



HEALTH & COMMUNITY SERVICES UNION

*Submission into the
Review of the Tasmanian State Service
(October 2020)*

The Health and Community Services Union (Health Services Union Tasmania Branch) is Tasmania's largest union made up of over 8000 members working across the public and private health and community services sectors. HACSU has represented hundreds of thousands of workers since we were established in 1911 and, as one of Tasmania's largest public sector unions, we have extensive experience in public sector industrial relations, governance and administration.

The following is HACSU's formal response to the revised Terms of Reference dated September 2020.

When commenting on the draft Terms of Reference we made the following observation "A preliminary assessment notes their very broad nature and, while some examples have been given, they don't reflect this expansive nature, therefore we stress that it's difficult to respond given the lack of clarity around each of the terms of reference." The Terms of Reference have since been revised, remaining expansive, and making it extraordinarily difficult to respond. Our response to the terms of reference seeking further clarity and further inclusions has been largely ignored.

Meeting with the Reviewer

On 11 September 2020, I met with the "independent" reviewer, Dr Ian Watt, who is a very learned and experienced individual but can't be described as independent as he was been appointed by government and no transparent nor inclusive process of selection preceded that appointment.

In addition, the establishment of the State Service Reference Group and unilateral appointment of most of its members from outside of the State Service including, in some cases, people with a known bias regarding the value of the State Service raises further serious concerns regarding the "independence" of the process.

I made it clear to Dr Watt that we believe the government is taking an enormous risk undertaking a review that will likely result in major change while we're in the middle of a COVID-19 pandemic. Right now nobody has clarity about anything, let alone public sector structural and governance needs, so public sector unions have asked the government to step back and consider a longer-term review that will allow for learnings from current and emerging COVID-19 issues to be addressed in an informed way. We restate this as our position.

Having stated the above, we will continue to engage in this process to highlight the concerns and needs of our members.

Finally, the haste with which this review is now required to deliver its findings is farcical at least and dangerous in its extreme. It's impossible to conduct what appears to be a wholesale review of the Tasmanian State Service within the time given, and to attempt to do so right now, given the restrictions associated with COVID-19, amplifies our concerns.

When I met with the reviewer on 11 September he asked if there were specific matters we thought should be considered and I raised several areas that should be explored.

1. Continued politicisation of the Tasmanian public sector: The need for further limits on the extent to which politicians can influence and interfere in public sector decision making and operations must be addressed.

2. Transparency and accountability for upholding matters relating to fairness in employment: As discussed, there's an urgent need to review and realign how employment matters are dealt with across the Tasmanian public sector. I referred to recent findings of the Integrity Commission Tasmania (Report 1 of 2020) investigation into misconduct by public officers in the Tasmanian Health Service, North West Region, that outlined a range of matters including conflicts of interest, bullying and lack of proper oversight. Some of these matters were reported but never investigated. Our view is that code of conduct breaches by managers are largely dealt with using quite different approaches than breaches by employees, with a bias by human resource operatives to not investigate reported breaches by managers while, in many cases, vigorously pursuing employees for the most minor breaches.
3. Continued attempts by government to undermine, through acts and procedures, the personal freedoms of employees to express their own views as public citizens: It's well known this Liberal Government wants to restrict employees' freedom of speech, and any attempt by this review to limit those freedoms will be viewed as a political act that has no relevance to the matters the review seeks to address.
4. Bullying and Harassment: I suggested to the reviewer that he obtain copies of the relevant agency breakdown of the results of the recently conducted State Service Survey. The State Service Management Office refused to release these reports to the public. In my view, the agency-by-agency breakdown will give the reviewer a better understanding of cultural matters in agencies and what should be done to address them. Bullying and harassment is a key concern to our members.

The Terms of Reference - Overview

This Review will focus primarily on the governing framework of the TSS. It will identify structural, legislative and administrative improvements that will transform current structures, services and practices to deliver a more efficient and effective public service and reflect on lessons learned during the COVID-19 pandemic to identify improved ways of working. This is primarily a structural review. However, it is anticipated that broader findings related to operational and cultural improvements may arise in the process.

This term of reference was amended to include "reflect on lessons learned during the COVID-19 pandemic to identify improved ways of working", but we're still in the midst a pandemic, with a second wave across the world. Nobody can truly analyse lessons learned when it's completely unknown how long the pandemic will last, and presupposing Tasmania has somehow miraculously come out the other end so now we can 'reflect' is a completely naïve suggestion.

