

Thursday 4 April 2019

The President, **Mr Wilkinson**, took the Chair at 9.30 a.m. and read Prayers.

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

In Committee

Resumed from 3 April 2019 (page 100)

Clause 21 -

Part 4A substituted

Ms FORREST - Mr Deputy Chair, I will read the first part of clause 21, proposed new Part 4A. As there are a number of sections of part 4A, would it better to proceed with 28A, 28B and 28C or do the whole lot?

Mr DEPUTY CHAIR - Do the whole lot. Because it is a new clause we ask that you read it right through.

Ms FORREST - Thank you. Mr Deputy Chair, I move -

That clause 21 be amended by -

Leave out the proposed new Part.

Insert instead the following proposed new Part:

Part 4A - Gender Identity

28A Registration of gender identity

- (1) A person who has attained the age of 16 years and whose birth is registered in this State may apply to the Registrar to have a gender, specified in the application, registered in relation to the person.
- (2) An application under subsection (1) by a person to have a gender registered in relation to the person -
 - (a) is to be in the approved form; and
 - (b) is to be accompanied by a gender declaration made by the person; and
 - (c) is to be accompanied by any other document or information that the Registrar reasonably requires,

other than a medical certificate, or other medical document, in relation to the sex, sexual characteristics or gender of the person.

- (3) The parents, or guardians, of a person who has not attained the age of 16 years and whose birth is registered in this State may apply to the Registrar to have a gender, specified in the application, registered in relation to the person.
- (4) One of the parents, or a guardian, of a person who has not attained the age of 16 years and whose birth is registered in this State may apply to the Registrar to have a gender, specified in the application, registered in relation to the person, if -
 - (a) the applicant is the sole parent named in the registration under this Act of the person's birth; or
 - (b) the guardian is the sole guardian of the person; or
 - (c) there is no other surviving parent of the person; or
 - (d) the registration of the gender in relation to the person is approved by a magistrate under section 28B(2)(a).
- (5) An application under subsection (3) or (4) to have a gender registered in relation to a person is to be -
 - (a) in the approved form; and
 - (b) accompanied by -
 - (i) if the person is able to make a statutory declaration - a gender declaration made by the person; or
 - (ii) if the person is not able to make a statutory declaration but is able to express the person's will and preference - a statement from each of the applicants stating that the applicant believes on reasonable grounds that the registration of the gender in relation to the person is consistent with the will and preference of the person; and
 - (c) accompanied by any other document or information that the Registrar reasonably requires, other than a medical certificate, or other medical document, in relation to the sex, sexual characteristics or gender of the person.
- (6) An application under subsection (1), (3) or (4) to have a gender registered in relation to a person who has not

attained the age of 18 years may be accompanied by evidence that -

- (a) the person has undertaken counselling as to -
 - (i) whether or not the application ought to be made; and
 - (ii) the implications of the registration of the gender in relation to the person; and
- (b) the counselling was provided by a person, chosen by the applicant who the applicant considers has suitable qualifications, training or experience to provide such counselling.

28B Approval by magistrate of registration of gender

- (1) A parent or guardian, of a person who has not attained the age of 16 years may apply to a magistrate to approve the registration of a gender, specified in the application, in relation to the person.
- (2) A magistrate to whom an application is made under subsection (1) to approve the registration of a gender, specified in the application, in relation to a person may-
 - (a) approve the registration of the gender in relation to the person; or
 - (b) refuse to approve the registration of the gender in relation to the person.
- (3) A magistrate may only approve the registration of a gender in relation to a person if the magistrate-
 - (a) is satisfied that the registration of the gender in relation to the person is consistent with the will and preference of the person; or
 - (b) is satisfied that the person is unable to understand the meaning and implications of the registration of the gender in relation to the person.

28C Registration of gender

- (1) The Registrar, after receiving an application under section 28A(1), (3) or (4) for a gender to be registered in relation to a person -
 - (a) must -

- (i) register the gender as the registered gender in relation to the person by making an entry in the Register specifying the gender to be the registered gender in relation to the person; and
 - (ii) make any other changes to the Register that are necessary to indicate that each previous registered sex, and each previous registered gender, of the person is no longer the registered sex or registered gender in relation to the person; or
 - (b) must refuse to register the gender as the registered gender in relation to the person.
- (2) The Registrar may only register under subsection (1) a gender as the registered gender in relation to a person in accordance with an application made under section 28A(3) or (4) if the Registrar is satisfied that -
- (a) the gender to be registered in relation to the person is consistent with the will and preference of the person; or
 - (b) the person is unable to understand the meaning and implications of the registration of the gender in relation to the person.
- (3) The Registrar may, before determining under subsection (1) an application made under section 28A(1), (3) or (4), require a person who made the application to provide to the Registrar the further documents or information that the Registrar reasonably requires, other than a medical certificate, or other medical document, that relates to the sex, sexual characteristics or gender of the person to whom the application relates.
- (4) Despite subsection (3), the Registrar may, before determining under subsection (1) an application made under section 28A(1), (3) or (4) in relation to a person, require the applicant to provide to the Registrar appropriate evidence of counselling of the person if -
- (a) the person has not attained the age of 18 years; and
 - (b) the application is not accompanied by evidence under section 28A(6) of counselling being provided by a person who the Registrar considers is a person with suitable qualifications, training or experience to provide such counselling.
- (5) For the purposes of subsection (4), appropriate evidence of counselling of the person is evidence that -

- (a) the person has undertaken counselling as to -
 - (i) whether or not the application to register a gender ought to be made; and
 - (ii) the implications of the registration of the gender in relation to the person; and
 - (b) the counselling was provided by a person, agreed to by the Registrar and the applicant, who the Registrar considers has suitable qualifications, training or experience to provide such counselling.
- (6) If the Registrar determines under subsection (1) an application made under 28A(1), (3) or (4) by refusing to register a gender as a registered gender in relation to a person -
- (a) the Registrar must record the Registrar's reasons for the refusal; and
 - (b) the Registrar must provide, to the person who made the application, the Registrar's reasons for the refusal; and
 - (c) the person who made the application may make an application under section 53 in relation to the decision.
- (7) If a gender is registered as the registered gender in relation to a person under subsection (1) -
- (a) any registered sex that was previously registered in relation to the person ceases to be the registered sex in relation to the person; and
 - (b) any registered gender that was previously registered in relation to the person ceases to be the registered gender in relation to the person

28D References to sex and gender

- (1) If there is a registered gender in relation to a person, the person is, for the purposes of, but subject to, any law in force in this State, a person of that gender.
- (2) Subject to subsection (3), a reference to a person's sex in any law in force in this State is taken to be, in relation to a person whose birth is registered in this State, a reference to -
 - (a) the registered sex, if any, in relation to the person; or

- (b) the registered gender, if any, in relation to the person.
- (3) In any law in force in this State -
- (a) a reference to the pregnancy of a female, female person or woman includes a reference to the pregnancy of a person of another gender; and
 - (b) a reference to the termination, or attempted termination, of a pregnancy of a female, female person or woman includes a reference to the termination or attempted termination, of a pregnancy of [a] person of another gender; and
 - (c) a reference to the fertilisation of a human egg outside of the body of a woman does not include the fertilisation of a human egg inside of the body of a person of another gender who has a female reproductive tract; and
 - (d) a reference to the mother of a child, or a child of a female or a woman, includes a reference to a person of another gender who carried the child in the person's female reproductive tract, or who gave birth to a child, except -
 - (i) if the person is to be taken by the operation of the *Surrogacy Act 2012* or another law to have ceased to be such a mother; or
 - (ii) if a person is to be taken by the operation of the *Surrogacy Act 2012* or another law to have ceased to be the child of such a mother; and
 - (e) an assumption of the ability of a person to procreate as a female or male is to be determined irrespective of the registered gender of the person.
- (4) Despite any other provision of an Act -
- (a) if a person in respect of whom there is a registered gender requests that a search of the person, that is to be conducted, be conducted by a male or female, a search of the person is not to be taken to be invalid, unauthorised or unlawful by reason only that the search was, in accordance with the request, conducted by a male or female; and
 - (b) if a police officer asks a person in respect of whom a search is to be conducted whether the person wishes to have the search be conducted by a male or female, a search of the person is not to be taken to be invalid, unauthorised or unlawful by reason only that the search was, in accordance with the request, conducted by a male or female.

(5) The registration of the registered gender in relation to a person under section 28C(1) does not affect any relationship of that person arising by consanguinity or by operation of law.

(6) 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 otherwise provided under the will, trust or by the law conferring the entitlement, forfeit any right or entitlement by reason only of the fact that a registered gender in relation to the person has been registered under section 28C(1).

(7) Subsection (6) does not operate so as to confer any right or entitlement that would not exist apart from that subsection.

28E Recognition of certificates issued outside State

A person in respect of whom there is a recognition certificate in force 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, as the case may be, stated in the recognition certificate.

Mr DEPUTY CHAIR - Honourable members, we will deal with each subclause separately, with the member giving an overview of the whole clause. Everybody will then have a chance to look at each subclause individually.

Ms Forrest - As in 28A separately, then 28B?

Mr DEPUTY CHAIR - Yes, 28A separately, 28B separately and so, and that is where the amendments go. Members may wish to have a general discussion after the member for Murchison has spoken to an amendment.

Ms FORREST - I will leave references to my clause notes until we get to 28A, 28B, 28C and 28D because they speak specifically to those clauses. Members have had those for some time now and I am sure they have read them to appreciate the intent of each new section in this provision.

The context of this new replacement of the provision, inserted in another place, enables a person to register a change of gender. From our discussion with Robyn Webb, the Parliamentary Counsel, in the principal act, this whole section is too wordy and long to make the process really clear. Again, I thank Robyn for her work on this.

I previously expressed concerns about the process undertaken. Some proposed sections fitted better together than others, so the decision was made to completely rewrite it and focus on the intent, which is to provide a process and provisions in legislation for a person to register a change of gender.

If we are talking about registering the sex and name at birth when a baby is born, nothing changes. This is focusing on the change of sex so I will confine my comments to that. The current act provides only for a change of sex when the person has had sexual reassignment surgery. Four other jurisdictions in this country and many other jurisdictions around the world have already dealt with this in their legislation. I understand Queensland is soon to introduce legislation seeking to do that.

Mr Valentine - I went through them in my second reading contribution.

Ms FORREST - Yes, you did so it has already been mentioned. Much work is being done around the world to do this. Our society does not require morbidly obese people to undergo bariatric surgery to take on the appearance of someone we believe looks like a healthy 'normal' person. There is a very strong view around the world people should not be forced to undergo invasive, expensive surgery to conform with other people's norms.

Allowing this to happen through a process of statutory declaration for a person 16 years and over is consistent with many other places around the world and other jurisdictions within this country. It is an appropriate and reasonable step. When you explain this to most people in the community, some people have a philosophical objection. I respect their view and their right to hold it, but I do not agree with them. I am not saying they are wrong. They are not wrong. That is what they believe and that is fine. However, when you talk to them, many of them appreciate and understand why we should not force people to have major surgery to deal with a situation that is about who they are. That is the purpose of this. Obviously, specific clauses will deal with different aspects about how the process will work, and it is best to leave that until we reach those clauses.

In broad terms, this amendment will enable a process for a person to change their gender and then register it. A person can change their gender by living a different gender without going through any of this, and people do. We have heard from some parents of children, not young children, who realised they were perhaps in the wrong body in terms of the way they were born so they live as the opposite gender without doing anything to change in a formal sense. Many people want to change in a formal sense because that is who they identify as. This provides the process without the need for surgery. It provides a process for people under the age of 16 and the circumstances where the magistrate may be involved in the decision-making. We can talk about that at a later time. It provides what will very soon be a nationally consistent approach to people changing their gender and registering that change. When the birth certificate is issued, they have choices as all people have choices - but that is in Part 3, amendments to clauses relating to the birth certificates. I will not muddy the waters with that now - I am talking only about the process to enable a change of gender without requiring sexual reassignment surgery. I ask members not to muddy the waters in their contributions to the birth certificate issue because that will be dealt with under clause 23.

Mrs HISCUTT - The Legislative Council is a House of review, and here we are with an entirely new part in the bill. The Government has consistently made the point that the amendments have not been properly consulted and thought through and there are a range of practical problems with them. The fact this bill now has dozens of amendments and an entirely new Part 4A in this place demonstrates that view was correct.

I acknowledge the time and effort that has gone into the development of these amendments, but it is very clear that uncertainties still exist within the bill. As the Solicitor-General said in his briefing, they have very real unintended legal consequences. While the proposed amendments seek

to fix these problems - and I appreciate the effort that members have gone to - we need to be mindful that these examples were only identified through his preliminary review.

Mr VALENTINE - The proposed amendment is an entirely new section but it is still within the policy intent of the bill, which I think is the important thing to remember here.

Ms Forrest - Exactly right.

Mr VALENTINE - We are not going outside what the original bill intended, and it is important to understand that.

As I said in my second reading contribution, Tasmania may well be, in a sense, going further than other jurisdictions in Australia in regard to this. The fact is that it is in line with what is happening on the international front. I want to read from a letter we all received, as far as I am aware, from the Australian Lawyers for Human Rights. I will not read all of it because I do not think we need to read all of it, but I go specifically to the part where they talk about international human rights standards -

ALHR asks members of the Legislative Council to give due and proper weight to relevant international human rights standards when considering the Bill. In this respect, on 29 September 2015, twelve United Nations entities released an unprecedented joint statement calling for an end to violence and discrimination against lesbian, gay, bisexual, transgender and intersex people.

Further quoted as the statement -

The Statement expressly confirms that failure to uphold the human rights of LGBTI people and protect them against abuses (such as violence and discriminatory laws and practices) constitutes serious violations of international human rights law. It calls on State parties to make legislative change to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) people from violence and discrimination.

It is particularly notable that the statement 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.

I note 'without abusive requirements'. The statement also notes -

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.

Further, we would ask you to consider the Yogyakarta Principles Plus 10 (YP+10), adopted by human rights experts, including three (3) Australian representatives, following a meeting in Geneva, Switzerland in September 2017. The principles seek to affirm the binding international legal standards with which

all States must comply and address a broad range of human rights standards and their application to issues of sexual orientation and gender identity.

