

**Tuesday 20 November 2018**

The Speaker, **Ms Hickey**, took the Chair, acknowledged the Traditional People, and said Prayers.

### **RECOGNITION OF VISITORS**

**Madam SPEAKER** - Honourable members, this morning I have the pleasure of welcoming the community group from the Glenorchy Youth Task Force.

I also acknowledge the presence in the Speaker's Reserve of the Honourable David Pisoni MP, member for Unley, Minister for Industry and Skills in the Parliament of South Australia. Welcome.

**Members** - Hear, hear.

### **QUESTIONS**

#### **Commissioner for Children and Young People - Recruitment**

**Ms WHITE question to MINISTER FOR HUMAN SERVICES, Mr JAENSCH**

[10.03 a.m.]

On 6 September 2017, your predecessor, Mrs Petrusma, said the Government would undertake a nationwide recruitment process to find a new Commissioner for Children and Young People after the departure of Mr Mark Morrissey. Following this process, how many people did the selection panel recommend for this position?

### **ANSWER**

Madam Speaker, I thank the member for Lyons for her question.

I am very pleased that yesterday the Governor confirmed the appointment of Leanne McLean as our new Commissioner for Children and Young People. It is a very important independent statutory position for Tasmania. This appointment is one that is very important for children and young people in Tasmania. This is a position -

**Members** interjecting.

**Madam SPEAKER** - Order, please.

**Mr JAENSCH** - As I am demonstrating, we take the issues of the oversight, governance and wellbeing of children and young people in Tasmania very seriously. We are acutely aware of the importance of the independence of this role and its ability to serve the terms of reference, the objectives of the act under which the position is created, to the letter.

The Government, as has been pointed out, commenced the recruitment process in September last year. The recruitment process involved print advertisements nationally and across the state. It also included an executive search process to identify the best candidates possible for this position.

A selection panel was created which included senior public servants and independent members of the social services sector, not politicians.

**Members** interjecting.

**Madam SPEAKER** - Order and please, through the Chair.

**Mr JAENSCH** - The process was not rushed through to be concluded in the lead-up to an election. It was suspended and recommenced with a new government and a new Department of Communities Tasmania. That meant a new chair of that process.

In the second stage the panel was chaired by Ginna Webster, the secretary of Communities Tasmania. Jenny Gale, secretary of DPAC and Tim Bullard, secretary of the Department of Education, were on that panel, and two non-government panel members, Kym Goodes, the CEO of TasCOSS and Ros Cornish, the CEO of Lady Gowrie Tasmania. The panel short-listed a field of candidates for interview. The nature of the panel ensured there were strong, independent and experienced voices around the table who would oversee a merit-based process. The panel was unanimous in all its findings. The recommendation was made by me to Cabinet to appoint the most suitable candidate based on the panel's unanimous findings.

**Ms WHITE** - Point of order, Madam Speaker. Standing order 45 goes to relevance. The minister has glossed over the key part of the answer in not addressing the question which was, how many people did the selection panel recommend following that process? You have missed that step.

**Madam SPEAKER** - Unfortunately that is not a point of order because I cannot direct the minister how to answer the question, but I am sure he will.

**Mr JAENSCH** - Madam Speaker, I am being clear and thorough with this because we understand the importance of this appointment. We understand the importance of the public's confidence in this appointment process.

The panel interviewed their short list of candidates and presented a report to me. I recommended to Cabinet to appoint the most preferred and suitable and strongest candidate as found unanimously by the selection panel. My recommendation was supported by Cabinet and confirmed by Executive Council yesterday. Through this process we commissioned WLF to independently conduct a probity audit of the whole selection process.

**Members** interjecting.

**Mr JAENSCH** - I believe they go by WLF these days. I checked it to ensure the process was conducted thoroughly and fairly. We now have in this position a person with background in social work, policy development -

**Ms O'Byrne** - They recommended more than one and you picked the Deputy Premier's former chief of staff?

**Madam SPEAKER** - Order, Ms O'Byrne.

**Mr JAENSCH** - and experience in Tasmania in this field, working with young people and particularly those who are most vulnerable.

The independent selection panel advised that the successful candidate's vision, aspiration, understanding and sense of purpose was strongly demonstrated at interview. The panel was convinced that if provided an opportunity, Ms McLean would make an outstanding Commissioner for Children and Young People.

The selection process was independent. It included an independent probity audit. My office contacted the Leaders of Labor and the Greens on Sunday to offer a briefing from the chair and independent members of the selection panel. I now understand that Labor and the Greens have accepted the offer of a briefing that will take place today. I ask those members of those parties to reserve their further judgment until they have had the opportunity to hear from the independent panel, who can talk about the process from which I was at arm's length. This is a very important position for children and young people -

**Members** interjecting.

**Madam SPEAKER** - Order. We have already spent about seven minutes on this question.

**Mr JAENSCH** - in Tasmania. It deserves to be treated with respect and not politicised. The process we have undertaken has been rigorous and independent, has been independently assessed and we have offered a briefing on the process from the panel.

The offer has been accepted and I ask that the Opposition and the Greens do this matter the justice of having received their briefing before continuing down a line of asserting politicisation of this appointment.

### **Commissioner for Children and Young People - Recruitment**

**Ms WHITE question to MINISTER for HUMAN SERVICES, Mr JAENSCH**

[10.11 a.m.]

For the past 14 months, Tasmania has had an acting Interim Commissioner for Children and Young People. That person has now been overlooked for the permanent role, as well as whoever else was recommended by the panel for you to consider as commissioner, despite being described by Mrs Petrusma last September as having -

... extensive experience in not-for-profit management, policy development, corporate governance, change management, strategic planning, recruitment and management of paid staff and volunteers and delivery of services.

The position of Commissioner for Children and Young People needs to be entirely independent from Government and promote the rights and wellbeing of children and young people without political bias. Why did the Cabinet decide not to appoint the independent acting commissioner, who had been in the role for 14 months, instead of a person who has been a political staffer to the Deputy Premier for the past five years?

### **ANSWER**

Madam Speaker, I acknowledge the excellent work of the Interim Commissioner for Children and Young People, David Clements, who has stepped into the interim commissioner role and

provided continuity of work. I thank him for the particular interest he paid and the contribution he made in the area of health and wellbeing of young people in Tasmania in his time as interim commissioner, his interest in the young people in the Ashley Youth Detention Centre and our youth justice system and for his open and earnest communication he had with me and with others. He did an excellent job. I thank him for his service to Tasmania and young people in Tasmania during the time he was interim commissioner. I wish him every success in his future career.

In answering the last question, I outlined the exhaustive and rigorous process undertaken by the independent selection panel, that it had been independently audited and with their findings being unanimous. I was able to recommend to Cabinet with great confidence the strongest candidate for the position based on the panel's findings. I believe the recommendation of the selection panel and the identity and privacy of other candidates also needs to be respected in this place.

I hear the loaded questions and the assertions of political interference but to do anything other than to take the unanimous findings of the independent selection process for their strongest candidate for the process, to apply a political lens over that in my recommendation, would have been political interference and I did not go there. I ask the Opposition in particular to save some their questions for the independent panel that is going to brief them this afternoon.

**Ms O'BYRNE** - Point of order, Madam Speaker. This is question time. The minister can answer the questions. If he answered the question about how many people were recommended by the panel, we could move on.

**Madam SPEAKER** - It is not a point of order but I urge the minister to move on with the answer, please.

**Mr JAENSCH** - The recommendation of the selection panel should be respected. The opportunity of the briefing should be taken. Your Leader has asked one question and you are asking another. I am not going to go into the details in this place, under privilege, of who else was in the process or the reasons for the decision. We have given the Opposition and the Greens the opportunity of a direct briefing from the independent selection panel that operated at arm's length from me and from Cabinet. I trust that most of their questions will be answered there this afternoon.

### **Marine Farming Planning Review Panel - Resignations of Members**

**Dr WOODRUFF question to MINISTER for PRIMARY INDUSTRIES and WATER, Mr BARNETT**

[10.16 a.m.]

Two of the eight members of your marine farming review panel have resigned in protest at the recent approval of the salmon industry expansion into Storm Bay. They sent a joint letter to your department dated 27 August. Ms Louise Cherrie, a specialist in environmental management, and Professor Barbara Nowak, an expert in aquatic health and biosecurity, both sent a follow-up letter to you earlier this month outlining their specific concerns about the approval process and a basis for the decision. Can you confirm these two scientists resigned because of the flawed approval process and will you table both these letters to the House today?

**ANSWER**

Madam Speaker, I thank the member for her question. It is coming from a member of the Greens who has a very strong record of criticisms and attacks on our productive industries going

back to hydro industrialisation, our forest industry and now the salmon industry. There is no better supporter of the salmon industry in Tasmania than the Hodgman Liberal Government.

I have full confidence in the Marine Farming Planning Review Panel and the advice it provides to Government on marine farm planning matters. It is an independent authority. It is set up under the law, the Marine Farm Planning Act 1995. It provides expert and independent advice to me and the minister of primary industry on matters relating to marine farming planning matters. Frequent, robust debate occurs during that process, as I would expect and as any minister would expect of such a body.

I am pleased to say that I met with the chairman of the panel last week. I wanted to meet with the chairman, Craig Midgley. I had a meeting with him and it confirmed my confidence in the panel and the work of the panel. I give my thanks to the panel members for their work and for their service to me as the minister, to the Government and the important role they play in our sustainable salmon industry. I am extremely grateful to all the panel members for contributing their expertise to this important statutory planning process.

I have received a letter from the two members of the panel who have resigned, as the member for Franklin advised the House. I received that letter and I responded to that letter in writing last week. I have noted the concerns -

**Ms O'Connor** - Table it.

**Mr BARNETT** - Sorry, it was a private letter from them to me, as minister. I have responded to that letter. I have set out my acknowledgement and thanks to them for their service to the panel.

**Dr WOODRUFF** - Point of order, Madam Speaker, Standing Order 45. I asked a question. Can the minister confirm they resigned because of the approval process, and will he table their joint resignation letter?

**Madam SPEAKER** - He has already answered the question. He won't be tabling it. It is not a point of order because I cannot put words into the minister's mouth.

**Mr BARNETT** - Thank you very much, Madam Speaker. I am doing my best to respond. I met with the chairman of the panel only last week. I responded to the letter from those two members that they forwarded to me and I received last week. I have acted as swiftly as possible. They have outlined a range of concerns and issues in their letter. I have put on the record my thanks to them for their service. I have talked to the chairman and have been reassured of my confidence in the panel and the wonderful work they do for and on behalf of the Government.

In addition, in that letter to those two panel members, I have indicated and asked my secretary of the department to make himself available to meet with those two members to understand more about their concerns and issues and the reason for their resignations. I have acted as swiftly as possible. Last week I sent that letter -

**Ms O'Connor** - Why did they resign?

**Mr BARNETT** - The secretary of the department has agreed to make himself available to meet with those two panel members. I am looking forward to hearing any feedback that is relevant from that meeting from the secretary of the department. There cannot be anything clearer in terms of the

importance of our salmon industry. We have growth in the salmon industry, with 5000 jobs in rural and regional Tasmania, and that should not be forgotten.

**Dr WOODRUFF** - Madam Speaker, point of order under standing order 45, relevance. The question was why did they resign, not that they did resign. That is on the record. Why did they resign?

**Madam SPEAKER** - As you know, standing order 45 is the greatest frustration on Earth to a Speaker, but I cannot rule it in so I will ask the minister to wind up.

**Mr BARNETT** - Thank you, Madam Speaker. I have answered the question in full, in a comprehensive manner, and I have highlighted the importance of our salmon industry, something that the Greens continue to attack.

### **Commissioner for Children and Young People - Recruitment**

**Ms WHITE question to MINISTER for HUMAN SERVICES, Mr JAENSCH**

[10.22 a.m.]

The Deputy Premier, Mr Rockliff, knew that appointing Ms Leanne McLean, his chief of staff, as Tasmania's Commissioner for Children and Young People, presented a conflict of interest for your Government. We know this, because you were at pains yesterday to point out that he was deliberately absent from Cabinet when the decision was made. Again I ask, how many people did the selection panel recommend for this position before you chose to recommend a political staffer to your Cabinet colleagues?

### **ANSWER**

Madam Speaker, I can confirm that Ms McLean did declare to the Deputy Premier when she first made application for -

**Ms O'Byrne** - The secretary was on the panel so you would think so. Probably in her briefing notes.

**Mr JAENSCH** - Do you want me to answer?

**Ms O'Byrne** - Anytime you want to answer a question.

**Mr FERGUSON** - Madam Speaker, point of order. Earlier, the Leader of the Opposition begged to be heard in silence. Can I ask that the same courtesy be provided to the minister?

**Madam SPEAKER** - That is a fair call. We will hear this answer in silence - and I mean silence.

**Mr JAENSCH** - The independent selection panel was asked to find us the best people for this job, to conduct a rigorous process nationally, to shortlist and interview and to provide me with their assessment of the relative suitability of the candidates they interviewed, which they did. Their findings were unanimous. I acted on their findings and recommended the strongest candidate to Cabinet. Cabinet supported my recommendation and the Governor acted on it.

**Ms O'BYRNE** - Madam Speaker, point of order under standing order 45, relevance. The question is very precise and the minister is deliberately ignoring it: how many people were recommended by the selection panel? That is the only question before the House right now.

**Madam SPEAKER** - I have to rule that out as a point of order. I hear the question frequently so I am sure the minister is listening.

**Mr JAENSCH** - Madam Speaker, what I have been explaining - and I will step it out - is that the selection panel assessed the relative suitability of its short-listed candidates they interviewed and provided that report to me. Leanne McLean was the strongest candidate, unanimously agreed by the members of that panel. I then recommended the appointment to Cabinet.

**Opposition members** interjecting.

**Mr JAENSCH** - You need to listen carefully to what I am saying. You asked me how many people the panel recommended we appoint. The panel gave me their assessment of the relative suitability of the short-listed candidates. I recommended the appointment.

### **Economic Growth in Tasmania**

**Mr HIDDING question to PREMIER, Mr HODGMAN**

[10.26 a.m.]

Can the Premier please update the House on Tasmania's thriving economy and the measures the Hodgman Liberal Government has taken to help our economy grow?

**ANSWER**

Madam Speaker, I thank the parliamentary secretary for his question. On this side of the House we welcome a question about Tasmania's strong economic performance. In fact, the only questions we get about Tasmania's economy and its performance come from this side of the House.

There is no doubt that our economy is very strong but it is not something we claim credit for, because it is Tasmania's buoyant private sector and Tasmania's high levels of confidence in our business sector that is driving our economic growth - confidence that was never experienced under Labor and the Greens. Their policies were ranked the worst in the country. Ours are ranked the highest by our small business sector.

While we will not claim the credit for it, we will certainly acknowledge the fact that our economy has come a long way and Tasmanian businesses, that those opposite are so out of touch with, are saying they are supportive of what this Government is doing to continue sustained economic growth, create more jobs and ensure that our budget is in such a strong position that we are able to invest record amounts into our schools, hospitals, police service, and the infrastructure that our growing state needs. That is all contained in our long-term plan for this state that we are delivering and that is delivering results.

We have the fastest rate of economic growth in the decade. Tasmania, as the ABS statistics recently showed, is the third-fastest growing state in Australia, since being slammed into recession back in 2012-13 under the Labor-Greens government. Our economy has grown by 9 per cent and

that economic growth is underpinned by high levels of confidence but also high levels of household consumption, high retail growth, business investment growth, international tourism at the highest rate in the country, the highest rate of export growth in recent year, and most importantly since we came to government, over 15 000 more jobs for Tasmanians, and 3000 Tasmanians have found full-time work over the past year alone. Our unemployment rate is now 5.6 per cent. Under the former Labor-Greens government, it went as high as 8 per cent, so a lot has happened.

It has not happened by chance, because we now have a much better, attractive business and investment environment under our majority Liberal Government. We have cut red and green tape, as we promised. We have given Tasmanian businesses more opportunity to get government work. We have lowered payroll tax rates so they are the most competitive for small and medium enterprises in the country. That is a reform we have undertaken to make it more cost-effective for our businesses.

We have taken action to cap power prices to reduce electricity bills; to support the growth in our important sectors where we have a strong competitive advantage in tourism; in agriculture; in building and construction where we are supporting more Tasmanians into homes, and as a result our building and construction sector is performing very strongly. We are also investing record amounts now and over the coming decade into infrastructure that will drive further economic gains and productivity improvements for our state and more job opportunities.

Madam Speaker, these are some of the things we are doing. They are policies we took to the election that are contained within our budget and our long-term plan. Tasmanians are more confident and optimistic about the future more broadly and that is a positive thing. There is much more to do and our economy is strong now.

The reason why it is so important to keep our economy strong, to not be complacent, or worse still to take our foot off the pedal, is because we need to ensure that this opportunity that presents to us, this extraordinary point in time where our economy is so strong, is sustained for as long as possible. They are the things we are doing and have done.

It is also important to look to the future and we have outlined our long-term plan. It is very clear what we intend to do and the targets that we have set ourselves and will be matched against. It is also important to understand what the other parties intend to do.

What we are hearing from the Greens is an increasingly protectionist line. They literally want to put up walls or tax tourists coming in. They want to stifle growth and they are not supportive of the strong investments that we are making in those competitive strengths - those areas where we do have great opportunity. They are averse to our forest and mining sectors. They are very negative - increasingly so - to our important salmon industry and are prepared to go into markets and damage our reputation and our brand. They literally want to put a wall up and stop more tourists from coming into our state and to tax them. If you put up a tax then that will prevent and deter people from doing something, so the high rates of growth that we have in our tourism market will cease under the Greens.

What about their colleagues, their good friends the Labor Party? It is a very important question to ask of them. What would they do? What are their policies? What do they stand for? Over recent times we have been asking to try to understand what Labor actually stand for.



The only economic policy they have is to create another layer of bureaucracy, demonstrating their lack of ideas. They are literally a policy-free zone and as the member for Clark, Ms O'Connor, said recently, 'Labor are gutless and dishonest'. That was out of the mouth of their colleague, the member for Clark, Ms O'Connor. That is what their political friends are saying about them. I guess it does raise that question: with friends like that, who needs enemies? That is a true reflection on the status of the Labor Party who delivered their third worst result for their party in an election just a few months ago. They have learned nothing from that worst election result. We are getting on with the job, we are delivering on our plan and it is delivering results.

### **Commissioner for Children and Young People - Recruitment**

**Ms WHITE question to MINISTER FOR HUMAN SERVICES, Mr JAENSCH**

[10.33 a.m.]

You have confirmed that you received a list from the selection panel. You have also confirmed that you selected one person from this list to become the Commissioner for Children and Young People. How many people were on this list?

### **ANSWER**

Madam Speaker, there was one job going and we needed to come up with the best person for the job - the best person for this important job, this very important independent statutory position so important to safeguarding the safety and wellbeing of children and young people in Tasmania. The independent selection panel did its job. It produced for us a report on the four people that it had taken to final interview stage and prepared a report for me, which identified that two of them were suitable for appointment and one was outstanding. There were four at final interview; two were suitable, one was outstanding.

I know that the Opposition and the Greens are very focused on the political optics of this position. I am only focused on ensuring that we get the best person in this job in the interests of children and young people in Tasmania and I am open to any scrutiny. I will take the heat on this. I am happy to be accountable for this. What I do not want, what I ask members opposite to do-

**Members interjecting.**

**Madam SPEAKER** - Order. This debate goes through the Chair. The minister has the call.

**Mr JAENSCH** - I ask members opposite, ahead of their briefing from the independent selection panel, to take great care not to taint the person in this position who has now been appointed by the Governor after this independent, rigorous and independently audited process.

We cannot be any more transparent. We will not be doing what former Labor minister, Lin Thorp, and former Labor premier, Lara Giddings, did in 2011 where they were forced to apologise for revealing the details of the performance of various people in a selection process. We are not going down that road. We are better than that. We respect due process, we respect independence and rigour and we are totally committed to ensuring the best person for the job is appointed and to ensure the process through which that appointment has happened has been rigorous, independent and withstands any scrutiny of its probity.

## **State Service - Pay Rise Offer**

### **Mr SHELTON question to TREASURER, Mr GUTWEIN**

[10.36 a.m.]

Can the Treasurer please update the House on the Hodgman majority Liberal Government's offer of a pay rise of 6 per cent over three years? Can you also update the House on the last week's offer made to the Australian Education Union in good faith?

### **ANSWER**

Madam Speaker, I thank the member, Mr Shelton for his question and his interest in this very important matter.

The Government has been negotiating with unions on new public sector agreements: largely negotiating with the Labor Party and that is the point that should be made. The vast majority of the union bosses are members of the Labor Party.

Meetings are scheduled right throughout December. Contrary to what the unions or the Labor Party say, discussions have generally been productive. Each side has had the opportunity to put their view on the table; there are some areas of debate but there are areas of commonality. Importantly, we are addressing on an ongoing basis the issue of resources and levels of staffing. We are listening. The Government has already hired 142 teachers. We started hiring 250 more. We have hired 500 additional nurses and plan to hire more. Last week the minister announced he started hiring another 42 regional paramedics.

We made an offer to teachers last week which included 95 more specialist primary school teachers over and above the 250 new teachers we have already committed to and they rejected it within hours.

Contrary to what the unions say, the Government believes the public sector needs a pay rise, so we are offering one; 6 per cent over three years. It is disappointing but understandable that the unions are taking the industrial action they can because they are an arm of the Labor Party. Let us be clear about that. It is reprehensible that a small group of militant unionists, led by the Labor Party, have taken and are advocating actions that will disrupt children's learning in Tasmanian families, where they threaten to withhold information from children's report cards, important learning records. They compromise worker safety on construction sites by not issuing infringement notices. They banned breathalyser calibration in crime reports which will impact on police investigations.

Tasmanians are concerned and rightly so. With those opposite encouraging and cheering it on, the Labor Party is actively working with the union bosses who, in the main, are members of the Labor Party, to disrupt essential services. Imagine what would be going on if we on this side of the House were taking instruction from the TCCI if all its broader executive were members of the Liberal Party. What would they be saying?

The point that has to be made is, considering the damage Labor did to the public sector over the time they were in government, let us not forget, they sacked a nurse a day. The member who sits on the front bench sacked 108 police officers, and that was just the O'Byrne family's war on the public sector.

**Opposition members** interjecting.

**Madam SPEAKER** - Order, order! You are giving me a headache.

**Mr GUTWEIN** - Last week the Government made a very good offer, a very sensible and affordable offer, to the Australian Education Union. It demonstrated we were listening and negotiating in good faith. The offer went directly to addressing teachers' concerns regarding workloads. That offer would have reduced contact hours of primary school teachers from 22 to 20, bringing them into line with secondary school teachers. That would be nation-leading, allowing primary school teachers increased time for lesson planning, marking, meeting with parents, et cetera. In addition, the Government would have hired 95 new specialist teachers on top of the 250 already committed to deliver specialised subjects. That was in direct response to requests by teachers and parents, but the AEU, led by the Labor Party, rejected that offer outright. Teachers did not even get the opportunity to comment on this. The offer was made in the morning and rejected by late afternoon.

The unions have stated that their claims go to the issues of pay and attraction. We recently advertised for 52 new teaching positions and received more than 600 applications from both within Tasmania and interstate. Aspiring teachers are certainly of the view that teaching in Tasmania is an excellent profession and well paid. The AEU also claim that our teachers are the lowest paid in Australia.

**Ms O'CONNOR** - Point of order, Madam Speaker, under standing order 48, answers terminated after sufficient time. The Treasurer has been union-bashing for five and a half minutes and I ask you to draw his attention to that fact.

**Madam SPEAKER** - I will give you another 30 seconds, minister.

**Mr GUTWEIN** - I was not union-bashing. I was Labor-bashing, to be honest. Setting that aside, the points I want to finish on -

**Members** interjecting.

**Madam SPEAKER** - Order. Give him 30 seconds, please.

**Mr GUTWEIN** - The unions claim that our teachers are the lowest paid in Australia. This is simply not true. Tasmanian graduates are paid the fourth-highest salary in the country. Tasmanian teachers at the top of the base rate are paid the third-highest hourly rate in the country, and Tasmanian teachers have the equal second-lowest hours per week in the country at just 35 hours per week. The fact that the AEU rejected our offer is simply politics. It is the Labor Party and their union mates trying to roll into a federal election period to create as much disruption as they possibly can.

Let me make this point in finishing: the people they are disrupting are parents and schoolchildren, the people who use our essential services. They should wake up to themselves and accept that what is on the table is fair, reasonable and, importantly, it is affordable.

## **Marine Farming Planning Review Panel - Resignation of Members**

**Dr WOODRUFF question to MINISTER for PRIMARY INDUSTRIES and WATER, Mr BARNETT**

[10.43 a.m.]

The communities of Tasman Peninsula, the southern beaches, Clarence, Bruny Island and the Derwent estuary presented across days of public hearings to the Marine Farming Planning Review Panel about the Storm Bay expansion. The substantial evidence highlighted the limited science and the risk of 40 000 tonnes of salmon in Storm Bay causing damage to the marine environment. The expansion would generate nearly six times the sewage load of the Derwent River. The communities put in substantial submissions to Storm Bay but did not even get a response from the panel. The two panel scientists with expertise in fish health, environmental management and biosecurity resigned after the panel's recommendation was made. Why did they resign and will you table the letter with their reasons?

### **ANSWER**

Madam Speaker, I thank the member for her question because it allows me the opportunity to mention again the importance of our salmon industry, which the Greens continue to undermine. They are supporting a protest at the fish markets in Sydney next year. Shame on you because you are undermining not just the Tasmanian brand but the 5000 direct and indirect jobs in the salmon industry across rural and regional Tasmania. That is typical of the Greens; it is a pathological hatred for the productive industries. They have form.

I have confidence in the panel. I have met with the chair. I have received a letter of resignation from the two panel members referred to by the member for Franklin and have responded directly to them in writing. I responded almost immediately after I received the letter last week. When I received that letter I responded as swiftly as possible. I have secured a meeting with the secretary of the department to go through their reasons for that and the secretary will no doubt meet with them. I am looking forward to that meeting and seeking that feedback as soon as possible. What more could you do?

I also met with the chairman last week and have been reassured of the important role of the panel. I put on record my clear thanks to the panel for their work.

**Dr WOODRUFF** - Point of order, Madam Speaker, going to relevance. The community is deeply concerned at this corrupt process. We have to remember that the previous minister was dismissed during that period. We had the director of the EPA -

**Ms Archer** - This is a debate. It is not a point of order.

**Madam SPEAKER** - Thank you, Attorney-General. It is my call whether it is point of order.

**Dr WOODRUFF** - shuffled across to the head of the department. There is a whole stink around this process, a two-month delay, and people have a right to know why they resigned.

**Madam SPEAKER** - Thank you but it is not a point of order.

**Mr BARNETT** - Thank you, Madam Speaker. There was mention of the former minister. I thank both former ministers for their leadership and support of the salmon industry. Ms Courtney and Mr Rockliff have been determined to grow the salmon industry in a sustainable way. We have an independent review process. That process was put in place and it has been acted upon.

With respect to Storm Bay, the Government accepted -

**Dr Woodruff** - Why did they resign? The best ones left.

**Madam SPEAKER** - Order.

**Mr BARNETT** - I am trying my best to answer the question, the part thereof, with respect to Storm Bay. The Government accepted the independent review panel's recommendations on applications by Huon Aquaculture and Tassal to amend the two marine farming development plans on Storm Bay. What does that mean for Tasmania? It means up to 180 additional jobs. The Greens are determined to fight -

**Dr WOODRUFF** - Point of order, Madam Speaker. Standing order 25 - this is a total abuse of the House's processes. The minister is not even pretending to be relevant to the question. It was a direct question. Either answer or sit down.

**Madam SPEAKER** - You have made your point, Dr Woodruff. It is still not a point order. Minister, would you like to resume?

**Mr BARNETT** - Thank you, Madam Speaker. In conclusion, the independent Marine Farm Planning Review Panel is in place and doing its job. The Government accepted the recommendations on Huon Aquaculture and Tassal in Storm Bay. I was asked about Storm Bay. I mentioned that 180 additional jobs will flow. Why are the Greens so opposed to the jobs?

The big question to conclude on is why there has been silence from the Labor Party. Why are they not calling out the Greens for their criticism and attacks on the salmon industry? Where is Labor on salmon? They have nothing to say. They are in cahoots with the Greens.

### **Australian Education Union - Planned Industrial Action**

**Mr HIDDING question to MINISTER for EDUCATION and TRAINING, Mr ROCKLIFF**

[10.49 a.m.]

Will the minister update the House on the Government's response to the Australian Education Union's planned industrial action in Tasmanian state schools and outline how this disruptive action will affect parents, carers and students across the state?

### **ANSWER**

Madam Speaker, I thank the member for his question and interest in this matter. I can confirm that as a direct result of Australian Education Union industrial action, the majority of state schools in Tasmania will not be open until 10.30 a.m. on Tuesday 27 November for schools in the north, and will not be open until 10.30 a.m. on Wednesday 28 November for schools in the south.

