



TASMANIA

State Service Act 2000

**Report of the
Tasmanian Industrial Commission
'Review of Actions'
2019-20**



Tasmanian Industrial Commission

8 October 2020

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' 2019-20

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 2020.

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.

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.

CHANGING NATURE OF MATTERS LODGED WITH THE TIC

Last year I reported that over the last few years the complexity of matters has increased. The nature of industrial disputation across Australia has become increasingly more complex. Points, sometimes of a technical nature not formerly taken are now being taken almost as a matter of course. Jurisdictional points are taken. Preliminary points (such as, questions of ongoing employment for the purposes of casual employees) are raised and determined before the substantial merits of matters. Often more than one decision is required to be made for a single matter.

The last year has seen no change in that. Indeed the employer is now often represented by the Solicitor General's Office where formerly that had been rare. While the assistance of the Solicitor General is welcome, the way in which proceedings are being determined now more resembles proceedings in a court than was previously the case. There is nothing wrong with that, indeed it contributes to the orderly disposition of matters and ensures that that procedural fairness is provided to the parties. However the matters tend to be more formal and take more time to finalise than was formerly the case.

BULLYING

Bullying is a matter of concern to all and the fact that state service employees have no place to readily ventilate issues of bullying is concerning. The Commission sees applications which have at the heart of the dispute, issues of bullying. Many grievances relate to alleged bullying. However the Commission is presently unable to adequately respond to such matters.

Bullying does not amount to a state service action. Nor does the Commission have jurisdiction to deal with bullying under the *Industrial Relations Act 1984* save where it might amount to a breach of an award (which may be very difficult to establish).

Under the SSA the only matter which could be reviewed in relation to bullying was the way in which any investigation undertaken into the bullying was handled. The outcome of an investigation is a state service action.

However the Commission is limited to reviewing the action (that is the investigation and report) but not the conduct. The orders which the Commission can make are limited.

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.

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.



David Barclay
President

STATISTICAL OVERVIEW
STATE SERVICE REVIEW APPLICATIONS – REVIEW OTHER

Applications lodged 2019/20	28
Applications carried over from 2018/19	2
Total applications dealt with 2019/20	30

Applications lodged by Agency	2016-17	2017-18	2018-19	2019-20
Communities Tasmania	-	-	2	1
Department of Health incl Ambulance Tasmania	1	4	3	2
Department of Education	3	6	4	5
Department of Justice	3	6	3	7
Department of Primary Industries, Parks, Water and Environment	1	3	2	-
Department of Police, Fire and Emergency Management	-	-	2	1
Department of Premier and Cabinet	-	-	-	-
Department of State Growth	-	-	-	-
Integrity Commission	-	-	1	-
Port Arthur Historic Site Management Office	-	1	-	-
Tasmanian Health Service	19	12	10	11
TasTAFE	-	-	-	-
Treasury and Finance	-	-	-	-
Tasmanian Audit Office	-	-	-	1
	27	32	27	28

Outcomes	2016-17	2017-18	2018-19	2019-20
Resolved through conciliation	26	21	22	24
File closed due to no jurisdiction	1	-	1	-
Determined by Commission - granted wholly or substantially	-			2
Determined by Commission – not granted wholly or substantially	1	3	2	1
Continuing	4	8	2	3
	32	32	27	30

Report relating to 'Review of Actions'

State Service Act 2000

STATE SERVICE REVIEW APPLICATIONS – REVIEW SELECTION

Notice of Intention to lodge Application 2019/20	35
Notice of Intention to lodge Application lapsed	4
Total applications lodged 2019/20	31
Total applications carried over from 2018/19	-
Total applications dealt with 2019/20	31

Applications lodged by Agency	2016-17	2017-18	2018-19	2019-20
Department of Communities	-	-	1	1
Department of Education	3	4	2	3
Department of Premier and Cabinet	2	1	-	-
Department of Health incl Ambulance Tasmania	1	1	1	7
Department of Justice	1	1	3	4
Department of Primary Industries, Parks, Water and Environment	3	-	-	-
Department of Police, Fire and Emergency Management	3	2	2	2
Department of State Growth	1	1	1	2
Port Arthur Historic Site Management Office	1	-	-	1
Tasmanian Health Service	10	18	10	10
TasTAFE	1	1	2	1
Treasury & Finance	-	1	-	-
	14	24	22	31

Outcomes	2016-17	2017-18	2018-19	2019-20
Resolved before or through conciliation	14	26	21	31
Determined by Commission -- granted	-	-	-	-
Determined by Commission – not granted	6	4	1	-
Continuing	2	-	-	-
	24	26	30	31