Principle 31 of the YP+10 recognises that:

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.

Principle 31 also imposes obligations on States to:

- (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 drivers 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-defined 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.

That is one part of it. It goes on to talk about inclusion of gender on birth certificates, removing the requirement for surgical intervention, which I will read -

When a birth certificate does include gender markers, it is vital that the Act provides a non-intrusive means of correcting gender to reflect a person's lived experience. The Act currently requires a person seeking to apply to the Registrar

to change their sex to ... have undergone gender reassignment surgery and be unmarried.

In order to make an application under s28A of the Act, an applicant must also provide, amongst other things, a statutory declaration from each of two medical practitioners verifying that the applicant has undergone gender reassignment surgery.

Access to birth certificates, passports and other identification documents that reflect a person's lived gender (male or female or non-binary) current is vital to avoid discrimination in many circumstances. Without these documents it can be difficult to obtain employment, housing and access to services.

Accurate identification is also necessary for a person to participate in modern society, and timely access to updated documents is a matter of equality, non-discrimination, privacy, physical integrity and recognition as a person before the law.

The requirement that transgender Tasmanians undergo gender reassignment surgery in order to apply to change their identification documents is an abusive requirement, as referred to in the Statement. The requirement also offends Principle 31 of YP+10.

ALHR calls on members of the Tasmanian Legislative Council to bring Tasmania into line with states such as the Australian Capital Territory and South Australia in allowing transgender and gender diverse people to update their legal documentation without the requirement of gender surgery.

That was from parts of the Australian Lawyers for Human Rights document of 16 March 2019. I point this out because it did not come out during the second reading debate. These are important principles. I think the whole of this section deals with that.

The main point is that it is not going outside the policy principles in the bill.

Ms RATTRAY - It was certainly a mammoth effort by the member for Murchison to read those amendments into *Hansard*.

The member for Hobart stated that these amendments go further than any amendments have gone in other jurisdictions. I am interested in how much further they go.

Can the member for Murchison explain why we need to go further? What makes the requirement in these to go further than in other jurisdictions? That is worth putting on the public record. The eyes of Australia are upon us so we need to understand the level we have gone to with these amendments to put forward the proposals.

Mr VALENTINE - I was referring to statements that certain states had gone the full length in respect of some international human rights laws, when I do not think they have.

I have not done a detailed description of other states and I do not think it is necessarily needed here. My point in reading that letter out is that this is an international set of principles and we are

not going any further than those. In fact, some of our amendments - requiring counselling and such things - go against those principles. It actually does not go as far as some I have read out. In the second reading debate it was said by some members that Western Australia had done certain things and in fact it had not. Some of those things are included here but I do not have a blow-by-blow description.

Mr DEAN - Perhaps Mr Deputy Chair can help me here. Are we currently dealing just with 28A? There is some confusion.

Mr DEPUTY CHAIR - I will say it again so people are not confused. I asked the member for Murchison to give an overall version of her amendments and said we would deal with each subclause separately. The member for Murchison will speak to the factsheet for each subclause as it is raised. Members have the Floor for a general discussion and then we will break down into each subclause.

Ms RATTRAY - On a point of clarification, do we finally have three opportunities to speak full stop on the entire suite, or do we have three on the overall and then three on each clause?

Mr DEPUTY CHAIR - What will happen is everybody will have three opportunities to speak on each subclause. Because this is a new clause, it is important we understand people have that right to three opportunities to speak on each subclause, as well as three opportunities to speak on the general as presented by the member for Murchison.

Mr DEAN - I repeat what I have said throughout this whole thing. We are now told by the member for Hobart that it is really just going along with what was previously in the bill - a few changes here and there. That is not true.

There is a significant change in 28D - it is almost totally rewritten in a number of areas. Obviously it was rewritten to try to cover issues raised by the Solicitor-General and the president of the Tasmanian Bar. I do not think Mr Chris Gunson is now president of the Tasmanian Bar.

When you look at the Part 4 changes, clause 21 which changes the new parts is absolutely and totally disrespectful to the people of Tasmania. These are significant changes that have not gone to them for comment. It is being disrespectful. They are entitled to have a say.

On my way to work this morning someone asked me, 'What weed are we on in this place?'. That is the sort of attitude, the sort of thing being said, out there at this time.

Mr WILLIE - On a point of order, Mr Deputy Chair, standing order 100 deals with repetitious or irrelevant debate. We have heard this argument from the member for Windermere across a whole range of amendments. The same argument is being repeated over and over. I ask, through you, Mr Deputy Chair, that the member addresses the amendments at hand.

Mr DEPUTY CHAIR - Because the clause is so broad and new, there will be a bit of latitude for the member in the discussion introducing it. However, with other subclauses it would not be appropriate for the member to revert to what he is now reiterating. Because this is a new clause, he is able to have some latitude and introduce aspects to respond to the member for Murchison, but he has to be mindful that he should not be going over his second reading contribution verbatim because we have heard the points he has already raised.

Mr DEAN - I do not intend to do any of that, but I intend to raise issues. The Leader raised a similar thing as well. It is interesting that the interjection and point of order were taken in relation to myself, but it is okay for others - that is all right, that is fair enough. You are being absolutely fair.

This is how the public is feeling about this, with all this new evidence coming to us. In the *Mercury* yesterday, the heading in a letters to the editor was 'Informed debate by all' -

There must be informed discussion about gender law amendments and possible long-term consequences. Too many ill-thought-out bills have been fast tracked through parliament without thought of the consequences for future generations, and increasingly the consequences are rebounding throughout all of society. Prudence and caution must be employed for this situation and honest and informed debate engaged in by politicians from all parties before a decision is made.

Sue Carlyon
Kingston

That is the position we are getting here. There are significant changes in the bill. As I said yesterday - and I will repeat what I said yesterday, and I can see nothing wrong with that unless I am picked up again because they will try to cut me down - in relation to this matter, there is huge concern in the community about where we are going with all of this. I have not had an opportunity for many of these clauses - 28D particularly when I get to that - to discuss those changes with the public and the stakeholders. I tried to contact the Commissioner of Police, which has been raised and was raised here yesterday as well. One member has some advice, but I do not accept that. We are having difficulties there as well. I am still trying to get all of that. It is creating enormous problems for us. In my opinion, it is ill-conceived and the direction we are taking is wrong.

Ms ARMITAGE - I appreciate the number of amendments and the work that has gone into clause 21. There are certainly many changes. When 28A comes up, I have an amendment to it.

I feel a little like the member for Windermere in that I am concerned that a number of these amendments have certainly have not gone out for community consultation. As late as this morning people are still coming to me with concerns and they are not aware of what is happening and what is in the bill.

Mrs Hiscutt - That is true, it needs consultation.

Ms ARMITAGE - I appreciate the work that has gone into it; Robyn Webb has done a lot of work of these amendments. I flag that I have some amendments to 28A.

While I appreciate that trans reassignment surgery is certainly a step too far, we need to help these people. Sometimes we think we are helping by making it really easy but in fact sometimes we are not helping by making it really easy. Sometimes we need to put a few hurdles here and there, and my amendment, which I will speak to when it arises, is simply to medical practitioners.

We need to really think about what we want people to do, and what we think we are doing and sometimes what we actually are not; in the current amendments there is too little of that.

Ms FORREST - If no-one wants to speak on that, I will move onto 28A.

Ms Rattray - What about the answer to my question?

Ms FORREST - I thought the member for Hobart answered your question. We have not reached 28A yet.

Ms Rattray - Why have the amendments gone that far? With all due respect, honourable member, they are your amendments.

Ms FORREST - Yes, but the member for Hobart commented about how far they have gone. Anyway, I will address that briefly because he answered that - it was his comment, not mine, and he did answer that.

They do not go a lot further. I am confining my comments to this particular proposed section, which is about providing a framework for a person to change their gender without sexual reassignment surgery and making sure that they are protected in doing that.

It has been done in slightly different ways in other parts of the world and around the country but the principle is the same. I ask the Government and the Leader on behalf the Government: would she rather see the bill the way it is or see my amendments proceed here to provide what I would consider - I use the word 'properly drafted' because it was drafted by Parliamentary Counsel - as a way of achieving this outcome?

That is what we are talking about here. I hesitate to refer to our late colleague, Dr Vanessa Goodwin, but I understand she gave the instructions to the Anti-Discrimination Commission to look at this because she recognised change was needed. It is happening around the country; it is happening around the world, and, as the member for Launceston said, we should not be forcing people to have surgery for this.

We are trying to create a situation here where that is the case. While it was put in in the bill downstairs in a way that the intention was clearly right, in my view, the process could have been done better and I have done all this work on it over the last four or five months with Parliamentary Counsel to achieve that.

Mrs Hiscutt - Through you, Mr Deputy Chair, I will answer that. The Government is very appreciative of the efforts you have made, but we still think it should go out for consultation.

Ms FORREST - Does the Government support the principle of removing a requirement for sexual reassignment? That is the question here because that is the question we are answering in this.

Mrs Hiscutt - It needs to be consulted.

DEPUTY CHAIR - We will have your answer in a moment.

Ms FORREST - It was consulted. The birth certificate issues are new in Australia, and that is making a range of choice for everybody so everyone is treated exactly the same in this. That is a small 'l' liberal policy about creating change.

Ms Rattray - I do not belong to the Liberals.

Ms FORREST - No, and I am not suggesting you do. I am saying these philosophies are held by the broad church of the Liberal Party, for want of a better term

Mr Willie - The trouble is there are not many of them.

Ms FORREST - Maybe there are not but this is to provide choice and to treat people equally. Is that not what we all want? For people to be treated the same and not have to go through different processes because they may not be exactly like us, or me, individually? We are all different anyway.

In respect of the argument about unintended consequences, I am going to read a quote from Kenneth Hayne. You might wonder about the relevance of Kenneth Hayne in this. I am sure we all know who Kenneth Hayne is - he is the royal commissioner who delivered the report of the royal commission into banking in Australia and he said this, and it is very relevant to this debate because we hear it all the time - unintended consequences - he said -

The responses and recommendations made in this report will attract varied responses. Those who oppose change will appeal to real or supposed difficulty in altering present arrangements. Reference will be made to change bringing 'unintended consequences'. That argument is easily made because it has no content; the consequences feared are not identified.

That is exactly what we are seeing here.

I will be happy to move on to 28A if the Leader would like to respond to my question. Overall, that is what we are doing. We are rewriting a proposed section of the bill to provide a framework that removes the requirement for sexual reassignment surgery for people who want to change their gender.

We will get into the detail when we get into each clause -

Mr Valentine - Same policy intent.

Ms FORREST - Exactly right.

Mrs HISCUTT - Our position remains the same. It has been referred to TLRI and it should be consulted through that process.

Proposed new section 28A -
Registration of gender

Mr DEPUTY CHAIR - I ask each speaker to confine themselves to the clause in front of us in light of the new clause and what we are trying to do here. Please do not go back to second reading material. We have already had that discussion.

Ms FORREST - I will go through the intent and purpose of proposed new section 28A. This provides a process by which a person who is 16 years of age or older, the parents or guardians of a child under the age of 16, the sole parent or guardian of a child under 16 or one parent, with the magistrate's approval, to be able to apply to the registrar, to register a gender or a change of gender.

A process is clearly outlined and it has to be in the approved form. They have to obtain the approved form, complete that and be accompanied by a gender declaration made by the person. If the person is able to so declare, including a young person under the age of 16, they can make a statutory declaration; if the child has capacity and competency, it can be accompanied by that.

The parent does not provide a gender declaration because they cannot. That is the person's own declaration. It is when the person can provide it.

The registrar may request other documents or information from the applicant in relation to the sex, sexual characteristics or gender of the person, other than a medical certificate or a medical document.

It is very clear, as the member for Hobart referred to in his contribution on the overarching part of this bill, that is what is expected around the world. It is not out of line with international best practice. It is what is happening in many other jurisdictions, it is happening in Australia, and it is happening around the world that we are providing a framework that indicates this is not a medical thing. We are not requiring sexual reassignment surgery. We are allowing people to identify as they are.

When the applicant or applicants are the parent, parents or guardian of the child under 16 and the child is unable to make a gender declaration, but is able to express the will and preference, the parent or guardian must provide a statement they believe on reasonable grounds that the gender to be registered for the child is consistent with the child's will and preference.

Parents should not be asked to sign a statutory declaration regarding this because parents generally are not in a position where they can make a legal statement about the capacity of their child. The legal advice is that if the parents are making the application and they believe it is in the will and preference of the child, they need to state that.

They are saying, 'This is what the child wants. I am/we are not going against the child's wishes'.

Subclause (6) will enable an applicant in relation to a person under 18 years to elect to provide evidence of counselling by a person chosen by the applicant. This is a proactive approach to providing evidence of counselling.

I had discussions and broad consultation with community members, with parents directly affected by this legislation, currently or in the future, as well as with the Anti-Discrimination Commissioner, the children's commissioner and other stakeholders, including many members of the community. They actually understand this. It was really on the advice of the children's commissioner that I sought to include, against the wishes of Transforming Tasmania, the inclusion of evidence of counselling and provide a proactive approach. My discussions with many people who have actually been through this process or a similar process is that they often have had some form of counselling. Certainly, children in the care of the state definitely have.

They said if this is in the legislation, it would be easier for the registrar if I provide this up-front. They do not have to, but they can. We will come to a subsequent clause later, where the registrar can request it, if they have not received it. This provides a proactive up-front approach, in terms of counselling, so I urge members to support this. This is the first step in the process to enable a person to register a gender in relation to a person who is 16 years and older. We have had the debate about

16; we do not need to go there again. This is setting up the process by which a change of gender can be achieved for a person over the age of 16.

Mrs HISCUTT - The Government has been consistent with its line of thought throughout this bill, therefore we will vote against this proposed section.

Ms ARMITAGE - Mr Deputy Chair, I move -

That the amendment moved by Ms Forrest be amended by:

First amendment

Proposed amendments, proposed new Part 4A, proposed s 28A, new subsection (2), after paragraph (b).

Insert the following paragraph:

- (ca) 2 certificates -
 - (i) one of which is issued by a medical practitioner and one of which is issued by a psychiatrist within the meaning of the Mental Health Act 2013; and
 - (ii) each of which certifies that, in the opinion of the person issuing the certificate, the person to whom the application relates genuinely identifies as a member of the gender that is specified in the certificate.