While it is our strong preference that all schools remain open for a normal day, the AEU industrial action means that there are 152 schools where safety cannot be guaranteed and will not be open until 10.30 a.m. Student safety is the Government's number one priority and that is why a delayed school opening time is necessary. Parents and carers will be required to ensure that children are dropped off after 10.30 a.m. at those schools that are opening later than usual. School bus timetables will not change on these days. Individual schools will be communicating with parents about the revised school starting times and any other information through their normal school communication channels.

This deliberately disruptive industrial action taken by the Australian Education Union is very disappointing, especially considering the Government offered the AEU a fair and affordable wages agreement that provided a 6 per cent pay rise over three years and addressed key concerns about workload. The AEU leadership rejected the Government's formal offer without even taking it to their members or proposing a counteroffer. In my strong opinion, the teachers should have a say.

A fair and affordable 6 per cent pay rise over three years will ensure wages will keep pace with inflation while also enabling the Government to employ even more frontline staff and deliver high-quality outcomes for students. Reducing the face-to-face teaching time for all primary school teachers from 22 to 20 hours a week will directly address the teacher workload, which has been the number one concern of the Australian Education Union, making their contact hours the lowest in the nation and would equate to nearly three more weeks of available time for collaborative planning, meetings, marking, meeting with parents and other important aspects of their work. Commencing in 2019, the recruitment of an additional 95 new specialist teachers, and this is on top of our election commitment to employ 250 new teachers and 80 teacher assistants, specifically addresses the AEU's workload concerns. It will also see dedicated specialist teachers such as maths, arts, music and sport teachers returned to Tasmanian primary schools for the first time in many years.

**Ms O'Byrne** - The ones you cut.

**Mr ROCKLIFF** - Thank you, Ms O'Byrne, it gives me the opportunity to say that we have 142 more teachers now in our schools than when you were in government. We are employing another 250 teachers and another 80 teacher assistants and the 95 specialists on top of that. The addition of 95 specialist teachers is a direct response to numerous requests from parents and teachers alike, and it is something the union has lobbied for with successive governments for many, many years. This is what they have wanted for many years.

Instead of taking this offer seriously and allowing teachers to have their say about the offer, the union has publicly belittled it and suggested we would not be able to recruit these new staff. This is ill-informed. In our recent recruitment drive for the first tranche of the Government's election commitment of 250 new teachers, we received nearly 600 applications. This gives us a strong indication that we will be able to recruit the 95 new additional specialist teachers. It is very disappointing that the AEU has not seriously considered the Government's fair and affordable, good faith offer and has instead chosen to proceed with this industrial action that will disrupt parents and carers' work and family life and ultimately disrupt student learning.

**Ms O'CONNOR** - Point of order, Madam Speaker, Standing Order 48. The minister has had sufficient time to beat up on teachers. We are now at five minutes and 40 seconds on a Dorothy Dixier.

**Madam SPEAKER** - Thank you for pointing that out, Ms O'Connor. Minister, I will give you another 30 seconds.

**Mr ROCKLIFF** - The union is choosing strike action instead of negotiation. They did not even give teachers a chance to have a say about the offer. The union bosses blocked our offer and no counteroffer was put forward. There are 152 schools that will not be opened until 10.30 a.m. and it is going to affect thousands of families. This is extremely disappointing but I repeat that we must act in the best interests of students and will do all we can to minimise any disruption to students and families as a result of the Australian Education Union action.

### **Total Support Services - Allegations**

**Ms WHITE question to MINISTER for HUMAN SERVICES, Mr JAENSCH**

[10.56 a.m.]

On 24 May, after very serious allegations were raised about the for-profit care provider, Total Support Services, you said they would be investigated. Since then, Tasmanians have heard nothing from you on this very important matter. Last night, the ABC exposed further serious matters about this profit-making provider involving Tasmanians living with disability. Why are you continuing to pay groups like Total Support Services to provide care for some of Tasmania's most vulnerable despite these very serious concerns?

### **ANSWER**

Madam Speaker, I note that there is a combination of matters being referred to in the media reporting and some of the aspects of the member's question. I note that any aspects regarding disability services are outside of my direct portfolio responsibility and that, generally, we do not go into allegations of individual cases or investigations in this place due to confidentiality. On the whole, the Department of Communities Tasmania takes all allegations very seriously across all its areas - disability, child services and others - and I understand that all allegations are being responded to appropriately. It would be inappropriate of me to comment any further while investigations are ongoing.

Regarding the earlier matter around a child in out-of-home care, I can confirm a review is still underway. It is being undertaken by a senior quality and practice advisor, what the Department of Communities Tasmania calls SQPA, and the aim of that is to establish the accuracy of the allegations that were made. I will receive advice when that review is complete.

I can confirm that Total Support Services has always been a temporary placement care provider for certain types of cases while more permanent placements that can meet the kids' needs can be found. I am happy to update the House that there is currently only one child in a temporary placement with TSS awaiting a longer-term placement. The placements with TSS have always been negotiated to be short-term. From time to time, we have kids with a complexity of needs and specialist needs. We need to be able to assign them to a care provider while their situation is stabilised and more permanent placements can be found. This is the case with TSS. At this stage, there is only one child in their care and we are hopeful that a long-term placement will be found for that child shortly.

## **Total Support Services - Allegations**

**Ms WHITE question to MINISTER for HUMAN SERVICES, Mr JAENSCH**

[10.59 a.m.]

Again, on 24 May, you promised an investigation into serious allegations about Total Support Services. Yesterday, and again today, you said the review is currently being undertaken into those allegations. Minister, do you think it is acceptable that an investigation should take six months or longer, while vulnerable Tasmanians remain in the care of Total Support Services? When will this review be finalised and will you be making those findings public?

### **ANSWER**

Madam Speaker, I thank the member for her question. It is important that we enable the senior quality practice advisor to conduct their review with as much time as is required to get to the bottom of the allegations made. In the meantime, I can report that I have advice from the department that the child in the care of TSS is safe and being well cared for in such a manner that they will be able to be moved to a longer-term placement as soon as an alternative placement is found that is suitable to their needs.

**Ms White** - Six months is a long time and there are still children in their care.

**Mr JAENSCH** - I agree, but it takes time. I am prepared for it to take time for the investigation to be thorough and undertaken without my creating a political time frame for them to come up with answers.

## **Cemeteries - Legislation for Protection and Preservation**

**Mr SHELTON question to the ATTORNEY-GENERAL, Ms ARCHER**

[11,01 a.m.]

Can the Attorney-General please update the House on legislation to protect and preserve cemeteries in Tasmania?

### **ANSWER**

Madam Speaker, I thank the member for Lyons for his question and ongoing interest, and indeed all members of this House, in this important matter. I am pleased today to be tabling the Burial and Cremation Amendment Bill 2018 that will clarify and strengthen the regulatory framework for cemeteries. As members will recall, the bill addresses legitimate concerns raised by community members in relation to how cemeteries are sold and managed.

Following the significant community concern regarding the Anglican Church's decision to embark on a significant property divestment program which includes the proposed sale of a number of cemeteries, and taking the view that current legislation is inadequate in a number of respects, the Tasmanian Government commenced a review of the Burial and Cremation Act 2002. Whilst the review is ongoing with further reform expected to be introduced in 2019, the Government has identified several priority amendments necessary to address an immediate need to protect the rights of community members.



Since the Government released its draft bill outlining the first stage of amendments on 24 September this year for public consultation, a number of changes have needed to be made to address issues raised during the public consultation. We believe our bill now strikes the right balance by ensuring the protection and preservation of cemeteries while also enabling cemetery managers to do their important work without undue regulatory burden.

After extensive community consultation, our bill will firstly clarify that the obligation for maintaining headstones, monuments and the like rests with the family or person who placed the monument, whilst cemetery managers are responsible for maintaining the site infrastructure.

Second, it will introduce a staged closure process. The regulator will have the capacity, upon application, to approve the closure of the cemetery no earlier than 50 years since the last interment. Unless an application is made by the cemetery manager to reduce the time frame, the cemetery manager cannot do anything else with the land, such as remove headstones or exhumed bodies, until 100 years since the last interment. The regulator can also place conditions on the closure to ensure the ongoing protection of graves.

Third, it will remove the requirement for cemetery managers to undertake a five-yearly audit as originally proposed, and rather, the regulator can require an audit at their discretion.

As well as this, our bill introduces a new governance approach. The bill establishes a regulator who will have the following functions: the oversight of the sale and transfer process, ensuring cemeteries are sold to suitable entities and not to individuals who may lack the capacity to properly manage them; enforcement of regulatory obligations, ensuring accountability and transparency in the management of cemeteries; and oversight of the closure process and ongoing protection of grave sites beyond the closure of the cemetery.

Other amendments provide clarity by setting out that a person becoming a cemetery manager must be a body corporate with perpetual succession, and lists the matters that may be considered as part of the test of whether that entity is a fit and proper person to manage a cemetery. The practical effect of this change is that cemeteries will be managed by entities whose purpose is directly related to managing the cemetery. This change does not prohibit interested community groups from taking on this role. While the application process for new cemetery managers does not apply to past sales, in line with the principle that legislation should not apply retrospectively it is the case that cemetery managers must meet their obligations in relation to maintenance and access and increased penalties enforcement powers will apply to all cemeteries.

The bill increases the minimum time period before a cemetery can be closed to 50 years since the last interment but requires cemetery managers to apply to the regulator to close the cemetery at this time. Importantly, the regulator can place conditions on the closure, such as requiring certain graves not be moved. The bill also introduces a default time period of 100 years if there is no application prior. The regulator can also place conditions on the approval if needed to protect graves or monuments on the site.

The Government believes the amendments proposed by the bill provide necessary safeguards while it undertakes its ongoing broader review of the act. It is acknowledged that a small number of cemeteries have been sold to private individuals under the current legislation. The Director of Local Government has committed to work through options in good faith that could deal with legacy arrangements in the second stage of the review. This second stage is already underway and these issues will be addressed as a priority through that process.

The final bill balances the many important concerns expressed through the consultation process and allows us to achieve our objectives within the timeframe set by the Anglican Church. I look forward to debating this important bill in coming days.

### **Ms Sarah Courtney - Perceived Conflict of Interest**

#### **Ms O'BYRNE question to MINISTER for RESOURCES, Ms COURTNEY**

[11.07 a.m.]

Despite the fact you have breached the Ministerial Code of Conduct over your relationship with Dr Whittington, you have confirmed that you will still be required to work as minister with him, so the risk of a further breach has in fact not been removed at all. You have admitted your role will bring you into contact with Dr Whittington. What protocols are now in place to manage this clear conflict of interest, and when will these protocols be released publicly?

#### **ANSWER**

Madam Speaker, I thank the member for her question. The secretary of the Department of Premier and Cabinet and the Solicitor-General reviewed the interactions between DPIPWE and my new portfolios. They have advised that there are no impediments to my taking on these portfolio responsibilities. There may, however, be limited occasions where some interaction between DPIPWE and my responsibilities occur. Arrangements are in place to ensure that no advice will go directly from the secretary of DPIPWE to me as minister. Suitable delegations are in place to ensure that Dr Whittington will not be directly briefing or advising me as minister. We will manage this conflict of interest, as has been done in the past.

### **PETITION**

#### **Bunker Fuel Usage by Cruise Ships**

**Ms O'Connor** presented a petition signed by approximately 131 citizens of Tasmania praying that the House call upon the federal Minister for Transport to use Commonwealth powers to immediately ban the use of bunker fuels by cruise ships whilst they are docked in the Port of Hobart and limiting the sulphur emissions to less than 0.08 per cent, in line with restrictions in Sydney Harbour.

**Petition received.**

### **TABLED PAPER**

#### **Joint Standing Committee on Integrity - Code of Conduct for Members of Parliament of Tasmania**

**Mr HIDDING** (Lyons) - Madam Speaker, I present a report of the Joint Standing Committee on Integrity titled A Code of Conduct for Members of the Parliament of Tasmania, Report No.3.

Madam Speaker, I move that the report be received. By way of explanation, members of the House would recall that the Premier indicated to this House that he would ask me as the Chair of that committee to use best endeavours to clear this up by the end of the year. This will allow the Legislative Council to make their moves this week or early next week. We would then act on advice from their House that they have done it and we should be able to facilitate all this next week.

**Report received.**

**LEGAL PROFESSION AMENDMENTS BILL 2018 (No. 36)**

**ELECTRICITY SUPPLY INDUSTRY AMENDMENT  
(PRICE CAP) BILL 2018 (No. 13)**

**WATER AND SEWERAGE LEGISLATION (CORPORATION GOVERNANCE AND  
PRICING) AMENDMENT BILL 2018 (No. 53)**

Bills agreed to by the Legislative Council without amendment.

**RESIDENTIAL TENANCY AMENDMENT BILL 2018 (No. 32)**

Bill agreed to by the Legislative Council with amendment.

**Mr FERGUSON** (Bass - Leader of Government Business) - Madam Speaker, I move -

That the amendments be made an order for the day for a later date.

**Motion agreed to.**

**BURIAL AND CREMATION AMENDMENT BILL 2018 (No. 56)**

**First Reading**

Bill presented by **Ms Archer** and read the first time.

**ENERGY CO-ORDINATION AND PLANNING AMENDMENT BILL 2018 (No. 57)**

**First Reading**

Bill presented by **Mr Barnett** and read the first time.

**MATTER OF PUBLIC IMPORTANCE**

**Conflicts of Interest**

[11.19 a.m.]

**Mr O'BYRNE** (Franklin) - Madam Speaker, I move -

That the House take note of the following matter: conflicts of interest.

Madam Speaker, it is an unfortunate moment that we have to rise and even debate these matters of conflicts of interest because it seems that this Government, in many examples, has chosen to redefine how you manage a conflict of interest. It has redefined matters of integrity and how you deal with issues which could bring into question decisions of government, decisions of departments, and the good governance of Tasmania.

Tasmanians need to know that when there is a potential perception reality of a conflict of interest that there are appropriate steps taken to ensure that that is either resolved or it is avoided. More importantly, the focus should be on avoiding those conflicts of interest and if they arise they are dealt with, managed, resolved in a transparent way at the earliest possible time and in a way that gives the people of Tasmania confidence that they are managed.

We have seen many times this Government redefine what conflict of interest is in this and in the previous parliament.

**Ms O'Connor** - The term 'litany' comes to mind.

**Mr O'BYRNE** - Litany - when a pattern forms, member for Clark, litany is a word you could appropriately use. I have a list I want to go through, but it is only for this Government. I am sure you, member for Clark, can refer to the previous parliament.

What the member for Lyons is referring to is a public statement in which the good Treasurer referred to the conflict of interest in the context of the member for Bass, Ms Courtney's conflict of interest with the secretary of the department and referred to the brother and sister, David and Michelle O'Byrne, being myself and the member for Bass. We declared it at a number of elections. We declared it at school. It is a known fact we are a brother and sister and those matters were resolved. Michelle was not reporting to me, I was not reporting to her and there was no conflict in terms of the decisions. For the Treasurer to say there was a conflict of interest between a brother and sister in parliament because we hid it from the people of Tasmania for so many years, then we were uncloaked as brother and sister when we were appointed to our Cabinet positions - how farcical. What a stupid thing to say; that was ridiculous.

A conflict of interest is a situation in which an individual has competing interests or loyalties. Conflicts of interest involve dual relationships; one person in a position of one relationship and a relationship in another situation. A conflict of interest can exist in many situations. For example, with a public official whose personal interest conflicts with his or her professional position, or with a person who has a position of authority in one organisation that conflicts with his or her interests in another organisation. That is, when the person who has conflicting responsibilities. I say this in reference to the member for Bass, the now minister for Building and Construction, Ms Courtney, and the secretary of the department.

We have no interest whatsoever in their personal lives, apart from the goodwill you would assume of fellow Tasmanians and fellow parliamentarians. When the cross-sections of that relationship impact on the decisions of the independent public service and the executive arm of government, that is where we have a problem.

We are only debating this because this Government has refused to acknowledge that there was a serious breach of ministerial conduct and an absolute breach and a conflict of interest in decision-making. For over a month, there was a personal relationship between a minister and a head of a department who reported to her. That department is designed to do the bureaucratic work of

government and to provide frank and fearless advice to the minister of the day, regardless of political persuasions or political views. This relationship was conducted in secret for over a month. I have no interest in how it was conducted. The only interest we and the people of Tasmania have is that this matter was not reported at the earliest possible moment as required under the Ministerial Code of Conduct.

**Ms O'Connor** - Deliberately.

**Mr O'BYRNE** - It would have to be deliberately.

**Ms O'Connor** - They only reported when they got busted.

**Mr O'BYRNE** - The omission is deliberate. The problem we have is the comment on the public record of the member for Bass, Ms Courtney, who said, 'Oh, no, there was only a perception of a conflict of interest'. How could this minister, with a departmental secretary whose role is to provide frank, fearless and independent advice on a whole range of matters, be making these decisions for over a month and it not be a conflict of interest? It questions everything. They say there was a review. We have to take that on face value and we have no choice but to. We have serious concerns that, in a matter of weeks, all those decisions and matters were investigated. I have been talking to public servants who have had minor matters of issues of conflict of interest or potential inappropriate behaviour looked at that have gone for months. I spoke to someone recently whose review of the decisions they made lasted six months.

We have seen they have form. The Premier said there was a breach of the Ministerial Code of Conduct but a minor one. Goodness knows what a major one will be. What are the consequences for a breach? Nothing. There are no consequences. We have seen it raised again today that the Chief of Staff of the Minister for Infrastructure, the member for Braddon, Mr Rockliff, has now been appointed to the head of an independent statutory office in the commissioner for children after years and years playing a political role. He said he absented himself from the Cabinet decision but questions remain. We have the former chief of staff of the Minister for Infrastructure, Mr Rockliff, the member for Braddon, being appointed to the head of the public service.

**Ms O'Connor** - Mr Rockliff's is the golden ticket office.

**Mr O'BYRNE** - I might apply for it. I might apply for the chief of staff role and we will see what happens.

**Mr Ferguson** - I don't think he would have you.

**Mr O'BYRNE** - I think you are right, Mr Ferguson, I do not have much chance. The problem is that this Government does not know right from wrong. It does not know when it has a conflict of interest and integrity is under question, even when it slaps them in the face. The reason we are asking questions is because the people of Tasmania deserve to have these questions answered.

**Time expired.**

[11.26 a.m.]

**Ms O'CONNOR** (Clark - Leader of the Greens) - Madam Speaker, I thank the member for Franklin, Mr O'Byrne, for bringing this matter of conflicts of interest on as a matter of public importance debate today. Public faith in the institutions of government, of parliament, of ministerial

decisions and of departmental officers must be upheld. It is a fair assessment that it has been eroded under this Government.

I remind the member that in November last year the Auditor-General brought down a report that examined conflicts of interest in the State Service. It examined eight senior public service appointments and found that three of them had conflict of interest situations that were neither declared nor managed. The Integrity Commission has also raised concerns about the Government's capacity to manage conflict of interest. We have two of the state's key integrity bodies pointing to a problem with conflict of interest management by this Government, yet it continues. The appointments the Auditor-General looked at were only in the year 2015 -16; on this Government's watch in the last term. We are talking about positions that attract massive salaries relative to what people living in Berriedale are earning.

The discussion we are having today is necessary because of an appointment to one of the most important independent statutory roles in Tasmania and that is the Commissioner for Children and Young People. As a human being, Leanne McLean is a fantastic person, a hard worker and a good person. The problem we have here is one of optics because we now understand that there were a number of recommendations made by the panel to the minister. It was the minister who singled out Mr Rockliff's head of office and took that appointment to Cabinet. We are going to get a briefing from the panel at lunchtime today and I look forward to that. The question I will be asking the panel members there is, did you ask all the applicants what they will do in the role if they are appointed when it becomes clear that a Liberal minister responsible for children - whether it be in the children's portfolio, education, any other portfolio of Government - when it is necessary to take on the government and the minister of the day over their administration of the portfolio? The Commissioner for Children and Young People must be independent and a fierce advocate for the wellbeing of children and young people in Tasmania. Sometimes that means rubbing the government of the day the wrong way.

There is a litany of concerns with conflict of interest in Tasmania. We saw Mr Brooks, the former mining minister, disgraced. He only pointed to a perception of a conflict of interest. We do not know whether there is a conflict of interest because we have not seen the results of that audit. The former minister for state growth, Mr Groom, had a close friendship with Adrian Bold, the proponent of the Mount Wellington cable car that would desecrate kunanyi/Mount Wellington. Mr Bold and the Mount Wellington Cableway Company got special enabling legislation, an email address in the Department of State Growth - special treatment every step of the way.

The other conflict of interest that Mr Groom did not manage related to Bernacchi Lodge in the Tasmanian Wilderness World Heritage Area. Mr Groom's brother was one of the proponents of that development which was enabled as a result of changes to the Tasmanian Wilderness World Heritage Area management plan. The final plan came out in 2016 on Mr Groom's watch and - what do you know? - it made a special provision to allow for Bernacchi Lodge to be privately operated. If that is not a conflict of interest I do not know what is.

In Estimates this year under questioning from Dr Woodruff we also had the very clear conflict of interest situation where in 2016 the Director of Prisons-designate Mr Ian Thomas sat on a panel that employed two of his former colleagues from a private prison in Victoria to the Department of Justice. The Director of Prisons declared a conflict of interest and stayed on the panel. That is not how you manage a conflict of interest; that is how you distort a conflict of interest potentially to undermine good governance in Tasmania.

We have a problem with this Government managing conflicts of interest. Apart from the appointment of the Commissioner for Children and Young People, one of the most stark relates to the current Minister for Resources, Ms Courtney, who clearly allowed a situation to continue for a month where there was unquestionably a conflict of interest. A conflict of interest was allowed to perpetuate through government because of a secret relationship between the minister and her secretary. We know the minister got the approval from the Marine Farming Planning Review Panel for the massive expansion in Storm Bay three months before it became public.

If you want to talk about a tangled web, Mr Deputy Speaker, we have a minister in a relationship with her secretary, there is a confession to the Premier of the day so those two step aside briefly during a conflict of interest investigation, and the director of the EPA, who has overseen the industry's expansion, steps up to temporarily oversee the Department of Primary Industries, Parks, Water and Environment in the secretary's role, and then there is an announcement. There is a significant and enduring problem with managing conflicts of interest by the Liberals in government.

[11.33 a.m.]

**Mr BARNETT** (Lyons - Minister for Primary Industries and Water) - Mr Deputy Speaker, I am pleased respond to the Opposition and the Greens. I find it very surprising that the member for Franklin, David O'Byrne, is leading this motion on behalf of the Labor Party because it is the pot calling the kettle black. I am not sure that Labor has entirely thought this motion through. I do not think so.

Let us go back in history a little way and start with the fact that it was Mr O'Byrne's union, his own union when he was secretary, who authorised a cash payment of \$15 000 to fund Mr O'Byrne's own election campaign.

**Mr O'Byrne** - If that was the only donation they made you would be right.

**Mr BARNETT** - That was your only donation, was it?

**Mr O'Byrne** - No, the union has made donations to a whole range of candidates over generations.

**Mr BARNETT** - Was it was the only donation to you?

**Mr O'Byrne** - On interjection, don't verbal me. I ask you to withdraw that right now.

**Mr DEPUTY SPEAKER** - Order, the minister has the floor. If any member has any personal issues about what is said they know the proper process to go through. It is not to stand here and argue with the minister at the time.

**Mr BARNETT** - Thank you, Mr Deputy Speaker. The point I am making is Mr O'Byrne's own union, when he was secretary, authorised a payment of \$15 000 to have Mr O'Byrne elected. That confirms what we all know - that Labor is a wholly-owned subsidiary of the union movement. We know that. The *Examiner* said at the time:

Economic Development minister David O'Byrne has defended accepting \$15,000 from the union he led to help fund his 2010 election campaign.

Mr O'Byrne was secretary of the Liquor and Hospitality Workers Union, now known as United Voice, at the time. According to the article, Mr O'Byrne received the funds in two instalments to avoid public disclosure requirements. Is that right?

**Mr O'Byrne** - No, that is not true.

**Mr BARNETT** - I am only reading the *Examiner* article; you can refute it, Mr O'Byrne.

It said the funds were approved by the union's executive when Mr O'Byrne was a member when he was still the state secretary.

**Mr O'Byrne** - He referred it to the Fair Work Ombudsman and it was found -

**Mr DEPUTY SPEAKER** - Order. I have already drawn a line in the sand on this.

**Mr BARNETT** - Thank you, Mr Deputy Speaker. The report also raised questions about whether Mr O'Byrne had left the room when the donation was approved although he said he had left.

'I can understand there might be a perception of conflict', Mr O'Byrne told the *Weekend Australian*.

Thank you for noting that to the *Weekend Australian*.

Mr O'Byrne spent \$100 000 on his 2010 election campaign. The initial instalment of \$9000 and the union's \$15 000 donation was paid in June 2009, followed by the remaining \$6000 in January 2010, and a further \$20 000 was donated by the New South Wales branch of United Voice to the ALP Tasmanian branch. Hello, conflict of interest? There it is, conflict of interest management 101 from David O'Byrne. How are you going there? You have introduced this motion. Hello, pot calling the kettle black? You had the union you worked for pay for your election campaign. That is what has happened.

What about the ABC online article? It said, 'A senior Tasmanian union figure proposed offering money to a government minister to further the career of one of its union colleagues, the Federal Court has heard.' This is another matter. Former Communications, Electrical and Plumbing Union (CEPU) state secretary Rodney Bell said that in 2012, Kevin Harkins, the union's president at the time, proposed giving then workplace relations minister, David O'Byrne, 'a bit of lolly' - we remember that - in a legal court case to get the then CEPU state secretary, Nicole Wells, appointed as an industrial commissioner. Mr Harkins was working with the minister to get Ms Wells promoted to commissioner. She was appointed to the job in August 2012, so she got the job. Mr O'Byrne said that the appointment process followed by the department was open and publicly advertised and subsequently went through a full Cabinet process. Perhaps Mr O'Byrne could explain whether the Tasmanian Labor Party or any member of the then Labor Cabinet who considered the appointment had at any point received donations from the CEPU. I wonder if you have ever answered that question?

**Mr O'Byrne** - Yes, I have - no.

**Mr BARNETT** - You have said no for you and every member of the Labor Party?



**Mr O'Byrne** - Come on, don't be stupid.

**Mr BARNETT** - It went through Cabinet and was appointed by Cabinet.

**Mr O'Byrne** - That is ridiculous - clutching at straws.

**Mr DEPUTY SPEAKER** - Order.

**Mr BARNETT** - No, it is the pot calling the kettle black. You are bringing on an attack here and you do not have conflict of interest management 101 under your belt as yet, Mr O'Byrne, so you should, with all your self-declared expertise in conflicts of interest, explain why.

Let us make it very clear. It has already been raised. Mr O'Byrne, throughout his time in Cabinet, was joined in Cabinet by his sister, Michelle O'Byrne. It has been referred to earlier by the Treasurer. Labor now wants to act as if it is not possible for Ms Courtney to appropriately manage a potential conflict in regard to her relationship with Dr Whittington. That was the question today from Michelle O'Byrne, the Deputy Leader. It was okay for a Labor-Greens Cabinet to not only have brother and sister but also two Greens ministers who were in a relationship, yet you are saying she cannot manage it. Hello, come on, pot calling the kettle black. Is Mr O'Byrne suggesting there was never any overlap with the ministerial responsibilities of himself or his sister that had to be declared or managed, or with the corrections and human services minister, Ms O'Connor and Mr McKim.

**Time expired.**

[11.40 a.m.]

**Dr BROAD** (Braddon) - Mr Deputy Speaker, this Government has a history of conflicts of interest. This is certainly coming to a head and we are again reminded of the Government's lack of dealing with conflicts of interest. Even in these past few weeks we have seen the ministerial issues where the then Minister for Primary Industries and Water, Ms Courtney, having an undeclared relationship for one month with the secretary of a department. This is a serious issue. It was a deliberate omission for this one-month period. It was admitted that it was a breach of the code of conduct and yet there are no consequences. We see that there is potential for ongoing conflicts of interest in the working relationship of these two individuals.

This is the tip of the iceberg but the main issue here is that there seems to be no consequences for these deliberate omissions and conflicts of interest that are not declared. As we say, the standard that you walk by is the standard you set and we have seen time and time again that these conflicts of interest are not dealt with properly.

Today we have heard about the appointment of the new children's commissioner, which is an independent statutory officer. The portfolio of child protection is one which requires there to be a frank and fearless children's commissioner with an independent nature willing to take on government. What we have now is a situation, regardless of whether the qualifications of the appointee, Ms McLean, are exceptional, that will always have the perception that a decision that is taken or not taken will be coloured by the fact that she was working for the Liberal Party for the last five years. In fact, she stepped from the position of chief of staff with the minister for education, Mr Rockliff, directly into the children's commissioner's seat, a position which requires that she will take on government. The people of Tasmania will question this.

