

8 December 2023

Kristy Bourne  
Deputy Secretary, Justice and Reform  
Department of Justice

By email: [kristy.bourne@justice.tas.gov.au](mailto:kristy.bourne@justice.tas.gov.au)

Dear Ms Bourne

### **Supreme Court (Parliamentary Commission of Inquiry) Bill 2023**

---

Thank you for providing a copy of version 9 of the Bill. In the short time available, the Society has taken time to review the Bill and makes the following comments:

1. The Society is aware that a Judge of the Supreme Court can only be suspended or removed by the Governor with agreement of both Houses of Parliament.
2. The Society maintains its position that it would not be appropriate to make any comment in relation to a pending court matter. The matter should take the usual course.
3. All persons are equal before the courts and tribunals in Tasmania. The Society takes the view that everybody should be treated the same in the justice system, irrespective of their position, which includes employment.
4. The Society acknowledges the seriousness of family violence offences and the impact these offences have upon our society.
5. In determination of any criminal charge, everyone, and that includes Justice Geason, is entitled to a fair hearing by a competent, independent and impartial

court. Justice Geason, like any other Tasmanian, charged with an offence is entitled to the presumption of innocence. The onus is on the police prosecution and/or the office of the Director of Public Prosecutions to prove any allegation beyond a reasonable doubt.

6. The Society has noted the information provided by the Department of Justice and that the purpose of this Bill is to provide for the creation of a specific Parliamentary Commission of Inquiry to gather information and provide a report to parliament. It is understood that that report would contain findings of fact made by the Commission in relation to the conduct and behaviour of Justice Geason, along with the Commission's opinion as to whether he is fit to sit as a Supreme Court Judge.
7. The Society understands that this report will not bind the parliament in any way and parliament will not be required to act with any opinions or recommendations expressed in that report.
8. The Society does have significant concerns in relation to this Bill which are summarised as follows:
  - (a) The Society does not understand the urgency with which the Bill is being treated. There is no urgency. Justice Geason has taken leave. Criminal charges are pending and should be finalised before any inquiry begins.
  - (b) The effect of the Bill is to establish a Commission in relation to one person before completion of the criminal proceedings. The outcome and any findings by the court in relation to these alleged offences must be relevant. The review should be deferred until that process is complete.
  - (c) The Society is therefore concerned about the potential prejudice in relation to the current proceedings.

- (d) The Society is concerned about the ability of the Commission to make findings of fact when the court process has not been completed and the possibility of inconsistent findings of fact.
- (e) The Society has grave concerns in relation to clauses 5(1)(a) and (b). These clauses appears to allow the Commission to inquire into all aspects of Justice Geason's behaviour (professionally, personally or otherwise) since 2017, when he was appointed. This allows a wide scrutiny of a six (6) year period. Clause 5(1)(b) appears to allow the Commission to inquire into aspects of Justice Geason's professional and personal behaviour or otherwise from birth until 2017.


Justice Geason is entitled to particulars of the conduct or behaviour that is said may warrant suspension or removal. The subsections as drafted are far too broad. They are unfair to a significant degree. In addition, presumably the Government undertook appropriate investigations relating to conduct and fitness for office, prior to appointment in 2017.

- (f) The Society has concerns in relation to clause 6. This appears to allow the Commission to hold the hearing and written submission despite there being proceedings in another court.
- (g) The Society has concerns in relation to clause 6(2)l and, in particular, inclusion of the words "*or any other act.*" That seems to provide wide powers on the Commission.
- (h) The Society has concerns in relation to clause 6(3).
- (i) The Society is concerned that there are no restrictions upon the Commission obtaining information which may include calling upon the following:

- (i) The Commission has the power to ignore legal professional privilege if it seeks to obtain information in relation to the current criminal proceedings. That may prejudice the criminal proceedings.
  - (ii) There may be power of counsel for Justice Geason to cross-examine the complainant as part of the Commission's inquiry as a consequence of affording procedural fairness.
  - (iii) The Society does have concerns about whether clause 6 which allows the Commission to obtain evidence 'in any manner that it considers appropriate' along with the apparent abrogation of solicitor/client privilege. That calls into question whether the Commission is entitled to seek records of instructions and advice between Justice Geason and his legal representative.
- (j) The Minister having the power to omit parts of a report in clause 11 is not appropriate. If parts of a report are to be omitted it ought to be on the recommendation of the Commissioners.
- (k) Clause 17, which provides power to the Minister alone to recommend suspension is problematic. It turns the Commission's report into a source of power for the Executive government over the judiciary. It is likely that the provisions are unconstitutional as they attempt to divest the Supreme Court of the characteristics of a Chapter III Court.
- (l) The Law Society of Tasmania repeats its concern as to whether the Commission will be prejudicial to the criminal proceeding.
9. Having regard to the significant defects in the Bill, the Law Society of Tasmania cannot support the Bill in its current form.

10. The Society has no difficulty if these submissions are placed on the department's website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Julia Higgins', written in a cursive style.

**Julia Higgins**  
**President**