

SECOND READING SPEECH – HON. WILL HODGMAN MP

Promissory Oaths Bill 2015 & *Promissory Oaths (Consequential Amendments) Bill 2015*

Madam Speaker, the purpose of the Promissory Oaths Bill and Promissory Oaths Consequential Amendments Bill is to consolidate and clarify the law in relation to the taking of oaths and affirmations by various office holders, as well as validating the previous oaths and affirmations taken by certain office holders.

Madam Speaker, as Members may recall, prior to Easter there was some consternation about the procedures for Magistrates, Coroners and Bench Justices to take various oaths upon appointment to office.

The Promissory Oaths Bill 2015 seeks to remove any doubt surrounding the past taking of oaths by Magistrates, Coroners and Justices of the Peace in Tasmania, while at the same time consolidating, clarifying and updating the law as it relates to oaths that various office holders are required to take.

Upon being appointed, Magistrates, Coroners and Justices of the Peace are required to swear a judicial oath before exercising the functions and powers of their office. These requirements are set out under the *Magistrates Court Act 1987*, *Coroners Act 1995* and *Justices Act 1959*.

The words of the oath are prescribed by the *Promissory Oaths Act 1869*. There are also provisions for an affirmation to be taken in place of an oath. Appointees are required to swear or affirm to faithfully execute their office and do equal right and justice to all persons to the best of their judgment and ability according to law. The taking of the judicial oath is a solemn occasion and reflects the important roles that these officers hold in society.

Madam Speaker, the *Promissory Oaths Act 1869* is an old Act drafted in colonial language, which has led to some ambiguity in interpretation and possible doubt as to whether oaths were taken in the appropriate manner.

While the Government is of the opinion that the past exercise of powers and functions of Magistrates, Coroners and Justices is lawful, there should be no doubt about the legality of their decisions or actions, and any uncertainty must be resolved.

Madam Speaker, I refer Members to a well-settled principle of law that courts have always accepted that it is unlikely that it was the purpose of legislation that an action done in breach of a statutory provision should be invalid if public inconvenience would be a result of the invalidity of the action.

Further, the Government relies on the doctrine of validity of *de facto* public officers, which applies to the exercise of an office recognised by the law. The *de facto* officer doctrine provides that the actions of public officers who are, for all intents and purposes, recognised as public officers, will still be held to be valid so far as they involve the interests of the public, even though the officer's appointment may not have conformed with some legal requirement – such as the proper taking of an oath.

This doctrine also requires action to be taken to remedy the defect once the problem is known.

Essentially, this is what the Promissory Oaths Bill and consequential amendment Bill does. They remedy any previous defects or irregularity in the oath taking process, and validate the actions of those officers to remove doubt.

Madam Speaker, as Members would appreciate, concerns in relation to the way in which the judicial oath has been taken relate to the swearing of various oaths going back many years.

To this end, the Department of Justice has also been asked to take urgent action to remove any doubt about the way in which the judicial oath has been taken by having existing Magistrates, Coroners and active Bench Justices retake their oaths, in accordance with the Act.

The *Promissory Oaths Act 1869* will also be replaced with modern provisions that codify the law in respect to who should take an oath, the form of oath and the ability to make an affirmation in relation to a number of persons including -

- Members of both Houses of Parliament;
- Members of the Executive Council such as Ministers;
- the Secretary of Cabinet;
- the Clerk and Assistant Clerks of the Executive Council;
- Judges;
- Magistrates;
- Coroners;
- Justices; and
- the Sherriff of the Supreme Court.

The Promissory Oaths (Consequential Amendment) Bill updates the changes to various Acts that refer to certain persons taking oaths to ensure the law is clear and contemporary.

Madam Speaker, there should be no uncertainty in the administration of justice and in the operation of the machinery of government. These Bills seek to rectify and clarify any past issues that have arisen and recently come to light.

I commend the Bills to the House.