We had her immediate predecessor, Jenny Gale, who is now DPAC secretary, also sitting on the panel. These conflicts are quite obvious and were not dealt with. We did not hear if Ms Gale withdrew from the panel when her previous work colleague's appointment was being discussed. That is an issue, but we also have the minister, Mr Rockliff, having issues of conflicts of interest raised in the past that have not been dealt with. That was with payments from Irrigation Tasmania of the Sassafras Wesley Vale Irrigation Scheme, of which he was, and still remains, a beneficiary of the Sassafras Wesley Vale Irrigation Scheme. Yet he had the ability as then primary industries minister to write-off costs for that. That was not dealt with. He should not have been the person making that decision. Then we have the former mining minister -

**Mr Barnett** - You be very careful.

**Dr BROAD** - You be very careful here. You were throwing around allegations about all sorts of things about two seconds ago, so you be very careful.

We had a former mining minister in Mr Brooks - and I add that the Tasmanian mining industry has had something like five mining ministers in the last few years. The resources portfolio seems to be one that is popped around from minister to minister. The industry must be questioning who is going to be the minister next week. I have had three mining and resources ministers in my time in parliament.

We have other issues of conflicts of interest. One which we discussed in the past was the member for Montgomery, Mrs Hiscutt, urging Crown Land Services to grant her unfettered access in a crown land dispute. When questioned in Estimates, the current secretary of the department, Dr Whittington, said there had been no contact between Mrs Hiscutt and Crown Land Services. Even though in Estimates I provided the minister, Ms Courtney, with evidence that there had been direct contact between Mrs Hiscutt and Crown Land Services, Ms Courtney refused to correct the record.

At the time I thought that what the Government was actually trying to do was protect Mrs Hiscutt from further queries about why she had had unfettered access, but now, given the current context, it could be concluded that maybe the then minister, Ms Courtney, was not protecting Mrs Hiscutt but was protecting Dr Whittington. We know that later on down the track the relationship developed so we have this potential for a conflict even way back then.

Further on the Attorney-General and member for Clark, Ms Archer, refused to bring the Integrity Commission to the table to address some of the concerns that I raised and got on her high horse and said that it was inappropriate, et cetera. Brian Wightman, the previous Attorney-General, did exactly that. He brought the Integrity Commission to the table to answer allegations, to answer specific questioning on specific individuals. The Integrity Commission has the ability to determine whether that question was appropriate. Yet Ms Archer decided that that was entirely inappropriate, once again protecting a member of her own government. There is a conflict of interest. Maybe that goes back to trying to protect the secretary of the department. We have a history of conflicts of interest.

We have Mr Brooks being the former mining minister and at the investigation of the whole issue with his emails and whether he was operating or had any relationship with his mining company when he was mining minister, we see that investigation is still ongoing.

**Time expired.**

[11.47 a.m.]

**Mr HIDDING** (Lyons) - Mr Deputy Speaker, it is very interesting being lectured by a Labor Party that has rules in its own offices as all members that are staff must be a member of the Labor Party. If there is not a conflict of interest built in there - they have to be a member of the Labor Party and have to be a member of a union. It builds in an immediate conflict of interest in terms of advisers in Labor offices.

It is a tragedy that the Labor Party acts like that and then seeks to make some sort of a case that this side of the House has an issue with conflicts of interest. The point is this: we believe that anybody who comes to work for us should not have their professional career sterilised as a result of working for us.

The fact is there is no rule in our offices that prohibits these professional people from pursuing their career elsewhere in the public sector. There is no such rule, and Labor has a history of bringing people out of departments and becoming chiefs of staff and, as a minister, I have been perfectly okay with that where they have gone back into the public service. This business of saying he was once an adviser or whatever -

**Mr O'Byrne** - Not a DLO, a chief of staff.

**Mr HIDDING** - I am not talking about DLOs either. I am talking about people coming out of a department, worked for you guys when you were in government, from our point of view their career should not be sterilised.

**Members** interjecting.

**Madam SPEAKER** - Order. It is very noisy.

**Mr HIDDING** - One of the cases you are talking about today happens to be a lady who has been appointed as the children's commissioner. I want to read into the record a statement from TasCOSS and Lady Gowrie. The media release says:

Two of Tasmania's strongest advocates for the state's most vulnerable children have backed the appointment of Leanne McLean as Tasmania's new Children's Commissioner.

**Mr BACON** - Point of order, Madam Speaker. I think the panel put forward two names, so the question is why did the minister knock one out?

**Madam SPEAKER** - That is not a point of order.

**Mr Bacon** - Okay, don't raise that bit. Don't talk about that.

**Mr HIDDING** - Continuing with the media release -

Kym Goodes, CEO, TasCOSS, and Ros Cornish, CEO, Lady Gowrie Tasmania, who were members of the selection panel that recommended the appointment of Leanne McLean, said the panel's focus was solely on the best interests of Tasmania's children.

**Mr Bacon** - They put forward two names.

**Mr HIDDING** - They said -

'This young woman was a standout applicant and in interview gave the panel absolute confidence that she was the right person for the role.'

'We are strong advocates for an independent children's commissioner. Independence from government is the cornerstone of the Commissioner's ability to act as a powerful voice for Tasmanian children.'

'As panel members we were the guardians of this role on behalf of children and young people in Tasmania and ensured that the appointment was going to be a strong voice.'

**Mr Bacon** - Why were there two? How did two become one?

**Mr HIDDING** - I am still quoting from TasCOSS and Lady Gowrie. I am still quoting from Kym Goodes and Ros Cornish.

'The role of Commissioner is vital to ensure the best interests of Tasmanian children are an absolute priority in our State.'

'The position requires strong relationships, trust and leadership and Ms McLean was the standout applicant for the role with the desirable vision, skills and tenacity to succeed.'

You do not get a better report card than that from two of the strongest advocates for the state's most vulnerable children who have backed and strongly supported the appointment. Some of the questions put to this side of the House today strongly smelt of a circumstance such as when I was in opposition. I was driving and I heard the former minister, Lin Thorp, on radio, throw -

**Mr Bacon** - What show? You heard it, did you? Yes, what show was it?

**Mr HIDDING** - It was an afternoon show. I will find the presenter for you.

**Mr Bacon** - Afternoon? I think you are misleading the House.

**Madam SPEAKER** - Order, Mr Bacon.

**Mr HIDDING** - I heard Ms Thorp throw Mr Mason under a bus while on radio. She was speaking about the selection process and gave his name. She even quoted where he came in the consideration of the role, which was disgraceful. It was so wrong that she lost her job and her career. Here we are again with the same sort of question from that side of the House: tell us what went on on the inside in this professional selection process. It smacked of the same stuff that brought down Lin Thorp and ended her career. The people of her electorate voted for Tony Mulder to take her place.

The other matter raised by that side of the House is the matter of managing Ms Courtney's -

**Mr Bacon** - You talk about my morals. Have a look in the mirror.

**Madam SPEAKER** - Order, please.

**Mr HIDDING** - potential conflict. It is well-established that ministers are expected to manage their own compliance with the Ministerial Code of Conduct and obliged to report any non-compliance by themselves or by another minister to the Premier. These conflicts are perfectly capable of being managed through normal long-standing processes. This will ensure that no advice will go directly from the secretary of DPIPWE to Ms Courtney. These things have been managed and they will continue to be managed on this side of the House.

I will conclude where I started. When we are in Government, there is no circumstance that people who work for us should somehow have their professional careers sterilised forever. That is not the case. We want to employ the best people and they should be free under all the arrangements, under all proper probity arrangements. Incidentally, the toughest probity adviser in the state works for Wise, Lord & Ferguson and that probity auditor, I suspect it would be the same person, has given the process a big tick. The probity auditor has done the work and it is a totally appropriate appointment.

**Time expired.**

**Matter noted.**

## **JUSTICE AND RELATED LEGISLATION (MARRIAGE AMENDMENTS) BILL 2018 (No. 47)**

### **Second Reading**

**Resumed from 18 October 2018 (page 84)**

**Ms STANDEN** (Franklin) - Madam Speaker, I rise to speak on this bill with a sense of responsibility as a member of the LGBTI community. I share a background of a quest for rights, equality, inclusion, dignity and respect, and yet I realise, on reflecting on the diversity of our community, I do not share or represent the diversity of experience. My own experience of discrimination pales into insignificance in comparison to others. My experience has been of strained relationships, an estrangement from loved ones for a time, of limited public expression and, at times, fear and shame, but I am fortunate not to have experienced, for example, physical violence, loss of job opportunities, deep mental scars or loss of life.

This debate matters for people like Rosemary Harwood and her daughter, Marjorie, known to her as Marty, a transgender person whose change of gender was not recognised by the system that allowed her to be incarcerated in the men's prison, who was bashed and abused, raped so severely that she required a colostomy and eventually tragically lost her life when she gave up the very will to live and denied treatment for kidney failure because she had lost hope that she would be cared for and protected by the laws of this state. The law needs to change for the safety of transgender people.

I realise it has taken most of my lifetime for public opinion to shift sufficiently to recognise and include lesbian and gay people, at least in respect of marriage equality. This past month has

given me the opportunity to reflect and talk with many friends as well as advocates to realise that, as a society, we still have some way to go to shift the fear and misunderstanding of others in my community. I am not absenting myself from ignorance and misunderstanding, here in this place.

I want to thank Dede River and her partner Trish Roberts, and I acknowledge their presence in the Gallery today, who so generously enlightened me and spent hours with me to help me navigate these issues. Thanks to Rodney Croome and Robin Banks, longstanding advocates of the community, Martine Delaney, Matty Wright and Roen Meijers, who are here today, and others who have engaged in the consultation with MPs in these past three or so months. Some of these people have been tireless advocates for legal recognition and rights for trans and non-binary people for years and all have shown incredible courage in coming forward to share their stories.

The past four-week recess has allowed a renewed hate campaign, ironically, coinciding with a time of joy and celebration within the LGBTI community with the 30th anniversary of the Tasmanian Gay and Lesbian Rights Group, now aptly renamed Equality Tasmania, the marvellous campaign and, only last week, the one-year celebration of achieving marriage equality following the postal vote.

This bill relates to the changes in the federal Marriage Act 1961. These changes were a move to recognise the rights of LGBTI people to marry and end discrimination based on who we love. It was a move toward equality, a move to recognise we are members of society and that our society is diverse.

I mentioned that last week there was a celebration to mark the end of the marriage equality survey a year ago. That survey was pointless and it was expensive, budgeted at around \$122 million. It only confirmed what polls had been saying for many years; it was widely seen as a tactic by the federal Liberal Government to delay addressing the issue of marriage equality in parliament and to satisfy the deeply conservative, homophobic wing of their party, a group that has apparently recently unseated Malcolm Turnbull and taken control of government. The survey also served the purpose of providing hate groups a national platform for a number of months. It was to prevent this that the plebiscite was rejected by the Senate. The long duration in which conservative culture warriors were given a national voice had a devastating effect on many of the people whose rights were being put to a vote. The arguments were not about marriage but about acceptance of LGBTI people.

As others speaking on this bill have pointed out, there was an overwhelming 'yes' vote nationally of 7.8 million Australians or 61.6 per cent and, with an almost 80 per cent rate of return, it was a resounding result. The vote in Tasmania was the second-most supportive nationally. The vote in Clark was 74 per cent in favour. My own electorate of Franklin was only slightly lower at 69 per cent. That is still much higher than the state's average of 63.6 per cent and is still seven out of 10 people supporting marriage equality, but this is still three out of 10 people in my community that do not share my views or my values.

This has had a personal impact on me. For me, achieving marriage equality means, amongst other things, choice for me and my long-term partner, but just as importantly, dignity of equality under the law. It also means convenience and efficiency, and streamlined administrative processes, and I look forward to a time when my passport application will not take three times of to-ing and fro-ing from the Australia Post office in order to jump additional hurdles just to explain why it is that our son does not comply to the form that says 'mother' and 'father'. When the form instead says 'parent 1' and 'parent 2', won't that be easier? It means recognition of our relationship, and I hope

will mean even more to our 10-year-old son and a strong signal to his generation about inclusion, diversity, tolerance, dignity and respect.

On 15 November 2017 at the Cascade Hotel I was present, along with many others, nervously awaiting the result of what felt like a national survey of judgment. I felt the collective exhale of a previously marginalised community and, along with so many others, shed tears following an eight-week postal survey and associated sustained hate campaign that went on for months. Some had waited decades for legislation to wed lifelong partners. Others had barely passed the age of consent, celebrating what this would mean for a better future for themselves and a more just society. For us as same-sex parents, we simply hope that our son will grow up in a society that is more tolerant, so that he never questions the value of our family and is never forced to defend his parents.

As I said, the marriage survey provided a platform for those who push homophobia with outrageous statements about same-sex parents and attacks on anti-bullying campaigns designed to help a group of children who experience high levels of overt bullying and subtle discrimination. Children who have same-sex parents, children who are same-sex attracted - or assumed to be same-sex attracted, because children are often not really aware yet of what their sexual orientation may be - are subjected to bullying, verbal and physical violence and isolation at far higher rates than the general population. This pressure has a number of negative outcomes, ranging from harming learning and academic performance to self-harm and even suicide, yet programs to help teachers be aware of and address this sort of violence have been targeted often by the 'No' campaign. But there was something about the No campaign many people noticed. The target for hatred and fear of difference was often not lesbian and gay people but trans and gender-diverse people - fear of a 'boy in a dress', so to speak. Fear of anti-bullying campaigns designed to address not only homophobia but transphobia. Tony Abbott and others attacked 'gender fluidity'.

Gender diversity is an easier target today than gay people. The sense of being targets, of being under assault, was greater for trans people than for the gay community. It resulted in increased anti-trans violence, including the assault of a 16 year old in the Elizabeth Street Mall. Trans people feel the hate campaign has not really ended, with comments like those from the Prime Minister, Mr Morrison, about so called 'gender whisperers'. Three weeks ago, he called the removal of gender markers from birth certificates and driver licences 'nonsense', without seeming to realise that there had been no gender markers on driver licences for over a decade.

The bill before us is said to be about marriage. It has a deadline of 8 December, as I understand it, in order to eliminate the requirement for trans people to divorce a loving spouse if they want to change their legal gender. But the survey was about more than marriage. The No campaign tried to make it a referendum on the equality of LGBTI people. It was nominally about marriage but almost no objection focused on marriage. It was about lesbian and gay people, trans and gender-diverse people, and generating fear and hatred in order to prevent equality. It was about making some people 'other'.

In many ways, this bill is not just about correcting some of the so-called 'other-ising' and discrimination against lesbian and gay people. With the motive force being the need to correct a discriminatory measure in relation to birth certificates for trans people, this is the ideal time to address the even more discriminatory measures in the same part of the same act governing the same issue - restrictions on trans people getting a birth certificate that matches their identity. Trans people who are married cannot change their legal gender unless they divorce, even though they have changed their gender and neither they or their spouse wants a divorce. This is terrible on any human

level and is only there to protect an illusion that same-sex couples cannot form real emotional and social bonds. The number of people in this situation is very small.

Far worse is the requirement for genital surgery. This impacts all people wanting to change their legal gender. It is an almost insurmountable barrier for trans men, as Cassy O'Connor, the member for Clark, has made clear. It is a problem for non-binary people and anyone who does not feel their gender resides in their genitals. It is a problem for those who cannot do this for medical reasons. It is a problem for trans children who cannot get access to surgery, and complicating this is the difficulty of getting the surgery itself and the compromises a person may need to make. The surgery requirement is even a barrier for those who want such surgery.

For trans women, an operation generally costs over \$25 000, which is not covered by Medicare or private health insurance, and that is the base cost for the simpler form of surgery. It does not count time off, hospital fees, or the fact that almost no surgeons in Australia perform such surgery, so surgery usually entails overseas travel. To get permission involves at least a year of living as the gender of identity while being monitored by a psychiatrist with regular visits and then getting a second psychiatrist to also approve. This means that many people wanting surgery live for years without it and without any ability to change their legal gender. So the majority of trans people born in Tasmania find it impossible to change their gender on their birth certificate even if they want surgery.

Happily, the requirement to change it on a passport is not so restrictive. The federal government dropped the surgery requirement in 2011, a year after the requirement was dropped for United States passports. Gender markers were removed from driver licences over a decade ago. This allows many trans people to be accepted as they are, unless, of course, a birth certificate is required.

The changes in this bill have been celebrated in the media as a boon for trans people, but the actual changes are minimal and affect very few people. Since this bill is about justice, equality and ending discrimination, there is no reason we cannot fix other aspects. Since we are addressing the barriers to trans people changing their legal identity, we should address the issue more comprehensively. This is why I will be supporting these amendments. There is no reason at all not to address this except an unwillingness to do anything to address issues of equality and discrimination. The Government here is determined to do no more than they are forced to do.

Unfortunately, this is not unusual and is the reason trans activists have worked so hard to dispel myths and improve understanding. The ability to change gender on a birth certificate was introduced in 2001 and became law on the first day of 2002, and since then it has not changed or been touched. The 2001 amendment was to catch up to international norms, with Sweden being the first nation to allow legal change of gender in 1972 and several other nations doing the same in the following decade. In other words, the 2001 amendment was already over 20 years behind the times.

Since that time the standard international practice has become allowing trans people to change gender through a simple declaration without surgery or medical intervention. The current best practice in terms of international human rights is to leave off gender markers from identity documents in the same way we leave off race. It is no impediment to anyone and results in fewer avenues for discrimination.



Trans people have been trying to update our laws for years. As acknowledged by my colleague, Ms Haddad, Martine Delaney has been advocating for change for well over a decade and has spoken on this to at least the last nine attorneys-general, to my knowledge. This issue has been at the very fringe of LGBTI human rights and has been considered too hard and going too far, so it has always been up for review or consultation or a report and governments have been slow to act. Indeed, there has been no change since part 4A was introduced 17 years ago.

When the change of gender must be dealt with it is an opportunity to address longstanding issues. It is a chance to look at implementing changes recommended by the Anti-Discrimination Commissioner in 2016 after extensive consultation. Instead, the Government would like more consultation and reviews to do only what the federal government forces it to do. I am critical and suspicious of this Liberal Government that makes no commitment to progressive policy in this area other than putting things off again. I am suspicious of these delay tactics. When will a government bill, addressing Births, Deaths and Marriages Registration Act 1999 come again before this parliament? Possibly not for decades. We cannot and we should not wait. Now is the time.

The federal government made changes, so has the ACT and South Australia. They allow change of passports and birth certificates without surgery and allow for more than two genders, although its laws also now fall behind international standards. Gender markers have been off drivers' licences in all states for over a decade. The world has not ended. No-one has lost awareness of their gender.

What these amendments will do, to the best of my understanding, is to eliminate the requirements for genital surgery and other medical intervention and simply recognise a person's gender identity on their declaration. This is now standard internationally, even in Pakistan or India.

The amendments do two other things: they create and allow choice; choice to allow gender not to be shown on the birth certificate. It allows that to parents for their children. It allows that to mature people for themselves. It does not stop or deny gender and it does not stop the registrar or health professionals from collecting information about gender or sex. It does not interfere with statistics. It makes a choice whether or not it is on the ID. This is not radical and it is in line with international recommendations and current best practice.

The other issue is for intersex children. This is an area where the record of all governments and medical professionals is a disgrace: the unnecessary and deferrable genital surgery on infants. I understand the recommendations from Transforming Tasmania to criminalise such surgery have been to the Tasmania Law Reform Institute and I can only hope Government will act on their findings. One part of the proposals for intersex people is incorporated in this bill in amendments. That is to allow the parents of a child who is not clearly male or female a longer period to make a decision how to raise such a child. No-one expects to have such a child. Learning the implications of their decisions is important for parents to avoid pain and suffering in the children. Allowing an extension from 60 days to 120 days will enable parents to make decisions with more information and less pressure. It may avoid imposing avoidable surgeries onto children, designed to make people, other than the children, comfortable.

The bill before us, and the amendments from Labor, also address the Anti-Discrimination Act. The intent of the Government amendment is to look like introducing additional barriers to same-sex marriage in the name of religious freedom. Their amendment adds nothing to the federal anti-discrimination provisions and was, at least originally, poorly drafted.

Our amendments are a small modernisation of the language in the act, some, at the request of intersex people, correspond to international definitions.

In summary, I believe the Government's proposal to protect ministers of religion from discrimination claims is unnecessary because federal law provides sufficient protection already, and does not achieve its stated goal because it protects the recipient of the minister's service, the couple seeking to marry, not the minister and protects them on the grounds of their religion, not their sexual orientation or gender identity. Third, it stigmatises same-sex couples as a unique threat to marriage and religion because never before have ministers of religion been given this extra superfluous and theatrical layer of legislative so-called protection in regard to marriages they may want to refuse to solemnise.

Community advocates strongly support our proposal to include 'gender identity' and 'intersex variations' as protected attributes under section 19 of the Tasmanian Anti-Discrimination Act. Protections for transgender people against hate speech were in place from 1998 until 2014 when they were accidentally removed. The amendment will reinstate those protections. It will not create them anew.

The only significant change is to include people with gender identity and intersex variations as protected from hate speech. In *The Australian* this past weekend, they cited the Australian Christian Lobby as claiming this was new and would allow all sorts of vexatious litigation. This is simply a lie. As many here know, these were both protected classes but were amalgamated as part of 'sexual orientation'. A few years ago, the act was corrected and intersex and gender identity were seen as separate issues, having nothing to do with who a person is attracted to. In separating these out, they were inadvertently left out of section 19 that governs hate speech. They went from protected to unprotected. The Anti-Discrimination Commissioner at the time asked this to be fixed. She was told it would be with the next Justice omnibus bill. That was two years ago. Bills have come and gone and it still has not been fixed. This fixes it now.

The bar for considering something as hate speech is high; it is not for trivial comments. There has been a campaign of misinformation and lies about this. It is not a problem, it repairs a mistake and must be fixed and now is better than some day.

Last week was the first anniversary of the survey results. Soon we will have the first anniversary of the passage of marriage equality into law itself. Today, ironically 20 November, is another day of significance and the House will be interested to know that it is the 18th annual Transgender Day of Remembrance. What a fitting day for us to be debating these issues for it is on this day each year that the trans and gender diverse community remember the people killed that year in transphobic violence. This year that amounts to 309 people known to have been shot, stabbed, tortured, dismembered or beaten to death. The number does not count suicides that resulted from transphobic violence. It does not include deaths from domestic violence or attributable to other causes. Only killings with transphobia as a clear motive are counted. Even so that is one person every 28 hours in the last year.

Anti-trans discrimination and violence is not limited to hate based killing. It is systemic and affects trans people throughout their lives. It impacts them in terms of bullying and isolation of trans children in school, impacting their education and social development. It can take the shape of subtle marginalisation: the sales person who ignores someone, jokes, comments, the way the media reports. It may affect a person's ability to get a job, to get housing, to access services. It can affect the way the police or other authorities treat someone.

We tend to see trans people as 'men in dresses'. This is partly because it is exactly how they are portrayed in film and television with male actors playing a part. If the media wants a picture of a trans person they often find an older trans woman, someone who looks trans. They tend not to use pictures of people like Nicole Maines who do not look trans. They do not focus on people like Carolyn Cossie who worked as a model and played a Bond girl in 1981 before she was outed. In particular they very rarely focus on or include trans men or non-binary people. It is unfortunate and fits a media and political narrative that increasingly does not apply. It is a narrative that was used in the anti-marriage equality campaign. We heard about 'boys in dresses'. We never heard about 'girls in trousers'. After all women today wear jeans or trousers all the time.

The truth is that trans people are just people. Some people happen to be trans. Like sexual orientation it is not something people choose. It is part of who they are. That is what is meant by 'identity'. There have always been trans people. They just were not called that, although many non-European cultures did have words and roles for people outside the man or woman gender binary. There are words for trans people in most native American cultures. There are words in most cultures. There are words from history as far back as the ancient Sumerians, Egyptians and Vedic Hindus.

Trans people are just part of human diversity. They have lived as members of the opposite sex often not discovered until they died or were hospitalised. It is not a new thing. Elagabalus, the Roman Emperor from 218 to 222, was definitely trans and wanted surgery. In Australia we have our notorious figures in history as well. Edward De Lacy Evans, after having been married three times, with one wife giving birth no less, was discovered to be a woman when hospitalised in 1879. Bill Edwards was discovered to be female in 1905, and Ellen McGuire, a notorious Sydney female prostitute, on being discovered to be biologically male was sentenced to death. Such things happened all over the world. Not all of them were discovered.

Trans people are not trans on a whim. They are born trans. It is part of normal human diversity. They may have a hard time understanding it. They may try to deny or hide it, but it is part of them. Like same sex attraction, they are culturally taught that it is 'not normal'. We ignore it in history and reality. They are not pretending. The idea that some men may become trans to attack women is laughable. Domestic violence, rape and assault happens without anyone needing to dress up, and certainly not to go to the trouble of legal gender change. Women's services have publicly said they are inclusive of trans women now, they do not use birth certificates, and that trans women are the victims of violence, not the perpetrators.

But gender diversity has increasingly been recognised and today we are aware that this is how some people are. They are normal people with interests and skills. They contribute to society and just want to get on with their lives. Being trans does not affect anyone else so why do we have so many issues with their gender, and what gives us that right?

Trans children in particular are now being recognised for what they are - children. Children who are quite happy if allowed to develop as themselves. Children who are miserable, in pain, if their inner self is denied. Even if they are good at hiding that self, it is there, and ultimately hiding and repressing it leads to negative outcomes. Parents know this.

We know of Transforming Tasmania which is pushing reform, but other groups are also asking for them. Tasmanian Families for Trans Kids are the parents who love and support their children. They did not ask for their kids to be trans. The realisation that their children suffer when their

identity is denied is often hard for parents, but loving parents would rather just see their children happy.

I understand the acting Commissioner for Children and Young People supports these amendments and says they are in accordance with international human rights approaches. I support them too and I urge all of you to do the same.

Madam Speaker, I will finish on this point. Being trans is not ideological. They are not trying to erase gender; they know gender is something we are born with. They are not trying to destroy feminism; they know better than most the difference between how men and women are treated. It is time to stop punishing difference and realise that human diversity is not a problem. We do not all need to be pushed into a rigid box; difference is not a thing to fear. Freedom that harms no-one is not something we need to prevent, and choice for parents and trans and gender-diverse people should be celebrated. I urge the Attorney-General, the Government and all in this place to support the amendments brought forward today to strengthen this bill and make it all that it can be.

**Opposition member** - Hear, hear.

[12.22 p.m.]

**Dr WOODRUFF** (Franklin) - Madam Speaker, it has been a privilege listening to the other speeches members have made on this bill. I have a few particular things to add. I will not go into a lot of detail but I want to discuss how much things have changed in my life. There are many lives lived and I take the point Ms Standen made before about documented evidence throughout history in all human societies of trans people.

In the mid-1980s I did a university degree, part of which involved a women's studies course. One of the things that was discussed at that time was a conversation about what is sex and what is gender. Reflecting on that conversation I realised how over the past 30 years I have applied what I learned to language in writing, to the written word - and what we learned was that sex is your biology, it is how you are born. Gender is the culture you become embedded with, in your lived experiences in society, and it incorporates the historical, the environmental and the social arrangements and prehistory of the particular community you happen to be living in. How quaint. What a nice, clear little definition. I look back on that now and think that was the best we could do at the time. Feminist writings at the time were challenging the norms of sliding between the use of the terms 'sex' and 'gender', and bringing us to be more aware of the language we used. Clearly the thing I have learned probably in the last five years, more than throughout the last 30, is about the fluidity both of the term 'sex' and the term 'gender'.

The mercurial nature of those terms means that every single time we try to trap them in a definition, they elude us. We understand now that there is so much about human lived experience that we cannot put into a box. We particularly cannot put it into a binary opposition. That is where we have ended up in our Christian history, and most societies around the world try to push humans into binary boxes.

In our attempt over the last 20 or 30 years, we have created the idea of maybe a third box, but even a third box becomes complicated. Despite shame and stigma, violence, social disapprobation, the loss of jobs and harassment on a daily basis, people have continued to speak out over the past 50 years. We now understand that even the idea of a third box is complicated because some people can be born with a penis and two X chromosomes. Some people can be born with three

X chromosomes. Some people, at the very early age of four, five or even younger sometimes, can be definite that they are not the sex their parents keep telling them they are.

There are many stories. More open societies on this planet, such as in Scandinavia, have been incredibly welcoming and helpful, and have a non-binary way of looking at and understanding children, and helping their families support the child to grow with the lived experience that they having. We also see plenty of situations where people might be quite comfortable in the sex that they understand themselves to be until they reach puberty, and then an incredible explosion of hormones and the changes in their physical self and in their social interactions; and the relationship between those two means they come to understand that they feel differently about who they are.

