Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

WITNESS STATEMENT OF ANGELA SDRINIS

I, Angela Sdrinis of Level 1/239 Park Street, South Melbourne, in the State of Victoria, Solicitor, [redacted], do solemnly and sincerely declare that:

1 I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

2 I made a submission to this Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings on 2 September 2021. I refer to and adopt that submission. Attached to this declaration and marked **AS-1** is a copy of that submission dated 2 September 2021.

3 I made a second submission to this Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings on March 2022. I refer to and adopt that submission. Attached to this declaration and marked **AS-2** is a copy of that submission dated March 2022.

BACKGROUND AND QUALIFICATIONS

4 I have the following qualifications:

(a) Director, Angela Sdrinis Legal

(b) BA, LLB

(c) Personal Injuries Accredited Specialist

5 I commenced articles in 1983 with Ryan Carlisle Thomas (**RCT**) lawyers. I remained at RCT until 2014, with one short break of 12 months in about 1986 when I was employed as a legal officer with the Federated Fire Fighters Union. I was a partner at RCT between 1992 and 2014 when I left that firm to establish my own practice, Angela Sdrinis Legal (ASL). ASL is a personal injuries firm which specialises in institutional abuse claims.

6 Attached to this statement and marked **AS-3** is a copy of my curriculum vitae.

CURRENT ROLE

7 I am the founder and a Director of ASL, a plaintiff law firm with offices in Hobart and Melbourne. ASL specialises in sexual and institutional abuse, as well as personal injuries and Comcare applications.

8 Since its inception in 2014, ASL has represented over 300 victim-survivors of child sexual abuse seeking compensation from the Tasmanian Government, and over 1,700 victim-survivors in other Australian jurisdictions.

9 The ASL Hobart office was established in July 2018 in response to the quantity of Tasmanian survivors of child sexual abuse seeking legal advice but I commenced acting for Tasmanian survivors out of our Melbourne office from about 2015.

DEALINGS WITH THE DEPARTMENT OF EDUCATION DIRECTLY

10 I have been engaged to act on behalf of a range of individuals with complaints which concern their interactions with the Department of Education in Tasmania (the **Department**). Generally speaking, my clients have complaints or allegations connected with sexual abuse or exploitation.

11 My dealings with the Department on behalf of my clients have largely involved clients who were in the process of commencing, or who had already commenced proceedings. Therefore, much of my contact with the Department has been through the Solicitor-General's Office, and somewhat indirect. While the Solicitor-General's Office appears to be instructed by various individuals from the Department of Education, it is not clear to me how much of that instruction-giving process is driven by the Solicitor-General's Office's own advice to the Department of Education. I describe my dealings with the Solicitor-General's Office and Tasmanian Government generally further in this statement.

12 However, I have interacted directly with the Department of Education in respect of Right to Information (**RTI**) requests from my clients.

13 Unfortunately, the RTI process has deteriorated since I first interacted with it in 2018. Initially, unlike the Department of Human Services and Corrections, the

Department of Education dealt with RTI requests relatively promptly. More recently however time lines have blown out and in my experience, it can take an incredibly long time to get documentation from the Department of Education under the RTI process. Delay in getting RTI material from the Department of Education has blown out to about 12 months and I anticipate that the time lines will blow out further as we are regularly receiving requests for extensions of time for the Department of Education to provide documentation. This is the case even where the matter involves allegations of child sexual abuse. Even when we do receive documentation, I am not satisfied that the records we receive from the Department of Education contain everything they could or should give us, and they appear to be heavily redacted. In the first instance, I have no recourse to confirm the Department's approach except sometimes it is possible to do a comparison when Departmental documents are later received through the discovery process.

14 It has been my experience that the Department of Education has a general reluctance to provide information responsive to RTI requests in a timely way. The Department appears to me to take a broad view of the various exemptions that it can apply. Whilst in my experience all government agencies, including in other jurisdictions like Victoria, take a restrictive views of their powers to release information, I have found the provision of documents in Tasmania to be generally less forthcoming than in other jurisdictions.

15 While we have not had positive experiences with receiving information from the Department generally, I have observed improvements in the engagement of the State of Tasmania in the litigation process generally in the time that I have been acting for Tasmanian survivors. This shift is discussed in further detail, below.

