

Allison Waddington

From: Rob Valentine
Sent: Wednesday, 24 July 2019 3:38 PM
To: pod
Subject: Submission to Legislative Council Select Committee - Production of Documents

Hon. Ruth Forrest MLC
 Chair
 Legislative Council Inquiry – Production of Documents

Dear Chair,

Thank you for the opportunity to provide a submission to the Production of Documents Inquiry, with the following Term of Reference:

The options for an agreed process to resolve disputes that arise regarding the production of papers, documents and records between the Government and the Legislative Council and its Committees including joint Committees where Members of the Legislative Council have membership.

Given my involvement with the production of the Legislative Council's Government Administrative Committee "A" Special Report on Failure to Provide Documents, the basis for the Inquiry on this matter, I simply point the Inquiry to the contents of that Report and my contribution in the Chamber on the consideration and noting of that Report. For ease of reference, the relevant component of my contribution is reproduced in the text below:

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Read into Hansard on Tuesday 21st May 2019

MOTION

**Failure to Provide Documents – Special Report of Government Administration Committee A -
 Consideration & Noting**

...

[5.06 p.m.]

Mr VALENTINE (Hobart) –

...

To the matter at hand - the Government Administration Committee A Special Report on Failure to Provide Documents. The member for Murchison has covered a fair bit of ground on this matter and I thank her, given she is the Chair of the committee, for bringing this matter on. It is an important matter that we are dealing with here today.

It is important to have the debate given the nature of it, but the subsequent work on this matter is even more important to find some resolutions to the issues that exist. Getting effective and good information during the inquiry helps the committee to come out with the findings it needs to and the recommendations that follow.

This House needs to be able to fulfil its parliamentary role on behalf of the people of Tasmania. In undertaking that role, I believe there is moral duty for this House to be able to do so properly, to scrutinise all aspects of government activity that impacts upon the people of this state. In the acute health services inquiry that we were undertaking, for the part that I was involved in, it certainly is important. It is important that we be able to analyse information in light of all the available information that we have at our disposal to come out with good recommendations that we can put forward and that one would hope the Government then takes notice of and moves to address the issues that exist.

The Government's reasoning that it was important that the KPMG report not be released as it would fetter the opportunity for the Government to receive frank and fearless advice, to my mind, is not right. I will go to page 11 item 13 in the report, where on 16 November, I said to the minister -

We would really like a copy of that report. It is of interest to the committee, as you can appreciate. Are you saying you are not prepared to release that report?

In response Mr Ferguson stated -

I am saying that. That is nothing new, with respect Chair. I am not prepared to provide you with a report I am not empowered to give to you.

That is an interesting interpretation - 'I am not empowered to give to you'. It is as if the minister is saying, 'No, there is something else that prevents me from doing so'.

The KPMG report was commissioned. As I think the member for Murchison may have already stated, it was commissioned by the Tasmanian Health Service or DHHS. We do not have the report, so we do not fully know how that came about. It certainly was not commissioned by Cabinet as far as I am aware.

It would seem that the minister is relying on Cabinet telling him not to release it, yet it was not Cabinet that commissioned the report, so I think that is something that we have to understand. He says -

It is internal budget management advice. Obtaining external advice that has been longstanding practice in Health and other agencies for decades. It is the case in the private sector. Somebody became aware of the report and attempted to RTI it, but it was assessed under RTI as not for disclosure.

The member for Murchison has gone through that. Quite clearly, RTI does not apply to this House; it may to the general public, but it does not to this House. We are part of the parliament. We are not a member of the public requesting a document or information. Part of the duties of this House is to act as a House of review. I think that needs to be stressed.

We cannot fulfil our parliamentary role if we do not have access to the information we believe will indeed assist us in our duty. He goes on to say -

As I explained at my previous hearing in providing evidence, governments need to be able to take advice.

I am sure that members of the Legislative Council would want to think that government does take advice; so when you seek advice, you need to know it is going to be proper advice - frank and fearless. When you start releasing advice you have been provided with, it actually compromises your ability to get advice in future. It will change the behaviour of the person providing advice if they think, 'this might be released; I might not be quite so frank and fearless'.

I just want to take members to the State Service Act, Part 2, section 7, State Service Principles. I believe these principles are very relevant -

(1) The State Service Principles are as follows:

(a) the State Service is apolitical, performing its functions in an impartial, ethical and professional manner;

This is the State Service. This is not executive government we are dealing with. Under (d) it states - the State Service is accountable for its actions and performance, within the framework of Ministerial responsibility, to the Government, the Parliament and the community.

If we look at that within the framework of ministerial responsibility, a minister is not allowed to mislead parliament, so it is obvious those working within State Service departments under ministerial control have similar strictures placed upon them.

I will read a couple of other parts of these principles -

(e) the State Service is responsive to the Government in providing honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;

(f) the State Service delivers services fairly and impartially to the community;

We represent the community here. We are here because we were chosen by the community to undertake the review processes we have here, and we are the community in that sense.

Section (9) about the State Service Code of Conduct -

(1) An employee must behave honestly and with integrity in the course of State Service employment.