I was doing some reading about trans people who have lived their whole lives with a very strong view that they want to live a life as a person of another sex. There was a beautiful story published in the *Guardian* last week about a woman in England who underwent sexual reassignment surgery at the age of 81. Amazing. It was the most fantastic story but also a sad story because that person, Rose, lived her whole life with the understanding that she wanted to live as a woman but it took her to the age of 81 with the support of her doctor to be emboldened to undergo that surgery. She describes the experience of living in a different body and how incredible that is for her.

This is happening in the United Kingdom where they are far more open than we have been here in Australia. In the seven years up to 2015-16, 75 people aged between 61 and 71 had had gender reassignment surgery. That is quite a lot of people and it is rising. It is actually not that many but the figures say within that period those numbers are increasing, trends are going up and they expect them to continue to go up. There is a great sorrow for many people who have to transition at a late age, and let us not forget all the people who can never make that choice because of the society that we had. When they were 20 and 30, it was so shameful to have that conversation that they were riven with fear at the prospect of being able to have the conversation, to come out to their true self, and so they lived their life. They tried to make peace with themselves and lived their life in silence. They thought that if they did their duty, got married and had children, that it would cure them. For many people, it certainly did not, so-called, 'cure' them. It was a matter of duty. They undertook their duty to society, to their parents, to everybody else whose life was not theirs. They basically gifted their life to the community that was not prepared to allow them to live as their true self. Surely, of everything you would wish on a child when it is born, you would wish that child to be able to live a life of truth in themselves?

I met many gay men who had come out later in their life when I worked at the AIDS Council in Canberra in the early 1990s. They spoke about living a whole life in a lie, and it had created a tremendous impact on their physical and mental health. You could see the suffering embedded in their bodies. You could see the high prevalence of addictions, the high prevalence of a profound lack of confidence in themselves. And you could also see the joy and the love of communities of people coming together, coming out. People who have never lived in a position of shame in a community cannot know the feeling of incredible joy and love. It is why Mardi Gras is such an exciting place. It is why it means so much. It is a beacon of hope. It is why people in Tasmania, right now, have their floats organised for Mardi Gras. It is because it is a statement of public openness and acceptance of yourself in your community.

This bill and the amendments that have been foreshadowed to be discussed in the committee stage are about enabling people to live joyful lives, loving lives, embraced by their community for who they feel they are, for who they know they are. Because who except us, in our own hearts, can really know who we are?

I am deeply distressed to recently hear the minister continue to perpetuate a lie that she had not ever seen or heard of the amendments before. I am very distressed to hear the minister continue with that untruth. It is simply not true. I am very distressed to hear, in the context of this important bill, that the minister pretends that she does not know. She does not want to grapple with the change that is coming. This change is coming, trans people are living this life and they demand not to live in silence, to be able to live in their own sex and their own gender, the one that they choose.

**Members** interjecting.

**Madam SPEAKER** - Order.

**Dr WOODRUFF** - I want to come to a deeply concerning and deceptive action of the minister in the preparation of this bill. In section 12 of the bill - you could say that there are many important elements to this bill and the amendments that have been foreshadowed - but the heart of the principal amendment that was discussed in budget Estimates this year by Ms O'Connor, and discussed prior to that by members of the trans community was that a person should not have to undergo surgery in order to change the sex or the gender under which they choose to live.

Every person within the community I have spoken to about this bill is in comprehensive agreement that it is a cruel and harmful requirement and it should be removed. What we find in the principal act, under Part 4A - Registration of change of sex, section 28A says -

Application to register change of sex

(1) An adult person -

- (a) whose birth is entered in the Register; and
- (b) who has undergone sexual reassignment surgery; and
- (c) who is not married -

We find that the bill prepared by the minister, who asserts that she is very concerned about this issue, has removed from paragraph (b) the words, 'surgery; and' and she has substituted the word 'surgery -'. She has removed paragraph (c). If you are married to a person and you have changed your sex, you do not have to have sexual reassignment surgery. However, you can only apply to the registrar to change your sex or gender if you have undergone sexual reassignment surgery. In other words, it is only in relation to marriage that this minister is removing the requirement for sexual reassignment surgery. If a person in the community who is not married and who wants to change their sex or gender wants to make an application for that, they first have to have a risky medical procedure in order for that to happen.

It is not simply one risky medical procedure. I know a person who has had his breasts removed but that person still, according to this minister and how she has drafted this bill, has to have his uterus removed. Shame. Dangerous. We also know that the older a person gets, the higher the medical risks from surgery. What we are hearing, what we would expect, as society continues to change and become more open and which everyone in this House would surely want to occur, is that there will be older trans people who may want to change their sex or gender as it is registered, but they have to get sexual reassignment surgery. The risks for a person who has diabetes, the heart risk for somebody over 65, 70 or 81 having surgery is definitely a risk. Why would we insist that a person must take a risk to their health, also at great cost and definite pain? You cannot have surgery without pain of some sort. It is almost like a punishment.

It is really about exacting a cruel punishment to say they have to have that surgery, have that risk, have that cost, have that time off work. Have the pain and the suffering, and come back and we will talk to you. It is disgusting. It is really distressing to find that. I thought at least that was something that had been dealt with but it seems not. It is something we will definitely be talking about in the committee stage.

I will finish by saying that in the *Mercury* on 9 November there was joint statement released by the Women's Legal Service of Tasmania, Engender Equality, the Hobart Women's Shelter and Women's Health Tasmania in support of the foreshadowed amendments for this bill that have been proposed by the Greens and the Labor Party. Those services were disputing that people they work with would in any way be harmed or endangered by the foreshadowed amendments. This is an important statement, because some groups such as the Australian Christian Lobby have been peddling some mistaken, misguided ideas about the so-called concerns they have for men who might pretend to be women accessing certain spaces such as women's refuges.

The services who put the statement out collectively provide support on legal, health, domestic violence and housing issues. They said that they already worked with transgender women who are themselves an at-risk group. They are identified and are at a higher risk than other people in the community. The statement says that there is no research or service experience to suggest that men who seek to harm women change their gender or masquerade as transgender women in order to do so. Acknowledging in law the human rights of transgender people does not reduce the human rights enjoyed by non-transgender people. Protecting women's rights and supporting transgender people are not mutually exclusive. I would like to put that matter to rest in case it is one last straw the minister feels she needs to grasp on this issue, because it is not supported by the services that work most closely with women at risk.

Having lived with a person who underwent a life change from a woman to a man, and having an extended family member who does not identify either as male or female, does not accept either of those binary gender markers in their life, and having very close friends who have donated sperm to other extended family members and had the experience of people opening themselves up to the joy of living their life as themselves, I am really glad to be here today debating this bill and the foreshadowed amendments that will come before the House.

I look forward to us bringing some clarity and kindness, but most of all acceptance and choice to trans people, so they can get on with their lives in the community.

[12.44 p.m.]

**Ms ARCHER** (Clark - Minister for Justice) - Madam Speaker, I will say at the outset that I find some of those contributions highly offensive when the purpose of this bill is to deliver on the Commonwealth's commitment and the law changes there. It is a consequential bill which is purely administrative in nature. You are painting me and the Government to be demons, when all we are asking for is for this reform to be dealt with in a respectful manner and that there be consultation on this.

There was reference to the former anti-discrimination commissioner who issued an issues paper and received fewer than two dozen submissions. There was no final report issued, nor was the public consulted in relation to this. This is about process, not about policy position.

**Ms Haddad** - That's all it is to you, process. It's people's lives that we're talking about here.

**Madam SPEAKER** - Order.

**Ms ARCHER** - In summation, before we go into Committee, I would like to reflect also on a few matters that were raised by those opposite on the bill proper itself and then the proposed amendments since we last sat.

I am a little confused as to the status of the amendments. I received some amendments before we adjourned the House on the last day we sat. There has been public comment in relation to redrafting of amendments, but I have never encountered in this House in my time sitting as a member in whatever capacity that amendments are not circulated, particularly to the Government so that we can take advice.

There has been public comment that they were being redrafted so I am going to need to confine my comments in summation to what I have seen and what has been looked at so I can demonstrate to members the procedural and other drafting flaws which create errors, difficulties and inconsistency with other state laws and the reason the Government's position is to refer it to the Tasmanian Law Reform Institute to look at these issues of how there are consequences to other state laws so should their recommendations be to go down this path, to comply with other state laws so there is consistency.

Ms Haddad suggested the bill does the bare minimum. I need to refer members back to what this bill does. That suggestion is completely wrong because the bare minimum would simply be removing the forced divorce provision. We do more than that. We have also focused ourselves on what we are required to do.

Members have every right in this House to produce a private member's bill. This is a Government bill, a consequential procedural bill, in relation to same-sex marriage. That is the core purpose of the bill. I acknowledge this is about an important issue. It is true to say that it is largely administrative in nature. It makes us consistent with the Australian Government's changes to the Marriage Act. We have only included those matters that need to be fixed. We have made no policy changes.

**Ms O'Connor** - So the sexual reassignment surgery clause didn't need to be fixed?

**Ms ARCHER** - It is primarily a review of our statutes and the changing of language to remove any potential problems in the implementation of same-sex marriage.

Other members are choosing to make this debate about something else. The Government's position is that those other issues need to be properly looked at. That is our position. I have been consistent all along in all of my comments.

We have made a referral to the TLRI -

**Ms O'Connor** - That's a bit presumptive, isn't it?

**Ms ARCHER** - We have indicated that we would like to do that but it is entirely up to the board of the TLRI as to whether they accept that reference to be complete in my language.

Since the parliament last considered this bill I acknowledge that as members have said, we have passed the one-year mark since the vote on same-sex marriage and in that time more than 120



same sex marriages have been lodged in Tasmania alone. This shows how important the change has been to many Tasmanians and not just those who can now marry but their family, their friends and many in the broader community. There is general agreement on that point.

I do not want this House to be accused of delaying this important outcome. I remind members that for this reason we are here today to make sure that our state's laws are consistent with those of the Australian Government. That is fundamentally important. With the passing of this milestone we approach another and that is the date all states are required to have made their consequential amendments. That is by early December; the actual date is 9 December 2018. Without this bill we will not be compliant. There will be inconsistency with the laws of the state and the Commonwealth and I doubt anyone wants that.

This brings me to the amendments that have been flagged for inclusion in this bill. I remind the House - I am not quite sure if we have a third reiteration or iteration or I am on the second but I will try to deal with some comments around what I have seen.

First, I saw an actual bill that was presented by members of Transforming Tasmania. There were a lot of drafting issues with that and I believe the amendments that I have seen repeat some of those drafting errors which causes problems amongst many different laws across our state. Nobody wants poor law reform, hence the reason why we want to refer it to the appropriate body being the TLRI. I am quite confused as to why the House does not think that it is the appropriate body to look at an important issue like this.

What is proposed now, perhaps a third set or maybe a second set of significant amendments, to seek to change how we manage important issues of sex and gender in this state and how the Government and government agencies deal with those important issues and including for the purposes of a primary identity document on which every single Tasmanian relies upon. I come back to the fact that every single Tasmanian has not had an opportunity to have their say. Make no mistake, a birth certificate is a big deal to them, it is a huge deal to them.

This is an important point and I urge members to understand that it must be able to be validated through the Commonwealth Document Verification Service. We get passports, we get drivers' licences, we get firearm's licences and we apply for government support with them -

**Ms O'Connor** - You do not need proof of gender to get a passport in Australia.

**Ms ARCHER** - What you have given us by way of these proposed amendments -

**Ms O'Connor** - The passport office does not require proof of gender. You are being misleading.

**Ms ARCHER** - No I am not. What you have given by way of amendments fundamentally changes this document and without consideration of the changes the amendments can undermine this important document. We all have one, we all need one and they should not be subject to amendments on the floor of parliament without proper scrutiny or consultation. If you are going to produce more amendments then give them to me. At least I can have the lunch hour to look at them.

**Ms O'Connor** - Did you ask for them?

**Ms ARCHER** - Absolutely, I have been calling on them and on the floor of the House I have been calling on them.

**Ms White** - Dirty, dirty press releases.

**Ms ARCHER** - No, they are not dirty press releases when all I have done is call for members to refer this to the TLRI to properly consider how it might impact on all other state laws. That is all I have done. I do not know why that is a dirty tactic - sending something off to the TLRI.

**Ms Haddad** - We support the work of the TLRI but this is another opportunity for you to push this away and never do it.

**Ms ARCHER** - I will have a matter of minutes to look at the amendments if they have changed. I will need to determine if they have changed.

**Ms O'Connor** - You have the lunch break. They will be familiar to you.

**Ms ARCHER** - Thank you, but I should not have to extract them out of you like that. The secrecy around all of this -

**Ms Haddad** - They are normally tabled in the second reading debate. Even I know that and I have only been here five minutes.

**Mr O'Byrne** - When you issue press releases like you have, you assume we give you the benefit of the doubt because you want to be genuine about it and you are pretty clear in your press conferences. Come on, do not be disingenuous.

**Ms ARCHER** - Those opposite expect the Government to accept their amendments when they present them at the last minute, despite weeks of calls for you to be upfront about them. You also know we cannot support something of the magnitude you propose in these circumstances. It is not responsible government, it is not responsible law reform, it is not how good laws are made or should be made and it can have considerable potentially serious unintended legal consequences. Members opposite are professing to have gone through our state laws and seen that you are consistent with your terminology. This is what the department does. This is what OPC does - you go through the statutes for consistency. What I have seen so far -

**Ms Haddad** - It would make the work of government much simpler.

**Ms ARCHER** - What I have seen so far and I will go through and give you some examples of the problems that have been able to be identified on the face of it. The simple fact that we may see three versions of these amendments speaks to the important point -

**Ms White** - Maybe a simpler question is do you support the intent of the amendments? That is the sticking point for you, isn't it? You are trying to crush it any way you can.

**Ms ARCHER** - Madam Speaker, I urge members opposite - I am trying to explain the Government's position being not one of a policy position but one of a procedural issue we have on how we make laws and law reform of this type. Members have been hijacking a bill that is just a consequential amendment bill and trying to profess that I am trying to do something. The member for Franklin, Dr Woodruff's contribution about there being some impact on sexual orientation surgery: all this bill does is remove no forced divorce but that contribution that I am at least allowed to rebut was totally and utterly incorrect. This bill only deals on that aspect with no forced divorce. That contribution was incorrect.

The simple fact is we have potentially three versions of these amendments and as I have said, this very fact alone speaks to the important point that it is not a simple legislative fix. There are notable complexities with this - not just in policy but in their execution that need proper consideration. That has been our view all along.

I can indicate that we will not be able to support all the amendments for the very reason that they need to be properly considered. We have not had an opportunity for departmental officers to properly examine them. The Anti-Discrimination Commissioner has not had a chance to look at them; the Registrar of Births, Deaths and Marriages has not had a chance to look at them; the courts have not had a chance to look at them. They are all the major agencies and stakeholders that we consult with in relation to these types of reforms.

**Sitting suspended from 1 p.m. to 2.30 p.m.**

## **JUSTICE AND RELATED LEGISLATION (MARRIAGE AMENDMENTS) BILL 2018 (No. 47)**

### **Second Reading**

**Resumed from above.**

**Ms ARCHER** (Clark - Minister for Justice) - Madam Speaker, I was summing up before the break. Ms O'Connor finally provided me with the new iteration of amendments. This is the work that has been done during the break in relation to nine amendments. All of them are new, apart from one, and all of them have significant issues that we have identified in relation to the Registrar of Births, Deaths and Marriages with potential impact on the courts, even the family jurisdiction, and the Australian Bureau of Statistics. None of these agencies appear to have been consulted in the drafting. There is inconsistent terminology used in sex and gender, the removal of the best interests of the child for the court to consider in one case -

**Ms O'Connor** - It is not the removal of the best interests of the child.

**Ms ARCHER** - There is a test removal.

**Ms O'Connor** - It doesn't actually remove it, it strengthens it.

**Ms ARCHER** - I do not aim to go through all of the amendments in this summing up. I have been attempting to obtain these amendments for weeks, so they can be properly considered -

**Members** interjecting.

**Madam SPEAKER** - Order.

**Ms ARCHER** - by the Registrar of Births, Deaths and Marriages, the courts, other eminent people, agencies and the like. In the hour-and-a-half we have had, this is even different to what has been said and what has been promised publicly by members opposite. You have gone so much further. What you are proposing is unprecedented in Australia. All of those matters can be considered by the TLRI. All of them can be properly considered and they can be properly worded.

In looking at each of these amendments, they do not make sense, they do not interrelate and they remove tests that were put there for good reason. There is inconsistent terminology that is used in our state laws, so there are interpretation issues for the court. These are all matters that need to be appropriately considered. That is the point this Government has been making all along, that these things should not be moved on the floor of the parliament without being properly considered.

Members opposite are the ones who need to explain what each and every single amendment aims to achieve, what consultation you have undertaken, whether you have spoken to the Registrar of Births, Deaths and Marriages, and whether you have looked at the impact on the Australian Bureau of Statistics, the courts and the Family Court. It is for members opposite, who are now dealing with issues that the bill, which is currently before us in its original form and deals with consequential administrative amendments, to do that.

**Bill read the second time.**

## **MOTION**

### **Instruction to Committee of the Whole House**

**Madam SPEAKER** - I call the member for Clark, Ms Haddad.

**Ms ARCHER** - Point of order, Madam Speaker. It is the convention of the House that a minister will be given the call. I draw your attention to that convention.

**Madam SPEAKER** - I stand by my call, thank you. Please proceed, Ms Haddad.

[2.35 p.m.]

**Ms HADDAD** (Clark - Motion) - Madam Speaker, pursuant to standing order 279, I move -

That the Committee of the Whole House be instructed to consider provision for the necessary amendments to the Justice and Related Legislation (Marriage Amendments) Bill 2018 in respect of matters relating to gender.

The reason we are moving this motion is that I have sought and received advice from the Clerk of the House as to the intent of our amendments and he confirmed to me the intent of the amendments go a little outside the scope of this bill. The reason I have moved this motion to include debate on these amendments to this bill has been made abundantly clear to this House in the contributions on the second reading from all members of this House who have spoken on this bill, including the minister in her summing up.

The last four weeks have been extraordinary in the extreme. We have seen no less than nine vindictive, angry press releases from the Attorney-General over and over again, in more than two a week, in which she has shown her true intent on making these changes. It is absolutely untrue for her to argue these were unknown or that they were completely outside the scope of the Government's thinking because -

**Ms ARCHER** - Point of order, Madam Speaker. I heard the member for Clark, but I stand to be corrected if I am wrong, say something about my comment being demented. I take personal offence to that due to a personal circumstance. I hope that word was not used in this House lightly.

**Ms O'CONNOR** - Madam Speaker, if I could explain. In the context of Ms Haddad talking about the nine media releases that have been issued by the first law officer, I described it as quite a demented spray. I am not calling Ms Archer demented. Clearly, she is not but it is term I used in relation to this bombarding of media releases from the first law officer.

**Ms ARCHER** - I maintain that I find it personally offensive.

**Ms O'CONNOR** - I withdraw it.

**Ms HADDAD** - Those media releases were offensive. They were littered with terminology that is well-known to the LGBT community, language that is coded homophobia and transphobia, things we saw time and time again during the marriage equality debate last year, unintended consequences, untested plans, the slippery slope type of argument we saw over and again in the postal survey last year. That is what has been laid out in your summing up on this bill. The Government needs to tell us whether it supports the intent of the amendments we are putting today.

It is not true they were completely unknown to the Government. The people who are advocating for these changes went first to the Government. It was the Government's choice not to act on those intended amendments, which could have been drafted by the department and which could have been drafted using the services of the Office of Parliamentary Counsel, which, I have said in this Chamber before, the Opposition does not have access to.

While you have characterised the last four weeks as us being sneaky and not consultative, we have spent the last four weeks consulting extremely widely with people affected by this change, Attorney-General. We have been speaking to the families of transgender children. We have been speaking to LGBT advocates. I sought advice from the Anti-Discrimination Commissioner and I did not receive a response. We sought advice from the Births, Deaths and Marriage Registrar and were told to put those requests in writing, which we did, and we have not received a response. We have attempted the consultations the minister speaks of and those have fallen on deaf ears.

What we have done in the last four weeks, as well as consult, is work with qualified but voluntary, experienced legislative drafters who have come up with this set of nine amendments that you characterise as confused. You said they do not make sense and you said they are not properly drafted and would have unintended consequences. In the last four weeks I have been accused of trying to ram through controversial reform in 15 minutes, sneaking through changes, playing games. I have been called a deceitful, gutless liar. I have been accused of being in hiding, of subterfuge. I have been misrepresented in the national media. I did not say it was all you. I have been told that I was refusing to be honest and open, avoiding putting my position, tricky and dishonest. Some parts of the media and the Attorney-General's office even resorted to stalking my personal Facebook page and saying that I had gone rogue in suggesting that people participate in a survey which other members of parliament, including members of the Government, also shared on their personal Facebook pages.

I can take that. I ran for parliament knowing I would be attacked and I would be ridiculed and I would be diminished. None of it comes even slightly close to the kind of discrimination and the kind of victimisation that is felt by transgender people all over this country and all over the world. It does not. In the marriage equality debate we heard those arguments that we have heard again here in the Tasmanian and the national media over the last four weeks. They are tried and true arguments that the right roll out against transgender people every single time.

The marriage equality postal survey had very little to do with transgender rights. Transgender people stood to gain very little from the results of that marriage equality survey which was very limited in its scope looking at the rights of gay and lesbian people to marry. Yet they copped the abuse. They copped it in bucket loads more than I have copped over the last four weeks. This has been a really hard time for transgender people in Tasmania these last four weeks. For my part in it as a member of this parliament I am sorry that transgender people have had to be put through that kind of victimisation and ridicule over the last four weeks. On your Nelly I will not stop in moving these amendments that we know are well drafted, that we know do not have unintended consequences, that we know fit within the Tasmanian legislative drafting framework and we will be putting those amendments today.

I encourage the Government to look at supporting those amendments, to be on the right side of history in this debate because do you know what they are telling us by ridiculing the amendments and ridiculing the people whose lives these amendments would improve? They are telling us that they do not support the intent of the amendments. You can go to the drafting, you can talk about whether or not they could have been drafted differently: what I want to know is do you support the intent? The intent is clear. Removing forced surgery is -

**Ms Archer** - But this is just a stunt for you, isn't it?

**Ms HADDAD** - It is not a stunt. I want to see these amendments supported. Removing forced surgery which is an absolutely abhorrent requirement and not the role of politicians to dictate to people when they have to have major surgery. Second, making it a simple administrative procedure to change your gender marker on your birth certificate. That is the long and the short of it. It is not controversial. It is not nation leading. It is administrative change.

When we get to the Committee stage I will explain how some of the Government's attempted amendments are in fact not administrative in nature and could well have done with community consultation which you seem so keen to highlight. There has been no consultation on this bill. You say that is because it is administrative in nature. There are changes in this bill as it was tabled that are not administrative in nature and we will get to those during the Committee stage.

[2.43 p.m.]

**Ms O'CONNOR** (Clark - Leader of the Greens) - Madam Speaker, we support the move to ensure that the amendments which we have prepared along with Labor and the transgender community in Tasmania, must be debated today. Today is the International Day of Transgender Remembrance as Ms Standen outlined in her extraordinary contribution this morning. Every single day that as legislators we do not deal with the issues which we will debate today because there is a strong resolve on this side of the House to ensure that we improve this legislation, every single day we delay dealing with the unfairness and in fact the cruelty in the Births Deaths and Marriages Act is another day that transgender people and intersex people in Tasmania will suffer.

We know that life for transgender and intersex people can be extraordinarily hard. You can face discrimination, vilification, transphobia. The International Day of Transgender Remembrance reminds us that you can be shot, stabbed, beaten to death simply for being who you are in a society that does not accept you for who you are. I agree with Ms Haddad that the bill prepared by the Government contains some significant changes which were not consulted; for example, the removal of the terms 'mother' and 'father' were not consulted on. In between issuing vile media releases

Ms Archer needs to explain to people who are concerned about those changes and why they were made. Why can't we put 'mother, father, parent', for example.

As the first law officer of this state, Ms Archer, you have not covered yourself in glory here at all. Ultimately the Greens are determined to make sure that no transgender person has to undergo invasive surgery just to demonstrate to an authority that they are who they are. For the Government not to take the opportunity while we are working into the Births, Deaths and Marriages Act to at least deal with those provisions in 4A of the principal act that require a transgender person to have undergone reproductive surgery in order to prove to Births, Deaths and Marriages that they are who they are, is a disgrace. It is mealy-mouthed, it is mean and it is one of the things at the very least they could have done in the bill. If they could not have gone as far as making sure we ended discrimination in birth certificates and the register, at the very least knowing what they know they could have dealt with the surgical provisions.

I have a statement here, which I feel very strongly about, to read into *Hansard* from Martine Delaney who has been an outstanding advocate for transgender people going back such a long time. Ms Haddad and I first met Martine when we were working with Duncan Kerr and if I do not finish it all in the short amount of time that I have then I will take it up again when I get to my feet.

**Ms Archer** - We are putting a procedural motion.

**Ms O'CONNOR** - Yes but it explains why there is an urgency about dealing with the issue today, former Madam Speaker, current first law officer of the land. Martine Delaney:

It is not hyperbole to say Tasmania's treatment of transgender and gender diverse people has been the worst of any Australian state or territory. Ours was the only jurisdiction to ever criminalise crossdressing and has, by far, the most draconian requirements upon an individual seeking to change their birth certificate. And currently, even if it's been altered, a Tasmanian birth certificate still ensures a trans or gender-diverse individual can face discrimination and an uphill battle while simply negotiating daily life - in ways the average Tasmanian would never be forced to even consider.

In 2004, I personally began lobbying an ever-changing parade of Attorneys-General in an effort to have these discriminatory provisions reformed. I directly lobbied eight of the nine who've held the position. I was unable to secure a meeting with our current Premier during his brief tenure as A-G. Throughout those fourteen years each and every Attorney-General found reasons to avoid dealing with these issues - issues that continue to seriously affect the lives of trans and gender-diverse Tasmanians.

In the lead-up to the 2006 State election, before Premier Hodgman had become Opposition leader I made an Anti-Discrimination complaint against a Scottsdale pig farmer who'd authorised a series of political advertisements claiming recognition of transgender and intersex people's rights would 'destroy Tasmanian families and society'.

As the complaint process played out, two important facts were uncovered. Firstly, the pig farmer was acting as a 'front man' for the Exclusive Brethren sect. Secondly, the half-page advertisements had been designed at - and forwarded to

newspapers from - Liberal Party headquarters. Eventually, my complaint was upheld. Subsequently, the pig farmer publicly apologised for his actions. The Liberal Party did not.

Shortly before the 2010 State election, Premier Hodgman - as Opposition leader - asked to meet with me. At that meeting he assured me his party would not be involved in attacks on trans and gender-diverse Tasmanians during the election campaign. Further, he gave me an undertaking to do what he could to make life easier, fairer, for us, should he lead the government. It's been eight years since that meeting, and nothing's changed, Mr Premier.

Madam Speaker, how much time do I have left?

**Madam SPEAKER** - About one minute.

**Ms O'CONNOR** - Ms Delaney continues:

Of course, I'm pleased to see the forced divorce provision removed from the Births, Deaths & Marriages Act. In the interests of a fair and just Tasmania, this should have occurred years ago. Sadly, the government is only doing so now, because Federal law requires it. And, the reality is that this amendment will only directly affect the handful of married individuals whose marriages survive the transitioning process. For every other trans and gender-diverse Tasmanian, the important issue - the one most damaging to their prospects of leading a normal life - is what appears on their birth certificates.

The proposed amendments will make Tasmania a far fairer and more equitable place for its trans and gender-diverse communities - without affecting the lives of other Tasmanians in any measurable way. They are supported by the extensive consultation and review process undertaken by then Anti-Discrimination Commissioner, Robin Banks, during 2015-16. They are also in line with international human rights developments and already exist in other parts of the world. And they do what Premier Hodgman undertook to do eight years ago.

Transforming Tasmania has met with Attorney-General, Elise Archer, on a number of occasions since May of this year. From the first meeting we have sought to engage positively with the Attorney-General to make these reforms work well. Months ago, we provided her with draft amendments, and offered to assist her agency with the process. It was only in September, after the Attorney-General refused to consider them, that Transforming Tasmania took the amendments to the Opposition and Greens parties. It had been our hope the Government would take these positive steps, to really benefit trans and gender-diverse Tasmanians, rather than doing no more than the bare minimum required by Federal legislation.

I look forward to this debate on behalf of every transgender and intersex Tasmanian and their families.

[2.52 p.m.]

**Ms ARCHER** (Clark - Minister for Justice) - Madam Speaker, I go back to the procedural motion that we have before us moved by Ms Haddad. By her own admission, these quite extensive



amendments, all nine of them, are outside the scope of this bill that deals with consequential amendments in relation to the Commonwealth changes to the Marriage Act. As I have mentioned with reference to Ms O'Connor's last contribution about Transforming Tasmania, I have been upfront at the outset that the Government preferred to refer this to the TLRI, and as we go through Committee today, that view will be upheld because there are significant flaws. I am talking about drafting flaws, legal consequences - things that need to be properly considered.