THE TASMANIAN GOVERNMENT AS A MODEL LITIGANT

16 I have litigated in personal injuries matters for many years, and have been engaged in litigation against a range of institutional defendants, particularly in the Victorian context.

17 When I commenced dealing with the Tasmanian Government with respect to negotiated settlements , my experience was that when it came to child sexual

abuse claims, the Tasmanian Government were poor litigants. It appeared to me that there was little or no interest in non-litigious settlement negotiations, and there was no interest from the Solicitor-General's Office to agree informal protocols about settlements. For example, I first wrote to the Tasmanian Government about a settlement protocol on 20 September 2015 and I attach a copy of my letter to the then Minister for Health and Human Services marked **AS-4.** However it was not until late 2017 that there was any movement with respect to my request that a settlement protocol be established when I was invited to meet with a representative of the Solicitor-General's office and a Government representative. At this meeting, I was advised that the Government was open to settling child abuse claims without insisting on proceedings being filed, but there was very little other indication of what the Government's approach might be to claims that would be brought.

18 In our early attempts to settle child abuse claims without having first filed proceedings, I found the Government response less than satisfactory. For example, there was an insistence that claimants should attend the "opening session" of the informal settlement conference which was not agreed to at that time. However, I felt the attempt to pressure claimants to be present at opening sessions was the for the purpose of intimidating the claimant by the Government's hard line approach. It was not and is not usual in abuse claims for survivors to be present in these opening sessions.

19 Further, it was made clear at these early conferences that the State would take a hard line approach. Whilst I am not able to discuss the detail of matters that are discussed at settlement conferences and mediations as these discussions are to be kept confidential, I found that the State was very aggressive in its approach. The approach of the State caused enormous stress to my clients, who were already quite vulnerable – often due to their experiences of institutional child sexual abuse while in the care of the State. There were some instances where settlements were agreed to under pressure and against my strong recommendation which I felt was inappropriate.

20 It was also my experience that the Tasmanian Government at this time took a technical and legalistic approach. It was difficult to respond to such aggressive tactics, and at the time it was difficult to know how the Tasmanian judiciary would deal with these claims.

21 Aspects of this type of overly technical practice have continued until very recently.

22 For example, in my submission I have referred to the fact that in some matters the Tasmanian Government has argued that limitation periods still apply where the claimant allegedly "consented" to a sexual relationship even where the claimant was a minor and even where the sexual conduct might be regarded as a criminal offence under s124 of the Criminal Code.[1] I felt that these overly technical arguments put my clients under significant unnecessary strain, and were generally disconnected from the reality of the abuse and trauma at the core of my client's complaint. In any event, in my view, it is not appropriate to raise this point in defence of a *bona fide* claim.

23 In my experience, I have never come across a government or other agency in any other Australian jurisdiction seeking to rely on the "consent" of a minor to a "relationship" with an older person, usually in a position of power, as meaning that in these circumstances it cannot be abuse and that therefore limitation periods still apply. I also note that the Government has not once used this defence in male on male matters but only in matters involving girls and older men which I found to be a particularly sexist and unsavoury approach. I do not consider that this type of defence is in the spirit of the legislation or the model litigant guidelines or consistent with community expectations. The Tasmanian Government did not take a therapeutic or sympathetic approach to victim-survivors of child sexual abuse. In many cases, the approach taken by the Tasmanian Government actually exacerbated the suffering of the victim-survivors. Following recent media attention on this issue of "consent", the State is no longer relying on this defence and I have received amended Defences in the relevant matters.

24 After some time, we began issuing matters far more vigorously and we did see a change in attitude from the Tasmanian Government.

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[1] *Criminal Code Act 1924* (Tas) section 124.

THE TASMANIAN GOVERNMENT'S CURRENT APPROACH TO CIVIL LITIGATION

25 The attitude of the Tasmanian Government has improved but it has taken around 6 years from my original approach to 'reset' and shift from the way it responded to child sexual abuse historically. It was not until 2021 that we have had more meaningful processes and settlement discussions and we have been able to appropriately resolve a number of child sexual abuse matters. The only explanation that I have for the shift that I perceived is that we started filing matters in the Supreme Court which also coincided with a number of very significant verdicts in child abuse matters which were handed down on the mainland.