Second amendment

Proposed amendments, proposed new Part 4A, proposed s 28A, new subsection (5), after paragraph (b).

Insert the following paragraph:

- (ca) 2 certificates -
 - (iii) one of which is issued by a medical practitioner and one of which is issued by a psychiatrist within the meaning of the Mental Health Act 2013; and
 - (iv) each of which certifies that, in the opinion of the person issuing the certificate, the person to whom the application relates genuinely identifies as a member of the gender that is specified in the certificate.

Mr DEPUTY CHAIR - We will debate the amendment to the amendment and then see where that goes, then we will go back to, if we need to, the original amendment from Ms Forrest.

Ms ARMITAGE - I appreciate the amendment from the member for Murchison and believe to expect people to have reassignment surgery is a terrible impost on them, whether they be young or old when they decide to transgender. They certainly should not have to, but I am concerned with the amendment and accept the member for Murchison mentions counselling. The amendment says may be accompanied by evidence the person has undertaken counselling -

Ms Forrest - This is the proactive section of it.

Ms ARMITAGE - I understand, but it is still in this section that they may undertake counselling. I too have spoken to many people in the community. My amendment has come about after speaking to several medical practitioners and seeking the best way to go about this.

I have four children. I understand where parents are coming from. I know my children change their minds from time to time. I understand the parents saying, 'Okay, you have a transgender child. They may have always felt that way, but people do change their minds.' I can give an example which I should read rather than go off script, of someone I know who changed their gender quite seriously and then changed it back. I am very concerned that gender can be changed by something as simple as a statutory declaration and some counselling. I agree, as I said, that reassignment surgery is a step too far. The member for Murchison's amendment says that a person under 18 may have counselling by a person of their choice, but I do not believe that is strong enough for such a life-changing decision. This is a major change in a person's life, whatever their age, and we must do everything we can to help these people be absolutely certain this is something they really want and that they permanently identify with their new gender.

We talk about young people but they are not always young. Sometimes they are older when they decide to transgender, but whatever their age, they need to be as certain as they can be that they are making the right decision. As I mentioned, I have sought advice from medical practitioners and their advice to me is to enable people to make the most informed decision possible. Is that not what we want?

Gender identity can affect mental health and young people who are gender diverse or do not identify with the gender they were born with may have a range of stressful experiences that contribute to their increased risk of depression, anxiety, self-harm and, as we have heard, sometimes suicide. However, I am not saying that gender diversity causes mental health problems because I do not believe it does. I would not want anyone to think we feel they need to go to a psychiatrist for any other reason than to help them be absolutely certain that what they are doing is in their own best interests and for the rest of their life.

As mentioned earlier, I note in the member for Murchison's amendment that a person who has not attained the age of 18 years may be accompanied by evidence that the person has undertaken counselling and the counselling was provided by a person chosen by the applicant who the applicant considers has suitable qualifications, training or experience to provide such counselling.

I personally know a person who as a young male - he was in his early 20s - decided to become a female and he underwent some treatment. He was quite an attractive young female, looked like a young female. It was not easy for him because he was working in quite a male-dominated job and some of her fellow workers made it somewhat difficult. I did not see this person for a couple of years; when I did, she had reverted back to being a male because she had met a new partner and decided she or he no longer wanted to be a woman and had gone back to the previous gender. This does happen. I believe he changed his name by deed poll. I do not know of any other

documentation, but I do not want to say his name or identify who it was, but he changed from a male name to a female name, and it was not a name that could be used for either.

I mention this because I believe it is really important that when someone decides to permanently change their gender on their birth certificate they are absolutely certain it is something they want to do, whether they are 16, 18 or 20 - it does not really matter what age. I do not know about other people in this place, but I look back at some things I thought I really wanted to do when I was 16, 18, 20 or 30, and think, 'Why did I do that?' We all change our minds.

I am concerned we are going from the step way too far of having to have reassignment surgery to having virtually nothing, which is a statutory declaration and, if they wish, counselling with a person of their choice. I appreciate people in this situation would prefer the member for Murchison's amendment because it certainly is easier but, as mentioned by Martine Delaney in her email to us on 26 March, because the process of transitioning invariably requires post-medical supervision trans and gender-diverse people commonly have a well-established relationship with their doctor. Well that is one doctor. This would mean the only extra requirement would be an appointment with a psychiatrist. I am quite sure their doctor could be able to refer them to a relevant person who could help them. I do not believe this is overly onerous compared to what was in place in the past for someone making such a life-changing decision.

On the other side of the spectrum, while I believe that transgender people are genuine and doing everything for the right reasons, we also need to remember - and I think Chris Gunson said this - we make laws for the worst people in society, not just the best. He gave examples of maybe someone with two birth certificates who could have two tax file numbers, two bank accounts and how someone could become a different person. Perhaps they have moved to the mainland - John Smith in Tasmania who might have been on the sex register and cannot work with children then becomes Jane Smith on the mainland and starts a new life.

That might sound unlikely, but it is possible if you make things too easy for the people intent on doing the wrong thing. As I said, I am certainly not saying that of anyone transgender who is genuine. I am thinking of other people who might use the laws for the wrong reasons.

I ask members to support this amendment because I believe it really will help transgender people wishing to permanently change their gender.

Our President, Jim Wilkinson, is known for a little saying - and I am sure we have all heard him say it - 'Good, better, best, never let it rest until your good is better and your better's best'. I think we have to have the very best legislation we can. I believe the bill should have gone out for community consultation. I consulted, as I said, with many medical practitioners and other people in the community but mainly the medical practitioners, 'Do you think two medical practitioners, one a psychiatrist, is too much?'. They did not believe so.

I probably spoke to about six or seven and all of them felt it was really a requirement to help people - and I guess it is mainly young people - really establish and be sure about what they wanted to do.

I want to put this clearly on the record: no-one thinks they need a psychiatrist for what they want to do, but this is to help them go through it, work through it, and make sure it is a decision they will choose for the rest of their life, so they are not like the young person who did some work

for me when she was a female but who, when I met them again, had gone back to being a male because he had met a new partner and made a decision.

We have to think so carefully about this because it is such an important decision. I hope people do not think this is too hard and want us to make it easier because I believe we need to give them as much help as possible to help them make the very best decision for themselves. I make no apology for seeking two medical practitioners.

We should do whatever we can do to help these young people be certain this is the decision they want to make for the rest of their lives. I implore members to think carefully - do not think, 'Gosh, it would be much easier, why should I have to go through that?' - about what they had to do before: reassignment surgery.

All I am saying is that you already have a doctor, so just ask them to refer you to a psychiatrist, with whom you can sit down and have a discussion about this. All the psychiatrist then has to do is simply certify that, yes, they believe this young person believes and needs to be able to have a change of gender without any medical procedures. No procedures are needed in my amendment. It is purely two medical certificates. I do not think it is a step too far and I hope members understand it will help young people make good decisions.

Mrs HISCUTT - The Government's position remains the same, but I put on the record that we appreciate members trying to fix some of these clauses.

Ms LOVELL - I will not support this amendment to the amendment. Transgender people do not need our help. They certainly do not need us to be setting bars for them to jump over to prove just how serious they are. What they need is our acceptance, our support and for us to get the hell out of their way and stop obstructing them.

They should not need to prove anything to us. I hear what the member for Launceston is saying - she is not suggesting that being transgender is a mental illness - but by putting this requirement for transgender people to see a psychiatrist before they can change their gender on their birth certificate, that is what we are talking about. We are not talking about surgery; we are talking about changing a birth certificate.

By suggesting they need to consult with a psychiatrist who will validate whether they are serious, it is doing exactly that. Psychiatrists are trained to treat people with mental illness. It is expensive to see a psychiatrist and it is difficult. It is not only a matter of going to your GP and getting a referral. Psychiatrists in Tasmania have extensive waiting lists. I have people come into my office every week.

Members injecting.

Mr DEPUTY CHAIR - Honourable members, the member has the Floor and sat in silence while you presented your case. She should be afforded the same respect.

Ms LOVELL - Thank you. It is expensive to see a psychiatrist and it is difficult. To suggest people need to explain their situation and decisions to another person and that somebody else should validate them is offensive.

If the member for Launceston is concerned about the permanence of this decision and it being a life-changing decision, we are talking about a birth certificate. If people change their mind again -

Ms Forrest - If I may interject to clarify the point the member is making. She is wrong in this. 28A is only about the application. We are not talking about issuing birth certificates nor are we talking about the actions of the registrar. This is only about a person applying.

Ms LOVELL - Thank you, member for Murchison. We are not talking about undergoing irreversible medical treatment. That is where people have a close relationship with their medical practitioner. That is where they have close medical supervision by their treating clinicians. This is not irreversible. We should trust that transgender people are sure. What makes us think we know better, or that even a psychiatrist knows better?

My position on the member for Murchison's amendment is that even goes a bit too far, but that is far preferable to this requirement to see a psychiatrist, which I will not be supporting.

Ms RATTRAY - I believe the member for Launceston is very genuine in her attempt to put some strength into this. It is an application to change a gender. That is what we are talking about. We are also talking about a 16-year-old person being able to go through that process.

We talked about that yesterday and that discussion has been had. The member for Launceston read out part of a letter from Martine Delaney saying they would have a doctor. I am sure they all have a medical practitioner.

Ms Lovell - Not everyone.

Ms RATTRAY - Not everyone has a medical practitioner? Most people would have a medical practitioner they would see from time to time.

Perhaps we do not know best for everyone, but we are here to represent everyone. That is our role. I am sure some of the decisions we have made in the past have not always represented everyone, and they probably will not in the future. I can certainly say that we do the best we can and what we think is right.

I will be supporting the amendment. It puts some strength into a process that could certainly do with some.

Mr DEAN - It will come as no surprise that I support the amendments. The amendments put forward in this instance are very reasonable, sensible and necessary, in my opinion.

Let us take a look at a statutory declaration. What is a statutory declaration? It is simply a document signed before a commissioner of declarations. A commissioner of declarations can be any of us. A commissioner of declarations can be a police officer. Principals of schools are commissioners of declarations and just about everybody else. Huge numbers of people out there are commissioners of declarations.

What is the commissioner of declarations required to do in these situations? I sign many of these documents, and suspect we all do from time to time. All you are really required to do is to witness the signature of the person. That is really all you are required to do as a commissioner of declarations, you sign and you are a commissioner of declarations. That is it. There is absolutely

no requirement of a commissioner of declarations to check or look at the information provided and there is no requirement whatsoever of the commissioner to confirm or verify really anything in it other than that the person making the declaration has said their signature it witnessed by the commissioner of declarations.

It is true, as Chris Gunson said, that we make laws for all people. All people are required to comply with the law. But the necessity for laws is there only because of a very few people - those who do not and will not do the right thing. If it were not for those people, we would not need laws because most of us do the right thing most or all of the time. If a person is confronting gender issues, and I know of people who have, they would already be seeing either their GP or seeking some other form of counselling or talking to other people. I cannot see it would be something they would harbour within themselves, some might. If this amendment were to get up, it would help those people in this situation who want to make that very significant change. I certainly think about this since this bill came up. If I were torn to make for whatever reasons the transformation to live the life of a female, it would be an enormous decision I would be confronting. I think I would be talking to my doctor, to other people. I have had some personal issues I have spoken to my doctor about, as I guess some of us here have. Any discussion with a doctor is confidential and there is no fear any of this information will get out.

I am of the opinion simply to sign a statutory declaration, just like that with nothing else, really is not the right way to go here. This will assist and support those people. I heard the member for Rumney say that these people are not going through invasive surgery and all that; well, the following week they could come back and live their biological sex life again.

Having said that, I flag that I have an amendment relative to the point, which I will be moving shortly.

Having said this amendment has been thought out, much consideration has been given to it. The member has spoken to me on many occasions about it and she has sought a lot of advice; it is not something she has come up with because she thinks it is right. Obviously, she thinks it is right to want to move it, but she has taken a huge amount of advice on this and we know of her involvement with the AMA. I suspect there has been a lot of discussion there as well. I am sure she will tell us if there has been. I urge people here not just to go down this path of supporting the 30 pages of amendments. I ask that you independently look at some of those amendments. I have, and I ask that you do so. This is a good amendment.

Ms Forrest - I am sure members have looked at them. They have had them for a long time.

Mr DEAN - It is disrespectful to make comments behind my back, mumbling away. Please support the amendment we currently have. We are aware that the Government's position is that it does not support all the amendments put forward in the other place - none of them. That is the basis for their position. Deep down, if they were supportive, they would like this. I am asking members to support the amendment.

Mrs HISCUTT - I put on record that our reasons are as the member for Windermere has stated. We appreciate the efforts that members have gone to try to fix this legislation up, but we do not want this clause there to start with.

Mr ARMSTRONG - I will support the amendment. I have googled what a commissioner of declarations can be. A commissioner of declarations who can authorise a statutory declaration can be a chiropractor, a dentist, an optometrist -

Mr Valentine - We are commissioners of declarations.

Mr ARMSTRONG - Yes, the member is saying with her amendment that this is only a safeguard. It is a great amendment and I will be supporting it. A bailiff can sign it. What do these people really know about what these people are going through? It is a good amendment and I urge members to support it. It will strengthen the bill.

Mr WILLIE - I am hearing a lot of moralising. The member for Huon asked what do these commissioners of declarations know about what these people are going through? That is a good question for many people in this room. Everyone is supposed to be equal in the eyes of the law. Do we all need certificates from a medical practitioner for our own identity? Do you need a certificate, member for Windermere?

Mr Dean - I am not asking for identity. What are you talking about? There is nothing about identity.

Mr DEPUTY CHAIR - Can we please confine ourselves to the proposed amendment and let the member for Elwick continue?

Mr WILLIE - The member was interjecting.

Ms RATTRAY - Point of order. Have we not always been able to interject in this place?

Mr Willie - I was not complaining about the interjection.

Ms RATTRAY - I am asking for a ruling. We have always been able to interject.

Mr DEPUTY CHAIR - Yes, thank you. I will take that on board, member for McIntyre. Last night we said we had a lot of work to get through today and we are trying to make this as simple as possible. I understand and take on board your comments, but I am trying to progress the situation to allow each member to have a chance to get on with what they believe is correct and state their point of view on the amendment proposed by the member for Launceston. I will allow some latitude, but I need to progress this today because we all know what the endgame is to be.