Any review of the Tasmanian State Service Act must achieve several key principles, enshrined in public sector administration best practice, that should be non-negotiable, including:

- Fairness in the employment relationship
- Responsiveness of employees to the community and to the government

- Inclusiveness of public sector employment

In addition, the review should consider:

a) delivery of the government's objectives

(b) government commitment to Westminster principles in public employment;

Ministerial responsibility not only to Cabinet but also their responsibilities to Parliament and Tasmanians and the role of senior public servants to be stewards in the management of the public sector for current and future governments.

(c) merit in public employment

(e) that the public sector is:

(i) a fair employer that manages capably and consistently

(ii) responsive to the needs of government and the community

(iii) diverse

(iv) focused on being professional and non-partisan in its delivery of services to the community

(v) able to provide frank and fearless advice

(vi) is efficient and effective and provides value for money

3. The review should also consider:

(a) fairness in the management of employees

(b) employees' rights and obligations and their capacity to participate freely in their community outside of their employment

(c) responsive provision of services to the community and to government

(d) integrity and impartiality in providing services and in supporting policy development and implementation

(e) continuous improvement, innovation and responsiveness

(f) promoting the government as an employer of choice

(g) equality of employment opportunity and diversity that reflects the community

(h) equity of pay and other conditions

Specific Terms of Reference

1. Facilitating public service change and innovation that improves the delivery of public policy and services to support the aims of government and meets the needs of the community;

I refer to my earlier point about the need for an assessment of the governance of the public sector which includes government ministers and senior bureaucrats.

Ministerial responsibility not only to Cabinet but also their responsibilities to Parliament and Tasmanians and the role of senior public servants to be stewards in the management of the public sector for current and future governments must be reviewed in order to meet the desired change. A review would be incomplete if these two levels of public sector management aren't included.

2. Identifying opportunities to improve the delivery of government services, programs, projects and other initiatives more efficiently or effectively, including information technology platforms;

Privatisation is often driven by political and economic ideology, a political view that the public sector is inefficient, the private sector is more efficient, and costs should be shifted from government to the community. On every measure privatisation is an abject failure for the community so this term of reference is of major concern.

If the government wants the reviewer to look towards privatisation as a component of efficiency, the terms of reference should say so. Since austerity commenced many years ago it's hard to think of a government service that isn't struggling to provide services.

We disagree with any suggestion government services are inefficient, they are simply under-resourced.

Privatisation of government services or programs, regardless of outsourcing to the profit or not-for-profit sector, should never be considered in the context of providing essential services to the community. Health, social services and key government programs that require ongoing support or interventions from government resulting from changing needs and economic and social conditions should be resisted.

Privatisation can lead to rigid costs and service delivery rigidity that are counter-intuitive to the role of government. Privatisation also assumes managers of services, once outsourced, will act in the public interest, but there's no available evidence that supports this proposition. The ACC Chairman was recently quoted in the Sydney Morning Herald that privatisation had created unregulated monopolies that hurt productivity and damaged the economy.

We suggest this term of reference be reviewed or clarified in the context of the above statement - if the government is looking towards further outsourcing it should say so.

We agree that information technology platforms should be considered but it's known that any significant review recommendations that carry increased costs will result in circumstances that are severely curtailed as a result of the previous and current public sector austerity program.

3. Identifying ways to promote collaboration and partnerships including to support more flexible movement of employees between the private, non-government and public sectors;

As with the previous point, these terms of reference appear to be thematic. Partnerships with the profit or not-for-profit sectors create the possibility of secrecy and reduced scrutiny, something inconsistent with government's role under Westminster's principle of accountability.

It cannot be envisaged that a partnership with the profit sector would be more efficient than providing services directly to the community. Entrenched partnerships and commercial contracts reduce the ability to be efficient and effective, particularly where government needs to respond to changing or emerging demands.

As a specific component piece, it is suggested that a review be undertaken of all current partnerships and funding relationships that exist with external providers, both "for profit" and "not for profit". It is unknown whether specific research has occurred in this area, but prior to any further moves in this direction an assessment as to the success or otherwise of current partnerships exist. We are concerned that funding and partnership agreements with the non-government "for profit" and "not for profit" sectors aren't managed and scrutinised adequately to ensure key outputs and delivery and performance is monitored.

With respect to the portability of skills within and outside of the public sector, formal mechanisms exist in the current Act to facilitate these arrangements. The current ability to second employees provides significant safeguards for the public sector as well as the specific employees concerned.

4. *Achieving greater economies and efficiencies in TSS administration, including opportunities to streamline bureaucracy and services where suitable;*

After eight years of austerity across the health and human services sector, and considering that these funding cuts across government services have been ad-hoc at best rather than strategically managed, it's difficult to imagine further streamlining could occur without resulting in reduced services to the public or even no services at all in some cases.