26 Since then, the Tasmanian Government's general approach to responding to child sexual abuse matters is more consistent with that of Governments on the mainland. Our interactions with the State in child abuse matters have improved and are more realistic even though the backdown on the "consent" issue referred to above only came about after publicity in the media, notwithstanding that it was a matter that I had raised privately with the Solicitor-General's office on more than one occasion.

27 Presently, there is good exchange of information between ASL and the Tasmanian Government in respect of discoverable material. I no longer have the same concerns that information is being withheld inappropriately through discovery, although my concerns about the RTI process remain.

28 In matters in which civil litigation has not been commenced, ASL has reached an informal and unwritten understanding with the Tasmanian Government under which the Tasmanian Government works hard to provide the information it can provide, above and beyond what we would normally get under an RTI. It now appears that where the Tasmanian Government believes it cannot provide us with the necessary documentation under the informal information-sharing protocol, it is often accompanied by a disclosure that they have additional material which they cannot provide. In addition, they generally provide a reasonable explanation as to the reasons the State cannot provide that information or documentation. In these cases, we can file proceedings and either subpoena material or go through the discovery process.

29 That being said, there remain areas in which the Tasmanian Government's approach could still be improved.

30 It is not clear to me whether the State of Tasmania would seek to rely on a Judge's common law discretion to stay or strike out an application on the basis of delay. Whilst we have not had a strike out application in any matter which has been filed with the Court, some certainty in this regard would be of assistance. It certainly would make a mockery of the abolition of limitation periods in child abuse claims if the Government, which had the power to abolish limitation periods earlier in time, chose to make strike out applications.

31 It is also not clear to me if the Government would seek to recover costs from an unsuccessful litigant. In comparison, my understanding is that in the absence of fraud, the Victorian Government would not seek to recover costs from an unsuccessful litigant in an out of home care claim in Victoria. It would be a good step for Tasmania to assure applicants of the same, provided the claim is brought appropriately. It would also be an appropriate recognition for some categories of vulnerable people, such as children in out of home care.

INCONSISTENT INFORMATION-SHARING WITHIN GOVERNMENT

32 What has been less positive is that the Solicitor-General's Office appears to have formed the view that it has the power to obtain the personal records of applicants outside of what is held by the Department for which they are acting. For example, in matters where the Department of Education is the respondent, the Solicitor-General's Office may informally obtain corrections records from the Department of Justice, or medical records from the Royal Hobart Hospital or the Department of Health. We are in dispute with respect to the information sharing protocols which the Solicitor-General's office says permit the sharing of this information between Government agencies.

33 I have not seen similar practices in Victoria. In Victoria, if I wanted to obtain records held by another government agency in a proceeding, I would do an RTI request or issue a subpoena to the relevant government agency for the records. In instances where I have issued a subpoena for materials in Tasmania, the Solicitor-General's Office's response has been that we should have simply requested the records directly from their office.

34 When questioned on its approach, the Solicitor-General's Office's response is that there is an exemption under the *Personal Information Protection Act* 2004 (**PIPA**) which is relied upon by the Solicitor-General's office to obtain information which would otherwise be protected by PIPA. ASL disagrees with the State's interpretation of these provisions. . At this stage our respective offices have agreed to disagree regarding the interpretation of these provisions and there are ongoing discussions regarding the State's powers in this regard. I remain concerned that information may be shared between different branches of Government without any checks or balances.

35 Whilst I am not suggesting any impropriety on the part of the Tasmanian Government, it is my view that a subpoena concentrates the mind, and the subpoena process adds a certain rigour to the process of obtaining particular documentation as the recipient of a subpoena is ultimately producing documents to the court.

36 I have, however, also experienced instances where Departments have been unable to obtain particular information from other Departments. The way in which access to information is managed appears to be inconsistent within the Tasmanian Government. In some cases, information-sharing between Departments and agencies is closed down and incredibly difficult, and in other cases information-sharing is overly permissive to the point of inappropriateness. There is also to my knowledge no publicly available memoranda or statements setting out the way in which the Tasmanian Government manages internal information-sharing.