Mr DEAN - Point of order, Mr Deputy Chair. I hear what you say, but with the greatest respect to you and your ruling, the fact that we need to finish this today is no reason to be controlled in our debate in this place. I will not allow it to interfere with the matters I want to raise and go through today. We should not be restricted in our interjections if they are reasonable and sit within the Standing Orders of this place only because there is a need to quickly finish this matter off. The member for Murchison interjects by saying we need to do that. She is the greatest proponent of doing things thoroughly so let us not ignore that. I contest your ruling in relation to this matter, Mr Deputy Chair.

Mr DEPUTY CHAIR - I remind honourable members that standing order 99 says we do not digress from the matter under discussion and I am mindful that we do not want to have members

promoting quarrels within the Chamber. If the interjection is a question or explanation, that is fine; if I feel it is quarrelsome, I will pull you up under standing order 99.

Mr WILLIE - The reason I rose was to raise two points. The first point was the member for Launceston described an example of the person who worked for her. My question to the member for Launceston is: what is wrong with that?

Ms Armitage - Nothing.

Mr WILLIE - What is wrong with that example? Why can somebody not change gender and then change back to another gender? That is their business. They can live their lives however they want. What right do we have to reflect on that situation and say, 'Well, they needed a psychiatrist's help in that scenario'? That is my question. What is wrong with that example that you gave? I do not understand.

The second point I raise -

Mr Dean - Are you suggesting it is a very normal process to keep changing genders?

Mr WILLIE - No, I am saying that I do not know why we are reflecting on somebody's choices. I do not understand why we need to put in a process where somebody needs to see a psychiatrist, which I think makes the presumption that somebody needs a medical intervention, that perhaps they are mentally unwell, because the presumption of this amendment infers that somebody has a mental ill health situation. This is clearly not the case, in my opinion.

Ms Armitage - I have already stated that.

Mr WILLIE - That is my question. What is wrong with that example? I have no problem with somebody who wanted to do that. That is their life. That is their business.

The second point raised was some of the matters Chris Gunson was raising. I do not see how putting in a requirement for two certificates will prevent any of those scenarios described by Chris Gunson, and when he described those scenarios, he could not provide any examples of where that had happened either.

The arguments being used by members was that this will help protect against some of those scenarios. I do not see how that changes anything to the scenarios described about tax file numbers or other fraudulent activity.

Ms Armitage - It would make it harder.

Mr WILLIE - How would it make it harder?

Mr DEPUTY CHAIR - The member for Elwick should talk to me, then we members can get up to respond to any questions you may have.

Mr WILLIE - Sure. They are my two questions. What is wrong with the example given by the member for Launceston? How does this proposed amendment protect against any of the scenarios described by Chris Gunson in the briefings? I would like those two questions answered, Mr Deputy Chair.

Ms ARMITAGE - I am not saying there is anything wrong with the person. As I said, the example I gave was of the person I know who did a little bit of work on my house. I guess what I am looking at is: was he sure in the first place that he wanted to become a female? Not that long after he went back to being a male after going through all that hormone treatment. I just want people to be really certain when they make a decision.

If it were one of my children - and I can only speak from how I would feel - I would really want them, and I understand everyone thinks differently, to make sure and be certain that is what they wanted to do. They would have a medical practitioner who would be seeing them. They might have decided from a young age. We heard some parents saying children as young as seven or even younger are transgender. As I have stated, psychiatrists treat people for many things, not just mental illness. They see people for many different reasons.

Ms Rattray - Anxiety.

Ms ARMITAGE - All sorts of different reasons. I would have no problem with my child going to a psychiatrist but not having transgender surgery. We are up here with transgender surgery; we are down here on the floor with a statutory declaration. I am looking for some middle ground.

You ask about how this will stop the issues brought up by Chris Gunson. I am not saying it would stop them, but it would certainly make them harder. If you are looking to do the wrong thing, I could go to the local post office and sign a statutory declaration. I might not dress like a woman and may not do anything, but I will be a man and I could do whatever. I am not a true transgender person. I do not care about that. I can use this legislation and his comments and innuendo to me - I am not a legal person but I listen to the legal people. That is what we do in this place. We get advice.

He said we make laws for everyone. Not only for the best people but for the worst people so we have to look at what the worst people will do with the legislation. With a statutory declaration, all you have to say is, 'Show me your drivers licence. Okay, that is your signature, off you go'. That is a massive jump from reassignment surgery.

I am not saying the people doing that for the right reasons have any issues. I am not saying they have any mental issues. I am saying they need to be sure: two doctors, one a psychiatrist. For those people, as Chris described, who will - and can - do things for the wrong reasons, a statutory declaration is a step, a bar, way too low.

I reiterate: I am not saying any of these people have mental health issues because I do not believe they have. I spoke to medical practitioners, and for the member for Windermere: I did not speak to the AMA, I did not ask them that question. I spoke to doctors I have known for a good number of years who felt that this was a reasonable path to take. It is not reassignment surgery. That is a terrible thing to expect people to have to go through.

I do not see a problem with taking some centre ground, and I see this as centre ground. I understand the member for Rumney mentioned the waiting list. My understanding is the waiting list is more for psychologists than it is for psychiatrists. I have been told, particularly in the south, there are about 30 psychiatrists, there may not be so many around the rest of the state.

If you want to go down this path and transgender, you can do it from 16 according to our legislation. If you have to make a trip to Hobart to more easily get an appointment, I understand - and I see you shaking your head, but we all have our opinions -

Ms Lovell - They cannot just jump in a car and drive to Hobart, can they?

Ms ARMITAGE - It is better than jumping and going to America and having reassignment surgery. It is a big jump between what we are doing.

Some members in this House need to appreciate we are not just making laws for good people. That is what I am concerned with. We are saying, 'These people will not do this' and I agree. You can shake your head but I am sure they will not. We make laws for everyone and I am conscious that I am making a law here. I am not voting on how I feel emotionally because you cannot. You have to think what some people will do with the law.

I am sure there will be many people in this Chamber who will not support my amendment. I accept that. It is their right. Please members, just think about the fact that we are not only making the laws for the good people - we are making laws for those who will abuse them as well.

[11.04 a.m.]

Mr VALENTINE - As we go through life, we make all sorts of decisions as individuals. I might decide to buy a house on Macquarie Island because its value might go through the roof. Some other people say, 'Gee, you are an idiot, why would you think of doing that? It is never going to sell', but I go ahead and do it and put up with the consequences of it.

I may decide one day, 'We have always been a Ford family but I am going to go for Holdens' - well, we cannot now because they do not make them any more in Australia. Those are decisions people make. They are life decisions in some part and they are small and simpler decisions than others, but the fact is we are human beings. My point with these stupid examples is that every day we make decisions that impact on us as individuals. However, no-one has the right to say you cannot go and buy that house on Macquarie Island; you cannot go and change your mind on which car you buy. You cannot not have broccoli for dinner. This is about a person's personal life. We do not have to go and have our gender affirmed by a psychiatrist. We might be born that way, but we do not have to go and have it confirmed if we want to live as the gender we are born as. Why are we trying to stop people by putting in their path these hurdles they have to jump simply because they want to live life in a certain way? It is not impacting on someone else if I decide I want to change my gender.

Mr Dean - It could well impact on others.

Mr VALENTINE - But no more than other decisions I make in life. No, I am sorry,

Mr DEPUTY CHAIR - As I said, standing order 99 is about being quarrelsome. I do not think the member was asked a question, it was an interjection and I made that very clear. I expect all members to respect that decision.

Mr VALENTINE - I go back to the letter from Australian Lawyers for Human Rights and the quote I mentioned under principle 31C of the Yogyakarta Principles Plus 10, the third component of that,

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.

These are international human rights standards. We can decide we will or will not go as far as they suggest. That is up to this Chamber. The amendments coming forward are to show they have had some counselling to decide whether this is right or otherwise for them. It is not counselling to persuade not to do it, it is to make sure they understand what they are doing. Some would say that is going too far, but it would be a very costly exercise to get a psychiatrist. It is not going to be a small consultation to reach the point where the psychiatrist can decide you know what you are talking about. It is probably going to be two, three or four visits. With a commissioner of declarations, I do not want to sit in judgment of someone coming to me and saying, 'Will you sign this? I want to change my sex.' I do not want to be a part of that. It is their decision. We have to be careful we are not trying to tell people what to do in their own private lives.

Some see some unintended consequences of allowing this to happen. There are penalties for misusing certificates and such. That is what we do in life. We create laws to stop or discourage people from doing the wrong thing. It does not always stop them, because when they do something wrong, they do not know the law exists. The fact is there are laws there. We are putting in place penalties for the misuse of certificates and the like in broad terms

As much as I understand the passion and the purpose of the member for Launceston's amendment and her care for people - I think she does care for people and she wants to see that people do not go down a path they will regret later, as in the example she provided - at the end of the day, it is the person's decision. If there are consequences, those consequences will have to be borne by that person. It as simple as that - it is life.

Ms RATTRAY - In response to the member for Hobart, we tell people all the time what to do. We tell them they have to have a licence to drive a car; they have to go to school until they are 18, or from 2020; they have to wear a seatbelt; they cannot smoke in cars with children. To say that we should not be telling people what to do, I think we have gone past that.

I am just making the point that it is a bit of a long bow to draw to say we should not tell people what to do. We have laws and we do tell people what to do, and many of them do not like it. They do not like it and they sometimes do the wrong thing.

Mr DEAN - Mr Deputy Chair, I agree with some of your comments. It is difficult for me to demonstrate self-control when some of the statements are being made in this place. I struggle with it at times.

For the member for Hobart to compare the decision to change gender to that of buying a house on some island or anywhere in the world, or buying a car - a Holden or a Ford - is just beyond -

Mr VALENTINE - Point of order, Mr Deputy Chair. I was not comparing it; I was simply using an example of decisions that humans make. I was not saying they were the same level of importance.

Mr DEPUTY CHAIR - It is a point of explanation.

Mr DEAN - Why raise it in this situation? We are talking about the change of gender and the need to get some advice from doctors and psychiatrists. The member was right when he made the statement that they were stupid examples because that is what they were.

The decision to change gender is nowhere near that of buying a car, a house or anything else. The decision to change gender is a huge decision, it has to be. I think people are not looking at the decisions that would have to be made here and what is going through the mind of the person and what is confronting them.

To be born of male sex - and I will use 'male', it is the same as 'female' the other way - to have a penis and everything else that goes with it and then make the decision to change to the other gender and live the life of a female, to then associate with females in exactly the same way as any other female would associate with the same sex - that is, playing sport in female teams, entering female change rooms, doing all those things - is an enormous decision, a massive decision.

The member for McIntyre made a strong point about the comment that we should not be telling people what to do. I was listing a heap of things as well; we have covered that quite well. We tell people to do so much and we have so many laws. I would say that not one member here could go through a day without committing some offence, without transgressing some law. That is how restrictive our laws are.

Ms Rattray - I have not been in the car at all this week.

Mr DEAN - It does not mean to say you might not have done something else. What makes us a community, society and the people we are is telling us what we can and cannot do. If it was open slather, I am not sure what would happen. We only have to look at some of the other countries where their laws are fairly relaxed, to see what happens in those circumstances. Then you can look at other countries like Singapore and others, where their laws are far stricter than ours and look at the lives in those areas -

Ms Rattray - We tell people they have to wear a helmet when they go on a pushbike.

Mr DEAN - That is right. We have some minor laws people have to comply with if they are going to ride a bike. They have to wear a helmet. The seatbelt was a good example. If people do not do those things, they are in trouble if caught. I have difficulty with some of the positions put forward here. I ask you overlook the fact this amendment is being moved by someone other than the member for Murchison. I ask that you do not take that into account but look at the reasons behind the amendment put forward. Look at that. Do not look at anything other than that. It is a perfectly good amendment and I urge you to support it.

Ms LOVELL - I have a couple of final points to make on this. I am mindful there is still a huge amount of work to get through today. Not only that, but I am mindful this debate is not easy for people to listen to. The member for McIntyre made some points about laws. We have all kinds of laws. We tell people what to do all the time. She referenced smoking in cars and wearing seatbelts while other members referenced things like speed limits and drink-driving and other laws we have. The point is when we legislate around these types of laws, it is about keeping the community safe. To imply this is the same situation is to suggest this is about keeping the community safe. We spoke about this yesterday. There is nothing to fear.

Ms RATTRAY - Point of explanation, Mr Deputy Chair. I said we tell people what to do. I did not mention anything about why we tell them what to do, but we tell people what to do. That is what I said.

Ms LOVELL - I accept the member for McIntyre's point of explanation. My point is that linking laws telling people what to do to keep them or members of the community safe with people being able to register gender identity is suggesting there is something we are trying to keep people safe from. Whether we are trying to keep them safe from the decision they are making or we are trying to keep other people in the community safe, I find that offensive. There is nothing to fear here.

Mr Dean - What is wrong with keeping other people safe?

Ms LOVELL - What are we keeping them safe from? What are you suggesting? There are laws already in place that protect people from fraud. With respect to the Leader, it is not up to us to keep people safe from making a wrong decision. To suggest we know better is offensive. I reiterate: people need to remember being transgender is not a decision people make. People do not decide to be transgender. They might want to decide to register a gender identity but they are not deciding to be transgender. It is not up to us or anyone else to suggest they can control it and they can somehow make a choice and, by extension, there is a right and a wrong choice. I am going to stop there because we need to move on from this because we have considerable work to get through today. As I said, I will not support this amendment.

Ms ARMITAGE - I am not going to say anything else about the amendment because I am hoping people will support it. I want to read in an email from Martine Delaney and make a little explanation. It says -

Honourable Members,

I'm concerned that at least two members have quoted me, out of context, in the current debate.

Both the Member for Launceston and the Member for McIntyre have alluded to an email from me, quoting my statement that most trans and gender-diverse people would have a good relationship with a medical practitioner.

My statement was made in relation to a submission that seemed to suggest these reforms would create dangerous problems for pathologists. My statement had no connection to any discussion of the notion that an application to legally change gender should require medical approval.