(2) An employee must act with care and diligence in the course of State Service employment.

(10) An employee must not knowingly provide false or misleading information in connection with the employee's State Service employment.

(13) An employee when acting in the course of State Service employment must behave in a way that upholds the State Service Principles.

Telling half the story to a direct question is not really an option for a state servant and one extrapolates from that, if that is the case for a state servant, a minister must behave in a similar fashion. To those working for you, you cannot say, 'You need to have these strictures applied and make sure you provide frank and fearless advice' and then have the minister not following through and providing the same advice to this Chamber, Parliament.

We need to understand it is beholden on the minister, as a person chosen by the members of the public to represent them, that he too in this case, any minister really, needs to make sure they are providing the advice the parliament needs to be able to make judgments on things.

We need a public service that is always frank and fearless. The State Service Code of Conduct is encompassed in the State Service Act and public servants are well aware of these things. They are, and there are significant penalties for breaching the code. The penalties are mentioned under section (10) -

The Minister may impose one or more of the following sanctions on an employee who is found under procedures established under subsection (3), to have breached the Code of Conduct - counselling; a reprimand; deductions from salary by way of fine not exceeding 20 penalty units; reduction in salary within the range of salary applicable to the employee; reassignment of duties; reduction in classification; termination of employment in accordance with section 44 or 45.

It is significant. If public servants are expected to do this, it is really important we find a way through this impasse we have hit and for ministers and members of Government providing advice to committees like this inquiry. It is really important they too follow those same principles. It is do as I do, not as I say.

As for the email in which we requested access to the report - and the member for Murchison indeed mentioned this in her offering - I rang the minister on that particular day, 7 December 2018, to discuss the release in camera of the KPMG report -

Ms Forrest - At the request of the subcommittee.

Mr VALENTINE - Yes, that is right, at the request of the subcommittee. I was following my duty, but he said he would provide it under those circumstances. As such, I asked for his commitment to that be provided in writing.

Why would I have written to the committee if I thought the minister was not going to produce the report? Why would I bother writing the email? Why would I want to fabricate that? What was it that I heard that led me to believe the report was to be produced in camera?

More to the point, what was it the minister misheard, that he was saying he would not produce it? And why would I ask the minister to confirm it in writing, and why would I agree to an extension so he could do that? It really does not make sense. Obviously, I cannot speak for the minister as to what happened. I am not in his mind to know exactly what happened on that day, whether there was some other pressure that was on him when he was told to turn it around or whatever. To be quite honest, there is not much point in chasing too hard down that line. That is not necessarily going to get us the outcome that we want, which is the report.

I think it is important we follow this up in the manner that is going to be brought before us after the debate on noting this report. It is important we follow through with this. We know it also has happened with the Public Accounts Committee and the Treasurer, as is in fact mentioned in the report.

This House has to be allowed to do its job. If we cannot expect information to be coming forward that is not Cabinet-in-confidence for a start, but is merely, as the minister points out, for the management of budgets - if you look at the terms of reference that exist for the inquiry we have undertaken, budgetary information -

- (1) Current and projected state demand for acute health services;

The report could have had something to do with demand.

- (2) Factors impacting on the capacity of each hospital meet the current and projected demand in the provision of acute health services;

It could have had something to do with that -

- (3) The adequacy and efficacy of current state and commonwealth funding arrangements;

It could have had something to do with that -

- (4) The level of engagement with the private sector and the delivery of acute health services;

Maybe, not so much that -

- (5) The impact, extent of and factors contributing to adverse patient outcomes in the delivery of acute health services;

If you do not have the budget to do certain things, it could have had something to do with that.

There is no question in my mind that the report was quite fundamental to the terms of reference we were undertaking, given that the minister himself in his response to us said that it was for budgetary advice/management advice. Clearly, it was all about budgets.

I ask honourable members to support the next motion to come forward. To do that is to really improve our lot going forward for any inquiry we undertake and ensure we get the right information to be able to make the right findings or make the right recommendations at the end of the day.

While I am a little confused as to why the minister continued to deny us access to the report, I thank the minister for attending the inquiry - a lot of ministers do not take the time and effort as this minister did. His particular view on life when it comes to the production of reports certainly differs from our view. I ask you to support further work in this space so that we can go forward with a knowledge that we will get all the information we need to do our work.

In the final recommendation in the report, the subcommittee recommends that -

the Legislative Council consider an effective mechanism to deal with the issue of ongoing disputes arising between the Government and Committees of the Parliament of Tasmania in relation to the production of papers and records.

It is simple really. Let us hope a mechanism can be agreed to. I look forward to seeing the outcome of such a committee. I know that in other places things have been tried. Different models have been put in place. There is a way through this, but the job of this Chamber relies on access to those sorts of documents

to be able to do its job properly. Otherwise, why have a Chamber like this to review the actions and workings of government and yet not obtain the documents to do so?

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Report noted.

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Should the Inquiry believe I may have something further to add that is of relevance I am certainly happy to do what I can to oblige.

Kind Regards

Rob

The Hon. Rob Valentine MLC

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