CLAIMING PRIVILEGE OVER INDEPENDENT MEDICAL EXAMINATION REPORTS

37 In Victoria, if a defendant were to arrange a medico-legal assessment, they would be required to share the results of that assessment with the plaintiff; good, bad or indifferent.

38 In Tasmania, there is a capacity for the defendant, including the Tasmanian Government, to claim privilege over the medico-legal report. In historical matters of child sexual abuse where a victim-survivor is put through an Independent Medical Examination (**IME**), my view is that claiming privilege over the IME report is not consistent with either the model litigant guidelines or the

necessary 'trauma-informed' approach that ought to be taken in these circumstances.

39 It is difficult enough for the victim-survivor to endure an IME at the behest of the Tasmanian Government as a part of a civil claim. To then be restricted from accessing the resultant report is incredibly difficult for a victim-survivor to endure.

40 In some of our abuse matters, the Tasmanian Government has sought to rely on aspects of IME's which have not been exchanged. Upon being challenged about the fact that they are referring to a report over which they had claimed privilege and therefore withheld from discovery, the Tasmanian Government claims that their intention was simply to be as 'open as possible' with respect to what information was taken into account when advising their client, and that any references made to the privileged report were simply 'factual'.

41 In my view, it is inappropriate for the Tasmanian Government to claim privilege over IME reports in matters involving child sexual abuse. Further, should the Tasmanian Government claim privilege over an IME report, it is inappropriate to then rely upon the contents of that report to suit their case.

STANDARD OF TASMANIAN GOVERNMENT RECORD KEEPING

42 The standard of Tasmanian Government agency records have been mixed in my experience. At times, I have been pleasantly surprised about what Tasmanian agencies have held onto but at other times it has been hard to track down documentation even where claimants insist that complaints were made. This has been my experience mostly with Tasmanian Police where clients have instructed me that they made police complaints of which we have been unable to find any record. Further, it is not uncommon in Department of Education matters for clients to instruct me that they made a complaint to a teacher or even the Principal and no record has been kept. In the Harrington cases, two former teachers have provided me with statements that they complained to the then Principal of the school where Harrington was teaching and it appears that no records of these complaints were kept.

PRE-SETTLEMENT DISCUSSIONS

43 Generally speaking, the Tasmanian Government's capacity to respond to child sexual abuse claims is continuing to develop.

44 For example, the Solicitor-General's Office has been generally insistent that victim-survivor applicants participate in an open session where relevant questions of fact and law could be discussed, and the strengths and weaknesses of the applicants' case debated in front of the victim-survivor. This was incredibly brutal for some complainants to take part in, especially with respect to the discussion of causation. Some clients of mine settled because they found the mediation discussions so traumatic they could not contemplate a full hearing.

45 More often than not, the applicants, (particularly in the out of home care claims) were victim-survivors who ended up in care as children because they came from extremely difficult backgrounds. The discussion surrounding causation – is always significant in out of home care claims, as are arguments about vicarious liability of non-Tasmanian Government parties. Often, in cases of this kind, lawyers for the State of Tasmania would deploy the victim-survivor's life experiences prior to entering out of home care, and subsequent to discharge from care, as a means to minimise causation arising from the abuse or neglect they suffered while in out of home care. In some instances, lawyers for the State of Tasmania have described in detail the abuse suffered by the victim-survivor at the hands of their natural parents prior to entering the State's care. Even if there is a legitimate point to be made, I cannot understand why issues of this kind cannot be approached in a trauma-informed or sensitive manner.

46 More recently, the Solicitor-General's Office has been open to claimants not participating in the joint sessions and seems to be more aware of the trauma that can be caused to claimants if participation in a mediation or informal settlement conference is not well managed.

47 Child sexual abuse matters involving the Department of Education are usually less complex than those out of home care matters, as the alleged abuse is almost always perpetrated by a state service employee so that there is generally less contention with causation.

