



TASMANIA

State Service Act 2000

**Report of the
Tasmanian Industrial Commission
'Review of Actions'
2020-21**



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Tasmanian Industrial Commission

18 October 2021

The Hon Peter Gutwein MHA
Premier of Tasmania
11th Floor, Executive Building,
15 Murray Street,
Hobart, 7000

Report of the Tasmanian Industrial Commission 'Review of Actions' 2020-21

In accordance with the requirements of section 51(8) of the State Service Act 2000 I have pleasure in presenting the Report of the Tasmanian Industrial Commission relating to 'Review of Actions' for the financial year ending 30 June 2021.

A handwritten signature in blue ink, appearing to read 'Barclay'.

David Barclay
President

The *State Service Act 2000* (SSA), at s51(8), requires that the Tasmanian Industrial Commission (the Commission), on or before 31 October is to lay before the Parliament a report on the performance of the Commission's functions and powers under the SSA for the 12 month period ending on the preceding 30 June. This report fulfills that statutory requirement.

Section 50 of the SSA provides that a permanent or fixed-term employee is entitled to make application to the Commission for a review:

- a) of the selection of a person or employee to perform duties other than duties to be performed for a specified term or for the duration of a specified task [selection review]; or
- b) of any other State Service action that related to his or her employment in the State Service [review other].

The Commission has been conducting this function since 4 February 2013.

In exercising its jurisdiction the Commission may, pursuant to s51 of the SSA:

- Refuse to grant the application and, if appropriate, direct the Head of Agency to take such action as the Commission considers appropriate; or
- In the case of a Selection review, grant the application and direct the Head of Agency to undertake the selection process again subject to any other requirements imposed by the Commission; or
- In the case of a Review Other, grant the application and recommend or direct the Head of Agency [or delegate] to take such action as the Commission considers appropriate.

A Commission member's determination in respect of an application for a review is final. However, those decisions are reviewable under the *Judicial Review Act 1991*.

Section 51(1) of the SSA requires the President to determine the 'procedure for a review.' The Commission's procedures have been in existence since 4 February 2013 and have undergone a number of modifications since that time.

Time Limits for State Service Reviews

Previous reports have identified a procedural issue relating to the strict timelines associated with s50(1) applications for review. The Commissions discretion to extend the 14 day time limit within which applications are to be made was removed when the Commission took over from the Public Service Commissioner. The discretion should be replaced to allow for exceptional circumstances in so far as an application relates to the review of state service actions.

The Nature of Matters before the Commission

I have previously reported that matters before the Commission have developed in complexity consistent with the increases in complexity in industrial disputation across all jurisdictions in Australia. There has been no change in that trend. The number of applications remain stable with pre-COVID-19 numbers, although there is a trend upwards for State Service Reviews. The complexity of matters has significantly increased often requiring more than one decision to be made in respect to a matter. The knowledge and skills of the advocates (particularly those of the departments) has been keeping pace with the increased complexities thus throwing up additional issues for determination. This uptake in knowledge and skills is in part due to professional development in employment relations provided by the Commission.

Notwithstanding the increasing complexity of matters the Commission has been able to deal with the matters in an efficient way, maintaining a high clearance rate and no backlog in matters.

Bullying

Last year I reported that bullying remained an issue and that there was no mechanism by which a state servant could adequately seek a remedy to stop bullying. I recommended amendments to the Industrial Relations Act 1984. I said:

“The Commission should be able to inquire into bullying for the purposes of making orders to stop bullying and to prevent future bullying. The Commission should also be able to make ancillary orders requiring persons to undergo training into the ramifications of bullying and to learn strategies to ensure that bullying does not happen again.”

Over the current year bullying has remained a feature of some applications. The need for a bullying jurisdiction remains and I venture to repeat what I said last year.

General Matters

The Commission continues to provide an equitable, efficient and expeditious dispute resolution service that fosters positive employment relationships. In this context it is the practice of the commission to hold without prejudice conferences at an early opportunity to try to resolve issues without the need to proceed to a formal hearing. This of course does not remove the right of either party to proceed to formal hearing if that is their wish, however experience is showing that the parties are open to conciliation with a view to early settlement thus minimising adverse effects on the parties and the workplace.

Notwithstanding the increasing complexity of matters, the Commission has been able to deal with matters in an efficient way, maintaining a high clearance rate and no backlog in matters. Indeed the Commission was able to finalise 72% of all matters within 3 months of lodgement.



David Barclay
President

STATISTICAL OVERVIEW

STATE SERVICE REVIEW APPLICATIONS – REVIEW OTHER

Applications lodged 2020/21	34
Applications carried over from 2019-20	3
Total applications dealt with 2020/21	37

Applications lodged by Agency	2017-18	2018-19	2019-20	2020-21
Communities Tasmania	-	2	1	2
Department of Health incl Ambulance Tasmania	4	3	2	2
Department of Education	6	4	5	11
Department of Justice	6	3	7	
Department of Primary Industries, Parks, Water and Environment	3	2	-	4
Department of Police, Fire and Emergency Management	-	2	1	2
Department of Premier and Cabinet	-	-	-	1
Department of State Growth	-	-	-	-
Integrity Commission	-	1	-	-
Port Arthur Historic Site Management Office	1	-	-	1
Tasmanian Health Service	12	10	11	10
TasTAFE	-	-	-	1
Treasury and Finance	-	-		-
Tasmanian Audit Office	-	-	1	-
	27	32	27	34

Outcomes	2017-18	2018-19	2019-20	2020-21
Resolved through conciliation	21	22	24	23
File closed due to no jurisdiction	-	1	-	
Determined by Commission - granted wholly or substantially			2	2
Determined by Commission – not granted wholly or substantially	3	2	1	3
Continuing	8	2	3	6
	32	27	30	34

STATE SERVICE REVIEW APPLICATIONS – REVIEW SELECTION

Notice of Intention to lodge Application 2020/21	33
Notice of Intention to lodge Application lapsed	12
Total applications lodged 2020/21	21
Total applications carried over from 2019/20	-
Total applications dealt with 2020/21	21

	2017-18	2018-19	2019-20	2020/21
Department of Communities	-	1	1	1
Department of Education	4	2	3	4
Department of Premier and Cabinet	1	-	-	-
Department of Health incl Ambulance Tasmania	1	1	7	-
Department of Justice	1	3	4	3
Department of Primary Industries, Parks, Water and Environment	-	-	-	-
Department of Police, Fire and Emergency Management	2	2	2	3
Department of State Growth	1	1	2	-
Port Arthur Historic Site Management Office	-	-	1	1
Tasmanian Health Service	18	10	10	8
TasTAFE	1	2	1	1
Treasury & Finance	1	-	-	-
	30	22	31	21

Outcomes	2017-18	2018-19	2019-20	2020-21
Resolved before or through conciliation	26	21	31	16
Determined by Commission -- granted	-	-	-	-
Determined by Commission – not granted	4	1	-	-
Continuing	-	-	-	5
	30	22	31	21