The debate for me has been bitterly disappointing this afternoon. The Government does not have a position on these issues. Our position is to refer it to the TLRI, which is very well equipped to deal with these matters and to report back with recommendations. The recommendations that can be looked at -

**Ms White** - Your press release defies such statements.

**Ms ARCHER** - If I can finish, please. The recommendations will look at any unintended legal consequences. The language that has been used to describe what I have put in press releases simply calling on Labor and the Greens to be upfront and open about the nature of their amendments - and having had a look at the amendments over lunchtime, they go further than what you have said publicly.

**Mr O'Byrne** - You know what that language means.

**Madam SPEAKER** - Order.

**Ms ARCHER** - I do not have an issue with that other than to say nobody else has had an opportunity to have a look, to have a say, to have input, not least of all the agencies to which I have referred in detail throughout this debate.

**Ms Standen** - Who else do you need to look at this?

**Ms ARCHER** - Members opposite, I do not expect you to understand the exact process that we go through, but in relation -

**Mr O'Byrne** - Don't patronise.

**Ms ARCHER** - I am not trying to patronise. In relation to significant law reform, there are -

**Ms O'Byrne** - She is a senior public servant, she knows her strength.

**Ms ARCHER** - Exactly, and that is why it is a surprising comment coming from a number who have served in government and know the processes and the absolute rigour that such law reform needs to go through. I am not making this up. This is the advice that needs to be taken into account.

Tomorrow we have private members' time. Next Wednesday we have private members' time. Rather than moving significant amendments that are outside admission - because we are now debating a procedural motion to deal with this because members admit that it is outside the scope of the Government's bill - move it by way of a private member's bill. Do not hijack a government procedural administrative bill and put at risk Tasmania being inconsistent with Commonwealth law, because that is what will happen.

Madam Speaker, in summing up, this is a procedural motion to deal with matters completely outside the scope of the bill. Members could be doing this by way of private members' time in their own time, not government time, and we could have a debate about it then. I maintain our preference is to refer it to the Tasmanian Law Reform Institute. We will fully resource the TLRI to do this as quickly as possible.

**Opposition members** interjecting.

**Madam SPEAKER** - Order.

**Ms ARCHER** - That is what I have said to stakeholders all along, because these matters need to be looked at carefully.

[2.56 p.m.]

**Mr FERGUSON** (Bass - Minister for Health) - Madam Speaker, this is quite interesting from a procedural point of view. We are all aware that the Standing Orders provide for the Labor Party to move this motion before the House which plainly attempts to open up the House's consideration of this bill in Committee to a much wider range of policy which will be introduced by amendment.

I do not have the in-depth knowledge of the amendments that my colleague, the Attorney-General has, who has I understand has been looking at them over the lunch break when they were provided to her -

**Dr Broad** - Oh, come on.

**Mr FERGUSON** - Do not do the 'Oh, come on'. We have been waiting for them for a month and they were provided sometime around 1 p.m. prior to resumption of the debate at 2.30 p.m.

What this motion before this House seeks to do is to admit - you admitted it in Ms Haddad's contribution earlier - that the amendments are falling outside of the scope of the bill and that is why you have had to move this procedural motion, so thank you for the admission at last. This is the point the Attorney-General has been making throughout this debate in the second reading stage, and I heard her comments before 1 p.m. as well.

The Labor Party was openly talking about amendments that would be going far beyond the intent of the bill. Even in this House, the rules are very clear that amendments and debate around the bill in the Committee stage have to be relevant to the clauses, including any amendments that are being proposed. What has occurred, and what the Labor Party has admitted in its deal with the Greens, which Ms White has allowed and has been doing, once again shows that you are trying to hijack this Government bill.

This bill is about being compliant with the federal legislation which every state has been asked and required to do. If this bill does not pass, we are not compliant with the federal legislation, as we have been required to do. What you do as a consequence if you interrupt the proceedings of this bill is that you leave Tasmania not being compliant with our state-based laws with the Commonwealth legislation. You place at risk the notion of Tasmania continuing to be not compliant, and that is the price you are dangling in front of this House in trying to hijack this bill.

I cannot help but wonder why Ms White and Ms O'Connor did not put this down as a private member's bill. You have an opportunity in 24 hours from now to do a private member's bill, but

you have not done that, you have tried to hijack the Government's bill which is a technical piece of legislation to be compliant with the federal laws as a result of the marriage amendment. That is what has happened and I ask the question, and I can sense there is not an answer. Well, I wonder why?

There is a further opportunity for the Labor Party and the Greens in private members' time in one week from now, but Ms White and Ms O'Connor have not done that. You are trying to hijack the Government legislation and you are even attempting to move the procedural motion because you admit that your amendments are outside the scope of the bill.

The treatment that you have dished out to my colleague, the Attorney-General, is contemptible. You have not been open to the scrutiny of your own amendments that you want to put out there. I put the Leader of the Opposition on notice -

**Ms White** - Oh, will you put me on notice?

**Mr FERGUSON** - Yes. Your secrecy on this issue has been quite galling. Tasmanians are onto you. They have been asked the question, media outlets have been asking Tasmanians what they think about your amendments because, Ms White, you have not been willing to ask Tasmanians for their thoughts on your amendments. You have been keeping them secret. The Government has no option. We cannot possibly support this procedural motion.

While the Standing Orders provide the House with the opportunity to consider this motion, what you have done is admitted that your amendments are outside the scope of the bill. You are trying to pull a surprise trick because you only introduced and allowed people to see your amendments as recently as an hour or two ago. That is poor form. You are trying to piggyback off Government legislation but you are not willing to do it in your private members' time, which you have at your disposal every Wednesday.

The question has to be asked as to why. Are you not able to make your arguments in that way? Are you not willing to be transparent with Tasmanians? That is why the Government is not willing to support this procedural motion.

[3.02 p.m.]

**Ms WHITE** (Lyons - Leader of the Opposition) - Madam Speaker, before I speak on this motion, I acknowledge the contributions that have been made by members on this side of the House for debate today. It has been very uplifting to be a member of parliament today. The whole point of this debate we are having is that we are here as representatives of our community. It is our job to pass the best legislation. We have an opportunity to improve this legislation by moving amendments that ensure it is best practice legislation and that it upholds rights, dignity, and protects those in our community who are vulnerable to further discrimination. It is about righting the wrongs of the past and ensuring that Tasmania is viewed as a modern society.

The parliament will be doing its job today. This motion has been moved by my colleague, the shadow attorney-general, Ms Haddad, so that we can debate further amendments that need to be made to Tasmanian legislation, as we do when we debate legislation in this place all the time. Consequential amendments are routinely made to other acts when we are debating bills brought before this House. It is standard practice. This motion is consistent with the forms of the House and the Standing Orders. That the Government has put up such a fight about this today speaks volumes.

It is quite clear to me that it is their intention to push this off to a review, to never do anything about making the changes that this parliament needs to make and will make, I hope, today to improve the lives of transgender Tasmanians.

The Leader of Government Business claims we have hijacked the debate. That is extraordinary, very inflammatory language to choose to use and it demonstrates how uncomfortable they feel about this. You cannot put aside your ideological opposition when it comes to debate on issues such as this. It is why we have taken the opportunity to move these amendments, this motion, because we have no confidence the Liberal Government will ever seek to make these improvements to legislation. That is why the Labor Party and the Greens Party will seek to make these amendments today and will seek the support of members in this Chamber so that the Tasmanian Parliament, as a reflection of the will of the people, can improve legislation that will change people's lives, make their lives better and not impinge on their rights or freedoms.

There is no reason to not support the amendments that have been proposed today, except ideological opposition. It is simply an administrative change that will improve the lives of those people who need it; nothing more, nothing less. To argue we are hijacking debate is incredibly hurtful to those people who are demanding of us as leaders in our communities to make the necessary changes, to recognise we can do better. We are given this opportunity today because of the legislation that has flowed from changes to the Marriage Act in the Commonwealth Parliament to do just that. Why would we ignore this opportunity because the Government is too weak to act?

#### **The House divided -**

##### **AYES 11**

Mr Bacon  
Dr Broad  
Ms Butler  
Ms Dow  
Ms Haddad (Teller)  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

##### **NOES 11**

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding (Teller)  
Mr Hodgman  
Ms Jaensch  
Mrs Petrusma  
Mr Rockliff  
Mr Shelton

##### **PAIR**

Ms Houston

Mr Brooks

**Madam SPEAKER** - The result of the division is 11 Ayes and 11 Noes. In accordance with standing order 167 I cast my vote with the Ayes. The motion is carried.

#### **MENTAL HEALTH AMENDMENT BILL 2018 (No. 43)**

**Resumed from 17 October 2018 (page 46)**

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**The House suspended from 3.12 p.m. to 4.44 p.m.**

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**Debate adjourned.**

**JUSTICE AND RELATED LEGISLATION (MARRIAGE  
AMENDMENT) BILL 2018 (No. 47)**

**Resumed from above.**

[4.45 p.m.]

**Mr FERGUSON** (Bass - Leader of Government Business) - Madam Speaker, I call on order of the day 11 and wish to speak on indulgence, if I may.

To be very brief, I advise you, Madam Speaker, and members of this House through you, that that in the time that has elapsed since the previous vote and the earlier debate the Government has had the benefit of additional advice and we are now more than happy to allow the next stage of consideration on this bill to be proceeded with. The Attorney-General is empowered and ready to do that.

I am also able to advise the House that I will be in a moment moving that the House sit late to enable full consideration of this bill through each of its stages today. I am not addressing any of the content of the bill in this comment I am now making on your indulgence. Thank you.

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**Sitting Times**

[4.45 p.m.]

**Mr FERGUSON** (Bass - Leader of Government Business) - Madam Speaker, before the Attorney-General moves that the House resolve itself into Committee to consider the bill in detail, I move -

That for this day's sitting the House shall not stand adjourned at 6 p.m. and that the House continue to sit past 6 p.m.

**Motion agreed to.**

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**In Committee**

**Clauses 1 to 7 agreed to.**

**Clause 8 -**  
Principal Act

**Ms HADDAD** - Mr Chairman, I move -

That after clause 8 and before clause 9 three new clauses - clause 8A, clause 8B and clause 8C - be inserted.

**Mr CHAIRMAN** - Order, Ms Haddad. If it is after clause 8 we have to agree to clause 8 before you move past that point. You do not have anything in clause 8 to amend.

**Ms HADDAD** - No, but I wish to move amendments that need to be moved before moving on to clause 9.

**Clause 8 agreed to.**

**New clauses -**

**Ms HADDAD** - Mr Chairman, I move -

That after clause 8 and before clause 9 three new clauses, being clause 8A, clause 8B and clause 8C are inserted as follows:

**Clause A: Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

(a) Insert:

*gender expression* means any personal physical expression, appearance (whether by way of medical intervention or not), speech, mannerisms, behavioural patterns, names and personal references that manifest or express gender or gender identity

(b) Amend the definition of *gender identity* by:

(i) inserting the words 'including gender expression' after 'an individual';  
and

(ii) omitting the words 'includes transsexualism and transgenderism' and substituting 'may include being transgender or transsexual'.

(c) Omit the definition of *intersex*

(d) Insert:

*sex characteristics* means a person's physical, hormonal or genetic features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, genes, hormones, and secondary sex characteristics;

(e) In the definition of *transgender* after (b) add:

or

- (c) identifies themselves as a member of another gender, and lives or seeks to live as a member of that gender;
- (f) Repeal the definitions of:  
  
*transgenderism*; and  
*transsexualism*.

**Clause B: Section 16 amended** (Discrimination on ground of attribute)

Section 16 of the Principal Act (*Anti-Discrimination Act 1998*) is amended as follows:

by inserting in subsection (eb) 'variations of sex characteristics' after 'intersex'

**Clause C: Section 19 amended** (Inciting hatred)

Section 19 of the Principal Act is amended as follows:

Delete the full stop at the end of subsection (d) and substituting

; or

- (e) the gender identity or intersex variations of sex characteristics of the person or any member of the group.

The reason for this amendment to the Anti-Discrimination Act is to amend the interpretation section of that act, section 3, and also to make amendments to section 16, which specifies the attributes on which basis people are protected from discrimination, and to amend section 19.

Proposed clauses 8A and 8B modernise the definition of gender identity and provide a related definition of gender expression, and replace the outmoded term 'intersex' with the more accurate protected attribute of 'intersex variations of sex characteristics'. This requires a definition of sex characteristics in the definitions section, and I note that this has been done at the request of intersex people and their families and the national organisations that represent intersex people. Further, it updates the definition of 'transgender' for accuracy purposes and removes the outmoded terms 'transsexualism' and 'transgenderism'.

Proposed clause 8C deals with an error made when the Anti-Discrimination Act was previously amended in 2014 to correct the definition of 'sexual orientation'. Previously that definition inappropriately included transsexuality and transgenderism. The 2014 amendments corrected this by removing these from the definition of 'sexual orientation' and creating separate protected attributes of 'gender identity' and 'intersex'.

At the time of these amendments, 2014, section 19, which protects against public incitement to hatred, had protected people with the attribute of sexual orientation, including transgender. As a result of this legislative drafting oversight, section 19 was not amended to add in the newly defined and the included attributes.

This resulted in those groups who had previously been protected being left without this important protection from incitement to hatred on grounds of that attribute. This amendment restores the protection and fulfils a commitment made by the former Attorney-General, the late Dr Vanessa Goodwin, who committed to correcting this error signed a minute approving this amendment proceeding to drafting at its earliest opportunity by way of an omnibus Justice miscellaneous amendment bill. The Government had every opportunity to correct what was a legislative drafting error in this bill or in previous Justice miscellaneous amendment bills that have been considered since that time and has chosen not to, which is a shame.

It is also worth noting on the issue of incitement to hatred - and indeed this is correcting a former legislative drafting error that occurred in 2014 - that as many other speakers today have noted, we are debating these amendments on the International Day of Transgender Remembrance. I fully acknowledge that transgender people are disproportionately victims of hatred - discrimination hate crimes. Our mighty Anti-Discrimination Act is a leading act in the nation protecting people from discrimination on the grounds of attributes including being transgender, and no-one in this Chamber should argue against amendments that strengthen the protections in that act. It is particularly poignant that we debate this change on a day designed to commemorate and remember those whose lives have been lost as a result of violence against transgender people.

**Ms O'CONNOR** - Mr Chairman, it is good to be back in the House debating these amendments and I hope that some of the heat and unpleasantness can go out of the debate from here. We support these amendments which make sure that the Anti-Discrimination Act 1998 performs its intended function, and that is to protect people from discrimination and the incitement of hatred. We know that, statistically, transgender people have a very high risk of self-harm and suicide. That comes about as a result of a society that has not fully understood or accepted the reality of transgender people and their struggles. It is important that nationally it is recognised as a strong piece of law: that the Anti-Discrimination Act is robust. What the parliament is being asked to do here is to make sure we modernise the definition of gender identity and provide a related definition of gender expression, replace the outmoded term intersex with the more accurate protected attribute of intersex variations of sex characteristics, updates the definition of transgender for accuracy purposes, and removes the outmoded terms of transsexualism and transgenderism.

When they examine this issue there will be people who will be surprised that the legislation as it stands now boxes people on the basis of their gender identity and whether they have intersex variations of sex characteristics as a matter of sexual orientation rather than identity.

It is important these amendments are made to the Anti-Discrimination Act. I will make the point, in a calm way so as not to inflame it any more than has been, that this deficiency in the Anti-Discrimination Act has been known for some time. It has been a legislative fix that has been required and this is no secret. There was an opportunity in this Justice and Related Legislation (Marriage Amendments) Act to make sure we fix that deficiency in the Anti-Discrimination Act which left transgender and intersex people without the protections the act originally intended them to have.

We strongly commend this amendment to the House.

**Ms ARCHER** - Mr Chairman, I have issues with the legal consequences and construction of the amendments I have seen. In the brief period over the lunch break, and in the last period where the House was suspended, I have been able to take advice on various amendments from respective



agencies but cursory advice because we have only had these amendments - all but one is different to what we have previously seen.

With this first amendment we are now dealing with on clause 8 and putting in clauses 8A, B and C, the issues we have identified are that they use new definitions that lack legal precedent and are not used anywhere else in Tasmanian legislation and nor are we aware of being used elsewhere in Australia. Because the definition is so unclear it will be challenging to interpret and apply including for those seeking recourse through Equal Opportunity Tasmania and for the commissioner herself.

Regarding section 19, the clause that deals with that, this amendment does more than simply fix a previous change. It uses new definitions that are untested and unclear. We cannot support this amendment to the bill. As I have maintained, the appropriate way to be dealing with this is not on the floor of the parliament now, today, but to have a proper look at it and our position is to refer it to the TLRI.

[4.59 p.m.]

**Ms O'CONNOR** - With your indulgence, Ms Haddad, as this is your amendment. Attorney-General, I understand your reticence at one level. But if you are going to stand in the House and say this amendment has problems because it uses terminology that is not found elsewhere in Tasmanian law, which should not be a surprise to anyone because we are dealing with the Anti-Discrimination Act and that is where you will have attributes defined, then it is on you, Attorney-General, to explain to the House why there might be an issue with these definitions. For example, if you go into the proposed interpretation of gender expression, it means any personal physical expression or appearance whether by way of medical intervention or not, speech, mannerisms, behavioural patterns, names and personal references that manifest or express gender or gender identity.

If there is a problem in your view or on advice with that definition, it is on you, Attorney-General, to explain why it may be problematic rather than to say there is a range of associated concerns here but not go to what the concern is because we are actually dealing with amendments.

**Ms Archer** - I did. The TLRI needs to look at. I cannot be any clearer.

**Ms O'CONNOR** - I am sure, Attorney-General, if you had enabled your office or departmental officers to do some research early when Transforming Tasmania first came to see you about a suite of proposed amendments then the proposed definition of gender expression and the amendments to the definition of gender identity would be non-controversial. As Ms Haddad said earlier during the debate on the procedural motion, the drafting in these amendments we believe is very robust. If there is an issue with the drafting, given that we are making law here, then as the Attorney-General you need to go to what the issue is rather than just saying we cannot support it because in all likelihood the House is going to pass this amendment so as legislators we have a responsibility to make sure that it is as good as it can be. I have faith in the robustness of this amendment. If you have concerns, Attorney-General, rather than just saying no, I put it back to you to cooperate on the floor of the House to make sure that this is the best that it can be.

**Ms ARCHER** - All I can do is reiterate to members that I am not standing here to frustrate any policy position. I am raising concerns that the department has when it is a departure - anywhere else in Australia has not defined this. These are matters that should be appropriately looked at by the TLRI. I cannot be any clearer than that and can I say I am pleased that we are able to now have

a decent debate because these are matters of construction for us. These are matters that have always been matters of construction or policy consideration by the TLRI in my view. It has always been the premise in the public debate around this particular issue that it is fixing a previous change but it is using new definitions -

**Ms O'Connor** - Which are more accurate.

**Ms ARCHER** - That we say are untested and unclear and they are matters for consideration, not by me or the department or the commissioner taking a cursory glance. They need to be considered and thoroughly researched properly.

**The Committee divided -**

AYES 12

NOES 10

Mr Bacon (Teller)  
Dr Broad  
Ms Butler  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding (Teller)  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff

**PAIR**

Ms Houston

Mr Brooks

**Amendment agreed to.**

**Clause 9 -**

Section 52A inserted

**Ms HADDAD** - I have some questions for the Attorney-General. I do not seek to amend the clause. I seek clarification on the clause. I sought this clarification from the Anti-Discrimination Commissioner during the parliamentary recess over the last four weeks but I have not received advice from the Commissioner on my interpretation of the clause. Clause 9 provides an amendment to the Anti-Discrimination Act that purports to add an exception, a defence to a complaint of discrimination in other words, relating to the performance of marriage ceremonies.

In the second reading speech, the minister explained that the clause reflects the position at Commonwealth Law to exempt ministers of religion or religious celebrants from being required to conduct same sex marriages. She told us that, under section 47 of the Marriage Act 1961, a minister of religion may refuse to solemnise a marriage if the refusal conforms to the doctrines, tenets or beliefs of the religion of the minister's religious body or religious organisation. Further, that section of the federal Marriage Act provides that a religious marriage celebrant may refuse to solemnise the marriage of the celebrant's religious beliefs to not allow the celebrant to solemnise that marriage.

I understand the intent of the clause. I argue that such a change is unnecessary because that right of a minister of religion or a religious marriage celebrant to refuse to solemnise a marriage exists at federal law under the Marriage Act and it is not necessary to import that exception into local legislation. Arguments can be made that in purporting to import that exception from federal law into local law is further stigmatising people of the same sex who wish to marry, suggesting somehow that allowing same sex couples to marry poses somewhat of a threat to marriage and religion far greater than any other marriages ministers of religion may not want to solemnise. I make those comments on the intent of the clause and seek clarification from the minister on her attempt to import something that exists in the federal Marriage Act into our Anti-Discrimination Act in Tasmania.

I want to share with the House my interpretation of that section, which is that it does not provide that exception in relation to the performance of same sex marriages the second reading speech explained that it purports to do because of the language of the provision and the correct interpretation of that language. The proposed provision provides that a person, not limited to a minister of religion or religious marriage celebrant, can discriminate against another person on the grounds of religious belief or affiliation or religious activity. The way in which discrimination law operates is to protect a person against discrimination on the basis that they have a particular protected attribute.

Religious belief or affiliation and religious activity are protected attributes under section 16(o) and section 16(p) of the Anti-Discrimination Act. The provision, as drafted, would permit a person to discriminate against another person by refusing to perform a marriage for that person because of that person's religious belief or affiliation or their religious activity. For example, an Anglican Minister could refuse to perform a marriage ceremony for a person who is a Buddhist, a Sikh or a Catholic. This is already the case and has always been a permitted refusal.

Due to the chosen area in which this amendment has been placed in the Anti-Discrimination Act, it does not protect religious marriage celebrants or ministers of religion from a case of discrimination or an argument of discrimination on the basis of refusing to solemnise a same-sex marriage. It does not protect the discriminator on the basis of the discriminator's own religious belief or affiliation or their religious activity. This interpretation is reinforced by the fact the proposed provision will sit in part 5 of the act which is exceptions and exemptions, division 8, which is exceptions relating to religious belief, affiliation or activity. All the exceptions in that division provide a defence to an allegation made by a person, the alleged victim of the discrimination, of discrimination because of their religious belief or affiliation or their religious activity. That is, an allegation of discrimination on the basis of the protected attributes found in those previously mentioned subsections of the act.

I ask the minister for her views on this interpretation of the clause as written in the bill.

[5.16 p.m.]

**Ms O'CONNOR** - Mr Chairman, I am not going to go through all the very strong arguments put by Ms Haddad. We will not be supporting this clause in the bill for the primary reason that it is wholly unnecessary. We do not believe it provides the exception in a manner the Attorney-General stated it would in the second reading speech. As a person who has been around a very long time in politics, possibly too long because I am getting quite cynical, it is clear to me this provision is in there as nothing more than throwing some crumbs to some elements within the churches and the religious right. The conservative side of politics has been dragged kicking and screaming into marriage equality and when an opportunity arises for the law to be more inclusive, to be fairer, to

embrace love between two people, we still get pernicious little attempts like this being put into the legislation.

We will vote against this provision. It is entirely unnecessary other than for political purposes you do not need. If this religious exception is in Commonwealth law in the Marriage Act 1961, why would you try it on in the state law other than for political reasons?

**Ms ARCHER** - The member for Clark is wrong. This has been thoroughly looked at by the department and I will explain as best I can. The Commonwealth is responsible for legislating in regard to marriage under the Constitution. The changes to the Tasmanian Anti-Discrimination Act regarding the exemption for ministers of religion and religious marriage celebrants solemnising a marriage, are required to ensure the state legislation is consistent with the Commonwealth Marriage Act changes and I will go into more detail.

The Tasmanian Anti-Discrimination Act currently contains some general exemptions on the grounds of gender or religious affiliation. However, it does not include an exemption covering the refusal to perform same-sex marriage ceremonies. This could put a marriage celebrant in a position where they may potentially be in breach of the Tasmanian Anti-Discrimination Act even though they are meeting the requirements under the Commonwealth Marriage Act.

It is a legal requirement for marriage celebrants to observe the laws of the Commonwealth and of the state where the marriage is to be solemnised. Disciplinary action can be taken against them if they do not meet these requirements under the Commonwealth Marriage Act under the code of conduct for marriage celebrants. A complaint also could be made under the Tasmanian Anti-Discrimination Act against a person if the changes in the bill were not included in our act to provide a similar exemption in the state.

By way of further background, section 52A provides that a person may discriminate against another person on the grounds of religious belief or affiliation or religious activity by refusing to solemnise a marriage. If the circumstances mentioned in section 47 or 47A of the Marriage Act 1961 of the Commonwealth apply to that refusal.

Schedule 1 of the Commonwealth Marriage Amendment Definition and Religious Freedoms Act 2017 amended section 40 of the Commonwealth Sex Discrimination Act 1984 to allow a minister of religion or religious marriage celebrant to refuse to perform a same-sex marriage ceremony without breaching the act. This amendment protects a minister of religion or religious marriage celebrant against claims of discrimination if their beliefs do not allow them to solemnise the marriage.

The bill amends the Tasmanian Anti-Discrimination Act to give a specific exemption under state law which is consistent with the Commonwealth Sex Discrimination Act by permitting discrimination on the ground of religious belief or affiliation in line with the Commonwealth Marriage Amendment Act for a person refusing to solemnise a marriage if they are meeting requirements of the Commonwealth legislation.

What this bill attempts to do across the board is to be consistent with the Commonwealth legislation. It is the whole purpose. Under the Australian Government Code of Practice for Marriage Celebrants, a marriage celebrant must under (d), solemnise marriages according to the legal requirements of the Marriage Act 1961; (e) observe the laws of the Commonwealth and of the

state or territory where the marriage is to be solemnised; and (f) prevent and avoid unlawful discrimination in the provision of marriage celebrancy services.

The reason for the change to the Tasmanian act is that it is a legal requirement for marriage celebrants to observe the laws of the Commonwealth and of the state where the marriage is to be solemnised. Disciplinary action can be taken against them if they do not meet these requirements under the Commonwealth Marriage Act, under the code of conduct for marriage celebrants.

Our Anti-Discrimination Act permits discrimination if it is reasonably necessary to comply with any law of this state or the Commonwealth. Our act uses the phrase 'reasonably necessary'. Equivalent acts in other jurisdictions used different phrases and have different tests. For example, Victoria permits discrimination if the discrimination is 'necessary to comply with or is authorised by' a provision of an act. Queensland allows a person to do an act that is 'necessary to comply with or is specifically authorised by' an existing provision of another act. The Northern Territory law permits a person to do an act that 'is necessary to comply with or is specifically authorised by' an act or regulation. Those three are quite similar.

Tasmania's act by contrast with these acts does not include the phrase 'authorised by' another law. There is a real question whether Tasmania's Anti-Discrimination legislation would be consistent with the Commonwealth's law if this amendment is not made. New South Wales has amended its Anti-Discrimination Act but only to tidy up a definition of spouse to include spouses of the same sex. The laws in each jurisdiction differ with respect to the states and territories and it is important that we legislate to make Tasmania's laws clear, so that we are consistent with the Commonwealth changes. The section of the Tasmanian Anti-Discrimination Act that permits discrimination on the basis of other laws is section 24 which says:

A person may discriminate against another person if it is reasonably necessary to comply with -

- (a) any law of this State or the Commonwealth; or
- (b) any order of a commission, court or tribunal.

**Ms O'Connor** - Haven't you just explained why the amendments are necessary?

**Ms ARCHER** - No, I just explained why we have to be consistent with the Commonwealth legislation. Our act uses different wording to some of the other states to which no doubt members will draw a comparison but they did not amend their Anti-Discrimination Act in the same way and that is because their acts are differently worded. We are removing doubt so that we can be consistent with the Commonwealth laws because the ramification is there will be penalties that apply to a religious marriage celebrant if they breach. If we are inconsistent with Commonwealth law and particularly the Sex Discrimination Act someone could still make a claim under our Anti-Discrimination Act against such a marriage celebrant. It is only to comply with the intent and what has occurred at a Commonwealth level.

**Ms HADDAD** - I thank the Attorney-General for her answers to my queries and the queries of the member for Clark, Ms O'Connor. I argue that there are examples here and at other times when Tasmania has needed to make changes to accommodate changes in federal law where exceptions are not overtly imported into local legislation. I argue two things. First of all, the way that this exception is drafted and the part of the Anti-Discrimination Act it is inserted into appears to limit the scope of the federal Marriage Act provisions. The federal provisions do not limit the right of these specified religious marriage celebrants and ministers of religion to discriminate on the basis

of religious belief of the couple but that is in fact what this exception does. It will allow religious marriage celebrants and ministers of religion to discriminate not on the basis of the couple's sexuality but on the couple's religious belief, not the celebrant's religious belief. That would be my first point in response.