The meaning of 'TSS Administration' and 'bureaucracy' needs to be clarified in the context of this term of reference as all public sector employees are considered part of the administration and, as they are employed directly by the crown, they're also bureaucrats.

5. *Examining the appropriateness of the current location of government services, and the desirability of any change;*

An assessment of previous initiatives to regionalise services and programs would be of value before examining further decentralisation. Specific factors should be considered prior to embarking on such an exercise which would include the size and capability of the Tasmanian Public Sector, Tasmania's population the geographic spread of our population and access to appropriate skills and the extent that decentralisation would add additional costs to the service.

Facilitating areas of cultural change within the TSS (e.g. promoting risk-based decision making, increasing diversity, promoting innovation, improving accountability and identifying ways to enhance performance);

The example in the term of reference is laudable but many more risks exist with this principle than are presented.

Making certain the Tasmanian public sector remains apolitical without interference from government or political influence is of paramount importance. To be effective it must operate without fear or favour and ensure the key principles of a Westminster system are upheld.

As a starting point, employees and senior bureaucrats should be aware that in the Westminster system:

- Ministers and cabinet decide policy, and are free either to accept or reject advice, options and recommendations provided by departments and agencies
- Although employees are under the direction of their secretary or agency head, they have a clear duty to respond promptly and professionally to ministers' requests for advice or information
- Advice to ministers must be 'apolitical and non-partisan', meaning that it is evidence-based, impartial, places the public interest over personal interest and is uninfluenced by party political considerations or personal political allegiances
- Advice to ministers must be 'frank and fearless', laying out all options and dealing honestly with all issues, including those that are difficult, complicated and problematic

<https://www.psc.nsw.gov.au/employmentportal/ethics-conduct/behaving-ethically/behaving-ethically-guide/section-1/1-1-roles-and-responsibilities-in-the-westminster-system>

There are several clear examples in recent years where ministers have interfered with matters relating to public sector administration, and employees have regularly expressed their fears to HACSU of political interference and/or retribution when making decisions that are of significant public interest.

A significant ministerial and state service education program could be rolled out for current and future ministers and employees that specifically outlines their rights and responsibilities.

6. Identifying ways to help develop the long-term capability and agility of the TSS;

Agreed, but we should include diversity. Our public sector has a significantly aging workforce, so developing a public sector that reflects the changing nature of the Tasmanian community should also be considered. Australia is one of the world's most successful multicultural nations and this diversity is increasingly reflected in our religion, spirituality, sexuality, culture, socio-economic background and the geographic spread and personal experiences of our community.

The Tasmanian public sector does not manage its workforce effectively. I made a note earlier regarding the role of human resources within, particularly, the Department of Health and the Tasmanian Health Service.

Workforce planning is not and has not been a feature of the public sector (certainly the Department of Health, Tasmanian Health Organisation, and the Department of Communities Tasmania) for at least the past 20 years. Current staffing shortages, particularly in specialist areas in Health and Communities are currently evident, particularly in the north west. Many issues relating to attraction and retention were known before COVID-19, and the current restrictions around travel into and out of the state have exacerbated these issues.

The last workforce planning process that was engaged in by the Department of Health took place in between 2001 and 2003. The "Allied Health Professional Workforce Status Report" was released in August 2003 and it highlighted major issues with attraction and retention of AHPs across most specialist vocations. Between 2003 and 2006 unions and the government engaged specifically on addressing these issues which resulted in significant and positive outcomes for the workforce and service delivery.

7. *Implementing enhanced workforce management processes across the employee life cycle, including opportunities to implement improvements to how the TSS recognises, develops and manages employee performance; and*

Many of the current barriers to implementing programs to address the above relates to the siloed nature of the management and organisation of the Tasmanian public sector. In the past, unions have made many claims relating to improvements in the management and development of the workforce, addressing skills shortages, providing workforce flexibility and addressing public sector renewal only to find that even when programs are negotiated at a central government level agencies fail to implement or engage in them.

An assessment of enterprise bargaining claims specifically lodged by HACSU and the CPSU with respect to employees covered by the Public Sector Wages Agreement will provide an insight into the willingness of workers and their unions to innovate in this area.

Current vacancy control processes are slow, overly bureaucratic and centralised are leading to significant delays in both recruiting and appointing to positions. It is often reported that managers experience significant delays gaining approval to fill critical positions and recruitment processes are slow that in many cases the best applicant moves on to take up another position before the recruitment process ends. The delays are not due to any restrictions contained within the relevant legislation but because of systems agencies have imposed to centralise their recruitment processes.

