

**DRAFT SECOND READING SPEECH**  
**HON ELISE ARCHER MP**

*Justice Miscellaneous (Commissions of Inquiry) Bill 2021*

*\*check Hansard for delivery\**

Madam Speaker, I move that the Bill now be read a second time.

Commissions of Inquiry, known in some jurisdictions as Royal Commissions, are established on an as-needs basis to undertake a forensic examination into a matter of public interest. They provide an important social function by providing the community with the opportunity to contribute to the subject matter of the inquiry which, in turn, assists to inform recommendations and government decisions.

Commissions of Inquiry are established to advise the Tasmanian Government on matters relevant to policy development and government processes. They are a powerful tool and what separates them from other inquiries and investigations is their ability to use powers normally only reserved for the courts, to examine matters of great importance and public interest.

Commissions of Inquiry are usually conducted in public, through open hearings. However, as we have learned through the conduct of the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse, not all members of the community wish or are able to share their experiences in a public forum by the very nature of the subject matter.

It is critical that Commissions of Inquiry are empowered to respect individuals' needs and ensure that all members of the community are supported to participate in the Commission's work and share their unique experiences and perspectives.

On 23 November 2020, the Premier announced the intention of the Tasmanian Government to establish a Commission of Inquiry to examine the responses of the Tasmanian Government to allegations of child sexual abuse in institutional settings. The Commission will commence its important work shortly and will be led by the Honourable Marcia Neave AO, assisted by former Family Court Justice the Honourable Robert Benjamin AM, and Professor Leah Bromfield who is one of Australia's leading child protection researchers with expertise in child protection systems.

The Commission of Inquiry will build on the investigation to determine the adequacy and appropriateness of the responses by the Department of Education to allegations of child sexual abuse in Tasmanian Government schools commenced by Professor Timothy McCormack and Professor Stephen Smallbone last year. I wish to take this opportunity to thank them for their work to date on this investigation and sharing their significant expertise.

The Commission of Inquiry will also continue the investigation into the responses of the Tasmanian Health Service and the Department of Health to allegations of child sexual abuse, particularly in the matter of James Geoffrey Griffin and the Launceston General Hospital; and the

responses of the Department of Communities Tasmania to allegations of child sexual abuse at Ashley Youth Detention Centre.

I would also like to thank Maree Norton and the team at the Department of Communities for the work they have done on their respective investigations to date as well.

The allegations of abuse arising from these institutions have shocked us all. We need to understand how these incidents have occurred and what we need to do to ensure that they do not occur again. There is no greater task of a government than the protection of Tasmania's children and the prevention of child sexual abuse.

The Tasmanian Government is committed to ensuring that children are safe from those who would perpetrate sexual violence and so they can be confident they will be provided every opportunity to achieve justice in whatever form they seek.

Madam Speaker, the Justice Miscellaneous (Commissions of Inquiry) Bill 2021 makes a number of important amendments to the *Commissions of Inquiry Act 1995*, the *Children, Young Persons and Their Families Act 1997*, the *Youth Justice Act 1997* and the *Public Interest Disclosures Act 2002* to ensure that Commissions of Inquiry are appropriately empowered to undertake their important work.

The Bill amends the *Commissions of Inquiry Act 1995* to clarify the Governor's power to amend or vary the matters which the Commission is directed to examine, including the power to appoint additional Commissioners to an established Commission of Inquiry.

Under the Bill, a Commission of Inquiry will be empowered to conduct its inquiry in any manner that it considers appropriate, subject to the requirements of procedural fairness, including the use of private sessions.

The Bill includes a number of amendments that support vulnerable witnesses to give evidence, including to –

- permit a witness to give evidence anonymously, including the use of pseudonyms and any other measure that will assist to prevent the direct or indirect identification of the witness; and

- provide for the use of special measures for the giving of evidence including, but not limited to, those available under the *Evidence (Children and Special Witnesses) Act 2001*, such as the use of witness intermediaries.

The Tasmanian Government's Witness Intermediary Scheme Pilot commenced on 1 March 2021 and is already being used in the north-west, north and south of the State, in police stations and in Magistrates and Supreme courts. The use of witness intermediaries is essential to ensuring witnesses can effectively participate in otherwise daunting criminal proceedings. These types of improvements to access to justice is one of our Government's key priorities and we will continue to undertake evidence-based reforms that will support people to engage in the Tasmanian criminal justice system.

