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**Parliament of Tasmania**

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**Legislative Council**

**SELECT COMMITTEE**

**FINAL REPORT ON**

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**PUBLIC SECTOR EXECUTIVE  
APPOINTMENTS**

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**Members of the Committee**

**Hon. Paul Harriss MLC (Chair)**

**Hon. Greg Hall MLC**

**Hon. Jim Wilkinson MLC**

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## **APPOINTMENT AND TERMS OF REFERENCE**

On Tuesday, 4 May 2010 the Legislative Council resolved that this Select Committee, originally appointed on Wednesday, 11 June 2008 to inquire into and report, *inter alia* upon Public Sector Executive Appointments, be re-established, and that the Minutes of Proceedings of, and evidence received by that Committee be referred to the re-established Committee with power to send for persons and papers, with leave to sit during any adjournment of the Council, and with leave to adjourn from place to place, with particular reference to -

- (1) Best practice for the appointment of individuals to fill senior Tasmanian public sector executive positions and that the circumstances surrounding the appointment of a magistrate in Tasmania in 2007 be examined; and
- (2) any other matters incidental thereto

The re-established Committee membership as determined by Order of the Legislative Council is Hon. Paul Harriss MLC (Chair), Hon. Greg Hall MLC; and, Hon. Jim Wilkinson MLC.

## **PROCEEDINGS**

On 13 May 2010 the Committee presented its Second Interim Report to the Legislative Council.

Following the presentation of the Second Interim Report, the Committee has met on four occasions, but has not taken any further evidence.

At its meeting on 13 September 2011 the Committee resolved to approve this Final Report for presentation to the Legislative Council.

## **DISCUSSION**

The work of this Committee has, since its establishment, been the subject of considerable public discussion and debate. The Committee itself has also been the subject of criticism from individuals within the Executive arm of Government. It is not the intention of this Committee to engage in endless debate about the criticisms which have been levelled against it.

However, as the Committee concludes its inquiry, it is pertinent to make some observations about the longer term outcomes of that inquiry.

First and foremost, it is no coincidence that better processes relating to public sector executive appointments in Tasmania were introduced following serious matters identified in the two Interim Reports of the Committee. The process to appoint the current Police Commissioner is a striking example of how such matters are now handled in contrast with the shambolic processes inquired into by this Committee.

Further, on 21 December 2009, the then Premier, the Hon. David Bartlett MP, issued Ministerial Direction 17 *Senior Executive Service and Equivalent Specialist Officers – Administrative Arrangements and Conditions of Service*. Again, it appears that this document was the product of the matters highlighted in the first Interim Report of this Committee and the revelations resulting from its on-going inquiry in 2009.

The Committee reaffirms the findings and recommendations in the two Interim Reports previously presented to the Legislative Council. Unfortunately, the State Government has chosen not to implement all those recommendations and the Committee again urges it to address the outstanding matters recommended in the Interim Reports.

In particular, the Committee draws the State Government's attention to Recommendation No. 12 in its first Interim Report:

*"The Committee recommends that the Legislative Council do call upon the Government as a matter of legislative priority, to replace the current State Service Act 2000 with a Public Sector Management Act along the lines of those in place in Western Australia and New Zealand. One of the central features of such a legislative model must be the appointment of a Public Sector Standards Commissioner, reporting directly to Parliament, with jurisdiction to prepare shortlists of suitable candidates to all public sector executive appointments, up-to and including Heads of Agency, for Ministerial approval. Ministers should have the power to refuse such shortlists and request replacement short-lists, on the proviso that they publish their reasons for so doing in the Gazette."*

As pointed out at the time, this recommendation was made on the basis of evidence presented by the Auditor-General for Tasmania, Mr Mike Blake. The Auditor-General contended that the Western Australian system represents a world's-best-practice model for such appointments.

The Government rejected that recommendation and, despite a recommendation in the Committee's second Interim Report that it reconsider its position, there is no indication that the Government intends to affect the changes.

**Hon Paul Harriss MLC (Chair)**

**14 September 2011**

## **APPENDIX 1 ..... Minutes of Meetings**

### **LEGISLATIVE COUNCIL SELECT COMMITTEE PUBLIC SECTOR EXECUTIVE APPOINTMENTS MINUTES**

**TUESDAY 1 SEPTEMBER 2010**

The Committee proceeded to business at 9.00 a.m. in Committee Room 2, Parliament House, Hobart.

#### **Members Present**

*Mr Harriss*  
*Mr Wilkinson*  
*Mr Hall*

#### **In Attendance:**

Mr Tom Wise (Secretary)

#### **Confirmation of Minutes:**

Mr Wilkinson moved that the minutes of the meeting of 10 May 2010 be confirmed. – **CARRIED**

#### **Correspondence:**

The Committee received all incoming and endorsed all outgoing correspondence as circulated.

