briefing, it was suggested to me that the findings of the Bartlett and Bowen reports were heavily criticised and disputed and was I aware of this? I received the Bowen and Bartlett reports on a confidential basis, and I am not prepared to discuss what was in them other than as already referred to in the 28 March 2024 report.

7. Questions I posed of the Commission during my assessment

At the Briefing I was asked to provide a copy of the nine questions I posed of the Commission during my assessment. On 17 April, following the Briefing, I advised the Members by email that:

"I have reflected on the nine questions I asked of the Commission, and I have decided it would not be appropriate for me to advise you of these questions other than questions 1 and 3 which were:

- Question 1 sought to confirm the names of the Secretaries that I had concluded were within scope of my assessment. This was confirmed by the Commission; and
- Question 3 asked "Were any of them included on the so-called list of 22 (which I have formally sought access to without success to date)" – I noted three things in relation to this question (my emphasis by underlining):
 - when I discussed my report with you (the Members) today, I indicated I hadn't asked that question. My apologies but in fact I did. My sincere apologies for misleading you all today;
 - the Commission responded that they made no finding in relation to any Secretary – a fact that I included at least three times in my report (that is, the 28 March 2024 report); and
 - however, I withdrew my request of DPAC for the list of 22 as I now did not need it."

In preparing this addendum, I reflected on whether the other seven questions, along with the Commission's response to them, should remain confidential, and I concluded, based on the paragraph outlined on section 2 on page 4 of this addendum, that they remain confidential.

8. Advice to me by the Solicitor-General

I did not seek advice from the Solicitor-General. It was never my intention to seek advice noting that, not being part of the Crown, I am not entitled to use their services.

I sought a submission from the Solicitor-General who declined to make one. This is stated in my 28 March 2024 report.

9. Challenges that the Commission faced

You will be aware that my original terms of reference (TOR) included the need for me to "Engage with the former Commissioners of the Commission of Inquiry so far as possible 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 Challenges we faced) are fully considered."

At the time of submitting the 28 March 2024 report to you, I believed I had satisfactorily dealt with this aspect of my TOR. However, because of matters raised at the Briefing, I saw the need to carry out

additional work to reassure myself regarding the challenges faced. This additional work is outlined in section 10 below.

10. Other matters I considered

As noted in section 9 above, I carried out additional steps which are outlined here:

- a) To seek read only access from the Commission to the list of 22 people who received a notice of an allegation of misconduct⁶. The Commission responded as follows:

“Regrettably, the former Commissioners have no legal basis upon which to provide this information to you. We recollect that you may have sought this information from the Tasmanian Government, but they may have declined to provide it to you. Otherwise, we recommend that you request the Tasmanian Government provide this information to you.”

As a result of this response, because the Commission had already advised me that they had made no findings in relation to any Secretary and resulting from my carrying out the further inquiries outlined below, I concluded it unlikely that the list of 22 included any Secretary and I did not seek a copy of, or access to, the list.

- b) During my assessment leading to completion of the 28 March 2024 report, I had been informed by the Commission that they had made no findings in relation to any Secretary – refer Section 7 above. This response, along with the other work that I carried out in making my assessment (refer the 28 March 2024 report) led me to conclude that the conduct of the Secretaries did not potentially amount to a breach of the State Service Code of Conduct or the Code under the *Police Services Act 2003*.

However, I acknowledge that a question posed challenging this conclusion during the Briefing warranted an answer. Therefore, following the Briefing, I wrote to the Commission asking them – “Would the Commission, but for the challenges it faced as described in its report, have identified a finding of misconduct against any of the Secretaries?” They responded as follows:

The former Commissioners consider the sentence from their previous letter to you which you identify answers this, namely: “the Commission did not identify any specific findings of misconduct against any specific person that it would otherwise have intended to make but for the challenges presented by the Act.”

- c) During the Briefing there was discussion as to the interpretation of the concluding sentence in (b) above taken from the Commission’s submission to me and included as Appendix B of the 28 March 2024 report. That is, “At the same time, the Commission did not identify any specific findings of misconduct against any specific person that it would otherwise have intended to make but for the challenges presented by the Act.”