Both members appear to be implying my statement supports the principle of medical approval of the personal issue of gender identity.

I have never supported such a process, nor have I ever lobbied Members in support of such a position.

I would ask that this be clarified in the records, and that Members refrain from using my correspondence out of context.

Yours,

Martine Delaney.

Just an explanation: at no time did I say that Martine Delaney was in support. My comment was that in briefings at times we have had people say some people did not have a relationship with a medical practitioner and it would be difficult to have to have two medical practitioners. By quoting the comment from Ms Delaney, what I was doing was simply saying that the statement had been made that many transgender people did have a relationship with their medical practitioner. At no time did I say she supported my amendment.

Mr DEAN - I keep hearing this statement being made that we need to hurry and push this through and so on. It is starting to annoy me. The member for Rumney made the comment and I did not write it down word for word about stopping people from making a wrong decision or words to that effect. I would need to read the *Hansard* to get the correct wording that was used there.

Of course we should help prevent people making wrong decisions. Of course we should if we can. If the evidence is there and everything else is there to show that if the course of action being taken by somebody is a wrong decision, why would you not want to help them? I would not stand by if I thought somebody was making the wrong decision and let them make that wrong decision without intervening. I have done it many times and I have had it done to me when decisions I wanted to make were wrong and the changes I wanted to make were wrong. I accept that. It is great. If we look at that story of the young lad who featured in *Women's Weekly* some 18 months ago - and I had a copy of it, I am not quite sure where it is at the present time - where at a very young age and with parental support at the time - and I am not saying this is absolutely spot-on but it was around the position I am putting forward - where he changed his gender to that of a female. At that stage that is how he was feeling apparently. If you read his parents' comments, it is what his parents were saying as well. They assisted him and supported him in that.

He lived that life for a very short time and then he decided it was the wrong decision. His parents accepted that it was a wrong decision and he transformed back to his biological sex to that of living the life of a boy, of a male. He commented about what happens there and all the rest of that. I am just saying that in my view we ought to put things in place that will assist people in making a decision of this importance. To live the life of a male and then a week or so later live that of a female is an enormous decision, and I accept that it is an issue that many people struggle with. I accept that. If I can help the process, I am happy to do so and I think this is only helping the process.

Mr VALENTINE - I am sorry to prolong this, but I think we need to understand these people are not making decisions - the only thing they are doing is applying to have a change on their birth certificate for their gender but they are who they are. For the most part, and it is not going to be everyone, they know who they are. You know who you are and you are a male. I know I am a male. They know they are transgender. They do not make a conscious decision. It is who they are and I think that is what is being missed and for parliament to be involved in that is a bit strange.

I know I used ridiculous examples, but what I was saying is that these are the things we decide in life. These people are who they are and they need to be allowed to live who they are, and that is not what is being allowed at the moment. All that is happening here today is giving the agency to them to be able to have a document that deals with their situation in the best way they want it to be because there are options. There are options for people to put their sex or gender or whatever on their birth certificate and there are options for them not to and those sorts of things. It should not be things we have to be overly concerned with.

Mr DEPUTY CHAIR - The question is that the proposed amendment to the main amendment to new subsection 28A be agreed to.

The Committee divided -

AYES 4

Ms Armitage
Mr Armstrong
Mr Dean (Teller)
Ms Rattray

NOES 10

Mr Farrell
Mr Finch (Teller)
Ms Forrest
Mr Gaffney
Mrs Hiscutt
Ms Howlett
Ms Lovell
Ms Siejka
Mr Valentine
Mr Willie

Amendment to Amendment negatived.

Proposed new section 28A -

Registration of gender

Mr DEAN - Mr Deputy Chair, I move -

That the amendments moved by Ms Forrest be further amended by -

Proposed new part 4A, proposed new section 28A, after subsection (6).

Insert the following:

- (7) An application must not be made under this section in relation to a person within 12 months after a gender has been registered in relation to the person.

It is a simple and necessary amendment. There ought to be some time limit period between when a person is entitled to make an application to sign a statutory declaration or whatever, to change their gender.

If not, we could have somebody changing gender as quickly as it takes the registrar to register their new gender. Comments have been made by the registrar, it takes three weeks to go through all of the processes, from the time the documentation is received.

It could happen every other month and is not acceptable, and all this does is to say you could not go through this process within a 12-month period. It has to be over 12 months before you can go through the process.

In the paper provided by the Tasmanian Anti-Discrimination Commissioner in February 2016, one of the points on that document was -

... permitting an application for a change of sex be the same as for a change of name, with a limit of one every 12 months ...

That was a point put forward. The issue is we only received 23 submissions as a result of that process. We have no idea what was in those submissions, because none have ever been published despite the fact I have seen or know of two submissions forwarded and know of some of the comments made in those submissions. Why did that happen?

What points were made in relation to this point, as there would not much opposition to it in the circumstances? I would be surprised if there were. We have never seen a final report on this either. Why has there not been a final report put in on it? These are important issues. I have no problem with these points being made in the report and wanting and seeking feedback on these points - well made. I do not have the information that came back. Members, I ask that you support this amendment. It is a fairly simple amendment. There is no great deal about it. I could see no reason members would not want to support it. By the time they go through the process of this and determine where they are going and whatever, there is time involved in that in any event. I do not see that 12 months will be a great imposition on anybody to go through this process. The process to change gender is a big decision, not a light decision at all. To make that decision and then to be able to swap around in less than a period of 12 months is unusual in the circumstances.

Ms FORREST - I will be brief. I support the amendment. It is in line with the options paper and the report from the Anti-Discrimination Commissioner back in 2016, as all the other sections of my amendments are too, which is great. I am pleased to see the member has picked that up. I support the amendment.

Ms LOVELL - I, too, support this amendment. I agree with the member for Murchison. It is in line with this recommendation from the options paper. I use this though to make a point about the member for Windermere's constant comments about looking at who is moving amendments and the implication that the member moving the amendments is in some way the crux of how we are making these decisions.

Mr Dean - Point of explanation. I did not mention that at all in relation to this amendment. I am not sure what the member is inferring.

Mr DEPUTY CHAIR - I will let the member finish and then, if you need to, you can make a point of explanation.

Ms LOVELL - I will be a little clearer. I make the point for the member for Windermere that I appreciate the work he has put in on this amendment, that my interest is in strengthening the bill and creating good legislation. Any suggestion that there is any other way that decisions are being made may be the way the member for Windermere works, but it is not the way I work, and I resent that suggestion.

Mr VALENTINE - I support it, too; do not fall off your chair.

Amendment to amendment agreed to.

New subsection 28A, as amended, further considered -

Mr DEAN - Mr Deputy Chair, I do not think I have commented on section 28A as it now is. I want to make sure I am not repeating myself. No doubt if I do, you will pick me up on it.

Mrs Hiscutt - Point of clarification. We are talking about your first amendment, is that correct?

Ms FORREST - No, my amendment as amended by the member for Windermere.

Mr DEPUTY CHAIR - The new clause as amended and you have three speaks.

Mr DEAN - In proposed new section 28A, Registration of gender identity, 28A(1), is gender to be recorded on the register together with the sex marker registered at birth, or will it replace the sex marker registered at birth? In 28A(2)(c), what is a medical certificate and what is a medical document? We have previously had some discussion about this and what constitutes one of these documents. What guidance is offered for the registrar in determining what documents can be reasonably required to support an application to register a gender for a person? Also, it is not clear to me whether the sexual characteristics or gender of the person refers to any other document or information the registrar reasonably requires or a medical certificate or other medical document.

I assume the member intends it to refer to a medical certificate or other medical document, in which case the subsection needs to be redrafted to make it unambiguous. There is currently ambiguity.

Proposed section 28A(5)(b)(i) deals with who determines if a person who has not attained the age of 16 years is competent to make a gender declaration and how is such a determination to be made.

Proposed section 28A(5)(b)(ii) seems to indicate the parents or parent or guardian of a person who has not attained the age of 16 years are to make the necessary determination as to the person's competence to make a gender declaration.

If the person is considered not competent to make such a declaration, but able to express a will and preference the applicant parents or parent or guardian should provide a statement or statements they believe on reasonable grounds, the registration of a gender for the person is consistent with their will and preference.

Is there any objective assessment of the competence or otherwise of a person under 16 years to make a gender declaration? Is the best interest of the person under 16 years considered? Some of these issues came out in debate yesterday. Think about some of those statements and comments made.

I have similar reservations to proposed section 28A(5)(c), as I have pointed out; similarly with proposed section 28A(6) - I have concerns about how this section is to be interpreted.

The remainder of section 28A refers to persons who either have or have not attained the age of 16 years. Section 28A(6) provides that persons who have not attained the age of 18 years, a person who is not an adult according to definitions in the principal act, may lodge an application to register a gender that is accompanied by evidence of counselling.

Such counselling would apparently cover whether the person should make the application and the implications of the registration of a particular gender in relation to the person.

Further, the evidence should indicate the applicant, whether a person between 16 years and 18 years is making the application on their own behalf, or persons making an application for someone under 16 years, chose the counsellor and considered them to be reasonably qualified to provide the counselling received.

Were they qualified? There are many counsellors. The important thing is here is the qualifications of those persons and the capacity and ability for them to do exactly that.

What is the point of this section? Section 28A already provides applications for registration of a gender only require for a person who has attained the age of 16 years a gender declaration and whatever non-medical documents the registrar may require.

For a person who has not attained the age of 16 years, a gender declaration if the person is competent to make one, or a statement by each applicant they reasonably believe the gender registration is to be consistent with the will and preference of the person and whatever non-medical documents a registrar may require.

I appreciate the number of issues and questions arising in this and I know it is always difficult to pick up on them all and to provide the answers but just a couple of other issues I need to raise.

What need is there for a section allowing for optional counselling for a person under 18 years provided by a counsellor who the applicant person or parents or guardian on their behalf thinks is reasonably qualified? Why the change from 16 years to 18 years as the benchmark for this section? Should there not be some evidence of the counsellor's qualifications beyond the applicant's opinion?

Would advice about the applicant, application and its practical implications not be more useful coming from the registrar? Do counsellors not deal with personal issues, not pragmatic issues, relating to identification records?

The member has removed a reference to the best interests of the person from section 28A(5). That appeared in version 7, dated 19 February 2019, and was replaced with 'consistent with the will and preference of the person'. Perhaps some explanation can be provided as to why that occurred.

Ms FORREST - Proposed section 28A, with regard to the questions about a medical document: you need to read that subclause in context. It says this is to be 'accompanied by any other document or information that the Registrar reasonably requires'. The registrar has the power to ask for other information if the registrar believes it is necessary to support that application.

It says it cannot be a medical certificate or a medical document in relation to the sex, sexual characteristics or gender of the person. They cannot be asking for a medical document that shows they have had treatment or sexual reassignment surgery because this is not a medical condition. We have had that debate, so I do not wish to go over that again. That is what it is and it is quite clear when you read it in context.

There was a question about subclause (5), 'The application ... is to be accompanied by ... if the person is able to make a statutory declaration - a gender declaration', and who makes that determination. That is up to the person. It is a criminal offence to sign a false statutory declaration, which can result in a fine or imprisonment. A person is not going to sign a statutory declaration when they are informed of the seriousness of that. It is a commissioner of declarations' responsibility to make the person aware of their responsibility when signing it. That is self-monitored. People sign statutory declarations for many reasons. I have signed statutory declarations in the past and I am sure many other members have. When you sign it, you understand the seriousness of the act you are undertaking.

Subparagraph (5)(b)(ii) -

if the person is not able to make a statutory declaration but is able to express the person's will and preference ...

We need to cover some people who have disabilities that may prevent them from being able to write down their statutory declaration or to verbalise in a way that would be possible to be transcribed and for them to sign. They may suffer other forms of disability that may prevent them from being able to complete a statutory declaration but they can express their will and preference in a variety of ways.

We need to be sure that we are not discriminating unfairly against a group in the community who have particular challenges as it is. That is why that is there.

In terms of the use of 'will and preference' as opposed to 'best interests', there is a move away from that term when you are dealing with people making decisions about themselves and about their own lives. This is happening all around the world.

The UN Convention on the Rights of the Child says that organisations concerned with children should work towards what is the best interests of the child, but it says that children have the right to say what they think should happen when adults making decisions for them affect them, to have their opinions taken into account. That means being able to express their will and preference.

This is the language being used. It is being used in Family Court proceedings when asking children what they want. We are doing that with very young children, particularly in custody matters where children are being asked. This is contemporising the language that is being used now internationally. There is still reference to 'best interests' because that is important when adults are making decisions, but when children want to express what their will and preference is, that is what we should be listening to. You do not necessarily have to do it in writing or verbally, there may be other ways you can express it. That is covering this.

The question about subclause (6) with regard to why did we put it up to 18. I make the point that the member for Launceston's amendment that was voted down actually expanded the requirement for counselling to everyone, not only people under the age of 18. I am glad it was not supported, because we allow adults to make decisions about everything, including whatever they do with their lives, as the poor examples provided by the member for Hobart showed.

This inclusion here is a proactive inclusion and the reason it was 18 and not 16 was after I consulted extensively with the children's commissioner, who obviously has the responsibility of ensuring any law we make regarding children reflects the view of the commissioner of children as much as possible. She suggested we provide a process where evidence of counselling is by persons under the age of 18, rather than just under the age of 16. It was contentious. Members of the trans community would prefer not to have counselling, because it is almost medicalising the condition. I agree to some extent, but have taken this step because it is important to have. I hesitate to use the word 'protection', but we have some provision that enables counselling to happen.

Mr Valentine - An affirmation?

Ms FORREST - Yes, evidence of counselling. In the applications made, it provides an opportunity for the person to proactively provide evidence of counselling, because it may expedite the application. This is only the application. The registrar, when we get to it, has responsibilities in terms of registering it. Again, this is when the registrar can ask for further evidence. If the registrar does not believe the counselling provided - it was done by the next-door neighbour who has absolutely no skills or qualifications, for example - the registrar may say we need to agree on another person to provide counselling, you need to come back with evidence of counselling from another person, let us talk about who that could be.

Mr DEAN - I thank the member for getting back with answers to these matters. It is not easy to take it all in, because of all the information we are receiving. I will have a close look at *Hansard* and it may well be my contribution on the third reading may well be longer than usual.

