

Addendum to the Policy and Guidelines for the Grant of indemnities and Legal Assistance to Public Officers of the State of Tasmania (the Policy and Guidelines)

Public Officers served with a notice to appear before the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*

1. The purpose of this Addendum is to clarify the process for Public Officers (POs) who have been served with a notice to appear before the *Commission of Inquiry into Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings* (the Commission). These protocols apply to all claims by POs for indemnity and legal assistance, or both, made in relation to the Commission.
2. In accordance with Section 22 of the *Commission of Inquiry Act 1995* (the Act) the Commission may serve a notice on a PO to require that person to appear before it to give evidence.
3. Section 15 of the Act also provides that 'a person appearing before the Commission may, with its permission, be represented by counsel.'
4. The circumstances in which the Crown will agree to indemnify POs are set out in the *Policy and Guidelines for the Grant of Indemnities and Legal Assistance to Public Officers of the State of Tasmania* (the Policy and Guidelines). These protocols should be read in conjunction with that document.
5. However, in order to meet the timeframes that are likely to be imposed by the Commission and to ensure that those who have been served notices to appear are appropriately supported the following processes have been developed.
6. An Indemnity and Legal Assistance Panel for the Commission (the Panel) is authorised to approve an indemnity and/or the provision of legal assistance to a PO where certain criteria are met and where a PO complies with the terms and obligations set out under the Policy and Guidelines. Specifically Clauses 3.11 and 3.12 state that:

3.11: *The Panel may grant legal assistance to a Public Officer in relation to the officer's participation in an inquiry or investigation by a body other than a law enforcement agency where the Panel is satisfied that –*

- a) *the investigation or inquiry relates to the employment, office or official duties or functions of the Public Officer;*
- b) *it appears to the Panel that the Public Officer has acted in good faith;*
- c) *the matter giving rise to the inquiry or investigation for which the legal assistance is sought does not relate to a complaint by a Public Officer against another Public officer; and*
- d) *it is in the interest of the Crown that the Public Officer be assisted.*

No indemnity or legal assistance is to be provided to a Public Officer in respect to an investigation or inquiry that constitutes an internal employer investigation or internal administrative review mechanism, including such matters as complaints against the Public Officer e.g. staff grievances, performance management or disciplinary proceedings, Tasmanian Industrial Commission matters, or a review under the State Service Act 2000.

- 3.12 *The Panel may grant an indemnity and/or legal assistance to a Public Officer where there are exceptional or extenuating circumstances and the Panel considers that it is in the public interest to provide the indemnity or legal assistance.*

Exceptional or extenuating circumstances include -

- a) significant hardship to the Public Officer;*
- b) that the Public Officer may be unfairly disadvantaged*

Matters relevant to the public interest may include, but are not limited to -

- a) how best to protect the Crown's interests;*
- b) ensuring that Public Officers can undertake their functions with the support of the Crown and without unreasonable exposure to the risk of personal liability;*
- c) the appropriate expenditure of public funds to support individual Public Officers*

7. The composition of the Panel is in accordance with the guidelines set out in the Policy and Guidelines.
8. Upon receipt of a notice to appear before the Commission to give evidence the PO should advise the Secretary, Department of Justice as soon as practicable following receipt of that notice to appear. The Secretary has determined that the Director of the Child Abuse Royal Commission Response Unit (CARCRU) is their delegate for the purposes of this protocol and advice should be directed to the following email address - inquiry@justice.tas.gov.au.
9. The advice to the Secretary, Department of Justice, via their delegate, should include:
 - The name and position of the PO giving the notice, including contact details;
 - The PO's employment or appointment status, including details of the position/s held within the State Service relevant to the notice to appear;
 - The name of other parties involved, including any witnesses;
 - A description of any facts or information known to the PO that may be relevant to the Commission; and
 - Copies of the relevant documentation that the PO has, or is able to obtain.

10. The PO must make full disclosure of the circumstances which have given rise to the notice to appear and supply any additional information as requested by the Secretary of the Department of Justice or their delegate.
11. If the PO fails to give reasonable notice after becoming aware of the notice to appear, the officer may be refused indemnity or legal assistance.
12. An indemnity or grant of legal assistance may be withdrawn in accordance with cl 3.21 of the Policy and Guidelines. A condition of the indemnity or grant of legal assistance will be, in every case, that if, in the course of the provision of evidence, the PO acts unreasonably, or intentionally or recklessly fails to make full and frank disclosure or relevant matters, the indemnity or legal assistance may be refused or withdrawn.
13. The Panel will make their determination in accordance with relevant parts of Section 3 of the Policy and Guidelines.
14. The Panel's determination will be conveyed to the PO via the delegate of the Secretary, Department of Justice, specifically the Director, CARCRU, who will advise the PO of the outcome of the application and provide further information about their attendance before the Commission.