

Child Safety Reform Implementation Monitor Bill 2024: *Key Provisions Explained*

Introduction

The draft Child Safety Reform Implementation Monitor Bill 2024 (the Bill) supports the Tasmanian Government's commitment to establish an independent reform monitor (the Monitor) to oversee and report on the implementation of the recommendations of the *Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings* (the Col).

The Monitor is a crucial part of the Government's response to the Col, responsible for holding the Government to account through monitoring and public reporting on progress towards implementing reforms.

The Bill is consistent with the model and approach proposed by the Commission in Recommendation 22.1 of its report. It provides the necessary legislative architecture and support in respect of the proposed Monitor's:

- **Objectives, role, and functions;**
- **Independence from executive government**
- **Appointment and tenure, suspension, and removal;**
- **Staffing and resourcing;**
- **Legal powers and protections; and**
- **Formal reporting and consultation requirements.**

The key provisions of the Bill are explained in further detail below.

I. Objectives and functions

The Bill establishes the objectives of the Monitor which are, in broad terms, to ensure accountability and transparency in respect of implementation of reform recommendations, to engage and consult with children and young people, persons directly impacted by child sexual abuse and others, and to evaluate and report on the extent to which implementation is resulting in:

- improvements towards the prevention of the sexual abuse, or other abuse, of children in institutions;
- improved institutional response to the sexual abuse, or other abuse, of children in institutions; and
- improvement in the support of survivors of such abuse.

The Bill also establishes the scope and nature of the Monitor's functions. These are in line with the Commission's recommendations but have been extended to include further matters the Government has determined to include.

Specifically, the Monitor would have oversight of the implementation of the following reform recommendations:

- the Commission of Inquiry;
- the Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse;
- the Department of Health's Child Safe Governance Review;
- such other commission, inquiry or review, or such part of an inquiry or review, that relates to child safety and wellbeing in institutions that are referred to the Implementation Monitor in accordance with the Bill; and
- recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse that have been accepted by Government but not yet implemented.

The Bill provides that the Minister (in this case the Premier) and the Parliament may both refer further matters relating to child safety and wellbeing in institutions and establishes the process for doing so. For example, the Government has committed to having the Monitor oversee the *Keeping Children Safe Interim Actions*.

The Bill also provides the Monitor has the functions of evaluating the effectiveness of actions being undertaken to implement reform recommendations, developing a monitoring and evaluation framework, consulting with relevant agencies and peak advisory bodies, and to produce written reports on its findings and conclusions, including reporting to the Parliament.

2. Independence

The Commission emphasised the importance of the Monitor being independent from executive government. Reflecting this, the Bill expressly provides the Monitor is not subject to the general direction or control of any Minister in performing its and functions and exercising its powers, including with respect to the contents of any of its reports.

This is broadly consistent with a number of independent State Authorities including the Ombudsman and the Auditor-General.

3. Establishment, appointment, tenure etc

The Monitor would be appointed by the Governor on the recommendation of the Minister.

The Minister may only recommend a person to be appointed if they are satisfied the person has:

- relevant qualifications or experience in child safety and working with those impacted by child sexual abuse;
- sufficient relevant experience in senior management in the public sector or public administration; and
- sufficient relevant experience in understanding, and implementing, major reforms in the public sector.

The person would be subject to certain prescribed registrations and pre-employment checks (i.e. a Working with Vulnerable Persons Registration or an equivalent standard and a National Police Check).

Appointment would be for a maximum term of five years, with the ability for re-appointment for further terms of up to five years each. The logic of this tenure is that it broadly aligns with the proposed five and ten yearly evaluation reports the Monitor will deliver in line with the Commission's recommendations.

Appointment would be on terms and conditions as determined by the Governor. Consistent with the Commission's recommendations, the remuneration of the Monitor would not be able to be reduced over the period of appointment unless the Monitor agrees.

The Bill provides for Acting arrangements in a range of circumstances where the Monitor is absent or cannot perform their functions. For a period of up to 30 days the Monitor may appoint a suitable person to act. Beyond this, the Governor must make the appointment.

There would be public notification requirements regarding the appointment of the Monitor, and around acting arrangements.

4. Funding and Staffing

The Col emphasised the importance of the Monitor being directly funded, rather than funded through an agency, to reinforce its independence. To achieve this, the Bill provides that the Office of the Monitor would be established as a State Authority under the State Service Act, in the same manner as entities such as the Integrity Commission.

As a State Authority, the Monitor will be able to employ State Servants to support the functions of the Independent Monitor like any other Agency.

5. Monitoring and evaluation framework

The Commission recommended an evaluation framework and baseline data requirements be established within the first year of the Monitor being appointed, to support the Monitor in making independent evaluations of reform implementation over time.

The Bill provides that the Monitor is to develop and publish a monitoring and evaluation framework it will use to guide its work. The objective of this provision is to provide transparency to all parties – including agencies - around how the Monitor is evaluating the implementation and resulting impact of reform recommendations.

The framework would include:

- the key indicators to be used in evaluations and assessments
- the reporting requirements for agencies reporting to the Monitor;
- the data collection, or data publication, requirements for agencies;
- the minimum frequencies that the Implementation Monitor intends to make evaluations and assessments under this Act; and
- such other matters as the Monitor considers appropriate.

The framework would need to be in place within 12 months of the commencement of the section in the Act. The Bill provides the Monitor must consult with agencies and may consult with any other entity or person (including peaks/advisory bodies) before it finalises and publishes the framework.

The framework would be able to be updated or replaced from time to time but would need to be re-published where this happens (and would also need to be subject to consultation).