Proposed new section 28A, as amended, agreed to.

Proposed new section 28B -

Approval by magistrate of registration of gender

Ms FORREST - This new clause is a similar process to what was in the bill as presented to the Chamber. A process to enable an application by a parent or guardian of a person who is under the age of 16 to apply to a magistrate to approve the register of a gender, as specified in the application.

The magistrate has the power to approve or reject the registration of a gender. Approval may only be granted if the magistrate is satisfied the registration of a gender is consistent with the will and preference of the child. I know the member for Windermere will probably ask why 'best interests' has been removed and I will explain that now so as to prevent him having to ask that question.

The person who is unable to understand the meaning or implications of the registration of gender - and that was answered in relation to the previous clause where we talked about people who have disabilities that may prevent them from being able to do that themselves - their parents are making application on their behalf.

Mr Deputy Chair, the reason 'best interests' was removed is that - and I did discuss this with former magistrate Don Jones - magistrates are not elevated to that position as a magistrate without a great deal of experience, knowledge and expertise in matters of law and in decision-making and discerning decisions. Where cases of children are before a court, whether that be the Family Court or other courts, where children have the capacity to express their will and preference, that is what should be taken into consideration. Magistrates do that now so it is contemporising the language around that.

The magistrate will not approve a request to change the gender or register a gender of a person or a child - talking about a person under 16 here - if the magistrate is not satisfied it is the will or the preference of the child. If the child is unable to express their will and preference to the satisfaction of the magistrate, the magistrate will just say, 'No, I do not approve this'. If a magistrate cannot be satisfied of that then clearly it is not in the best interests of the child to proceed - clearly - otherwise the magistrate would not do it.

Proposed new section 28B(3) says 'if the magistrate ... is satisfied that the person is unable to understand the meaning and implications of the registration of the gender in relation to the person'. The magistrate would have to be satisfied that it still is appropriate to do this if a person is unable to understand the meaning and implications. A magistrate I am sure - and talking to other magistrates and other legal experts in the field on this - would need to be satisfied to do it.

Magistrates do not make their decisions lightly. They do not do it without evidence. They do not do it without full and proper consideration. To suggest otherwise is an insult to magistrates. So that is the reason for the wording of this subclause and I ask members to support this.

Mrs HISCUTT - The Government is concerned about the use of the phrase 'will and preference' rather than 'best interests' in relation to children. 'Best interests' is a well-established

and well understood test. The Commissioner for Children and Young People in her letter of 19 March, which we all have, suggests that a 'best interests' consideration should apply where an application is made to a magistrate to approve registration of a gender. I ask members to consider carefully the absence of a 'best interests test' as proposed in section 28B.

Mr DEAN - I am not quite sure where I am. We have some other amendments coming in and nowhere to put anything. Proposed 28B - approval by a magistrate of registration of gender - is what it is all about. I appreciate the comments made by the member for Murchison.

This section covers applications to a magistrate to approve the registration of a gender in relation to a person who has not attained the age of 16 years. Such applications presumably would be made in the case of a dispute between the parents or guardians of such a person about the making of an application to register gender or the gender to be registered.

That will be interesting where we have disputing positions in relation to the mother or the father, or the parents/guardian as to how that would be handled. A magistrate appears to have the discretion to either approve or not approve the application, and they do. Don Jones, who has been mentioned, has raised some of these issues and I referred to that yesterday as well as in my second reading speech.

Under section 28B(3) the magistrate may only approve the registration of a gender in relation to a person under 16 years under two conditions: if they are satisfied the registration of a gender in relation to the person is consistent with the will and preference of the person or if they are satisfied the person is unable to understand the meaning and implications of the registration of the gender.

I refer to version 7 where the member required magistrates to consider the best interests of the person in proposed section 28B(3)(b), registration of gender for a person unable to understand the meaning and implications, but this requirement has now been removed. There are several questions arising from this section. How is a magistrate to determine the will and preferences of the person? Don Jones says there are issues and problem areas here as well, hence the reason why these people should have been involved in this whole process. How are they to determine whether the person is able to understand the meaning and implications of the gender registration? An infant will obviously not have this understanding, but at what age will understanding be assumed? Will there be an objective assessment of the person's understanding? I have a five-year-old grandson who can tell me what happens. How calves are born and what happens to bring them into this world. He is far forward with his thinking. He is on a farm.

The next one is, should not the best interest test and an appropriate level of objective assessment be necessary before a gender can be registered for a minor, a child?

These are some of the issues I raise.

Ms FORREST - I answered the first two questions in my comments. I will briefly touch on them again. The member also asked about who makes the objective assessment. It is the magistrate. It is why we pay them the big bucks. That is why they are as skilled and as qualified and experienced as they are. To suggest that they do not make objective assessments would be insulting.

In terms of the best interest, as I said in my speech, and I know the Leader raised this as well, if the magistrate is not satisfied with a registration of gender in view of all the circumstances, they can ask for whatever information they want to inform them. They can talk to both parents if they need to if there is a dispute. They can get the information they need to make a decision.

If they cannot be satisfied that what is being asked for here is the will and preference of the child then it is not going to be in the child's best interest to do it. It will not pass the best interest test because it has not passed the first test.

The Committee divided -

AYES 8

Mr Farrell
Mr Finch
Ms Forrest
Mr Gaffney
Ms Lovell (Teller)
Ms Siejka
Mr Valentine
Mr Willie

NOES 6

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt
Ms Howlett (Teller)
Ms Rattray

Proposed new section 28B agreed to.

Proposed new section 28C -

Registration of gender

Ms FORREST - Clause 28C empowers the registrar to consider and determine an application received under 28A(1), (3) or (4).

The registrar must register the gender and make changes to the register to record the gender as the currently registered gender and indicate the previously registered sex or gender is no longer the registered gender, or the registrar must refuse to register the gender. This does not remove the previously registered sex or gender from the register. It is just clarifying that there is a newly registered sex or gender and that it replaces it. It does not remove the previously registered sex or gender.

Clause 28C(2) provides that the registrar must be satisfied that the registration of the gender is consistent with the will and preference of the person, or that the person is unable to understand the meaning or implication of the registration of the gender.

We have just covered that discussion with regard to the magistrate and now it behoves the registrar to apply the same test. If the will and preference of the person cannot be expressed or the registrar is not satisfied that it is consistent then it will not meet any best interests tests and she - the current registrar being a woman - would not approve it.

Clause 28C(3) enables the registrar to request further documents or information from the applicant in relation to the sexual characteristics or gender of the person other than a medical certificate or medical document. We have debated that already and my comments stand with regard to that.

Clauses 28C(4) and (5) provide an option for the registrar to require a person under 18 years to provide evidence of counselling provided under section 28A(6) and may require evidence of counselling provided by a person agreed to by the applicant who the registrar considers has suitable qualifications, training or experience. I did speak further to that when we were talking about

counselling under 28A. Where a person has not proactively provided that information or evidence of counselling, or the registrar felt that the person perhaps was not suitable, the registrar can request evidence of counselling from a person under 18, or an applicant on behalf of a person under 18, to agree to a person the registrar believes is suitable to have counselling and provide evidence of it to the registrar. If the person provides it proactively under proposed section 28A and the registrar deems that to be sufficient, no further request will be made. Again, it is entirely within the registrar's purview to decide how she manages that.

Clause 28C(6) requires a registrar, if the application is refused, to record reasons and provide those reasons to the applicant, and a right of appeal of this decision is available under the principal act in section 53 and that stands.

Clause 28C(7) clarifies a gender registered under this section causes the previous sex or gender to cease to be the registered sex or registered gender such that each person only has one registered agenda, that being the most recently registered gender.

We debated a lot of this yesterday and I answered a lot of questions yesterday about the sex or gender previously registered not ceasing. It replaces that as the newly registered gender but does not remove it. It replaces it, because the previously registered gender, as with a name - and we debated this at length yesterday - remains on the register as the previously registered, in this case, gender or sex, depending on when it was registered.

It maintains the integrity of the register. It means someone who needs to have evidence of a formerly registered sex or gender can have that extracted from the register and provide on a birth certificate which we will get to in clause 23 and it clarifies a person only has one registered gender, at any one time.

I hope that has answered some of the member for Windermere's questions, and he was listening.

Mr DEAN - The member for Murchison has mental telepathy. While clause 28C(1) is about this, there are two issues to point out. Clause 28C(2) - we know what the issues are there - the two points covered in that area. Some of the issues I have include: How will the will and preference of the person be determined in this situation? What must the registrar do to satisfy themselves of this condition? How is a registrar to determine a person is unable to understand the meaning and implications of the registration of the gender?

Some of the answers may have been given to some of these issues, but I want my questions and positions in *Hansard*.

Clause 28C(3) - the registrar may require further documents to support an application, but nothing medical. There are issues with interpretation of this subsection. If you look at proposed sections 28A(2)(c), 28A(5)(c), the issues are that sex and sexual characteristics are not defined. Is sexual characteristics the same as sex characteristics as defined in clause 13 of the bill?

What type of documents are contemplated by this section? What documents are to be considered medical? Where is the guidance for the registrar? I thought we were going to clarify a lot of this with our amendments. It does not seem to be an issue for other members - it certainly is for me - when I repeat sex and sexual characteristics are not defined. Is sexual characteristics the same as sex characteristics? There are these different terms used.

Clause 28C(4) - the registrar may require before determining an application, for either a person over 16 years and under 18 years or a person under 16 years, appropriate evidence of counselling by a person agreed to by the registrar and the person and who the registrar considers is a person with suitable qualifications, training or experience.

How does this section work with section 28A(6)? It raises a number of questions. Proposed section 28A(6) provides that for persons under the age of 18, an application to register a gender may be accompanied by evidence of counselling as described, provided by a person the applicant considers to have suitable training, experience or qualifications.

While we are moving through amendments and changes like these, it is important they be closely examined and studied. With amendments that come through from a government of any colour, they have been closely scrutinised by the departments and have taken all advice necessary to ensure what they are putting forward is foolproof. It is not always the case, as we find an error here and there.

This is where I have issues now. Proposed section 28C(4) provides that the registrar may require evidence of such counselling, if an application is not accompanied by evidence of counselling under section 28A(6) and the provider must be a person the registrar considers to have suitable training, experience or qualifications.

Is evidence of counselling required or not and who decides whether the party providing counselling is suitably qualified, the applicant or the registrar or both? Whose decision is that?

Proposed section 28C(5) describes the type of counselling to be provided. How is it determined whether the counselling is of a type required? Do counsellors need to have any formal qualifications? If the counsellor is a qualified psychologist or psychiatrist, is any documentary evidence they provide prohibited because it is of a medical nature?

What type of counsellor is qualified to provide advice about the implications of the registration of a gender of a person. Would the registrar not be best qualified to provide such advice?

Proposed section 28C(6) provides for a review of any refusal by the registrar to register a gender in relation to a person. What guidance is offered to the registrar or a magistrate if the registrar's refusal to register a gender is referred to the Administrative Appeals Division of the Magistrates Court under section 53 of the principal act to review a decision? Can they call for further evidence to support the application? What type of additional evidence would be acceptable?

Proposed section 28C(7) says that previously registered sex or gender ceases to be the registered sex or gender, if an application to register a gender is accepted by the registrar.

How does a previously registered sex and/or a previously registered gender cease to be the registered gender in relation to a person? Are they removed from the register? How does this work with the provisions in the new subsections 16(3), 16(4), 16(5) and 16(6) as noted above?

There are a number of issues and I am not sure if the member is able to answer any of them. My capacity and ability to record everything is not going to be that easy, but I raise those issues.

Ms FORREST - I have answered the majority of those questions already and I am not going to repeat myself. It is all on the record.

A couple of additional questions. The registrar is an independent statutory officer, who is appointed to that role to make determinations under the act. She is required to operate within that act. She would refuse an application if it did not meet the provisions of the act, such as the application was not provided on an approved form, it was not supported with a gender declaration or other requirements as necessary. As discussed, the registrar has the power to call for other documents, if needed - that is at her discretion - other than a medical document, which I have already discussed and will not repeat. She can seek further information.

The registrar is the one who decides in this case, a person who would have the suitable qualifications, training and experience. The registrar is an independent statutory officer with the capacity to make these decisions, knowing the operation of her act under which she operates. In doing that she would, in discussion with the person or the applicant, make a suggestion of a person that she deems to have the appropriate skills, qualifications, training or experience to undertake such counselling and the person would need to agree. If the person continued to refuse to accept the person who was suggested by the registrar, the registrar might think that perhaps there is a problem with it and may refuse to register it, which would be possible because if you pass this, it will be within the act she operates under. We need to give some credence to the capacity of the registrar to undertake her role in accordance with the act.

With regard to the question regarding subsection (7) that was all answered in my opening comments.

Mr DEAN - The comments made by the member for Murchison raise issues that I have been on about the whole time through this bill where she says that perhaps there are other questions raised by the comments and statements I made. Well, in fact there are. If you look at what I said and the questions previously provided, to the best of my knowledge a number of further questions came up here that need an answer.

Ms Forrest - I have answered them.

Mr DEAN - Just to brush over these when we are talking about legislation and important law to me is a demonstration of arrogance that everything here is right, and we know that it has been continually changed ever since we commenced this process in November last year.

All I can say is that again I will hopefully fairly closely scrutinise this as we move forward. The other position - and I am not quite sure what process I take here - is that I have an amendment to 28C. I think I had amendments to some of the others as well. I think it was to the whole part.

Mr DEPUTY CHAIR - The advice from the Clerk is that we can continue with the member for Murchison's amendments as we progress and then at the end of that there will be the opportunity for the member for Windermere to comment on the whole of amendment 21 and invite feedback.

The Committee divided -

AYES 8

Mr Farrell
Mr Finch
Ms Forrest
Mr Gaffney

NOES 6

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt

Ms Lovell
Ms Siejka
Mr Valentine
Mr Willie (Teller)

Ms Howlett (Teller)
Ms Rattray

Proposed new section 28C agreed to.

Proposed new section 28D -
References to sex and gender

Ms FORREST - Mr Deputy Chair, in relation to this clause, I reiterate that even though this was one of the more recently inserted clauses, I again offered every member the opportunity to sit down with me and go through these amendments and ask some of these questions that may have assisted in this process. Yes, it does not mean you do not put them on the record in here, but that opportunity has not been taken up, unfortunately, because it could have made the debate much easier to follow.