#### **Matters arising from Correspondence:**

**RESOLVED:** 'That the Secretary examine the relevant Hansard transcripts in relation to the matters raised in the letter from Mr Rhys Edwards and report to the next meeting.'

#### **Any Other Matters:**

**RESOLVED:** 'That before the next meeting Members consider whether to examine the appointment of the new Police Commissioner.'

**RESOLVED:** 'That before the next meeting Members consider whether to call Mr Stephen Estcourt to give further evidence.'

**RESOLVED:** *'That before the next meeting Members consider whether to examine any other matters.'*

**Next Meeting:** The next Committee meeting will be on a date to be fixed.

There being no further business, the meeting adjourned at 9.40 am.

**LEGISLATIVE COUNCIL SELECT COMMITTEE  
PUBLIC SECTOR EXECUTIVE APPOINTMENTS  
MINUTES**

**WEDNESDAY 24 NOVEMBER 2010**

The Committee proceeded to business at 9.30 a.m. in the office of the Hon Paul Harriss, Parliament House, Hobart.

**Members Present**

*Mr Harriss*

*Mr Wilkinson*

*Mr Hall*

**In Attendance:**

Mr Tom Wise (Secretary)

**Previous Minutes:**

The Committee **RESOLVED** that the Minutes of 1 September 2010 be adopted without amendment.

**Business Arising from the Minutes:**

The Committee **RESOLVED** that the Chair send a written response to Mr Rhys Edwards in the terms agreed to.

The Committee **FURTHER RESOLVED** that the committee not examine any of the matters mentioned at the previous meeting for possible consideration.

**Correspondence:**

The Committee **RESOLVED** to receive all inwards and endorse all outwards correspondence.

Inwards correspondence: *Letter dated 20 October 2011 from the Leader of the Opposition.*

**Business Arising from the Minutes:**

The Committee **RESOLVED** that the Chair send a written response to the Leader of the Opposition in the terms agreed to.

**Draft Final Report**

The Committee **RESOLVED** that the Secretary prepare a draft final report in the terms agreed to.

**Next Meeting**

The Committee **RESOLVED** to meet again on a date to be fixed to consider the draft final report.

**Adjournment**

At 9.40 p.m. the Chair declared the meeting adjourned.

**LEGISLATIVE COUNCIL SELECT COMMITTEE  
PUBLIC SECTOR EXECUTIVE APPOINTMENTS  
MINUTES**

**THURSDAY 14 JULY 2011**

The Committee proceeded to business at 9.36 a.m. in the office of the Hon Paul Harriss, Parliament House, Hobart.

**Members Present:**

*Mr Hall  
Mr Harriss  
Mr Wilkinson*

**In Attendance:**

Mr Tom Wise (Secretary) and Mrs Mann

**Previous Minutes:**



The Committee **RESOLVED** that the Minutes of 24 November 2010 be adopted without amendment.

**Correspondence:**

The Committee **RESOLVED** to endorse all outwards correspondence.

**Outwards Correspondence:**

- *Letter to the Hon. Will Hodgman dated 24 November 2010 advising his request for inquiry into the recent appointment of the new Commissioner for Children will not be undertaken*
- *Letter to Mr Rhys Edwards dated 24 November 2010 regarding his response to the Second Interim Report*

**Draft Final Report:**

The Committee **RESOLVED** to make the amendments suggested by the Chair to the Draft Final Report and that the amended Draft Final Report be circulated to Members prior to a meeting to approve the Draft Final Report.

**Next Meeting:**

The Committee **RESOLVED** to meet again on a date to be fixed to consider the draft final Report

**Adjournment:**

At 9.44 p.m. the Chair declared the meeting adjourned.

**LEGISLATIVE COUNCIL SELECT COMMITTEE**

**PUBLIC SECTOR EXECUTIVE APPOINTMENTS**

**MINUTES**

**14<sup>th</sup> September 2011**

The Committee proceeded to business at 3.00pm

**Members Present:**

Mr Hall )  
Mr Harriss ) *teleconference*  
Mr Wilkinson ) *Committee Room 1*  
*Parliament House, Hobart*

**In Attendance:**

Mr Tom Wise (Secretary) and Mrs Mann

**Minutes:**

The Committee **RESOLVED** that the Minutes of 14<sup>th</sup> July 2011 be adopted without amendment.

**Business:**

The Secretary tabled all the papers to be presented with the Committee's Final Report.

The Committee **RESOLVED** that the papers so tabled by the Secretary be presented with the Final Report.

The Committee **FURTHER RESOLVED** unanimously that any documents, submissions, correspondence, transcripts or other papers not so tabled shall remain strictly confidential.