Second, the wording of the clause as it stands in the bill also seems to extend that exception to non-religious marriage celebrants, which is a defined term in the federal Marriage Act, and that is because of the use of the word 'person', as opposed to using the words 'minister of religion' or 'religious marriage celebrant' as defined in the federal Marriage Act.

While I thank the Attorney-General for the answers to those questions, I think it needs to be put on the record that this change is in fact making a new exception under the Anti-Discrimination Act which will arguably allow all celebrants to discriminate against a couple who seek to have their marriage solemnised by that person on the basis of that couple's religious belief or activity.

**Ms O'CONNOR** - Mr Deputy Chair, I will do this from the desk in the interests of moving us along a bit, but I do not believe the Attorney-General has answered the query put to her by Ms Haddad in relation to the black-letter interpretation of this clause. If you want to talk about extending the scope of the intent of the original bill, not only in my view and Ms Haddad's view but in the view of the previous Anti-Discrimination Commissioner and other activists in this field, this is a poorly drafted clause that should not be in any legislation because it does significantly extend the scope.

I simply put it to the Attorney-General that to argue state law or the Anti-Discrimination Act here needs to make some adjustment on this specific question after changes to the Marriage Act of 1961, does not go to the fact that this is a constitutional issue. Where there is conflict between a state law and a Commonwealth law, the Commonwealth law prevails. Therefore, why are we adding a clause that may cause confusion and indeed broaden the scope of the Anti-Discrimination Act, but also not perform its intended purpose, where a person may discriminate against someone in performing a marriage celebration on the basis of a couple's sexuality, a person may discriminate against someone on the basis of their religious belief?

If the Attorney-General believes this meets the intent of its drafting, we would love to hear it, but so far I do not think you have dealt with that particular question which is also about the drafting. The clause is unnecessary, which is why we will vote against it, but the drafting is appalling.

**Ms ARCHER** - We obviously have a difference of opinion. I just read out three pages of the reason we need to be consistent with Commonwealth legislation and the ramifications if we are not. I cannot be any clearer than that.

**Ms O'Connor** interjecting.

**Ms ARCHER** - You can object all you want but I am not going to agree with you. I do not agree with you.

**Ms O'CONNOR** - Okay. Attorney-General, being a legislative process, we are in a -

**Mr CHAIRMAN** - Ms O'Connor, you have stood three times, I am afraid.

**Ms O'CONNOR** - I will take a point of order, then. I ask the Attorney-General to answer the specific question put by Ms Haddad.

**Mr CHAIRMAN** - That is not a point of order; I will sit you down, Ms O'Connor.

**Ms HADDAD** - I will reiterate my question to the Attorney-General. Does the Attorney-General agree that what clause 9 does in amending section 52A is allow a person, so arguably any celebrant or religious minister, to discriminate against a couple based on their religious activity; not based on their sexuality but based on that couple's religious belief or activity? Not the celebrant's religious activity or belief but the couple's religious activity or belief. For example, an Anglican minister could be confronted with a couple, one or both of whom are Catholics, and could refuse to solemnise their marriage because of their religious belief or expression which is Catholicism.

**Ms ARCHER** - The wording is there for the member to see; I am not being cute in saying that. Section 52A says a person may discriminate - and I suggest may only discriminate to comply with this section - against another person on the grounds of religious belief or affiliation or religious activity by refusing to solemnise a marriage in the circumstances mentioned in sections 47 or 47A - which I ran through in the explanation - of the Marriage Act 1961 of the Commonwealth. I ran through those sections and gave you the background to -

**Ms Haddad** - But it is in Division 8 of Part 5 of the bill which deals with discrimination on the basis of religious belief.

**Ms ARCHER** - I am still on my feet. I still have the call. I am saying to members the circumstances are confined to this section only in which a marriage celebrant or religious minister can discriminate, and it is only those circumstances. I am quite prepared to accept that you can have a different view. My view has been informed from advice I have taken and I am not going to agree with everything you are saying because that is your theory or belief or opinion. We will have to agree to disagree, but I have answered the question.

**Ms HADDAD** - Mr Chairman, we will have to agree to disagree but I will put on the record again that it is my belief that because section 52A is going to be inserted into Part 5, Division 8 of the Anti-Discrimination Act, which is the part and division that deals with exceptions relating to religious belief, affiliation or activity, this exception does not create a protection for ministers of religion and religious marriage celebrants to refuse to solemnise a marriage based on the couple's sexuality but rather creates a new exception for people to refuse to solemnise a marriage based on that couple's religion.

**The Committee divided -**

AYES 10

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding (Teller)  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma

NOES 12

Mr Bacon (Teller)  
Dr Broad  
Ms Butler  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor

Mr Rockliff

Ms Standen  
Ms White  
Dr Woodruff

PAIR

Mr Brooks

Ms Houston

**Clause 9 negatived.**

**Clause 10 agreed to.**

**New Clause D -**

New Clause D presented by **Ms O'Connor** and read the first time.

**Ms O'CONNOR** - Mr Chair, I move -

That after clause 10 and before clause 11, a new clause is inserted as follows -

**Clause D: Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows -

(a) Insert:

*gender* means:

- (a) the apparent sex of an infant specified by the parent; or
- (b) the gender identity of the person as specified on a gender affirmation declaration;

(b) Insert:

***gender affirmation declaration*** means a statutory declaration in which the declarant affirms the declarant's gender identity.

(c) Definition of ***recognition certificate***

Repeal the definition, substitute

***recognition certificate*** means a certificate that -

- (a) is issued under a law of another state or territory that recognises that a person may have changed sex or gender; and
- (b) is issued in respect of a person who has changed sex or gender; and



- (c) states the sex or gender of that person as so changed;
- (d) Definition of *sexual reassignment surgery* is repealed.
- (e) Insert:

*sex characteristics* means a person's physical, hormonal or genetic features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, genes, hormones, and secondary sexual characteristics.

**Ms O'CONNOR** - Mr Chairman, I move -

That new clause D be now read the second time.

The defining of gender as a term in the principal act is required because this term is used in the amending provisions. This definition states that gender would, in the circumstances of an infant, be either male or female. This is consistent with the request made by the Intersex Human Rights Association. That is the Australian body representing people with variations of sex characteristics. They have requested this change to avoid stigmatising children with such variations. It also provides for gender to be specified through the making of a legal declaration by the person affected, a gender affirmation declaration, which is also defined through this amendment. In most cases, gender will remain undefined. The definition allows, in the case where gender must be defined, for the person to specify their own gender. It allows for genders other than male and female. Paragraphs (c) and (d) remove definitions that are no longer required as a result of the later repeal of 4(a), which we will get to. The inclusion of a definition of sex characteristics is made to shift language toward the internationally accepted description of people with intersex variations.

I would like to point people to the body of precedent. For those who are predisposed to believe we are on some radical gender experiment or who are simply confused, I will go to some of those countries where there is legal precedent for the removal of the requirement for medical intervention or psychological assessment for gender change. Reform occurred in the following countries -

- Uruguay, 2009; enacted self-identification, no diagnosis requirement.
- Argentina, 2012; self-identification, right of gender recognition in law and the obligation for the government to change.
- Denmark, 2014; self-identification, no diagnosis requirement. In 2016, eliminate dysphoria as a mental disorder.
- India, 2014; a court decision, self-identification on documents.
- Malta, 2015; self-identification, right of gender recognition in the constitution.
- Columbia, 2015; self-identification, no diagnosis requirement.
- Ireland, 2015; self-identification, no diagnosis requirement.
- Ecuador, 2015; self-identification with a psychiatric test for informed consent.

- Bolivia, 2015; self-identification with a psychiatric test for informed consent.
- Norway, a marvellously evolved jurisdiction, in 2016; self-identification, no diagnosis requirement.
- France, 2016; self-identification, no diagnosis requirement and in 2009, removed transsexualism as a disorder.

When we talk about what is in our law at the moment that requires a diagnosis and the input of two medical professionals for a person to change their gender on their birth certificate, the law implies that to be transgender or intersex is a form of medical disorder. It is very important that our law does not do that.

- In all states of Canada in 2017; self-identification with a test for informed consent.
- Belgium, 2017; self-identification, no diagnosis requirement.
- Greece, 2017; self-identification, no diagnosis requirement.
- Pakistan, 2018; self-identification, no diagnosis requirement.

What we are doing here is not radical; it is not gender engineering. It is simply justice. It is about making sure people who are transgender and who already struggle in many ways with life, acceptance or inclusion, do not have to go through the demoralising and too often disappointing medical process to prove to the Registrar of Births, Death and Marriages they are who they know they are.

To remind people of what that definition in the current act is:

Sexual reassignment surgery means a surgical procedure involving the alterations of a person's reproductive organs carried out -

- (a) for the purpose of assisting the person to be considered to be a member of the opposite sex; or
- (b) to correct or eliminate ambiguities relating to the sex of the person;

When you go into the body of the bill, in order to change your birth record, you have to have undergone sexual reassignment surgery under Part 4A. This is to register what the law currently requires a change of sex -

An application under section 28A is to be accompanied by -

- (a) a statutory declaration from each of 2 medical practitioners verifying that the person who is the subject of the application has undergone sexual reassignment surgery; and
- (b) any other document or information that the Registrar requires.

Mr Chairman, there has been no consistency from within the medical profession in Tasmania about what sexual reassignment surgery actually means. You can have one medical practitioner who, if a transgender person, for example, a transgender male, has undergone breast removal surgery, you go, yes, that is sexual reassignment surgery. You can have another medical practitioner

say, 'No, look, you have only had your breasts removed and real sexual reassignment surgery requires the removal of your uterus under the law', because that is what the law requires right now. We will fix that today in this place and make sure that we are not putting transgender Tasmanians through an unjust, unfair, unnecessary and torturous process, to have the official record reflect who they really are.

**Ms HADDAD** - Mr Chairman, Labor will be supporting this amendment from the member for Clark, Ms O'Connor. I want to reiterate her explanation to the House and to the Tasmanian community that what we are doing here is by no means any kind of radical agenda as has been characterised here and about which I spoke vigorously earlier today.

We have seen a horrible hate campaign over the last four weeks. Transgender people have seen that same kind of hate campaign waged against them time and time again as soon as any parliament opens its mouth on transgender issues. The Attorney-General rolls her eyes, she has heard me say it before -

**Ms Archer** - I did not roll my eyes. I shook my head.

**Ms HADDAD** - You shook your head and threw your eyes back into your head.

**Ms Archer** - Stop misrepresenting me please.

**Ms HADDAD** - You rolled your eyes at me. I will not repeat the call I made before but I will explain that I personally find it utterly abhorrent that parliamentarians can dictate to members of our community when and under what circumstances they should be required to have major surgery that is extremely expensive, in many if not most cases, unaffordable; in many cases unwanted and unneeded, and in some cases, medically dangerous or even life threatening.

I am not a doctor; I do not believe that anybody in this place is a medical doctor but I could be wrong about that. Even so, the decision to have major gender reassignment surgery should be a decision for an individual and a discussion between them and their loved ones and their families and their doctors.

**Ms O'Connor** - Hear, hear.

**Ms HADDAD** - I do not know why, as the member for Clark just explained, the before surgery provisions sits right next to the forced divorce provision in the Births, Deaths and Marriages Act 1999. The forced divorce provisions are under Part 4A, section 28A(c). That is what this parliament needs to remove to satisfy the Commonwealth changes in the Marriage Act. We are also removing section 28A(1)(b) which sits directly above that forced divorce provision and reads:

[A person] who has undergone sexual reassignment surgery;

That is defined as the member for Clark has read into *Hansard* already.

It was within the power of this Government to remove that for surgery component themselves. I do not know why, for the life of me, the Government has held doggedly on to the idea that we as parliamentarians should be the people who dictate the law around whether a person should have major reconstructive surgery.

By adding these new definitions, the amendment will ensure that people who are transgender or gender diverse will have their legal identity correctly reflect their actual lived gender identity. Allowing for people to say what their gender is does not eliminate gender; it increases gender diversity, especially when people say they do not fit the social image of either man or woman well.

Gender diverse people actually include people with many gender identities including non-binary identities, androgynous identities, agender identities and more. As people who have had courage to identify outside of those norms, more people have realised that they could also. We are seeing an increase in the number of people who identify as transgender or gender diverse, which is a very positive thing.

People are now in a position where they can realise that their communities, their societies and hopefully their parliaments recognise the diversity of gender identities and will change laws to recognise that at law.

Labor will be supporting this amendment from the Greens to insert new definitions into the Births, Deaths and Marriages Act.

**Ms ARCHER** - Mr Chairman, this is a very important issue. The Government has not disputed that. All along I have said this bill that we had before us, without these amendments, was to deal with one issue and one issue only. That was to comply with the same-sex marriage changes at a Commonwealth level.

I have said and I have explained my position both publicly and to stakeholders privately that we want to deal with these issues on sex and gender holistically by referring it to the TLRI, not separating one small aspect and dealing with the rest perhaps by way of referral.

The Government has not shut the door on the issues that are being raised. What I am highlighting are either the unintended consequences or the flaws in the provisions that have been put forward by members today.

It is not for me to explain your amendments. I am here to explain why we are opposing them and on what grounds. I am not here, particularly on this issue, drawing any conclusions on behalf of any members because the Government does not have a position on this, other than we want it dealt with at the TLRI so we can then be adequately informed.

I am advised in relation to the issues surrounding this particular amendment and drafting and meaning or otherwise of various terms. I say this as to those things: there is no change to gender in this to change it from being binary. You can either be male or female but you cannot be intersex. That is flaw number one in the drafting.

Per the new definition that the amendments are inserting, gender means apparent sex of an infant specified by the parent or gender identity in gender. I have a typo here. It then goes on to talk about gender identity and gender add something else. The former can only be male or female.

Gender identity is not defined and so must mean whichever of male or female you choose or what your parent chooses; I might add, no-one else. You cannot have a guardian make that choice - only a parent can who has registered you as a baby. That is very loose at the moment and I do not think it is intended that you have to make that choice of male or female. Also it is not clear whether gender identity means what you think you are what you actually are. Whatever it is, it is what you

affirm, so do you mean I affirm it as a fact or I affirm this as the gender identity I say I am? It is unclear and obviously this is really critical as to -

**Ms O'Connor** - Why?

**Ms ARCHER** - Because it is not defined anywhere and then the apparent sex is only what a parent specifies, so if the parent dies or absconds or cannot specify it for whatever reason then you could have no sex registered. Even though Part 3 is used to register the sex and is being amended to increase the time for registration when circumstances do not allow for an easy assignment of gender, this is an acknowledgement that in future the gender will continue to be recorded in the register. If there is no sex able to be recorded for this reason, there will be no gender that a person can change under Part 4A. It is really ambiguous and the question in this circumstance is what are the child's rights?

**Ms O'Connor** - We can talk about that.

**Ms ARCHER** - You are giving all of this right to a parent. Again, it does not allow for anyone else, a guardian or -

**Ms O'Connor** - What do you think happens to intersex kids now? They have no rights.

**Ms ARCHER** - I am saying what my advice is in relation to these things. I have been listening to other members make their contributions. These are issues that need to be fleshed out and properly looked at. This is after a cursory look at amendments, which I stress have changed yet again today.

**Dr Woodruff** - You refused to look beforehand. It is on your head.

**Ms ARCHER** - They are different to what was provided before we adjourned in the last session of parliament. Eight of nine are different. Under these amendments it also appears that there would be no way for a child to change an inaccurate sex that has been reported by a parent, if that was a scenario, until they are 16, and at that point would need to meet the requirements under the amendments, specifically a gender affirmation application. For all the reasons I have identified, these are the sorts of things that need to be raised and looked at in terms of our preference of the TLRI looking at this, because that is just after a couple of hours looking at these amendments of where there are issues.

**Ms O'CONNOR** - I thank the Attorney-General for a quite reasoned explanation of why you will not apparently be supporting this. One of her concerns was that gender identity is not defined. We created a definition of gender identity in the first amendment, which has been passed by this House, and that definition would insert the words 'including gender expression' after 'an individual', omit the words 'includes transsexualism and transgenderism' and may include 'being transgender or transsexual', so there is a definition in the Anti-Discrimination Act. As to gender expression, we also passed a change to that clause.

As I understand it, Attorney-General, if there are any gaps in the information then the registrar can correct them. As I said, gender identity is defined in the Anti-Discrimination Act and if the registrar is uncertain about that she can refer back to that act, and this has not changed. A child under 16 can make a declaration and with the support of their parents get their sex changed and with one parent's consent can refer to a magistrate for a decision. That gives priority to the child's will and preferences, and I think there is a bit of a misunderstanding about the rights of the child

here, because of a couple of things. The parents of intersex children can be put into the most awful, unimaginably difficult situations where the law currently requires them to say their child is either one or the other. We know as scientific fact that there is much more to human existence than just being male or female and because of that pressure on parents, not just legal pressure but also social and cultural pressure, children's rights have been absolutely ignored. Intersex children are undergoing surgery so they can be one or the other with no consent, no rights, and terrible mistakes have been made.

There is a magnificent book by Jeffrey Eugenides called *Middlesex*, the story of an intersex child. That child's parents could have gone one way but they went the other and took the wrong turn for that person, no doubt all with the best of intentions. If we want to talk about the rights of the child, let us really talk about the rights of a child and the rights of a baby that is born intersex. I have spoken to a parent of an intersex child recently and they are passionate about this amendment and these changes we are talking about today. I urge the Attorney-General to hear that. The rights of the child are paramount to us here now.

I go back to the foundation in activism for the changes that have been happening all around the world. Twelve organisations of the United Nations in September 2015, including United Nations Human Rights, United Nations Development Program, World Food Program, UNICEF, UNHCR and UN Women, issued a joint statement on LGBTI rights and this included the following section that relates specifically to what we are dealing with today. Under the heading 'Protecting individuals from discrimination' it says:

States should uphold international human rights standards on non-discrimination, including by:

...

- Ensuring legal recognition of the gender identity of transgender people without abusive requirements.

Those abusive requirements were made explicit with regard to gender identity in this communique, and I quote:

Transgender people are frequently denied legal recognition of their preferred gender or face abusive requirements such as forced sterilization, treatment or divorce to obtain it, without which they suffer exclusion and marginalization.

Attorney-General, I realise we are probably going to divide on every clause here but we feel very strongly that this does protect the rights of the child but also strengthens the rights of transgender and intersex people.

#### **The Committee divided -**

##### **AYES 12**

Mr Bacon  
Dr Broad  
Ms Butler (Teller)  
Ms Dow

##### **NOES 10**

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson

Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

Mr Gutwein  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff  
Mr Shelton (Teller)

PAIR

Ms Houston

Mr Brooks

**New Clause D agreed to.**

**Clause 11 agreed to.**

**New clauses E and F -**

New clauses E and F presented by **Ms Haddad** and read the first time.

**Ms HADDAD** - Mr Deputy Chairman, I move -

That after Clause 11 and before Clause 12, two new clauses are inserted as follows -

Clause E: Section 11 amended (Notification of birth)

Subsection 11(3) new subclause inserted

After subsection (3)(a) of the Principal Act the following paragraph is inserted -

- (aa) in the case of a live birth where variations of sex characteristics do not allow an easy assignment of gender, within 120 days of birth;  
or

Clause F: Section 15 amended (Obligation to have birth registered)

Subsection 15(1) amended

Section 15 of the Principal Act is amended as follows -

By omitting subsection (1) and substituting -

- (1) A person responsible for having the birth of a child registered must ensure that a birth registration statement is lodged with the Registrar:
  - (a) within 60 days after the date of the birth; or

- (b) in the case of a live birth where variations of sex characteristics do not allow for an easy assignment of gender, within 120 days of birth.

Penalty: Fine not exceeding 10 penalty units.

This amendment gives additional time for registration of birth of children with ambiguous genitalia. This is to relieve the pressure on parents of such children and allows them time to learn about their child's situation and about variations of sex characteristics so that they can carefully consider how they will raise their child, including how to name them. Normally, births must be registered within 60 days.

The current imperative on parents to complete the birth registration document within 60 days creates an unnecessary pressure on parents who have a child born with ambiguous genitalia to specify the child's sex despite their child's sex being unclear. It is understood to result in parents feeling pressured to consent to genital surgery that is unnecessary and deferrable and causes actual and sustained physical harm to the child, often resulting in sterilisation, loss of sensation and sexual function and generally results in further requirements for surgery as the child grows and matures.

Sadly, decisions to assign a particular sex to such children may be made because of apparent ease of genital surgery to normalise the appearance of the child's genitals at that age. Too often, the surgical intervention chosen does not reflect the gender identity of the child as they develop and is often made without full understanding of the long-term physical and psychological harm that can result from unnecessary genital surgery. Just as we have made female genital mutilation unlawful, we seek to avoid unnecessary genital surgery on children born with ambiguous genitalia. Giving the parents time to seek advice, obtain information about intersex variations and to make a decision without feeling pressured to reinforce that decision through surgery will make an enormously positive difference in the lives of children born with variations of sex characteristics otherwise known as intersex.

This amendment has come about because of advocacy by intersex people and their families. When we have spoken to intersex people and to parents of intersex children they have described the enormous pressure that is put on them at the time of registration of birth. It might seem like a very administrative decision to make within 60 days to elect the sex of your child. In most cases, indeed, the majority of cases, the sex of the child born is immediately apparent. However, in the roughly 2 per cent of cases where the sex of a child is not apparent at birth - in other words, children who are born with genitals that are not immediately recognisable as either male or female - parents in that situation need to make an election within 60 days. While that may not sound like something that would put pressure onto those parents it is something that does put enormous pressure onto those parents.

In some cases, surgery is required young but in many cases the surgery that is required could be deferred or could be avoided altogether. Those parents said that in making that administrative election of male or female for their child upon registration of 60 days of birth, they did feel enormous medical and social pressure to conform to medical norms and to correct - and I use that term begrudgingly - their child's genitals to make them physically appear either male or female. As the member for Clark noted in her last contribution, parents who are put into that quite confronting situation have to make that election. Sometimes they get it right and sometimes they get it wrong, but no doubt they make that election with the best interests of their child in their heart and in their minds. This amendment will extend that time limit for registration of births from 60 days to 120



days only for infants who are born with genitalia which is not immediately recognisable as either male or female.

[6.15 p.m.]

**Ms O'CONNOR** - I strongly support this amendment which will certainly take some of the enormous pressure off the parents of children with intersex variations of sexual characteristics. It is an improvement to the Births, Deaths and Marriages Act which the Government should support and not divide on. It should not be in any way contentious. We argue that all the amendments we are putting should not be contentious, but surely the Attorney-General can agree this is a significant improvement to this part of the act where it enables the parents of an intersex baby a bit longer to register their birth.

As we know, we are moving on to an amendment which would further take some of that difficulty out of the lives of parents of children with intersex variations of sexual characteristics. In the next amendment we will move that the registrar may only collect information about sex or gender under section 50 of this act, which would certainly take some of the drama and pressure out of the decisions made by parents of intersex children.

**Ms ARCHER** - I am advised that section 15(1) of the current act allows the Registrar of Births, Deaths and Marriages to accept a birth registration statement after the standard 60-day period in any event, which caters for parents who need extra time and reflects current practice. I am advised that this amendment is not necessary as it says in section 15(1) that the Registrar must accept it post 60 days. Even by changing it to 120 days they could still be liable to a penalty. There are a few flaws that may need to be looked at there.

This is an observation, for completeness of the debate, by the registry. A change to these requirements will potentially have an impact on hospital systems data, increasing time frames for hospital notification, and lodgement of birth registration statement by parents could disadvantage the child and indeed the family, as no birth certificate would be available until the registration was finalised. There could also be an impact on the timeliness of birth data available for organisations such as the Australian Bureau of Statistics and the importance of birth data for statistical and research purposes is paramount as well. These are observations to some of the issues in relation to the delay, but in any event, in practice the registrar by virtue of the act is bound to accept late registrations.

On a personal note, I did not exist for about 18 months when my parents forgot to register my birth. I did not exist and had to prove I was theirs by going to court at the time.

**Ms O'Connor** - It's all coming out now.

**Ms ARCHER** - It is an interesting anecdote as to what can happen, but I do exist.

**The Committee divided -**

AYES 12

NOES 10

Mr Bacon  
Dr Broad  
Ms Butler (Teller)  
Ms Dow

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson

Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

Mr Gutwein  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff  
Mr Shelton (Teller)

PAIR

Ms Houston

Mr Brooks

**New Clause E and F agreed to.**

**New clause G -**

New clause G presented by **Ms O'Connor** and read the first time.

**Ms O'CONNOR** - Mr Deputy Chairman, I move -

Clause G: Section 16 amended (Registration)

Subsection 16(3) inserted

After Subsection 16(2) of the Principal Act the following subsection is inserted -

- (3) The Registrar may only collect information about sex or gender under section 50 of this Act, except as otherwise allowed under Part 4A.

This states that where information that is collected is retained, section 50 allows information to be collected and held, but not held on the register. The registration of birth form already includes a lot of information that does not form part of the register. This allows the register to give certificates as registered without including gender and still collect the information and include it on certificates if requested. The current imperative on parents to complete the birth registration documents within 21 days includes the requirement to specify the sex of the child although the act does not require this. It imports a required element that is unnecessary and has no legal purpose.

The removal of the collection of sex or gender information from the register removes the discriminatory impact in birth registration and certificates that seriously affects people who are transgender, gender diverse, non-binary.

As mentioned, the current collection also has a discriminatory effect for some people who have variation of sex characteristics.

Mr Deputy Chairman, I move that this be accepted and if there is a concern about data collection, I hope this alleviates some of those concerns on the part of Government.

We recognise that governments, and the Australian Bureau of Statistics, do collect data in order to inform public policy, the allocation of public resources and to identify trends in public health,

educational levels, employment. We recognise the importance of data and that the data must be robust.

I remind the House that when a child is born there is a record at the hospital of that child's birth, but every person in this place who has a birth certificate, given we are all of a certain age, but I am not sure exactly when it changed everywhere, there used to be on the birth certificate your parents' occupation, your race, your racial history and your religion. Those former requirements of officialdom are no longer the norm and we argue that this element that we seek to insert into the Births, Deaths and Marriages Act makes sure that there is still a capacity for the registrar to collect information, but the register which provides the official record of a person for their birth certificate does not. We will talk later about amendments that enable people to make changes to the register but that also retain the historical integrity of data.

[6.29 p.m.]

**Ms HADDAD** - Mr Deputy Chair, I will speak briefly to indicate that Labor will be supporting this amendment from the Greens and as the member for Clark outlined, this puts to rest any of the scaremongering we have seen over the last four weeks about the concept that these amendments are attempting to erase gender or stop the registrar collecting gender or sex information. In fact, that is not the case at all and this amendment very clearly states how and where the registrar may collect and store information about sex and gender.

**Ms ARCHER** - At the outset, it appears that this amendment is to compel the registrar not to put information on the register but on a separate duplicated parallel database in relation only to sex and gender recording and it is worth noting the concerns that I know that Births, Deaths and Marriages would have. There would be an impact on the quality of birth data collected in Tasmania. There is high importance for compliance with the agreed national standards in reliance on birth data for statistical and research purposes, as identified by Ms O'Connor.

It is worth acknowledging that changes to details collected to the register which a child would need to be referred to the Australian Bureau of Statistics because the ABS is heavily reliant on BDM birth data for a wide range of purposes. I have not had an opportunity to do that but in the normal course of significant law reform that would be one of the steps that would be done in this process of ensuring that the consequences of any law reform are not far-reaching or unintended for the original purpose.

ABS previously has provided the following advice, that I am going to read from, to state and territory registrars of Births, Deaths and Marriages or the equivalent titles in each of those states and territories relating to the importance of collecting sex or gender details. This is the advice:

Australia's population estimate statistics are dependent on the measurement of the population's biological sex. Information on the number of births and deaths recorded by sex is provided to the Australian Bureau of Statistics (ABS) on a regular basis by each state and territories' registry of births, deaths and marriages. This administrative data, along with the ABS's five-yearly census of population and housing are the basis of Australia's population counts, including future estimates.

Biological characteristics of the population are also required to accurately determine national cause of death every six years to inform Australia's death and disease prevention strategies and funding for the health sector.

Relevant international frameworks and guidelines need to be considered when assessing whether sex or gender identity should be included in data collections.

The United Nations statistical division's principles and recommendations for a vital statistics system revision 3 of 2014 requires all births and deaths be recorded by sex.

Gender identity is not considered an appropriate variable.

As part of the world's statistical community -

**Ms O'Connor** - It does not make it right.

**Ms ARCHER** - This is the ABS advice.

As part of the world's statistical community, the ABS bases many of its statistical collections on international statistical frameworks and guidelines. By doing so, it adopts widely accepted best practice approaches and produces high quality data on the same basis as other national and international statistical organisations.

Whilst the terms, 'sex' and 'gender', are often used interchangeably, they are separate concepts and they are important for different types of statistics.