6. Reporting

The Commission recommended the Monitor report regularly on implementation of reform recommendations, and also prepare a periodic evaluation report at five and ten year intervals (taken from the date of the Commission's report being tabled in the Parliament).

Consistent with this, the Bill provides for the Monitor to provide two main kinds of reports –

1. **Annual reports** for each financial year, to be delivered by September 30. These reports focus on implementation progress and are to include information on the following:
 - any progress made in implementing each reform report recommendation and each agency that has taken one or more implementation actions in respect of each recommendation;
 - any progress made by an agency in completing an implementation action;
 - the compliance by an Agency with the timelines specified in the relevant reform reports and the monitoring and evaluation framework;
 - any method or process developed by an Agency, in carrying out an implementation action, that the Implementation Monitor considers best practice;
 - any corrective action that the Monitor considers necessary to address a concern in relation the implementation of reform report recommendations generally;
 - any corrective action that the Monitor considers necessary to address a concern in relation to an agency carrying out an implementation action (where the agency head has been consulted and had the opportunity to respond);
 - details of any compliance notices issued by the Monitor; and
 - other matters the Monitor considers relevant.
2. **Periodic reports** at the five and ten year intervals. These reports focus on the effectiveness of reform recommendations in achieving positive change over time, consistent with the Monitor's objective. The Bill provides that these reports will also include information on whether the Monitor considers the Office of the Monitor is still required. These reports may be included as part of the relevant annual report or produced separately.

The Bill also provides that the Monitor may produce other reports as and where it sees fit.

All reports (including those done on the Monitor's own initiative) would be required to be tabled in Parliament, published on the Monitor's website, and made available in other forms where reasonable (e.g., hard copies on request).

The Bill sets out certain requirements in relation to reporting, including that reports must have regard to the monitoring and evaluation framework, and certain consultation and procedural fairness provisions in relation to the assessment of agency performance by the Monitor.

Reports would not be able to identify individuals except in certain limited circumstances (e.g. the information is already in the public domain, or the person has consented).

The Bill also provides that agencies are given fair opportunity to respond before the Monitor names an agency in any report in respect of a proposed corrective action or a compliance notice.

7. Powers and protections

The Bill provides a range of powers considered necessary and appropriate for the Monitor to effectively perform its functions, including information requests and entry and inspection. The Bill provides written notice provisions in relation to the exercise of these powers.

The Bill also provides that the Monitor is prevented from requesting certain information, including the health records of individuals, legally privileged information, and information which may incriminate an individual.

Where such information is provided *voluntarily* to the Monitor, the Monitor is nonetheless empowered to refer that information to the relevant authority for the purposes of further investigation (including police). There would also be penalties where the Monitor or their employees disclose information obtained in the course of their work, except as authorised by the Act.

Agencies have a duty to cooperate with any reasonable request or requirement of the Monitor, and the Monitor would be able to issue compliance notices to agencies in instances where this duty was not met.

The Bill also makes clear that secrecy requirements in respect of documents/information held by agencies do not apply where such information or documents are requested by the Monitor. The Monitor must not disclose such information, however, except in specific limited circumstances.

The Bill also affords the Monitor and its staff certain protections. For example, the Monitor is protected from liability in the same manner as a Supreme Court judge, and things said written or done in proceedings under the Bill are not admissible in civil proceedings.

8. Vacation of office, suspension, and removal

The Bill provides for the circumstances in which the office of Monitor becomes vacant (i.e. where the Monitor dies, resigns, or is removed from office in line with the relevant provisions in the Bill).

The Bill provides for the Monitor to be removed by the Governor where the Governor is satisfied the Monitor is incapable, incompetent, becomes bankrupt, has neglected to perform their functions, is convicted of a crime or a serious offence, nominates to stand for election to an Australian parliament (state/territory or federal), or has engaged in misconduct.

Both the Governor and the Minister (with Parliamentary approval) would also be able to suspend the Monitor in certain circumstances, and the Bill sets out the process by which suspension may occur.

The suspension and removal provisions mirror those that apply to the Director of Public Prosecution and the Solicitor-General.

Where the Monitor is removed, the Minister is required to provide a statement of reasons to the Parliament.

9. Commencement and administration of the Act

The Commission's recommendation was that the Monitor be established by June 2024 and the Government has committed to this timeline.

The Act would commence on a day or days to be proclaimed, but if not proclaimed within six months of Royal Assent, the Act will automatically commence then. This approach is similar to the voluntary assisted dying legislation and allows for flexibility around commencement while providing comfort to the Parliament that commencement will not be unreasonably delayed.

The Premier would be the Minister responsible for the Act, and the responsible agency the Department of Premier and Cabinet.

10. Winding up of the Monitor

The Act has a Sunset clause for the 31 July 2034, following delivery of its 10-year periodic report and final annual report. 10-year Periodic Report. The Bill provides that this date can be changed (either brought forward or extended) by regulation, but only where such change is approved by the Parliament.

The Monitor will also include in its Periodic Reports information on whether the Monitor considers the Office of the Monitor is still required which will assist the Parliament in making any determination about any change to the winding up date.

11. Other matters

The Bill also:

- provides the Governor may make regulations, including offence provisions for contravention of the regulations.
- places an obligation on agencies to make staff aware of the Act and obligations procedures etc under it (these provisions are similar to those under the *Anti-Discrimination Act 1998*).
- makes consequential amendments to several Acts – including the *Archives Act 1983*, the *Corrections Act 1997*, and the *Right to Information Act 2009* - to allow the Monitor to be able to effectively share information in the course of performing its functions and exercising its duties. These amendments mirror those which have been put in place in respect of the Custodial Inspector.