8. *Attracting, developing and retaining a skilled public sector workforce with the capacity to meet emerging economic, social, environmental and technological opportunities and challenges.*

Key measures that address skills retention, maintenance of corporate knowledge, building employee capability and supporting workers transitioning from full to part time work or their ability to move across Government Agencies are matters unions have been seeking to be addressed for many years. There is a significant level of support for programs such as these across the workforce however where it has been agreed to implement such programs in the past they have not been well resourced nor has their been universal take up across Government Agencies.

Terms of Reference Closing Commentary

Having considered the above focus areas, the Review will then provide proposed changes to the State Service Act and associated administrative arrangements to ensure that the governing framework is fit for purpose and meets the current and ongoing requirements of the TSS.

The above issues are to be considered in the context of relevant previous reviews and experiences, in Tasmania, other states and territories, nationally and internationally; and to consider how such reviews may inform a future TSS.

Important note:

We have serious concerns about continued attempts by government to limit employees' capacity to participate freely in their communities outside of work. It's recognised and widely understood that employees must act apolitically, impartially and ethically when performing functions associated with their employment, but the terms of reference must rule out extending this power beyond the direct day-to-day employment of its staff.

Unions have resisted previous attempts by government to undermine employees' ability to participate in actions authorised by their unions and to severely curtail their ability to participate in democratic organisations and actions outside of their work. We provided further evidence regarding the current Tasmanian Government's previous attempts to undermine workers personal freedoms when we made our initial response to the Draft Terms of Reference.

The following items are outside the scope of the Review:

1. *Employment matters relating to Tasmanian Government employees who are not covered by the State Service Act including Government Business Enterprises, and State-Owned Companies; performance;*

Understood.

- *Cultural and operational matters unrelated to the governing framework of the TSS;*

As discussed in our initial response to the Draft Terms of Reference, further clarity is required prior to providing a definitive response.

- *Wages policy and conditions for public sector employees that are negotiated through awards and agreements;*

Any change that would give primacy of the State Service Act 2000 over awards and agreements would not be supported by unions and their public sector employee members, so this should be clarified in the context of this review.

'Wages policy', a term rather than an actual policy, is not negotiated through awards and agreements. The government has previously imposed wages policy on employees, something that's been contested for many years, but it's understood that it has abandoned the setting of public sector wages policy so this reference should be removed.

- *The role of Trade Unions to advocate for public sector employees; and*

It must be noted that trade unions are not a third party, public sector employees are members of their unions and therefore freely able to participate in them. The role of unions isn't simply to advocate for our members and their ability to participate in this advocacy, unless this is taken to mean advocate in the broadest context. This term should be amended to ensure that employees' current rights and obligations to participate within their unions is protected.

An extract from the HSU rules "Objects" highlights this point.

The objects of the Union shall be:

- (a) To uphold, foster, protect and improve the rights and interests of members and persons employed in the industries referred to in rule 2, industrially and otherwise, to the best possible conditions and just remuneration and to guard them against any hardship, oppression or injustice in connection with their work;
- (b) To uphold, foster, protect and improve the rights of members to freely associate and collectively bargain;
- (c) To take all necessary steps for the protection, health and safety of members;
- (d) To encourage and foster improvement of the status, training, advancement and qualifications of all members;
- (e) To obtain equal remuneration and employment and civil rights for members, regardless of the member's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, social origin or any other unlawful basis of discrimination.
- (f) To ensure that members enjoy the same civil rights as are enjoyed by other citizens;
- (g) To improve the lives, including the working lives, of members and their families;
- (h) To promote industrial peace by all amicable means, such as conciliation, arbitration, or the establishment of permanent boards, to assist in their settlement by just and equitable methods;
- (i) To represent the Union and members in any court, body or tribunal dealing with matters of interest or concern to members;
- (j) To secure the participation of and influence of members in the administration, development and planning of industries referred to in rule 2;
- (k) To encourage the democratic involvement of members in the Union;
etc.

The introduction of either a minimum or maximum target for the total number of public sector employees in Tasmania.

Understood. But we would have grave concerns if a target acted as a cap. Expanding the number of health workers for example to meet demand should not require staff cuts or offsets in other agencies, or the outsourcing or privatisation of functions within the agency concerned.

CONCLUSION.

For many cogent reasons we have requested that the Tasmanian Government abandon the current rushed review and embark on a broader and more measured one. We see significant risks finalising a review, and making major changes to the Tasmanian public sector, during a very serious global pandemic.

The terms of reference are vague, obtuse, unclear and difficult to definitively respond to, so this response must be read in that context.

A major concern to HACSU is the possibility of government using this review to achieve the political objective of limiting an employee's right to participate freely in democratic processes within and beyond their employment, fully within their union, their community and the political discourse separately from their employment. Government has given an assurance that the review will not extend to these matters and so this should be reflected at the earliest opportunity, in the initial report due in October 2020.

October 2020