The ABS recognises that a person's sex is not necessarily consistent with their gender and, additionally, it acknowledges the capacity and need to collect information on gender/sex for those who do not identify themselves as either male or female.

For this reason, the ABS has drafted a new sex and gender identity standard. The standard aligns with the Australian Government guidelines on the recognition of sex and gender of July 2013 and is consistent with Commonwealth anti-discrimination law which is the **Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013**.

It provides a basis for the ABS and other organisations to collect data about sex from surveys and administrative collections. It is also important to note that estimates of resident population for the states and territories of Australia are published by sex and age groups. This is the official measure of the population of states and territories of Australia and it is used for a range of key decisions such as resource and funding distribution and apportioning ? [6:34:40] in the House of Representatives to each state and territory.

To implement this, updates would be required to Births, Death and Marriages business systems, forms and stakeholder communication. To record all of this, it would need to overhaul all of its systems and there would need to be preparation for something like this. Again, this is the reason these types of reforms need to have some consideration to the practical aspects as well as as reform. There are potential issues for existing and future data matching activities for research, statistical and data cleansing activities. I understand the intent of this amendment but, for those reasons and because of the significant change in systems required, I am unable to support this amendment.

**The Committee divided -**

AYES 12

Mr Bacon  
Dr Broad  
Ms Butler (Teller)  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

NOES 10

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff  
Mr Shelton (Teller)

**PAIR**

Ms Houston

Mr Brooks

**New Clause G agreed to.**

**Clause 12 -**

Section 28A amended (Application to register change of sex)

**Ms HADDAD** - I am not seeking to amend clause 12, Mr Deputy Chairman. I am flagging with the House that I have a problem with clause 12 and I intend to move new text to replace clause 12. I will not speak for long on my reasons for opposing clause 12 but indicate we do intend to oppose it. Clause 12 makes amendments to part 4A which is the part of the Births, Deaths and Marriages Act that deals with registration of change of sex. We have already spoken at length about the provisions in Part 4A and I intend to move new text that has been circulated and I can circulate again now, which will replace the wording that is currently in clause 12 of the bill.

I move defeat of clause 12.

**The Committee divided -**

AYES 10

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff  
Mr Shelton (Teller)

NOES 12

Mr Bacon  
Dr Broad  
Ms Butler (Teller)  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen

Ms White  
Dr Woodruff

PAIR

Mr Brooks

Ms Houston

**Clause 12 negatived.**

**New Clause H -**

**Ms HADDAD** - As clause 12 has been negatived, I move -

That all of the following new clause H be inserted in the bill -

Clause H: Part 4 amended (Change of name)

Part 4 of the Principal Act is amended as follows:

- (a) Section 23 of the Principal Act is amended by omitting 'An adult person' and substituting 'A person of 16 years or over'.
- (b) Section 24(1) of the Principal Act is amended by adding the words 'under the age of 16 years' after the words 'The parents of a child'.
- (c) Section 24(2) of the Principal Act is amended by adding the words 'under subsection (1)' after 'one parent'.
- (d) Section 24(3) of the Principal Act is amended by -
  - (i) adding 'under subsection (1)' after 'a proposed change of name for the child';
  - (ii) omitting 'if satisfied that the change is in the child's best interest' and substituting 'is satisfied that the change is consistent with the child's will and preferences'.
- (e) Section 26 of the Principal Act is amended by adding after subsection (3) -
  - (4) If a change of name is registered under this Part in any respect of any person, a birth certificate issued by the Registrar for the person is to show the person's name as registered without any notation or indication that the person was previously registered as having another name unless a request is made under subsection (5).
  - (5) If requested by the person whose details are registered, the Registrar may issue an extract from the Register which shows the person's name as registered with a notation that the person was previously registered as having another name.

This amendment lowers the age for independent application for change of name from adult to 16 as in the former Anti-Discrimination Commissioner's recommendation of 2015. It also changes the words 'best interest' to 'will and preferences of the child', which reflects changes to replace this test in guardianship and other laws.

The significant issue affecting people who have changed their gender and consequently their name is the disclosure through their birth certificate of a name typically given to a person of a different gender to that reflected on the reissued certificate. This raises unnecessary questions and breaches of privacy of the person by disclosing irrelevant gender information through the prior name disclosure.

In moving this amendment, I share with permission the story of one family who have three children, one of whom is a transgender child. This very passionate mum told me that:

It frustrates me that a piece of paper, albeit a very official government-issued one, has the power to see one of my children blocked from the same opportunities that her sibling has without question. My daughter's birth certificate was a document I received very happily after she and her twin brother were born nearly 15 years ago, but it is now a cause of dismay for me and disadvantage for my daughter, because it contains information that does not reflect her true gender or name.

Despite having gone through the process of legally changing her name and paying the required fee, the first few lines of her reissued birth certificate refer to her former name and a gender that is not correct. I will admit that for too long I thought I had two sons, but I was wrong. After years of bravely seeking our conditional support for her true gender identity and overcoming our fears and reluctance to do so, my extraordinarily courageous daughter made a social gender transition at school at age 11. She hasn't looked back since.

There is no ambiguity or doubt about her gender. I am proud of her go-getter attitude and her willingness to seek employment at her young age. She recently enquired into the application processes for the local employers of teenagers in our area. All have required ID in the form of a birth certificate and there strikes a bureaucratic barrier to her first burger-flipping job - a piece of paper, her birth certificate, which would immediately out her by disclosing a name long left behind and a gender that is not correct. This potentially leaves her open to discrimination, bullying and unnecessary invasion of her privacy.

Valid and accurate identification is really important, no matter your age. I use my driver's licence as ID all the time, but that is not an option for my daughter who won't have one for a few years yet. At some point, listing of gender on Tasmanian driver's licences ceased. I checked mine and all you can see is my bad licence photo, my date of birth, my licence number and address. Surely we could apply this same standard of not listing gender or having a choice, as these amendments do, of listing gender on a birth certificate. This would mean transgender people who are young or who do not drive so do not have other forms of ID no longer have to risk discrimination or abuse when they use birth certificates as ID.

Recently I have read politicians saying we need public debate on this issue, but we have had that debate already. In February 2016 the Anti-Discrimination Commissioner published an options paper based on public submissions. Not acting now is simply kicking the issue into the long grass. Opinions have been canvassed and recommendations made. It is time for action now.

I know I am not the only parent of a transgender child who would like to speak out on the record instead of anonymously, but for many of us the risks of our children's wellbeing and privacy are too great. Our kids just need the chance to get on with being the great kids they are without fear of discrimination or being labelled. I do not think it asking too much for my children to have the same opportunities in life as they grow up. I do not think it is okay that only one of my children is going to have the chance to get a job this summer.

Mr Deputy Chair, I share that anonymous story with permission from an amazing family who came to meet with me. It struck me as completely unfair when I viewed that person's daughter's birth certificate that the first thing you see is a male name and the gender male. Below that there is a second cell that says 'change of name, if any' and there you see a female name. Obviously that child cannot have their gender legally changed on their birth certificate under current Tasmanian law without undergoing invasive surgery, which hopefully we will see change after today's debate.

While it was very marked looking at that birth certificate, having the very first thing you see on somebody's birth certificate who is clearly a female person, who presents as a female person and lives as a female person, being a male name was confronting and unfair. This change will ensure that people will have the choice after they have had a change of name as to whether their former name appears on their birth certificate or not. As is the case with the changes we are making regarding having gender included on printed birth certificates, this will remain a choice for the person applying for the birth certificate to either have their former name also printed or not to have their former name printed on their birth certificate.

**Ms O'CONNOR** - I am speaking in support of this amendment but unless you are a transgender person or the family or friends of a transgender person it is really difficult to take in how hard life can be when your birth name might, for example, be Frank. You know that you are not a boy. We need to acknowledge the courage of transgender people. You change your name, you tell the world to the best that you can even though the official records will not recognise that you are female and yet when you go out into the world, your documents say Frank. If you go into the hospital, to the emergency department they will call out your old name on the file.

Everywhere you go as a transgender person who lives under an identity they have courageously embraced and tried to make the world see them, everywhere you go there are obstacles to people. It is very hard to grasp that. People in this House, in this Chamber, we have not had to go out into the world and have people think or not recognise us for who we are. We have not had to go into the bank and take the old record of your identity in. It causes a level of social anxiety for transgender people that is extreme because each time they want to go out into the world and be recognised for who they are there will be some moment in the day usually, somewhere in the day, where the world smacks them in the face again. The world does not accept them for who they are. The doctors, receptionists call you out by the name your parents gave you.

We need to make sure that our laws allow people the freedom to be who they really are and does not put up obstacles to that. There are so many jurisdictions as I read out earlier, that recognise



this and have made it as simple as possible out of respect. Human diversity: the right of us all to free expression and to be recognised for who we are.

An adult person is a person of 16 years or over and we have long argued that 16-year-olds have the capacity and the investment in the future to be able to vote and we believe voting should be an option available to young adults of 16 or over. When we are talking about subsection (d)(2) we omit in the principal act that says when we are talking about the mechanism for having your name changed that a magistrate may on application by a child's parent approve a proposed change of name for the child if satisfied that the change is in the child's best interests. What is missing from that equation is what the child believes are their best interests.

I have sat through a Family Court hearing - not that I was a party to the hearing - where a learned judge is making determinations about what he or she believes is in the child's best interests but the child is not given a voice. The law in the 21st century is evolving to recognise the rights of the child to be given a voice and this change puts the equation where a magistrate is not determining what is in the child's best interests. The law says the magistrate must be satisfied that the change is consistent with the child's will and preferences and that places another set of tests on a magistrate not just to assume in a paternalistic way potentially about what you believe a child's best interest to be, but actually engage with the child and find out what their will and preferences are.

I believe that if we had started moving down this path earlier as a society - and when I talk about 'a society' I am talking about Australia, which my father often used to tell me is a backward nation - I truly believe that if we had embraced this evolution of understanding and law a decade or more ago, we would have avoided a lot of pain. We would have a much deeper understanding of the intrinsic rights of a child to determine and to have as great a say as possible in their future.

I strongly support this amendment and I believe that should it be passed by this House and also in the other place that constant social anxiety that transgender people live with every single day of their lives, whether they are transgender children or young adults or older transgender people who really have done it hard will be eased. It is one part of a salve on what transgender people have to endure and we can help life for transgender people to be a lot more inclusive and fulfilling and we can recognise that transgender people, transgender children, who stand up for themselves, have such courage. Goodness me, Mr Deputy Chairman, it takes some guts. No-one would choose that painful path unless they knew they had to for the world to recognise them for who they are. I strongly support the amendment.

**Ms ARCHER** - I note that it is regrettable that we no longer have the previous provision certainly deleting it from the act as far as this House is concerned and I urge the other place to seriously consider what I am about to say.

In my view, there are technical issues with the operation of this amendment and in fact all other amendments which are not resolvable on the floor of parliament and I maintain that is our position.

These are the national identity standards. What this amendment does, particularly section 26, will not align with the national identity standards, so these are the sorts of things that need to be considered in any of these proposed amendments. We are dealing with what the opposition parties are attempting to achieve and I am not casting aspersions on the intent or otherwise of the amendments. It is simply that logistically there are technical issues with many of these amendments.

The first part of this amendment deals with children over the age of 12 who already have to consent to a change of name application lodged by their parents at section 25 of the current act, so it is not clear what changing the current definitions from adult and child would actually achieve. The current provisions and definitions have never been raised, I am advised, as an issue with Births, Deaths and Marriages. Again, I repeat, the changes to section 26 do not align with the national identity standards.

**Ms O'Connor** - Attorney-General, can you just take us through the national identity standards, who issues them and what weight they have in law?

**Ms ARCHER** - The identity standards are across government between states and territories in the Commonwealth. Back in 2011, there were 10 recommendations made by the Standing Council on Law and Justice Working Group on Change of Name Processes, basically for the Births, Deaths and Marriages Registry to be consistent with all other jurisdictions. That is desirable too from state to state and territories, and I am relaying to this House my strong advice in relation to this. It is regrettable that you have just got rid of the previous provision and you now want to insert an amendment, and I recall from the second reading speech of Ms Haddad in particular, to the Registrar of Births, Deaths and Marriages, and had she had an opportunity to respond I am sure she would be providing some advice.

In any event, I now relay that advice. There are all sorts of issues that crop up that need exploring in relation to this proposed amendment. This amendment changes the age at which you can change your name from 18 to 16 years without parental consent - that is obvious in what it aims to do - and it does go beyond issues of sex and gender. Again, we have always been advised the amendments would deal with issues of sex and gender, so this is one step further. However, the House voted to deal with all of these amendments in its wisdom, and the House is the master of its own destiny. I am pointing out the difficulties we now have with making law reform of this nature on the hop that has not been considered by various agencies and indeed the national consistency.

These are identity issues that should not be taken without broad-ranging consultation. It changes the test also for a magistrate to decide the basis on which a child can change his or her name. It would no longer need to be in the child's best interest but their own will and preference, as the members pointed out. Again, that needs a thorough examination and we have a number of tests in law regarding age and capacity in which to make these sorts of decisions, so this represents a fundamental change in this practice.

I make the observation, without again being able to examine it fully, as we would and should when making law reform, that it could also be problematic in the family law context. I am not a family law expert but that is something that would need to be in the usual course of reform be considered thoroughly as well.

There is also a considerable potential for security issues around the previous name of the child not being included. Again, it needs thorough consideration in relation to these full range of legal consequences that I am sure are unintended, but again, that is the language I have used which apparently has been offensive and it certainly was not intended to be offensive. It is meant to highlight the fact that there can be unintended consequences to very well-meaning changes sometimes.

**Ms O'CONNOR** - I do not want to leave so much ambiguity hanging over the House after the Attorney-General's contribution. We have been subjected to a series of vague allusions to what

may be consequences, but who issues the national identity standards, how do they apply to jurisdictions, what weight do they have in law, and are they robust?

**Ms Archer** - They are all questions you can put to the registrar and in proper consultation.

**Dr Woodruff** - You just dumped it down on the table of the House.

**Ms Archer** - They are not my amendments, they are yours. This is your work.

**Ms O'CONNOR** - I know it has all gotten a bit nice in the last hour or so, but I am surprised that you had time to read the amendments we put when so much effort went into that dreadful press release that came out a short time ago where you have gone through each of our amendments and again whipped up fear and loathing over them.

**Ms Archer** - I have issues and I am raising them now.

**Ms O'CONNOR** - There are now 10 media releases from the first law officer that are highly political and highly offensive to people here today and watching today because they recognise the need for this reform and -

**Mr DEPUTY CHAIRMAN** - You might care to point out to the House what this has to do with the clause.

**Ms O'CONNOR** - Sure. Thank you, Mr Deputy Chairman, for your guidance and wisdom, but it is concerning that yet again we are having fear and loathing whipped up around provisions which might not be Government policy. When you say they are our amendments, yes they are, but do you know where the amendments came from? Straight out of the community. If you are going to say that there are all sorts of potential unintended consequences out of these proposed amendments, provide some detail rather than just wave around the national identity standards. If you are going to be an obstacle to reform then have the courage to say what the issues are. While it is easy enough to say, 'Oh, we only got the amendments in the lunch break so we can't really have an informed view', what we are getting -

**Ms Archer** interjecting.

**Ms O'CONNOR** - Yes, Attorney-General, but it is just creating so much unnecessary confusion about what we are seeking to do here because at the end of the day the only people this really matters to are the people we are trying to help through this reform.

**Ms Archer** - I didn't deny that. Don't say that I don't care or -

**Ms O'CONNOR** - I am not saying you do not care at all.

**Ms Archer** - I am highlighting issues and clauses and consequences.

**Mr DEPUTY CHAIRMAN** - Can we stick to the clause, please?

**Ms O'CONNOR** - We will just stick to the clause. We support the clause and will be voting for it, but it is really concerning that we have allusions made to potential consequences when the real consequences here, if we do not sort this reform out, will be more suffering for transgender,

intersex and sexually diverse Tasmanians, who are already discriminated against every day in society and under the law.

**Ms ARCHER** - I was at pains to point out in my last contribution the advice I have sought very quickly and admittedly on the hop so far from those who this bill will impact upon. How does the Registrar of Births, Deaths and Marriages interpret all of this? These are views on the initial sighting of these amendments, which we only received today. Eight of out the nine are different from what was foreshadowed previously. They are the facts and you refused to provide them. It is what it is. I am doing my best to communicate the preliminary advice I have in relation to this, which supports our position that these matters need to be considered fully, and if the recommendations are to go down each or any or all of these courses by way of recommendation, that they be properly considered and drafted.

**Ms HADDAD** - I agree with the member for Clark that a lot of misconceptions are being whipped up around the intent of this amendment and how it would operate. Quoting from the Digital Identity Security Standards 2018, which I believe are associated with the document the minister speaks of, that framework that deals with digital identity security around Australia does not have conflicting requirements about name change history. It simply says that a change of name certificate needs to exist.

What that means is quite simple; upon the birth of a child, a chain of events begins at notification of birth, which is done by the hospital, then registration of birth and then application for a birth certificate. Throughout life, subsequent changes happen, such as two people's identity documents in changing a person's name upon marriage. You can have it reissued with your married name. At every point of change there are created links in those digital systems that link those documents one after the other.

Not having had the benefit of reading the document the minister speaks of, I imagine that if it was dealing with needing to identify a person's history for national security reasons or anything of the like, through changing name, changing gender or reissuing printed birth certificates, none of that information that used to be the case for that person is lost to the system, the registrar, the Australian Bureau of Statistics, health records or medical records for which it may be relevant. It is fearmongering to say that this kind of amendment, which is very simple and will simply allow for people to choose to have a birth certificate printed with their correct name on it.

There will still be records in the Births, Deaths and Marriages Registrar that that person had a different name at the time of their birth. It will simply make the lives of those who need to use their birth certificate as a form of identity easier. If there is subsequently a need, through national requirements or otherwise, to establish to authorities what your previous name was, you can have your birth certificate reissued with that previous name information or previous gender information. These amendments we are moving today seek to put decisions about what appears on your printed certificate in the hands of the people who need to use those certificates. Ultimately, a birth certificate is simply that. It is an identity document like any other.

None of what we have done in these amendments would mean that any of that previous data is lost to government. It would still be retained, it would still be known and those changes across the life course of a person on government systems and otherwise would be linked to one another, which would make it very possible or anybody who needs to establish the full set of identity information a person has had over the course of their life can do so.

**The Committee divided -**

**AYES 12**

Mr Bacon  
Dr Broad  
Ms Butler (Teller)  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

**NOES 10**

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff  
Mr Shelton (Teller)

**PAIR**

Ms Houston

Mr Brooks

**New clause H agreed to.**

**New Clause I**

New clause I presented by **Ms O'Connor** and read the first time.

**Ms O'CONNOR** - Mr Chairman, I move -

That new clause I be now read the second time.

Clause I: Part 4A replaced (Registration of change of gender)

Part 4A of the Principle Act is repealed and replaced with the following new Part 4A -

**PART 4A - Inclusion of gender information, change or deletion of gender**

**28A. Inclusion of gender information -**

- (1) A person aged 16 years or more, on providing their gender affirmation declaration to the Registrar, may apply to the Registrar for inclusion of gender information under Section 50 of this Act.
- (2) The parents of a child aged under 16 years whose birth is registered in the State may apply to Registrar, in a form approved by the Registrar, for inclusion of gender information under Section 50 of this Act.

- (3) An application for inclusion of gender information for a child under the age of 16 years may be made by one parent or guardian if -
  - (a) the applicant is the sole parent named in the registration of a child's birth under this Act or any other law; or
  - (b) the applicant is the sole guardian of the child; or
  - (c) there is no other surviving parent of the child; or
  - (d) a magistrate approves the proposed collection and retention of gender under subsection (4).
- (4) A magistrate may, on application by a parent of a child under 16 years, approve inclusion of gender information for the child if satisfied that the change is in accordance with the requirements under section 28B(a).

#### **28B. Child's consent to the gender included**

For the purposes of 28A, gender information of a person under the age of 16 years must not be included unless -

- (a) the gender to be included is consistent with the will and preferences of the person; or
- (b) the person is unable to understand the meaning and implications of the gender to be included.

#### **28C. Application to register change or removal of sex or gender from the Register**

- (1) A person aged 16 years or more whose birth is entered in the Register who has made a gender affirmation declaration and provided it to the Registrar may apply to the Registrar for a change of that person's registered sex or gender to record current gender, or removal of sex or gender information from the Register.
- (2) The parents of a person under 16 years whose birth is registered in the State may apply to the Registrar, in a form approved by the Registrar, for registration of a change of the person's sex or gender to record current gender or removal of sex or gender information from the Register.
- (3) An application for registration of a change or deletion of the sex or gender information of a person under 16 years may be made by one parent if -
  - (a) the applicant is the sole parent named in the registration of the person's birth under this Act or any other law; or
  - (b) the applicant is the sole guardian of the person; or

- (c) there is no other surviving parent of that person; or
  - (d) a magistrate approves the proposed change of gender under subsection (4).
- (4) A magistrate may, on application by a parent of a person under 16 years, approve a proposed:
- (a) change of registered sex to current gender; or
  - (b) change of registered gender; or
  - (c) removal of sex or gender information;

for the person if satisfied that the change is in accordance with the person's will and preferences.

- (5) For the purposes of subsection (4), the will and preferences of the person are to be ascertained by the Magistrate from the person's gender affirmation declaration or by the Magistrate asking the person.

#### **28D. Application to be accompanied by documents**

An application under section 28A or section 28C is to be accompanied by -

- (a) for a person aged 16 years or over, a gender affirmation declaration; or
- (b) from a parent or guardian for a person aged under 16 years:
  - (i) an application in a form approved by the Registrar; and
  - (ii) where the person is able to make a gender affirmation declaration, that gender affirmation declaration;
- (c) any other document or information that the Registrar reasonably requires, but the Registrar must not require any form of medical certificates or other medical documentation relating to sex or gender.

#### **28E. Registration of inclusion or change of gender information**

- (1) On receipt of an application under section 28A or section 28C, the Registrar must -
- (a) ensure gender information is collected under section 50; or
  - (b) register the change of registered sex or gender to the current gender by making an entry of the change in the Register; or
  - (c) refuse to register the change.

- (2) Should the Registrar refuse the application under paragraph (1)(c), the reason for refusal must be documented, and the decision may subsequently be -

- (a) reconsidered by the Registrar; or
- (b) reviewed by a magistrate under section 53;

on receipt of a request for review from the applicant.

- (3) In determining whether or not to note the particulars of a change of gender, the Registrar may require the person or persons who signed the application to provide further particulars as the Registrar reasonably requires, other than those excluded under section 28D(c).

#### **28F. Issue of birth certificate after change of gender**

- (1) If the sex or gender information registered is changed under this Part in respect of any person, a birth certificate issued by the Registrar for the person is -

- (a) not to show any sex or gender information; or
- (b) at the request of the applicant, to show the person's gender as registered without any notation or indication that the person was previously registered as of another sex or gender unless a request is made under subsection (2).

- (2) If requested by the person whose details are registered, the Registrar may issue an extract from the Register which shows the person's gender as registered with a notation that the person was previously registered as of another sex or gender.

#### **28G. Issue of birth certificate to those other than the person concerned or a person with parental authority**

The child of a person for whom the sex or gender information registered has been changed under this Part, or a prescribed person, may apply to the Registrar, in a form approved by the Registrar clearly stating the reasons for this request, for a birth certificate of the person that shows the person's sex or gender before the change of gender, and if -

- (a) the Registrar is satisfied that there is a valid reason for releasing private information; and
- (b) the Registrar is satisfied that the person is unable to consent to the disclosure due to death or incapacity; and
- (c) there are unlikely to be negative consequences to the person concerned; then -



the Registrar may issue the birth certificate to the child or prescribed person showing the person's sex or gender as previously registered with a notation that the person has been subsequently registered as of another gender.

#### **28H. Effect of recording of change of gender**

- (1) Where a person's change of gender is recorded under this Part, the person is, for the purposes of, but subject to, any law in force in this State, a person of the gender as so changed.
- (2) Any reference to a person's sex in any law in force in this State is deemed to be a reference to the person's gender as recorded under this Part.
- (3) A person's change of gender does not affect any relationship of that person arising by consanguinity or by operation of the law.

#### **28I. Recognition of certificates issued outside Tasmania**

A person in respect of whom there is a recognition certificate is taken to be, for the purposes of, but subject to, any law in force in this State, a person of the sex or gender stated in the recognition certificate.

#### **28J. Saving for rights of persons who have changed or deleted their sex or gender information**

- (1) A person who is entitled as a beneficiary -
  - (a) under a will; or
  - (b) under a trust; or
  - (c) otherwise by operation of law -

does not, except as may be otherwise provided under the will, the trust or by the law conferring the entitlement, forfeit any right or entitlement by reason only of the fact that he or she is a person whose change of sex or gender information to record current gender is registered or recognised under this Part.

- (2) Subsection (1) does not operate so as to confer any right or entitlement that would not exist apart from that subsection.

#### **28K. Historical records to be kept**

- (1) Historical records of information changed or removed under this Part are to be maintained in a manner determined by the Registrar.
- (2) Subsection (1) notwithstanding, the Registrar is to ensure that, as far as is practicable, historical records referred to in subsection (1) are recorded and managed in a way that makes it clear that they are not to be taken to be relevant to the individual's identity.

This part of the principal act deals with the registrar's powers and processes for recording a change of gender on the registry. It currently contains a requirement for divorce and for surgery and, as we know, with the testimony and declaration of two medical practitioners. The replacement of this part will remove these requirements. This replaces the whole change of gender section. Much of it is unchanged. I am sure the Attorney-General will agree, there are very substantial parts of this foray. What a shame that you do not have a chance to explain it after reading all those amendments in. I am sure Ms Haddad will do a marvellous job of taking it from here.

### **Time expired.**

**Ms HADDAD** - Thank you to the member for Clark for outlining the content of that amendment.

This part of the principal act, and we have spoken a lot about it, deals only with the registrar's power and processes for recording a change of gender on the registry. It currently contains the requirements for divorce and for surgery with medical practitioner proof. The replacement of this part will remove these requirements. This replaces the whole change of gender section. Much is unchanged but enough is changed to warrant rewriting, rather than large numbers of small amendments. Nothing in the law or these amendments changes pre-existing entries in the register. As a result, many people will already have sex or gender registered and need a way to change or to remove that at their choice. Section 28A allows a person 16 years or over or the parents of a child under 16 years to apply for inclusion of a gender under section 50, which is of registry information. This allows the registrar to give certificates as registered without including gender and still collect the information.

As I said earlier, this information will not be lost to government. Proposed section 28C(1) allows simple change of gender by a statutory declaration without surgery, divorce or doctor's certificates. This is now becoming standard internationally and the member for Clark outlined in great detail many of the other jurisdictions around the world that have already moved in this way. Indeed, this reiterates what we have been saying all along about these amendments and that is that they are not groundbreaking amendments. They will bring Tasmania up to international standard in recognising the rights of transgender and gender diverse people.

Proposed section 28C(2) allows two parents to apply to change the registered gender of their child or to change a person's gender information. Proposed sections 28C(3)(a) and (b) allow one parent or a sole guardian to change gender information where there is no other parent. Proposed section 28C(3)(c) allows one parent or a sole guardian to do so with a magistrate's approval if there is another parent and if there is dispute between those parents. It also works if the other parent is unavailable. Proposed section 28C(3)(a) empowers the magistrate and directs them to consider the child's will and preferences as per guardianship law changes being made across Australia. As we have spoken about already on previous amendments, this is best practice in considering the rights of children and the will and preferences of the child rather than the now increasingly outdated best interests test.

Proposed section 28D is standard. Other than exclusion of medical certificates, it specifies the application forms, the documents required and allows the registrar to request additional information. Proposed section 28E(1) empowers the registrar and allows them to refuse to register. Reasons for refusal may include that the gender has been changed recently. The registrar may only allow change after one year for example, or information that a child is not consenting or a worry about the mental health of a person. It would also prevent vexatious applications. Proposed section 28E(2), in this

change section 53 of the act already allows review. This change will stipulate that in the event of a refusal, the registrar must document their reasons and that a person can appeal to the registrar before going to a magistrate if they dispute the registrar's reasons for refusal. Proposed section 28G reverses the current law that says gender must be listed as changed unless a person requests it does not. It will become a choice.

Proposed section 28H also replicates the current act. Proposed section 28I is also in the current act and allows recognition of change of gender certificates issued outside the state. Proposed section 28J is also in the current act and preserves the rights of people who change their gender.

While reading that great big long rewrite into the *Hansard* might seem like some significant change, if members listened to those changes and listened to the explanations that I have given in my contribution now and indeed look at those redrafted sections in parallel to the existing act, they will see that the changes are very logical and worthy of support.

**Ms ARCHER** - The member who has just sat down made reference to the length of time that it took Ms O'Connor to read this significant amendment into *Hansard*. It is several pages and generally we have only been able to seek preliminary advice on some technical details of the amendment. It highlights that our approach is the best approach to consider these things.