My original interpretation of this sentence, when read alongside the Commission’s response to me that they had made no finding in relation to any Secretary, was that, despite the challenges faced, no specific findings of misconduct had been or would have been made. However, in view of the uncertainty expressed during the Briefing, I decided to seek

⁶ Refer page 14 in Chapter 1 Establishment, scope and conduct in Volume 2 of the COI report.

independent advice as to the meaning of this sentence and I also asked, “does it infer that the Commissioners might, or would, have made a misconduct finding or not and if yes, why,”

That advice has been received. It considered the full submission (all of Appendix B) from the Commission, and drew my particular attention to the final paragraph at page 3 of the Commission’s submission. The advice is (my underlining for emphasis):

It was for all these reasons that the Commission’s report notes that the broader interpretation of misconduct put forward by the State on behalf of individuals made it difficult, and in some cases impossible, for the Commission to make some of the findings it might otherwise have made (Executive Summary, page 25). At the same time the Commission did not identify any specific findings of misconduct against any specific person that it would otherwise have intended to make but for the challenges presented by the Act.

Therefore, I acknowledge my original interpretation of this sentence was incorrect. Instead, I now believe that:

- what the Commission stated is that, on the evidence before them, they did not identify any⁷ specific misconduct against any specific persons (including the Secretaries);
- it is supposition as to whether any findings of misconduct against any specific person would have been made if the Commission had adopted a different procedural fairness process; and
- it is supposition to infer that the Commission, had it not been faced with the challenges presented by the Act, might have, or might not have, made any allegation of finding of misconduct against any Secretary.

I repeat the first recommendation made in the March 2024 report:

That Government take note of the matters raised by the Commissioners as these relate to changes needed to the COI Act and initiate changes to this Act to address these.

As a result of the additional work that I have carried out as outlined above, I saw no need to read the transcripts and witness statements brought to my attention during the Briefing and discussed in section 4 of this addendum. It is my opinion that doing so would effectively be re-examining, including the possible holding of hearings, and therefore re-prosecuting, all the work carried out by the Commission and then undergoing problems like those that the Commission experienced as outlined in Volume 1 of their report.

Despite this, I remain confident that my first and second conclusions, as outlined in my 28 March 2024 report, remain appropriate and therefore unchanged.

11. Conclusions

In my 28 March 2024 report I made the following conclusions based on the assessments that I carried out as outlined in detail in that report:

Firstly, the conduct of these persons (that is the Secretaries) does not, potentially, breach the Tasmanian State Service Code of Conduct or, in the case of the Commissioner, neither the Tasmanian State Service Code of Conduct nor the code of conduct outlined in the *Police Service Act 2003*.

⁷ Other than the one finding of misconduct referred to in Volume 6 of their report – refer page 14 in Chapter 1 Establishment, scope and conduct in Volume 2 of the COI report.

Secondly, that in relation to the persons mentioned in Chapter 5 who acted for periods as Secretary of any of the above departments (including the Department of Communities), the conduct of these persons, working in their capacity as Secretary, does not, potentially, breach the Tasmanian State Service Code of Conduct.

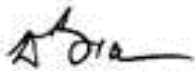
In addition, I note that, for reasons set out in Chapter 5, I am unwilling to conclude in respect of actions by the former occupants of the above Offices.

Thirdly, in relation to all matters in the COI's final report where findings were unable to be made (Volume 1, Chapter 5.1 Challenges we faced), I fully considered all matters and this did not change the conclusions that I arrived at as outlined above but resulted, for the reasons outlined in Chapters 4 and 6, in my Recommendations 1, 4 and 5. When considering the challenges faced, I also considered Chapter 23 in Volume 8 Afterword.

Despite this, and as already noted, I remain confident that my conclusions as outlined in 1 and 2 above remain appropriate and therefore unchanged.

Regarding my third conclusion, I believe the additional work outlined in section 10(b) and (c) above clarify my views regarding challenges faced by the Commission and I see no value in pursuing this further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mike Blake', with a stylized flourish at the end.

Mike Blake AM
16 June 2024