48 Whilst the Solicitor-General's Office lawyers are good lawyers, their approach to responding to child sexual abuse matters has been noticeably different to that of the government lawyers we deal with in other Australian jurisdictions. It is evident that there has either been a lack of understanding amongst the Tasmanian Solicitor-General's Office lawyers that such matters must be conducted in a more trauma-informed way or their approach has been based on instructions from the Government. Whatever the background to this approach it is clear that arguments should be made with a therapeutic approach in mind, especially when the victim-survivor is present. In my view, training around trauma informed practice and litigation should be made available to lawyers working in this space on behalf of the State. Part of the training should also be around Government lawyers having therapeutic support in doing this work which must be traumatic for those lawyers who privately may have enormous compassion for survivors but professionally are required to discount the survivor's experiences and the impacts of abuse.

SETTLEMENT AGREEMENTS

49 ASL has prepared an informal settlement protocol with the Tasmanian Government. I attach a copy of a letter dated 20 September 2015 that I wrote to the then Minister for Health and Human Services outlining the informal settlement protocol that I had developed with the State of Victoria and well before ASL had opened an office in Hobart, marked **AS-4**. Whilst there are some differences in the Tasmanian approach, and whilst a protocol has not been formally agreed, both ASL and the Tasmanian Government have tried to stick to a process which both parties understand as closely as possible. That protocol is substantially the same as the Victorian protocol outlined in my letter of 20 September 2015 with some improvements including that the State of Tasmania does not require statements of claim to be drafted which saves cost. The Tasmanian Government is also open to joint Medical Examinations, the cost of which the Government has agreed to cover. However, the Solicitor-General's office has not agreed to timelines e.g. there is no commitment to responding to a letter of demand within a certain time frame. Having said that, I have not found the Government to delay excessively except with a reasonable explanation. In any event, at times delay comes from our end.

50 In my experience, settlement agreements with the Tasmanian Government in child sexual abuse matters generally do not contain any conditions requiring settlement sums to be kept confidential, or otherwise including non-disclosure obligations in relation to their matter. This is a positive feature for victim-survivors.

51 While historically there have been references to general damages generally being lower in Tasmania, this may have changed since the recent decision in the civil claim in respect of ZAB - child sexual abuse where an award of $5.2 million was made in favour of the victim-survivor. This was a national record award. My experience is that, recently and across the board, the Tasmanian Government has made settlement offers in child sexual abuse matters generally consistent with those made on the mainland.

LETTERS OF APOLOGY

52 The Tasmanian Government has not formally agreed to provide letters of apology in all matters and this has also been something of a learning process with survivors at times feeling insulted by aspects of letters of apology which have been provided by the State, even though I accept that no offence was intended. I have had discussions with the Solicitor-General's Office that the Tasmanian Government could write direct personal responses to victim-survivors of child sexual abuse as part of the National Redress Response which already applies to NRS claimants and which could be extended to claimants who settle their claims via civil litigation. This would be a good development for Tasmania. It is important that letters of apology are appropriately drafted and that recognise the personal circumstances and wishes of the individual receiving the apology. Letters of apology are generally only provided in Government matters when claims have resolved but there are some institutions who provide a letter of apology as soon as a claim has been served.

TASMANIAN POLICE

53 My experience of individual police officers who investigate historical child abuse claims in the Tasmanian Police Force is that they are good officers

trying to do their best. However, there is not a specialised child sexual abuse unit in Tasmania. This means that the level of training and experience of a police officer responding to a complaint is variable.

54 Until last year, a person reporting a child sexual abuse matter would be referred to Crime Stoppers or their local police station. Late last year, after raising the inadequacy of this process with the SG's office, I was advised by Tasmanian Police that whilst no central point of reporting of historical child abuse matters had been established by police, the Joint Review Team was considering the issue as part of its work but in the interim, I could refer matters to the Assistant Commissioner's office.

55 This is one of the aspects of Tasmania's system for responding to child sexual abuse that is the most stressful and agitating. One cannot expect a victim-survivor of child sexual abuse to physically present to a local police station, particularly in regional areas or smaller populations like Tasmania, where the workers at the police station might be well known to members of the community.

56 In my view, Tasmania desperately needs, and is yet to establish, a specialised child sexual abuse unit with police officers that are trained to receive, manage and deal with these complaints directly and discretely.

I make this solemn declaration under the *Oaths Act 2001* (Tas).

Declared at [redacted]
on [date]

Before me

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