Proposed section 28D(1) provides that if a person has a registered gender, all other state laws will apply to the person as the person of the registered gender. This provision is replicated from the principal act.

It is important to remember if you have changed your gender, you still have to abide by the laws whatever those laws are.

Proposed section 28D(2) provides that all references to a person's sex in any state law are referenced to the person's registered sex or registered gender under the principal act. I am clarifying that point.

Proposed section 28D(3) ensures that a pregnant person does not lose the protection of the law because the person has registered a gender.

These provisions, these next few, are absolutely belts and braces. I have been informed by several legal experts, who I will not name in this place because that is inappropriate because they have asked me not to, but they have said we do not actually need this. This is the work the TLRI will do after this bill is passed if additional changes need to be made. I believe it was important to put some measures in here to ensure some measure of protection in the interim. Even though there is a new commencement clause, it means it will not commence for at least 90 days or more than that by the time it goes through the process.

These are belts and braces, if you want to call it that, to be sure that these people are protected and all people are protected under the law where they are doing the right thing.

We are not doing gender 'strange things' here. Clearly, even under our current law - and this is a problem that was pointed out by the Solicitor-General when we had the briefing with him last week - you can have a transgender man who has female reproductive capacity.

A transgender man could be raped by a man and could find themselves pregnant. I am not aware of any cases where this has happened, but notionally it could. We need to be sure that those people are protected. I am informed that these sorts of matters would be looked at by the TLRI once they have the clear policy intent settled through the passage of this bill, one way or another.

The other matter was, when I instructed OPC with regard to this matter, I did a search of all legislation. You can search for particular terms. I searched for 'male', 'female', 'man', 'woman', 'men', 'women' - all the gender-specific terms - and searched all the statutes to see where the words appeared. I passed this on to OPC and asked them to clarify my search because they are the experts in the field, not me, and this is the recommendation that came back from OPC for dealing with this matter in this way.

It does not mean that everything has been covered, but it is not absolutely necessary - I was informed of this as well - because this will be work the TLRI would do because that is what it has been asked to do once we have dealt with the bill.

Proposed section 28D(4) - and all those comments relate to all of these provisions - ensures that a person who registers a gender may seek to have any search of the person conducted by a person who is of the sex of the person's choice, and that if a police officer asks a person which sex the person would prefer to be searched by, the search will be lawful if it is conducted by a person of the sex chosen by the person to be searched.

I will come back to that with the correspondence from the Commissioner of Police in just a moment.

Proposed section 28D(5) confirms that a change of gender will not affect any relationship of that person arising by consanguinity - which is descent from a common ancestor - or by operation of the law. This provision is replicated from the principal act.

Proposed section 28D(6) confirms the person's entitlements under a will or trust or other operation of law will not be adversely affected simply because a person has registered a gender under the principal act, except where it is expressly specified under a will, trust or law that confers an entitlement.

That means that if an entitlement in a will or trust was left to the firstborn male in the family, which used to happen a bit, and that that firstborn male changes gender, they do not lose that entitlement unless the will is also changed to say that person no longer is entitled to whatever they were being promised in the will, trust or whatever it is.

Proposed section 28D(7) confirms that the registering of a gender does not create new rights or entitlements under a will, trust or by operation of another law. That means you do not become the firstborn son by being the second-born son when the firstborn son changes gender.

Going to the matter of my communications with the police commissioner, the reason it has not been released to other members - and I apologise - is that it is a communication with me. Any member could have written to the commissioner and asked the same questions and would, no doubt, have got a response. The letter from the commissioner I have not been able to speak to. I did make an attempt, but I believe the Government was also sent a copy of this correspondence. It is up to them what they do with that.

In speaking to the commissioner previously, he said I could refer to his broad comments. I understand from the letter that the police are broadly supportive of this legislation. They deal with this matter in practice now. They had a situation very recently where they had to conduct a search on a transgender young person. In those cases, when the person is cooperative, they will certainly

ask them what they want and they will abide by their wish, whether they are a transgender person, a non-binary person or whatever.

Sometimes, as we all know, it is not always easy to tell in the dark when you are meeting someone, or at any time. It is about treating people with dignity and respect - that is what we expect of our police and that is what we should expect of each other.

The provision that I am adding here provides the police, where the law says a person has to be searched by one particular gender or sex, depending on how the words are framed in the legislation they are being searched under, it is important that if the person asks for someone of the opposite sex to search them, it will not be considered unlawful.

That puts the police in a difficult position where a person is saying they want to be searched by a person of this sex or gender, but the law says notionally they have to be searched by someone of another sex. This means that if a search is conducted, particularly where a person has asked for a particular person to search them, that will be a lawful search. The police have said the police officer should have the ability to operate on a person's apparent gender, unless it is otherwise disclosed or raised as an issue.

If a person raises it, the police will deal with it. They do it now and they have been doing it for some time. It does not change, but this ensures that those searches are lawful and cannot be challenged on that basis.

The other matters are that after discussions with OPC about looking at gender-specific language throughout our statutes, acknowledging that this is not intended to cover every possibility, although I am confident it does. If you do a search yourself, most of the references to 'male' or 'man' are to do with animal health. The 'female' ones are more about reproductive health and the capacity to reproduce and having female sexual reproductive organs.

I hope that has answered members' questions. I am happy to answer them, but I do not want to go back over questions I have already responded to.

Mrs HISCUTT - While the Government acknowledges the time and effort that has gone into the development of these amendments, it is still very clear that uncertainties still exist in the bill.

As the Solicitor-General said in his briefing, there are real, unintended legal consequences. While the amendments proposed seek to fix the problems, we need to be mindful that these were examples identified through his preliminary review only.

The Government has consistently made the point that the amendments have not been properly consulted. Furthermore, the Government has obtained a copy of the letter to the member for Murchison and, in the interests of transparency, is willing to table the letter.

Letter tabled.

Mr DEAN - I have a number of issues. The amendments to proposed new sections 28D(3)(a) and (b) purport to address circumstances where a person with a registered gender other than female seeks a termination of pregnancy.

Significant changes have been made to proposed section 28D and these amendments arise from the briefings we had from the Solicitor-General and from the then-president of the Tasmanian Bar, Chris Gunson. I believe he has now relinquished that position, but he is a very learned barrister.

These amendments come from a briefing where the member for Murchison told us, we would receive nothing new. All these amendments arise from briefings where we have received nothing new from her perspective. That in itself identifies issues that will not be addressed here. This comes from a comment of the Solicitor-General about unintended consequences and the fact he did not have time to go through all the issues. I make that point at this stage.

The Reproductive Health (Access to Terminations) Act 2013 refers throughout to women and defines women as female person of any age - section 3, Interpretation. That deals with access to terminations. A substantive change to that act should not be made by way of amendment to an unrelated bill. Since the definition of woman in the act is crucial to its interpretation, any change to allow the act to apply to persons other than a woman as defined in the act must be by way of amendment to the act itself. Any change to the meaning of the term 'woman at law', whether it be the ordinary meaning or specifically defined, will require wide-ranging consultation. I make that comment in relation to searching and the other areas with changes made. If police, for instance, are conducting a search, they may not necessarily go to the Births, Deaths and Marriages Registration Act to determine how they will conduct a search. They look at their acts, and there is a consolidation of this now in some of those acts, as to where and what their powers of search are and required in the circumstances. They have to go through all these acts. It puts the police in a vulnerable position. I do not know what the Commissioner of Police has said here in relation to these changes. I have no idea what his position is and I do not accept he does not have concerns with it. I am confident he would have concerns.

The appropriate acts to be amended here would either be the substantive acts, the principal acts referred to and/or the Acts Interpretation Act. I would have thought it was an appropriate place for an amendment such as this, which identifies with all the other acts and covers the word 'usage' and how they will be interpreted. This is piecemeal. It is trying to cover areas that have been raised and keep being raised.

Proposed new section 28(D)(3)(c) - this amendment purported to address circumstances that may constitute an offence under the Human Cloning for Reproduction and Other Prohibited Practices Act 2003. This act also refers throughout to women in the context of activities, attempting to grow an embryo outside the body of a woman or other prohibited activities involving implanting an embryo or embryos in the body a woman. Proposed section 28(D)(3)(c) is exceptionally clumsy in its wording. It seems to be intended to provide that the body of a transgender man is not a gestational environment in the same category as one outside the body of a woman, but its meaning is not entirely clear. Once again, any substantive changes to this act should be by way of amendment to the act itself. The comments above in respect of a change to the definition of 'woman' in the act, a female human, also apply.

New section 28(D)(3)(d) - this amendment allows for a person with a registered gender that is not female to be the mother or female parent of a child at law. Only females can give birth to children. I want to make that statement. A former member of this place sent a message through saying 'arrant nonsense' was one of the headlines you read in papers about men given birth and so on - arrant nonsense. Only a female can give birth to a child.

The meaning of proposed subparagraphs 28D(3)(d)(i) and (ii) are not clear. On a first reading of the Surrogacy Act 2012, I cannot find any reason to refer to it in this context. The member may be able to elaborate.

Proposed new subsection 28D(3)(e) - this amendment provides that a person must be assumed to have the ability to procreate as a male or a female, regardless of their registered gender.

Proposed new section 28D(4) - this amendment is apparently intended to address any confusion that may arise when, for example, a person who is biologically male but has a registered gender of female is required to be searched by a police officer. I am unclear about the intent of this amendment. Does it mean, for example, that a biological male with a registered gender of a female can request they be searched by a female police officer and such a search must be undertaken as requested? If so undertaken it will not be invalid by reason of any other statute that requires biological females to be searched by biological females and biological males be searched by biological males. To protect both police officers and persons subjected to search, this issue cannot be addressed by way of amendment to a totally unrelated bill.

I make that comment again. It places the police in a very risky and difficult situation. A number of police officers currently working within Tasmania Police would feel very uncomfortable searching a person with an opposite sex to themselves. They would feel extremely uncomfortable and it does leave police officers open to allegations of improper behaviour and activity. I would be amazed if the Commissioner of Police did not have some concerns with the construct we have here. I would be amazed.

In this regard, I refer to a comment made by the member for Murchison last evening in this place; I quote from *Hansard* -

I was also hoping to chase up the letter the member for Windermere got from him as well just as fiercely, because I am not sure that he has entirely represented that correctly.

Meaning a letter I received from the Commissioner of Police, in relation to this very matter. I take umbrage at that comment - absolute umbrage - because it insinuated I have tried to mislead this place or incorrectly interpreted and picked out pieces from what the Commissioner of Police told me. I take umbrage at that suggestion that I was not open and frank and that I had tried to mislead this place. It is not acceptable. I will read to members what the Commissioner of Police told me - it is from my second reading contribution and is in *Hansard*. I did miss a couple of headings and one paragraph - the piece I missed was 'Dear Mr Dean', 'Justice and Related Legislation (Marriage Amendments) Bill 2018' and this paragraph -

Thank you for your correspondence seeking comment on the Justice and Related Legislation (Marriage Amendments) Bill 2018.

The rest is what I read into the second reading debate, and I will read it here again -

Whilst Tasmania Police is a strong supporter of gender equality, there has been limited time to consider the practical implications of the amendments included in the Bill, given their development in a short time frame and outside the usual policy development process. An immediate concern is how the amendments will impact on operational policing. However, full analysis has not been undertaken on this issue. Preliminary high level comments have been provided to the Department of Justice on this issue.

The amendments need significant consideration before they become law and advice on this should be sought from the Department of Justice.

Probably did not read the next part in.

Yours sincerely, D.L. Hine, Commissioner of Police.

I am annoyed it has been suggested that I have not properly interpreted a letter that I received from the Commissioner of Police. I am asking for an apology. I am not likely to get it but I am asking for it. What else is the member suggesting when she asked that question in the way that she asked it?

I will table the document. I will not table this one because I have written on it, but I will table the document at a later stage when I get the clear document without my writing on the bottom of it. I do not have a problem with that. The commissioner did not provide that to me in confidence. The commissioner has not asked that I not provide it to other members. There is no notation on there to that effect. It really does upset me. As an ex-police officer I say this: the one thing I have battled with in this place is honesty, openness, integrity, and everything else. I have battled with that. It has caused me a lot of grief and it has caused me a lot of concern.

I want to make a general comment here. The proposed new subsections make constant use of the term 'female'. If they are to make any contextual sense 'female' will need to be defined to mean 'biological female'. This entirely defeats the ideology behind all the amendments to the bill that the language of the law must be gender-neutral. Amending all Tasmanian legislation to further this aim is both impracticable and not necessarily sound from a policy perspective. To attempt to do so by way of amendment to an unrelated bill makes a mockery of the parliamentary process. I have referred to that before.

I need to be fair here - and I hope that I am fair at all times - the member mentioned something about there being some checking or searching of specific sex issues, gender issues, in other bills in other legislation and so on. We know there are a number of others out there that have not been touched and one that has been brought to my attention for instance is the Long Service Leave Act. The Long Service Leave Act provides for different entitlements for male and female, so what is a non-binary person's entitlement?

Ms Forrest - Isn't that a problem now?

Mr DEAN - I am saying that this is just one other act that has been brought to my attention. There are a number of others out there. To suggest that these other matters will be looked at after this bill is passed is really just taking it too far.

When we deal with bills here, that is why they go through the departmental processes. That is why they have the significant attention given them, and that is why stakeholders are included in the processes to identify very clearly the impact of those bills on other legislation.

You do not put the horse before the cart. Sorry, behind the cart. You do not put the horse behind the cart. You do not pass legislation and then go out and look at all the problems and issues that it is going to cause or involve. You do that in the first place. That is not to say that there might not be some other issues out there once you do pass it. I am not saying 100 per cent in every case. In most cases the departments get it pretty right and I commend them on the effort they put into it.

It will be interesting to see what happens when the protesters' legislation comes back into this place.

Mr DEPUTY CHAIR - Can we keep ourselves on this?

Mr DEAN - Having said that I have a number of concerns and issues and I ask that the member address that destructive and despicable comment made last night in relation to my position and my quotations of what the Commissioner of Police sent through to me in a written document.