I believe it is critical that the Commission of Inquiry into the Tasmanian Government's responses to child sexual abuse in institutional settings is able to utilise witness intermediaries where appropriate and any other special measure available in Tasmanian courts, and we are prepared to make these services available to it.

The Bill also implements the work of the Tasmania Law Reform Institute and the Australian Law Reform Commission to enable the appropriate management of circumstances where a witness to the Commission or other person may be the subject of a finding constituting 'misconduct' or another finding of the Commission which is contrary to the person's interest, and clarifying the circumstances and procedures for a Commission seeking to use listening or surveillance devices.

The Bill will also provide the Commission with the power to inspect documents where legal privilege is claimed, such as legal professional privilege or public interest immunity, and enables the Commission of Inquiry itself to determine whether the claim is properly made.

A very important amendment in the Bill ensures a Commission of Inquiry is able to discharge its ethical duty to share information for the purpose of ensuring the safety and protection of children, that is child safe reporting to appropriate law enforcement and other regulatory authorities.

Public Interest Disclosure Schemes operate across Australia and provide a framework for public officials to raise concerns about the conduct by government agencies or other public officials. In Tasmania, public interest disclosures are received and investigated by the Ombudsman.

Public Interest Disclosure Schemes promote integrity and accountability in the public sector by encouraging and facilitating the disclosure of information by public officials about suspected wrongdoing in the public sector. In some circumstances, the Ombudsman may refer matters to other bodies, such as the Integrity Commission for investigation.

The Bill amends the Public Interest Disclosures Act 2002 to enable the Ombudsman to refer a matter for investigation by a Commission of Inquiry.

The *Children, Young Person and Their Families Act 1997* and the *Youth Justice Act 1997* have confidentiality provisions that ensure the privacy of young people who are subject to child welfare and youth justice orders.

It is anticipated that the Commission of Inquiry will examine and hear from many people who have been the subject of these orders at one time in their lives, including being placed by the State in out-of-home care arrangements or while detained at Ashley Youth Detention Centre.

We already know from the work of the Commonwealth Royal Commission that Tasmanian children and young people have suffered abuse in these settings.

To ensure that the Commission of Inquiry can properly undertake its inquiry and that people who have been affected by abuse in child welfare and youth justice contexts can access their records to enable them to share that information with the Commission and participate in private sessions, the Bill amends the *Children, Young Person and Their Families Act 1997* and the *Youth Justice Act 1997* to provide exemptions to the confidentiality provisions to permit the disclosure and use of information.

These exemptions to the confidentiality provisions enable the use of otherwise protected information to and by the person to whom the information relates, and ensure that:

a person seeking to bring an action may obtain relevant information to enable them to bring that action, civil or criminal, and can participate in out-of-court settlement discussions;

a person responding to an action, civil or criminal, and can participate in out-of-court settlement discussions;

a person may use the information for any purpose associated with a Commission of Inquiry established under the *Commissions of Inquiry Act 1995*; and

a person may use the information for the purposes of any employment investigation or process to ensure the protection and safety of children.

It is important to note that the amendments ensure that the rules of procedural fairness are to be observed regarding a disclosure made for the purposes of seeking to bring or responding to a criminal or civil action or undertaking employment screening, review and disciplinary processes, and provides equivalent rights of access to information so that there is no power imbalance between the State and the party seeking to bring an action.

The amendment in so far as it relates to civil proceedings will enable the State and a party seeking to bring an action against the State to engage in early out-of-court settlement discussions and reduce the risk of re-traumatisation from the usual adversarial nature of civil litigation.

It was a recommendation of the *Royal Commission into Institutional Responses to Child Sexual Abuse* that states work to ensure settlement of civil claims in relation to institutional child sexual abuse, and are facilitated at the earliest possible stage. These changes implement this recommendation.

This reform ensures that the State can act as Model Litigant and manage civil litigation in a timely and trauma-informed manner.

I wish to take a moment to acknowledge and thank those victims and survivors who have shown enormous courage and already so bravely and selflessly shared their experiences, so that we may identify where we need to improve and act to ensure Tasmania's children and vulnerable are safe.

In closing, I want to highlight that these issues, and media coverage of these issues, can be extremely upsetting and traumatic for some people. I want to stress that if any aspect of these matters raises concerns for anyone, please reach out for help. The Department of Justice has a list of supports available on its website, but please call services such as Lifeline or beyondblue if you need to talk to someone.

Madam Speaker, I commend the Bill to the House.