**Ms O'Connor** - For whom?

**Ms ARCHER** - For good law reform. The member keeps taking personal offence but when you take that considerable amount of time to read out this significant amendment and expect when I was supplied it at 1 o'clock today, to be able to compare it with all of our laws and seek advice -

**Ms O'Connor** - Let us just reiterate at any point in the last six weeks you could have -

**Mr CHAIRMAN** - Order, Ms O'Connor, order. The Attorney-General has the floor.

**Ms ARCHER** - I have asked for the amendments. Members of this House know the convention around circulating amendments and if you wanted us to seriously look at things you would have supplied them earlier. Do not play dumb on this. There has been a discussion paper, so far, issued by the Law Reform Commission of Western Australia and all it is is a discussion paper and it reaches 130 pages already in relation to their significant review of recognition of a person's sex and change of sex or intersex status. That is the approach we prefer, that is the discussion paper that has been issued rather than being asked to accept an amendment which, again, however well-intentioned it is to expect us as a Government to accept this on the fly from 1 o'clock today is a bit rich.

It completely replaces an entire part of the act and you do not think it is reasonable for us to oppose this on that ground alone, and we will be. Obviously, the Registrar of Births, Deaths and Marriages needs to be consulted on this.

**Ms O'Connor** - You blocked the request for a meeting.

**Mr CHAIRMAN** - Ms O'Connor you are officially warned.

**Ms ARCHER** - I could go through each and every section on our initial observations of what this particular amendment appears on the face of it to do and what preliminary advice is but at the

end of the day we will be opposing the amendment, not least of all because it replaces completely a part of the act. To not extensively consider that would be incredibly bad law reform on the part of the Government and I cannot do that. As Attorney-General, I cannot in all good conscience on the face of it not even having time to consider it fully myself let alone the agencies impacted.

Again, limited guidance within this amendment is actually provided to the Registrar herself regarding documents or information that should accompany an application to change or removal of sex or gender. At the very least there is no guidance on the interpretation of it.

**Ms Haddad** - Most of these changes are replicating the existing act.

**Mr CHAIRMAN** - Order, Ms Haddad. Everybody gets an opportunity to have their say. The Attorney-General is on her feet at the moment. I would appreciate silence as far as the interjections go. Thank you.

**Ms ARCHER** - Those who are impacted regarding the operation of an act, in this case the Registrar of Births, Deaths and Marriages and how not only it would be interpreted but how it would affect the operation of an act consistent with the statutory duties of that officer, to not have that advice and to come in here and move an amendment again shows that this has not been a complete and thorough process. This is a completely new amendment that I have not seen before lunch time today. It appears to strip out all issues of sexual gender from the register and it forces the Registrar to duplicate and separately keep certain information, which, in a previous amendment I have referred to the fact that the current business systems do not allow for that so they would need whole new systems.

These are the sorts of practical issues that can be looked at as well as the legal issues. I could go on, I have a few more notes here in relation to this, but it does not change the fact that there are significant things that impact on the registrar, the operation of the act and indeed the statutory duties which we cannot support.

[7.45 p.m.]

**Ms O'CONNOR** - Mr Chairman, it is very important that there is an accurate, historical record of the evolution of this debate and how we got to this point today, because the Attorney-General has made much of not getting the final amendments until today but another way of looking at it is that the Attorney-General had the capacity, knowing that we would be having this debate, at the very least to ask her head of office to ring us to say, 'Can we have a look at the amendments; is there any possibility that we could work on these together?', for example. But no, instead we get 10 press releases. It is actually galling to hear this excuse-making and fear-mongering about these changes and, as Ms Haddad pointed out, most of these amendments are a direct copy from the repealed Part 4A in the Births, Deaths and Marriages Act.

The real changes that this amendment makes are the removal of the forced divorce provision; the removal of the surgical requirement. It gives parents the choice to include gender on birth certificates, lowers the age for children to 16 and under, and provides a mechanism to reflect the child's will and preferences.

While the amendment as it was read in was lengthy, substantial parts of Part 4A remain, and I am advised that these amendments are the recommendations of the previous Anti-Discrimination Commissioner with parental choice expressly dealt with, and the registrar was extensively consulted when the former Anti-Discrimination Commissioner was developing the options paper. Perhaps,

Attorney-General, if you are really concerned about the legislation of the Births, Deaths and Marriages Act in particular after this debate, and we have made a series of important amendments to this, you could seek some really robust advice on the changes that have been made, because in the view of any rational person -

**Ms Archer** - You don't do it after, you do it before.

**Ms O'CONNOR** - Yes, but if you had not been so busy putting out press releases you might have thought about how to massage this one through a bit more carefully. Instead of allowing some historical personal dynamics potentially to influence the way you dealt with this bill, you might have thought, 'Okay, what is the best we can get out of this; how do I as the Attorney-General make it' -

**Ms Archer** - TLRI referral.

**Ms O'CONNOR** - My understanding, Attorney-General, is that when you were asked by advocates for law reform whether you as Attorney-General would drive through and implement recommendations from the Tasmanian Law Reform Institute should they come back and say there are no impediments to this reform, you refused to give that assurance.

**Ms Archer** - I cannot give that assurance. We do not have a position until we get a TLRI referral.

**Ms O'CONNOR** - I guess different parties do government differently. I thought that the Attorney-General of the day has significant authority to say, 'We will send this off to the Tasmanian Law Reform Institute and should the TLRI recommend reform, I will drive that reform.' That is what a brave attorney-general would do.

**Mr O'Byrne** - That is right. Do not argue process when you do not believe in it.

**Mr CHAIRMAN** - Order, Mr O'Byrne.

**Ms O'CONNOR** - I know I would never have abrogated my authority to drive reform in the way you appear to want to.

My understanding also, Attorney-General, for all this noise you are making about not getting the amendments until lunchtime and not consulting with the registrar, is that a request was made for a meeting with the registrar to talk about these issues. Did you block that request?

**Ms Archer** - Did a member of parliament request this?

**Ms O'CONNOR** - The former anti-discrimination commissioner and other advocates for reform requested it. What is your point?

**Ms Archer** - That is not me.

**Mr CHAIRMAN** - Order. Through the Chair, Attorney-General. Interjections should cease.

**Ms O'CONNOR** - Thanks for your wisdom, Mr Chairman. My point is that a request was made by people who participated in and had been outstandingly gutsy and persistent to talk to the registrar about the register, the information that is collected by it and what information the registrar

might otherwise collect apart from the information that is in the principal act, and the request for a meeting was blocked, so it is very difficult to sit here and listen to all the excuse-making.

This is the bit of the bill that will make the most difference to the lives of transgender, sexually diverse and intersex Tasmanians. This is the guts of it and this is a very substantial, important change that will not affect the lives of anyone in this Chamber. It will not affect the lives of 99-odd per cent in this Chamber. It will not affect the lives of anyone on the floor of the House debating this but, my goodness, it will make a difference to the lives of people from Transforming Tasmania, who are here today, and to transgender and intersex Tasmanians in the future. This is important law reform that is really just a matter of having the heart and guts to take this through. We stand with transgender and intersex Tasmanians in pushing for this reform, which we will get through the House of Assembly of the Tasmanian Parliament.

**Ms Haddad** - Hear, hear.

**The Committee divided -**

AYES 12

Mr Bacon  
Dr Broad  
Ms Butler (Teller)  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

NOES 10

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding (Hidding)  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff

PAIR

Ms Houston

Mr Brooks

**New clause I agreed to.**

**Clause 13 -**

Section 28C amended (Registration of change of sex)

[7.58 p.m.]

**Ms HADDAD** - As was the case with the fifth amendment which was put in my name, the Clerk's advice is that our advice to the House is that we intend to oppose clause 13 and insert a new clause 13.

**The Committee divided -**

AYES 10

Ms Archer  
Mr Barnett

NOES 12

Mr Bacon  
Dr Broad

Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding (Teller)  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff

Ms Butler (Teller)  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

PAIR

Mr Brooks

Ms Houston

**Clause 13 negatived.**

**New clause J -**

New clause J presented by **Ms Haddad** and read the first time.

**Ms HADDAD** - Mr Chairman, I move -

That new clause J be now read the second time.

Section 40 of the Principal Act is amended as follows:

After subsection 40(1) insert the words:

- (1A) If required under Part 4A, sex or gender information may be included or changed or deleted on the Register, and may be included under section 50.

Mr Chairman, clause 13 in the original bill removed only the requirement to divorce in Part 4A. With the changes in the former amendment to Part 4A that part is now redundant. The addition of subsection 40(1A) does not interfere with the potential for this information to be registered if required under section 17(2), which is required by a magistrate's order or under Commonwealth or other state law nor does it prevent this information being collected and retained under section 50 and included on a certificate under section 51.

As we have said in former amendments to this bill tonight none of this information will be lost to the Registrar of Births, Deaths and Marriages or lost to government.

**Ms ARCHER** - I am going to speak on this just briefly. Obviously because we do not support the change to 4A, this is consequential to it and therefore we cannot support this either.

**The Committee divided -**

AYES 12

NOES 10

Mr Bacon  
Dr Broad

Ms Archer  
Mr Barnett

Ms Butler (Teller)  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding (Teller)  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff

PAIR

Ms Houston

Mr Brooks

**New clause J agreed to.**

**New clause K -**

New clause K presented by **Ms Haddad** and read the first time.

**Ms HADDAD** - Mr Chairman, I move -

That new clause K be inserted as follows -

Clause K: Section 46 amended (Issue of certificate)

Section 46 of the Principal Act is amended as follows -

After Section 46(1) insert

- (1A) Information about sex or gender may only be included on any certificate if requested by:
  - (a) a person 16 years or over, to whom the certificate relates, or
  - (b) if the person is under 16 years, by a person referred to in section 28A(2) or section 28A(3) of this Act.
- (1B) The gender included is to be:
  - (a) the gender as determined under section 28A or section 28C of this Act; or
  - (b) if requested, the sex or gender previously listed on the Register or collected under section 50.

This amendment removes reference to sex or gender of the person from the issue certificate and allows the person to ask for their gender to be included on the birth certificate. It creates, in effect, an opt-in approach to including reference to gender on a person's birth certificate. That will



be the choice of the person who seeks the certificate, be it the person themselves to whom the certificate relates or the parent of a child who has had a change of gender on their birth certificate.

Contrary to the now 10 press releases issued by the Attorney-General on this issue that falsely claimed we are making radical changes and removing gender and removing the option for gender to be printed on certificates, that is untrue. I hesitate to use words 'opt in' because it will actually be a very simply implemented change which would allow the question to be asked on application for a birth certificate, 'Do you wish to have gender printed onto this birth certificate?'.

**Ms ARCHER** - We had trouble interpreting this one. If this sounds a little confused it is because it is a bit confusing. Proposed section 46(1B), no gender is determined under 28A or 28C. All that happens is that a magistrate proves under section 28A inclusion of gender information.

That is an initial observation which is difficult for me to relay and decipher myself but what it appears to do, and again correct me if I am wrong because we have not had a chance to properly examine all of this, is mean that all people will not have sex or gender on any certificate unless they, or if under 16, their parents, approve it. Apparently this extends to all certificates issued under this act, including death certificates, so it is wider reaching than just birth certificates.

If that is not the case then that is all in the interpretation and even the greatest minds have not been able to determine that. In any event, it creates an issue that was raised previously in my prior contribution in relation to certainly the fourth and fifth amendments about the impact of changes to certificates on births, deaths and marriages stakeholders. One of the amendments really does need a thorough and better examination than we have been able to give it in the time that has been available to us this afternoon. As for what certificates can say, it appears you can either get a certificate in accordance with the new determination under section 28A or 28C or you can have the sex or gender previously listed. The purpose of a birth certificate is currently supposed to show what gender you are now and to have it as a fixed part of your identity, as opposed to where we say you can have this indicating your current identity statement about what it used to be. This amendment is all a bit confused and goes to the point that I have been consistently making, which is that it needs thorough examination.

[8.15 p.m.]

**Ms O'CONNOR** - It might help, Attorney-General, if you look at the amendment and insert the other sections. The whole section will be inclusion of gender information, issue of certificates and section 46 amended. In the principal act, section 46(1) says -

- (1) On completing a search of the Register, the Registrar may issue a certificate -
  - (a) certifying particulars contained in an entry; or
  - (b) certifying that no entry was located in the Register about the relevant registrable event.

Insert -

- (1)(a) Information about sex or gender may only be included on any certificate if requested by -

- (a) a person 16 years or over, to whom the certificate relates, or
- (b) if the person is under 16 years, by a person referred to in section 28A(2) or section 28A(3) of this Act.

When we go to section 28A(2) or 28A(3) we are talking about parents and guardians. To be really clear, the amendment I have put for section 28A says -

- (2) The parents of a child aged under 16 years whose birth is registered in the State may apply to the Registrar, in a form approved by the Registrar, for inclusion of gender information under Section 50 of this Act.
- (3) An application for inclusion of gender information for a child under the age of 16 years may be made by one parent or guardian if -
  - (a) the applicant is a sole parent named in the registration of the child's birth under this Act or any other law; or
  - (b) the applicant is the sole guardian of the child; or
  - (c) there is no other surviving parent of the child; or
  - (d) a magistrate approves the proposed collection and retention of gender under subsection (4).

Attorney-General, when you compile the amendments into the reformed Part 4A this is not particularly hard to interpret. It requires a clear eye on the language and having the right bits of documentation in your hands.

**The Committee divided -**

AYES 12

Mr Bacon  
Dr Broad  
Ms Butler (Teller)  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

NOES 10

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding (Teller)  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff

PAIR

Ms Houston

Mr Brooks

**New clause K agreed to.**

**New clause L -**

New clause L presented by **Ms O'Connor** and read the first time.

**Ms O'CONNOR** - Mr Chairman, I move -

That new clause L be now read the second time.

Mr Chairman, I move -

That after clause K and before clause 14, a new clause L be inserted as follows -

Clause L: Section 51 amended (Additional services)

Section 51 of the Principal Act is amended by inserting after subsection 51(1) -

- (1A) Despite anything contrary in the Act, the Registrar may provide information about the gender of a person as registered or collected under section 50:
  - (a) in respect of a living person, to a person eligible to make an application under section 44, or
  - (b) in respect of a deceased person born at least 100 years earlier.

Section 51 governs the inclusion of information collected under section 50 in birth certificates. This new subsection specifically allows the registrar to include gender information, both for the person or their parents, if requested, or for genealogy.

Mr Chairman, this debate, whilst it has been factious at times I hope that when we wind up tonight shortly - certainly on our side of the House - there will be a sense of having been part of something very significant for people who have been marginalised, shut out, and discriminated against for decades and centuries. I hope that for others who have participated in this debate, including the Attorney-General, there has been a measure of deeper understanding of some of the issues that we are trying to -

**Ms Archer** - It has been about the drafting and the construction and those issues. Please do not make it a motive when it need not be.

**Ms O'CONNOR** - No, I was not trying to patronise you - well I might say something. It has personally been a journey. There are things that I have learned in this process that I did not know before and was in fact profoundly ignorant of. I was not trying to say that in a patronising way. I was trying to say that I think this debate has been instructive and educational for everyone who has participated.

**Ms Archer** - I am worried about good law.

**Ms O'CONNOR** - We are all worried about good law, Attorney-General, and on that note, I will point to the Yogyakarta Principles plus 10 which were developed in 2006 to outline or to be very clear about the application of the UN Human Rights Conventions to LGBTI people.

Principle 3 states that in recognising the right of integrity of a person and their right to self-determination and freedom, states should acknowledge gender identity without requirements for divorce or medical intervention.

In 2017 a 10-year update of the Yogyakarta Principles was issued in Geneva and of particular interest to this debate here today and this journey we have all come on, the right to legal recognition: everyone has the right to legal recognition without reference to or requiring assignment or disclosure of sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents including birth certificates regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them. When the statement came out of Geneva, it said states shall:

- A. Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licences, and as part of their legal personality;
- B. Ensure access to a quick, transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the person;
- C. While sex or gender continues to be registered:
  - i Ensure a quick, transparent and accessible mechanism that legally recognises and affirms each person's self-identified gender identity;
  - ii Make available a multiplicity of gender marker options;
  - iii Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one's name, legal sex or gender;
  - iv Ensure that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender.

Attorney-General, I take on board what you are saying about making good law and I believe that is what the House is doing here today. It is recognising the rights of all people to be accepted for who they are. It recognises the rights of transgender and intersex Tasmanians and more than anything else it looks past gender, it looks past difference and it identifies the person and it respects that person for who they are. We are making good law in here today and it is law that will improve the lives of people who have been marginalised, discriminated against for far too long. It is fitting that we do this on International Day of Transgender Remembrance.

[8.30 p.m.]

**Ms HADDAD** - I indicate that Labor will be supporting this amendment from the Greens and reiterate what the member for Clark just said in agreeing with the Attorney-General that we want to make and are concerned with making good law. That is our objective and that is what we have been doing.

I started my contributions earlier today by reiterating my disappointment that opposition parties do not have access to the services of the Parliamentary Counsel. I have spoken about that on other bills in the parliament in the past few months. However, we do have access to qualified, skilled volunteer former parliamentary drafters who assisted us in putting together the package of amendments that we have spoken about today.

They are well-written; they are written by people who understand not only the intent of these acts of parliament but also the intricacies of their operation. It is not true to say that we have not consulted. We have consulted not only with people who are affected by these changes but we have consulted more widely. We have attempted, as other members have said, to consult with the Registrar of Births, Deaths and Marriages without success. I did also seek advice from the Anti-Discrimination Commissioner but I received no response.

We have been contacted by a number of families who have trans kids or families who have people in their lives who are gender diverse, gender non-binary, people who are allies of LGBTI people here in Tasmania. One person has specifically requested that this piece that she has written be read into the *Hansard*, attributed to Gillian Harris, and I have the privilege of reading Gillian's contribution into the *Hansard* today.

I know a little girl that was born a little boy.

She plays with trucks, she plays with dolls. To her a toy is just a toy.

One day she put her hand up and bravely spoke what she knew in her heart.

That though her birth certificate says boy, she was actually a girl right from the start.

Her family and loved ones stand by her fearlessly.

The little girl feels happiness, accepted for who she was born to be.

Her daily life, like any child, is filled with learning and with play.

Unbeknownst to her the adult world and the things she'll be faced with one day.

'Can I please see some I.D young miss? I need to sight it before completing this form.

Oh, no. Hang on. There's a problem right here, you look different from how you were born.'

Imagine, for a moment, wherever you go.

That your personal story was shared with those you don't know?

Could you handle the questions, the judgment and hate?

Imagine your life, if this was your fate.

We teach our children, from the moment they're born, to be kind towards others, that's why we need this reform!

Equality and acceptance, for all on this Earth, is my hope for the future, regardless of birth.

It is simple piece that she wrote but it explains in a beautifully poetic way how important these changes are. These changes are not controversial, they are not world-leading, there are a number of jurisdictions that have already moved in this way. These changes will have zero effect on the masses. They will have almost no effect on the majority of people born in Tasmania but I will tell you who they will have an effect on - transgender and gender diverse and intersex Tasmanians who, while they may be a small proportion, are unjustly treated under our current laws.

The changes that this Chamber has passed tonight will reverse that discrimination and that heartache that transgender and gender diverse people feel every single day. Every time they need to use their identity documents, they are outed. Every time they have to go to a government agency, they have to explain their background and explain their transgender status which to be quite frank is nobody's business, other than their own and their loved ones and their families.

The families who I have spoken to in recent weeks when we have had opportunity to refine the amendments, the Attorney-General has noted a number of times that they are different from the ones we tabled four weeks ago. That is because we have had the time to refine them. We have had the time to consult on them and it is why I stand by them today as well-written and worthy of support.

The changes that we have made will have an enormously positive effect on those lives that they affect.

I flippantly said to one of the people I spoke to, 'Who noticed when gender was taken off driver's licences?' Even the Prime Minister did not know it had been off for more than a decade when he tweeted that no Liberal government would remove gender from driver's licences or other documents. Surprise, surprise, it has not been on our licences for more than a decade. When I said that flippantly to a transgender friend of mine, she said, 'You know who did notice? Transgender people', because what transgender people then had in their hands was an identity document that was non-gender. It did not need to have their gender printed on their driver's licence because if you are pulled over for speeding or need to prove your residence, your address, no-one needs to know your gender. It is irrelevant. Who needs to know if you are a man or a woman when you are being pulled over for drink driving? Nobody. Who needs to know if you are a man or woman to verify that you live at a particular address? Nobody.

These changes we have made today do not eliminate gender from birth certificates or from government records. They will give people a choice as to what is printed on their birth certificate so that people can have identity documents that include their gender information if they want them to do so but to have them silent on that or to be correctly recorded if they so wish.

It is poignant, as has been said a number of times by a number of speakers, that we are debating these not just in Trans Awareness Week but on the International Day of Trans Remembrance. Three hundred and sixty-eight transgender people were murdered in the last 12 months. That is not deaths, that is murders specifically as a result of transphobic abuse and violence, and does not include suicides or other assaults. In a 2017 study one-third of trans people in the United Kingdom indicated that they had been victims of hate crime.

The day of remembrance is observed annually all around the world as a way for trans people to bring visibility to the fact that statistically a trans person is brutally murdered every three days somewhere in the world. Often people are not reported as murdered as a result of their transgender status because they are not counted as trans because of their legal status around gender in many countries not recognising that, which is precisely why the amendments that we have moved tonight

are so vital for those people they affect. It is a sombre day to remember the trans people who have died or have taken their own lives.

I would like to finish my contribution by quoting another transgender friend of mine who says the importance of the Day of Trans Remembrance for her is that we mourn for the dead and fight like hell for the living. That is what this Chamber has done tonight. Those who have supported these amendments are on the right side of history. It is an unusual but very positive day in this parliament that we have made significant changes to Tasmanian law that will protect and enshrine the rights of transgender people.

**Opposition and Greens members - Hear, hear.**

**Ms ARCHER** - If I can briefly address the amendment itself, most significantly the amendment we are debating at this point is that it only deals with gender rather than sex. As I have said, in law those two terms are separately defined. It is not clear what procedures need to be followed to obtain information about a person's sex. The use of the term 'gender' is broadly inconsistent with the rest of the act which generally uses the term 'sex'. When I say we do not want bad law reform I mean we do not want an act that has now become unworkable for administrative and other purposes, and that is what I believe some of these amendments have done. They needed to be properly considered in the context of policy intent.

I have said throughout this debate I have no doubt the members have been well meaning with these amendments they have put forward, but in the short time available my responsibility has been to try to dissect the impact not only on the act itself but the interpretation of that, and in what position it puts the registrar and other responsible entities in relation to this. Generally we have sought preliminary advice on the technical details of the amendments. As I have said, some amendments have been unclear. I have tried to highlight ambiguities and inconsistencies but I am sure I have missed a lot, which is again why our preferred approach is to the TLRI for proper consideration, as other states have done or are going to, for example, Western Australia.

Also in quite a few of these amendments their interaction with one another is flawed, so the Government has not been able to support them on that basis. As I have said, we have not been able to resolve these technical issues on the floor of the parliament this evening. Members have spoken to the policy intent, and as I have highlighted throughout this debate, for us and for myself this has been about the construction of the amendments, the definitions and those other matters, and it is for the public and other stakeholders to have their proper say on this. Members of the public have not seen -

**Ms O'Connor** - What right does any person who is not transgender -

**Mr CHAIRMAN** - Order.

**Ms ARCHER** - A lot of these things have been left open insofar as interpretation and technical details are concerned. There are many questions that remain unresolved, such as how the registrar interprets terms, how the court would interpret terms and inconsistencies, and how the Anti-Discrimination Commissioner would interpret some of these terms as well. They have been the predominant concerns at first glance of these amendments and in some cases they have been very lengthy. In other cases you have struck out entire sections or parts of the act. The Government's original bill is no longer our bill in the purpose for which it was intended and we are also left with various pieces of legislation which is regrettable that these were not considered fully in the context of the Tasmanian Law Reform Institute review.

**Ms O'CONNOR** - Attorney-General, you raised the issue of only the word 'gender' being used in this amendment rather than sex or gender, but for the purposes of the register, sex is gender, and you will recall that we have already passed an amendment that defines gender as the apparent sex of an infant specified by the parent, or the gender identity of the person as specified on a gender affirmation declaration. For the purposes of the register, sex is gender, and we have provided a definition of 'gender' which in fact has now been passed by the House. It is really important to remember, and it goes to what Ms Haddad was saying, that the reason we are having this debate today is because of an amazingly good thing that finally happened in Australia when we passed marriage equality. The foundation of this debate has been a fantastic reform which changed the lives of almost no-one except lesbian, gay, transgender and intersex people, but broadly had no impact on the lives of most Australians other than for those of us who like to see people happy and who like to celebrate love. It made us feel good and it made a lot of people who were discriminated against in the law really happy to know that even if they did not want to get married, they had the equal right to do so. It is the same as this debate. It is not going to affect the lives of the masses, as Ms Haddad called it. It is going to make some people happy to feel equal -

**Ms Haddad** - And safer.

**Ms O'CONNOR** - Yes, and to feel that the law does not embed discrimination and worse, does not punish them for who they are by requiring them, for example, to have invasive sexual reassignment surgery. The foundation of this debate is something that made Australia a happier and more loving place; marriage equality. This debate we are having today, and we are making good law despite the Attorney-General's furphies, these changes will make people, who we should all care about because they are our fellow Tasmanians, feel safer, happier and more included.

In winding up, I acknowledge a few people; an amazing woman, one of the people I love so much in the world, Martine Delaney, a champion.

**Ms Haddad** - Hear, hear.

**Ms O'CONNOR** - I thank Dede River who was absolutely central to drafting this and making sure it was good law, Roen Meijer's who has a wonderful statistician's brain, Innis Finn, Darna Edelmanis, Matty Wright, Rodney Croome, Trisha Roberts, and the wonderful Robin Banks, former Anti-Discrimination Commissioner, I don't know how many times I have seen you in that section of the parliament. It is good to see you there today. Thanks to Charlie Burton, Candice and Callum Harrington and other families who shared their stories. To my beautiful son, Jasper Lees, thank you, you are an inspiration to me and you make me proud. I adore you and thank you for all that you teach me.

To Ms Haddad, it has been an absolute pleasure, most of the time, except for that somewhat unpleasant day or two in the middle of it. You are a fantastic parliamentarian. You have a great big heart and it has been a real privilege to work on this legislation in parliament with you, thanks, and to have behind us those people who have given strength. Thanks very much. See what you can do when parliament is doing the job it is supposed to do. I commend the amendment to the House.

**Ms O'Byrne** - There's one more name - Sue.

**Ms O'CONNOR** - Of course. We would not be having this debate and the significant reform that will make Tasmanians who are transgender and intersex feel safer and happier if



Madam Speaker had not used the power of her vote on the floor of the House to make what is likely to be, should the legislation pass the upper House, a profound change to the law that will improve the lives of many Tasmanians. Madam Speaker, good on you. Thank you very much, as a parent as well as a parliamentarian.

**Members** - Hear, hear.

**The Committee divided -**

AYES 12

Mr Bacon  
Dr Broad  
Ms Butler (Teller)  
Ms Dow  
Ms Haddad  
Ms Hickey  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White  
Dr Woodruff

NOES 10

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding (Teller)  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff

PAIR

Ms Houston

Mr Brooks

**New clause L agreed to.**

**Clause 14 agreed to and bill taken through the remaining Committee stages.**

[8.55 p.m.]

**Ms ARCHER** (Clark - Minister for Justice) - Madam Speaker, I move -

That the bill be now read the third time.

**The House divided -**

AYES 11

Mr Bacon  
Dr Broad  
Ms Butler  
Ms Dow  
Ms Haddad (Teller)  
Mr O'Byrne  
Ms O'Byrne  
Ms O'Connor  
Ms Standen  
Ms White

NOES 11

Ms Archer  
Mr Barnett  
Ms Courtney  
Mr Ferguson  
Mr Gutwein  
Mr Hidding  
Mr Hodgman  
Mr Jaensch  
Mrs Petrusma  
Mr Rockliff

Dr Woodruff

Mr Shelton (Teller)

PAIR

Ms Houston

Mr Brooks

**Madam SPEAKER** - The result of the division is 11 Ayes and 11 Noes. I therefore have to use a casting vote. In accordance with standing order 167, I cast my vote with the Ayes.

Honourable members, today I voted to allow the debate through the committee system on this important bill in an attempt to seek consensus between the members of this parliament. I researched this subject thoroughly over several years; I have had conversations with those both for and against these amendments and I have listened to everyone who has spoken here today.

My votes today have all been on the above considerations and whilst I believe this bill will not in any way affect the lives of more than 98 per cent of Tasmanians, it will significantly improve the lives of our transgender communities and their families who have suffered significant discrimination. Therefore, I have voted for this bill to be considered further by the Legislative Council. This is democracy at work. I cast my vote in accordance with standing order 167 with the Ayes.

**Bill read the third time.**

**The House adjourned at 9.01 p.m.**