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Via: policy@dpac.tas.gov.au

To whom it may concern,

Thank you for the opportunity to make provide feedback on the draft *Child Safety Reform Implementation Monitor Bill 2024*. On behalf of the Greens I appreciate the decision to extend the submission period.

The Greens are broadly supportive of the draft bill. In particular, the Government's decision to extend the scope of the Monitor beyond just the Commission of Inquiry is welcome.

That being said, we have some suggestions for changes to the draft bill.

## Section 8 – Independence of the Monitor

Our view is that some of the language in the independence provisions of the bill should be stronger. For example, the Monitor is "*not subject to the general direction or control of any Minister*" and in particular has "*complete discretion in respect of the content of each report*".

The Auditor-General, on the other hand "*is authorised and required to act independently in relation to the performance of the[ir] functions*" and "*has complete discretion in the performance of those functions*".

We do not necessarily propose that the language chosen in the draft bill has any legal shortfalls in regards to establishing the independence of the office.

However, the context of this is quite important. Many people, including vulnerable people, have a significant stake in this bill. For many of these people there is a distrust in government – a distrust that is entirely justified.

In this context the plain English read of legislation like this is quite important. Language like the *general* direction or control of any Minister could be read as weak language, and not lead people to be confident in the independence of the office.

The Greens propose that firm, unequivocal language like that used in the *Audit Act 2008*, would make people more confident in the independence of the office.

## Section 9 – Staff and Facilities

The Monitor does not have the power to appoint staff, instead they can use the services of staff from the State Service. These staff may concurrently continue to work in their state service role. In our view, this has several ramifications for independence.

The Monitor themselves cannot be subject to, or be a close relation of someone subject to, a monitored recommendation either directly or indirectly (unless Parliament votes otherwise). However, this limitation does not apply to *staff* acquired by the Monitor.

Furthermore, if staff are acquired from agencies that are being monitored, this may also create either a conflict of interest, or a disincentive for staff to be fully independent in their monitoring activities.

The Greens propose that:

- staff appointed by the Monitor be subject to the same conditions that are imposed on the appointment of the Monitor under section 6(2)(c), and
- the Monitor be able to independently hire staff.

## Section 11 – Functions and powers of the Implementation Monitor

The function and powers of the Monitor are limited in scope to recommendations made in "relevant reform reports" (as defined in the bill). The bill would benefit from an expanded scope, to include the monitoring of reforms that might be introduced by the government purportedly to address issues relevant to, or raised in, a monitored report.

The type of matters that could be monitored should include, for example, those covered in volume 2, chapter 2, section 7 of the Commission of Inquiry report "Reforms made during our Commission of Inquiry". This section includes the crime of failing to protect a child, compulsory training on mandatory reporting, and the safeguarding officer in schools program.

These reforms were made during the Commission of Inquiry rather than as a response to recommendations. In some cases, in direct response to evidence raised in the Commission.

This either meant that these matters were not covered in recommendations, or the recommendations had a more limited scope in respect of these matters. As such, the Monitor would have no or limited scope to have oversight on the implementation and impacts of these policies.

## Section 13 – Power to request information

The Monitor's powers with regards to compelling information from agencies are in some respects strong. They can require documents be provided within 14 days, or a lesser timeframe if they deem it appropriate. Agency heads must comply.

There are, however, some limitations. The Monitor can only compel information that they reasonably believe is "necessary" to perform their functions or exercise their powers. 'Necessary' could be interpreted as quite a high bar.

By way of contrast, the Auditor-General can require someone to "provide the Auditor-General with any information or explanation that the Auditor-General requires" for the purposes of an audit.

The Greens propose that the language in section 13(1)(b) be amended to ensure there is no doubt the Monitor can require someone to provide any information relevant to their purview, and specifically that the language of being *necessary* to perform their functions be reconsidered.

## Section 14 – Certain information unable to be requested by Implementation Monitor

The Greens hold concerns the exemption of information that may incriminate a person in respect of an offence or crime is exempt.

We acknowledge that the principle is reasonable. However, with the new offence of failure to protect a child, and the nature of the recommendations being monitored, there is a risk that information relating to gross failures of policy may be exempted on these grounds.

We recognise there are likely to be complex justice principles at play.

However, it also needs to be acknowledged the Commission of Inquiry faced obfuscation from the Government on legal interpretations. In their own words –

> *"The way these requirements were drafted enabled various parties, including the State and lawyers acting for some individuals, to adopt*

*interpretations which had practical consequences for the way we approached our work. We heard arguments that any adverse comment about an individual's behaviour could constitute misconduct (for example, because it was a breach of the very broad State Service Code of Conduct). This interpretation made it difficult and, in some cases, impossible for us to make some of the findings we might otherwise have made."*

We have concerns that proposed exemption under section 14(1)(c) could be abused to prevent the disclosure of information to the Monitor.

The Greens propose the exemption under section 14(1)(c) be reviewed with an eye to narrowing the scope as far as is reasonable.

## Section 18 – Constraints of access to information not to apply

Section 18(3) provides a fairly broad power to disclose information in the annual report, but as far as we can determine no such power exists for periodic reports, or "other reports".

The Greens propose that section 18(3) be extended to also apply to periodic and other reports.

Yours sincerely,

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