**Draft Final Report:**

The Committee **RESOLVED** that the Draft Final Report be approved for presentation.

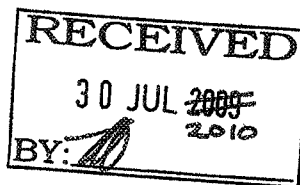
The Committee **FURTHER RESOLVED** that Mr Wilkinson be authorized to present the Final Report to the President on Friday 16<sup>th</sup> September 2011 in the President's Rooms.

**Adjournment:**

At 3.12pm the Committee adjourned *sine die*.

## Department of Premier and Cabinet

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Mr Tom Wise  
Clerk of Committees  
Select Committee on Public Sector Executive Appointments  
Parliament House  
Hobart TAS 7000

Dear Mr Wise

I write in response to a letter from Mr Harriss MLC enclosing a copy of the Committee's Second Interim Report.

Public servants, myself included, take very seriously the accountability to both houses of Parliament and the need to provide accurate and helpful testimony in committee inquiry processes. Parliamentary inquiries are by their nature, very free-ranging and evidence is not tested or its admissibility governed in the same way as it is in a court.

Giving evidence under oath is the most serious of undertakings and adverse findings against witnesses have the capacity to seriously damage reputations. It is clearly a matter of natural justice that where findings or "committee comments" are made which do not accurately reflect the evidence that there must be an opportunity to respond to such findings and comments and an obligation on the Committee to correct the record.

In this context, I would like to provide the Committee with some additional commentary on its Second Interim Report. I feel that some of the inconsistencies I have identified are the product of the attempt to construct a timeline in a shortened format, resulting in unintentional inaccuracies derived from a number of fragments of evidence from a number of different parties. I hope that the observations I make will help construct a more definitive record.

### CHRONOLOGY OF EVENTS (P 6-11)

13 October 2008

RHYS EDWARDS advised PREMIER to replace A/C HINE with MCCREADIE.

The Committee appears to conclude that there was a formal advisory from the Secretary of the Department of Premier and Cabinet to the Premier on this date advising him to appoint Mr McCreadie. This is not the case. As outlined in my testimony, there were discussions with the Premier about the option of appointing a temporary Commissioner whilst the Jack Johnston matter was dealt with. As stated, there was, by virtue of his recent retirement, a former Commissioner potentially available with the track record and experience to do the job. My "advice" to the Premier as such was that McCreadie would be worth approaching to see if he had any interest in the job.

15 October 2008

A/C HINE rang EDWARDS and asked if he knew anything about MCCREADIE returning. EDWARDS said "no".

This is a misrepresentation of the evidence provided to the Committee by me on two occasions (p66 of transcript of 6 November 2009 and p26 of transcript of 17 November 2008). Mr Hine's question to me was about a story running in the Examiner about the likely appointment of Richard McCreadie. Mr Hine's question to me on the telephone was "was I aware of a story". The answer to that question is "no", I was not aware of the story running in the Examiner. As my evidence states,

*Mr EDWARDS - My recollection is that he contacted me to say, 'Was I aware of a story running in the Examiner that the Government was intending to appoint Richard McCreadie.'*

*Mr WILKINSON - Your answer to that?*

*Mr EDWARDS - Which I have given in evidence previous to this committee was, 'No, I was not aware of the story running in the Examiner.' My recollection is that Darren said, 'Do you know what's going on?' I said, 'If an appointment is to be made around a temporary commissioner, the Premier would discuss it with you.' I think later that night arrangements were made for a meeting between Darren Hine and the Premier. I think that happened on Thursday, 16 October.*

This issue arises again in the Committee Comment on p14. The Committee asserts that I have deliberately misled Acting Commissioner Hine. You asked me "So you knew nothing about the intended return of Richard McCreadie". My answer to your negative question was a negative. Put simply when you asked me whether I did not know something, I answered 'no', that is, your assertion was incorrect and I was aware that the Government was considering appointing an acting Commissioner. As I correctly point out "...that didn't mean that it was my job to tell the Acting Commissioner Darren Hine of that" (transcript 17 November 2008 p26). It is clear when a decision had been made, Mr Hine was contacted to set up a meeting with the Premier and the Premier informed him of that decision.

On this basis I do not believe that it is fair and reasonable that the Committee makes a finding that questions the extent to which my evidence constitutes an appropriate level of disclosure.

I also find it extremely disconcerting that the evidence reprinted on p14 purports to be the evidence in an exchange between myself and the Chair. Upon closer examination it appears that the evidence is not in sequential order. The first comment attributed to me actually occurs later in the hearing. This seems a grave and unacceptable error. I cannot imagine why the Committee would wish to present evidence in this potentially misleading way.

It is also unacceptable to assert that I was "tasked" with the abortive appointment process. I was asked to have a conversation with Mr McCreadie to ascertain whether he would be interested in talking to the Premier about a temporary appointment as Acting Commissioner. The process for appointment is outlined in the Act. It is not the prerogative of the Secretary of the Department of Premier and Cabinet.

15 October 2008

SIR MAX BINGHAM called EDWARDS, MCCREADIE appointment discussed.

I do not understand how this conclusion has been reached when in response to general queries about whether I spoke to Sir Max Bingham I said *"I took a phone call from Max Bingham at some stage when I think he phoned me to express his concern about what was happening with Jack Johnston"* (page 62).

In my latter evidence at page 78-79 I clearly say that *"My recollection of the phone call was that it was about issues unfolding with Jack Johnston. He did not speak to me about the appointment of Richard McCreadie"*.

The Committee does not appear to have had any other evidence about the content of this phone conversation. I note that Mr Ellis purports to have discussed the matter at a meeting with the Premier, the Solicitor General and me. I can state that I did, at that meeting, confirm that I talked to Mr Damian Bugg as part of the process for considering the appointment of a temporary commissioner. I did not state that I consulted with Max Bingham, because I did not. The Solicitor-General attended that meeting and concurs with this account.

22 October 2008

DPP claims EDWARDS was in SG's office next door (p 54). EDWARDS denies being there (p 74)

The implication of this statement is that I have not told the truth. I do not need to "deny" being in the Solicitor-General's office as I was not there. Again, the Solicitor-General can affirm that to be the case.

22 October 2008

EDWARDS handed the DPP's clarification to the PREMIER after question time, EDWARDS is dismissive of the clarification

What I actually said was *"...I am not sure that it clarified anything..."* How the Committee asserts that this is dismissive I do not know. I am unclear how the Committee is able to make an assessment of my state of mind. As the actual document in question was not shown to me at the Committee hearing and does not appear to be in evidence before the Committee, I am not sure how the Committee has made a judgement about whether it was useful in clarifying anything either.

24 October 2008

EDWARDS confirmed that he had sought the view of BINGHAM and former DPP BUGG prior to recommending the appointment of MCCREADIE

I reiterate my earlier comments about the phone call with Sir Max Bingham. I did not confirm at the meeting with the Premier, Solicitor General and DPP that I had sought the views of Max Bingham. I did confirm that I had sought the views of Damian Bugg, former Commonwealth Director of Public Prosecutions and former Tasmanian DPP.

COMMITTEE COMMENT (p 12)

There is one last matter I wish to raise which is the most serious and grave conclusion reached by the Committee, one that is not substantiated by any evidence contained in either of the Interim Reports. (Committee Comment page 12).

As stated in my evidence, I was not aware that any police files had been handed to the Committee (see Transcript p 62).

Acting Commissioner Hine states in his evidence that he had never informed the Government or anyone within Government that he had given the files over.

I therefore fail to see how the Committee draws the inference that somehow this was known by the Government and was somehow linked to a decision to appoint a temporary Acting Commissioner.

This Committee comment is highly distressing to a career public servant with 15 years' service to the State of Tasmania. It has impugned my good reputation and I can see no basis for the Committee forming this view other than they heard in evidence of a "rumour"

*Mr MILLER - I just do not know. As I say, there was a story going around that the Government was not happy with Mr Hine for making the files available so readily. But that could be absolutely untrue. It could be absolutely true. I just do not know.*

In addition, there is in the Committee's commentary a linkage between when advice was provided to the Premier about McCreadie and the timing of charging of Mr Johnston. I cannot see any connection as I was never aware of when Mr Johnston was to be formally charged.

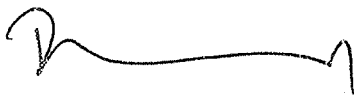
I find it remarkable that, in a statement from one of your own members, the Committee rightly downplays any comment provided by way of "rumour".

*Mr WILKINSON – If there is any rumour that can be substantiated we could probably listen to that, but as to rumours and speculation it is probably not going to get us far, unless you think otherwise....*

If the Committee has evidence that supports the Committee Comment on page 12 then it must, as a matter of procedural fairness disclose that evidence and its substantiation. If the committee has no such evidence then likewise, it must strike out that comment from its Second Interim Report.

In conclusion, I hope that the observations made here help clarify the Committee reporting process. There is an important obligation on public servants to cooperate fully with parliamentary inquiry processes. With that obligation comes a responsibility on the Parliament to use the information provided in a responsible and intelligent manner. If you have any further questions on matters outlined here, please do not hesitate to call me on 6233 3279.

Yours sincerely



Rhys Edwards  
**Secretary**

29 July 2010