Ms FORREST - Mr Deputy Chair, a number of the concerns raised by the member for Windermere are already current concerns. A full search of the statutes was done. There are references to male, female, man, woman that do not have any implication for this bill at all.

There are two ways you can do it. You can put consequential amendments into different acts and make them part of a bill, but the advice from Parliamentary Counsel on this occasion was to do it this way. This does stand alone. There may be changes to those acts in subsequent times but you cannot always assume that all these things are followed through and every change is picked up. The advice from Parliamentary Counsel to me was to do it this way.

Regarding the police matter and my comments last night, I said I want to see the full intent of the letter. We can all interpret things the way we see fit. That was the point I was making. I wanted to be sure we had seen all of it. In my communication with the police commissioner it seemed to reflect something different. That is the reality.

The letter to me from the commissioner has now been tabled. All members should have a copy or be able to access a copy. The member for Windermere referred to some of the search provisions being consolidated. I encourage members to read the whole letter. This is not taken out of context. It is referring to one section about the legislative provisions we are referring to and it states in his letter -

The legislative provisions for the search of persons in custody are contained in the following:

Section 58B of the Police Offices Act 1935 which permits the searching of persons in lawful custody where it is believed necessary on reasonable grounds. This Act does not specify that the search is to be conducted by a person who is the same sex as the person being searched.

Section 18 of the Search Warrants Act 1997 contains a specific direction that if practicable, a 'frisk search' is to be conducted by a person of the same sex of the person being searched. The Act defines a 'frisk search' as -

- (a) A search of persons conducted by quickly running the hands over the person's outer garments; and
- (b) An examination of anything worn including the pockets, or carried by a person that is conveniently or voluntarily removed from the person.

There are not many provisions and I referred to his other comments in paraphrasing but I encourage members to read it all. They have a procedure of how a search is to be carried out and that is described in this letter. Members may like to read that themselves.

He talks about treating an individual according to their preferred gender, respectfully asking a person how a person identifies if the police officer is not sure, ensuring the search is conducted by a person of the same sex the person in custody's identifying gender wherever possible. Being mindful that the person's identity documents and police records may not accurately reflect their identifying gender and recognise they may be at risk of harm and ensure that these prisoners are placed in a single cell when they are held in custody. Treating them like human beings, like we all want to be, and expect to be, treated by our police.

I commend the commissioner for being such a progressive and amazing police commissioner for this state. We are very lucky to have Darren Hine. He has done an awful lot of work in building a relationship with the LGBTI community. He feels very strongly about it and he does not want to see anything undermine that. That is why there are policies such as this in the police department.

The other questions I answered earlier about the full search of the statutes, the advice from OPC to put it in this frame.

Mr DEAN - I am taking the call. I am still reading through the letter the police commissioner has provided in relation to the matters.

I notice some of the comments he made: Tasmania Police 'will require updates to align with the scope and intention of the new legislation; Tasmania Police notes amendment 28D(4)(b) on page 16 in relation to a police officer asking whether a person wishes to have the search be conducted by a male or female, to maintain the validity of the search; it is the view of Tasmania Police that police officers should have the ability to operate on a person's apparent gender, unless it is otherwise disclosed or raised as an issue. The circumstances may not always allow for such questions to be addressed, for example, if a person is violent or non-compliant. There needs to be an appropriate level of protection to ensure that searches will not be considered invalid or unlawful in such instances.'

This raises a number of issues and it raises what I said before I read this response.

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

QUESTIONS

Police Family Violence Orders

Mr VALENTINE question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.33 p.m.]

In relation to pro-arrest laws that provide police with a mechanism to keep parents and partners apart, in the wake of alleged family violence events:

- (1) Have successive governments ever reviewed the Police Family Violence Order - PFVO - pro-arrest mechanism since its inception, with a view to understanding the level of impact it may be having on individual parties to pro-arrest orders and/or children involved in those relationships, with some pro-arrest orders, by default, keeping children apart from a parent for long periods of time, yet the matter not having ever been dealt with through the court system?
- (2) Can the Government confirm or otherwise that when such PFVO cases come before a magistrate, there is a presumption of guilt rather than innocence on the party on whom the PFVO has been served?
- (3) Is the Government aware a party on whom a PFVO has been served can be held in remand for a number of weeks without being found guilty of any charge against them, and the impact that has on the parties and/or children concerned?
- (4) Under section 33 of the Family Violence Act 2004, PFVOs are subject to any Family Court order. Are Tasmania Police made aware of this fact in their training regime before they exercise their right under Tasmanian law to issue a PFVO on a party?

ANSWER

Mr President, I thank the member for Hobart for his question. I have quite a lengthy answer.

- (1) A statutory review of the provisions of the Family Violence Act 2004, including an investigation of the effectiveness of its mechanisms, were undertaken by Urbis in 2008. The review noted a strength of the legislation is that the parties can individually or collectively apply for variations to their orders, such as a PFVO, including to have an order revoked.

A second review, focusing specifically on the Safe at Home response system, was undertaken by SuccessWorks in 2009. Safe at Home is the Tasmanian Government's integrated whole-of-government response to family violence. This review found the following were all positive outcomes of the Safe at Home response system -

- increasing interagency cooperation
- extensive training of staff involved in the response system
- increased public awareness of family violence as a crime
- improved legal recognition of family violence
- an improved police response to family violence
- the integrated case coordination process.

More recently, in 2014 an internal performance review of Safe at Home was undertaken. This review identified that the pro-arrest, pro-prosecution policy is seen as one of the greatest strengths of the Safe at Home service system which is underpinned by our family violence legislation and ensures offenders are held accountable for family violence.

Recommendations from this review included that Tasmania Police -

- consider the practice of issuing 12-month PFVOs and develop a more tailored approach to PFVOs to suit each family violence case

- review its practice of seeking court issue orders to ensure a consistent approach across the state so that serious offenders are put before the court, rather than issuing a PFVO.

The review also stated that the ability to issue on-the-spot PFVOs to secure the immediate safety of victims is viewed positively by both internal and external stakeholders.

For the benefit of members unfamiliar with the intricacies of the protection orders available under our family violence legislation, I will now provide some comments on the types of orders that may be issued by police in Tasmania.

Tasmania Police are able to issue a PFVO if they are satisfied that a person has committed, or is likely to commit, a family violence offence. The PFVO contains conditions designed to prevent further acts of family violence. These conditions limit the offender's behaviour.

When issuing a PFVO following a family violence incident to protect the safety, wellbeing and interests of adults and/or child victims, police use the Risk Assessment Screening Tool, which indicates a low, medium or high risk of a further family violence incident occurring.

The PFVO can be tailored to individual circumstances and children can also be included in the PFVOs to protect their safety, psychological wellbeing and interests that are affected or likely to be affected by family violence.

I wish to emphasise that a PFVO may be varied by police if the victim and the offender consent and the police are satisfied the variation will not adversely affect the safety and the interests of the victim or affected child. Further, it is open to either party to apply to a court to vary a PFVO.

A PFVO is revoked if a family violence order - FVO - or interim FVO is made in respect of the same parties. PFVOs cannot be revoked by police. An application for revocation must be made to the court.

A court may revoke a PFVO on the application of the police, a victim, an offender, or any other person the court may grant leave to, at any time during its operation.

A PFVO operates subject to any family court order.

A PFVO can be issued by a police officer with the rank of sergeant or above, or authorised by the Commissioner of Police.

- (2) A police family violence order - PFVO - is not an offence, it is a protective order. PFVOs only come before the court for the purposes of being varied, extended or revoked following the application of a police officer, an affected person, the person to whom it is issued, or any other person to whom leave is granted by the court at any time during the operation of a PFVO.

If the conditions of a PFVO are breached, an offender can be arrested and charged under the family violence legislation for contravening the order.

In court proceedings for family violence offences the prosecution bears the burden of proving the charge, and this guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt.

- (3) A person will not be held on remand as a result of being served with a PFVO. It is a protective order, not an offence. If a person is charged with breaching a PFVO, they may be held on remand on that charge pending their court appearance. When a person is arrested, they may be detained for a reasonable time for the purposes of questioning and investigation, and, unless bailed by police, for as long as it takes to bring them before a magistrate or justice. A reasonable time will depend on the situation.

Whether a person is remanded pending the outcome of charge will be a matter for the court, having taken into account the provisions of the Family Violence Act 2004 as well as the circumstances of the defendant, the alleged offence and the alleged victim.

- (4) The answer to your last question had to come from the police minister so it has been sent to a couple of ministers.

Section 33 of the Family Violence Act 2004 states that a family violence order, an interim family violence order, an external family violence order and a police family violence order operate subject to any Family Court order.

The current Tasmania Police training curriculum contains an entire module on family violence policing, which includes instruction on police family violence orders, family violence orders and restraint orders. When there are Family Court orders in place, police members are instructed to consider the appropriate application of police family violence order conditions to comply with the conditions of the Family Court order.

The Tasmania Police Family Violence Manual provides specific guidance to all police officers with respect to the situation regarding police family violence orders and Family Court orders. The manual specifically states that when members are issuing a police family violence order the conditions of any current Family Court order must be taken into consideration. Conditions restricting access to an affected child in a police family violence order do not override access enabled by a Family Court order.

The manual instructs that where concern exists surrounding the circumstances of a police family violence order and the implications of a federal Family Court order, members should consider the benefits of a family violence order in such instances. The manual further instructs members that the Family Law Act 1975 enables a magistrate to vary, discharge or suspend a Family Court order when making a family violence order.

Mr Valentine - Thank you for such a full response.

School Enrolments

Mr WILLIE question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.43 p.m.]

As of the end of March 2019, can you please provide information relating to the following questions -

- (1) The total number of part-time enrolments at the 126 primary schools?

- (2) The number of part-time enrolments at each of the 29 secondary schools?
- (3) The number of part-time enrolments at each of the 25 district schools (combined primary and secondary)?
- (4) The number of part-time enrolments at each of the senior secondary schools?
- (5) The number of part-time enrolments at each support school, excluding Early Childhood Intervention Service Centres?

ANSWER

Mr President, I thank the member for Elwick for his question. The answers are -

As at the end of March of the 2019 school year, the total number of part-time enrolments were -

- (1) Primary schools - 15 students.
- (2) Secondary schools - 56 students. Seven of these students were in years 7 to 10; the remaining 49 students were in years 11 and 12.
- (3) District schools - 39 students. Five of these students were in prep to year 10, the remaining 34 students were in years 11 and 12.
- (4) Colleges (senior secondary schools) - 194 students.
- (5) Support schools - seven students.

I will read in the following footnotes -

- Enrolment numbers (e.g. PT/FT) will change throughout the year in response to students modifying their learning programs. Some of the students, particularly those in years 11 and 12, may be temporarily appearing as part-time in the enrolment data while their learning programs are adjusted to suit their learning needs.
- The numbers provided here are as at the end of March 2019. These figures may differ from the official part-time enrolment figures which may be available once Census 1 2019 is finalised. Census is based on enrolment on 22 February 2019.
- In this analysis 'part-time' is any student with an FTE of less than one (1.0) across the whole state as reported in the enrolment table as at the end of March 2019.

Student Suspensions

[2.46 p.m.]

Mr WILLIE question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

As of the end of March 2019, can you please provide information relating to the following questions?

- (1) The total proportion of students suspended at the 126 primary schools?
- (2) The proportion of students suspended at each of the 29 secondary schools?
- (3) The proportion of students suspended at each of the 25 district schools (combined primary and secondary)?
- (4) The proportion of students suspended at each of the senior secondary schools?
- (5) The proportion of students suspended at each support school, excluding Early Childhood Intervention Service Centres?

If you want to table that because there is probably a lot of data in that answer I am okay with that.

ANSWER

Mr President, I thank the member for Elwick for his questions.

- (1) Primary school students - 0.7 per cent of students enrolled in primary schools received a suspension.
- (2) Secondary school students - 4.3 per cent of students enrolled in secondary schools received a suspension.

Mr Willie - I was after the breakdown of each school. That is why I thought it would be a bigger answer.

Mrs HISCUTT -

- (3) District school students - 2.8 per cent of students enrolled in district schools, combined primary and secondary, received a suspension.
- (4) Colleges and senior secondary school students - 0.3 per cent of students enrolled in colleges and senior secondary schools received a suspension.
- (5) Special school students - 0.3 per cent of students in special schools received a suspension.

Honourable member, if that is not the answer you were looking for, you might have another go.

Mr Willie - It might have been confusing because the first one said totals and the next ones were all of each school.

Mrs HISCUTT - We might get you to redo it.

Christ Church, Low Head - Funding

Ms ARMITAGE question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2:48 p.m.]

With regard to the 2018 election commitment of \$20 000 for maintenance and upgrade of the Christ Church at Low Head, given the church is on the list to be sold by the Anglican Church, can the Leader please advise -

- (1) Whether the funds have been expended?
- (2) Whether the grant agreement was varied specifically to provide for the return of the funds if the church was sold?
- (3) Whether the church has been sold?
- (4) If the church has been sold, has a request to return the funds been made?

ANSWER

Mr President, I thank the member for Launceston for her question.

(1) to (4)

I have been advised that a grant agreement was executed on 23 May 2018 between the Crown in the Right of Tasmania (the Crown) and the Trustees of the Diocese of Tasmania (the diocese) for the maintenance and upgrade of Christ Church located in Low Head. The agreement allowed for a single instalment of \$20 000, exclusive of GST, which was paid to the diocese on 24 May 2018.

Subsequent to the payment of the grant, the Synod of the diocese included the property on the list of diocesan properties proposed for sale and confirmed with the Department of Communities Tasmania that it will not use the grant funds pending a decision regarding the sale of the property.

A deed of variation was executed on 26 November 2018 that allows the Crown to recoup the grant funds in the case that the property is sold prior to 31 December 2020. The clause states -

The Recipient (the Diocese) must repay to the Grantor (the Crown) on demand in writing by the Grantor the grant if the Recipient disposes of the property prior to 31 December 2020.

Under the grant agreement, the diocese is required to inform the Crown if Christ Church is sold. The department responsible for the management of this grant agreement has not received such advice.

When, and if, the Crown receives advice Christ Church has been sold prior to 31 December 2020, the Crown may elect to recoup the grant funds or elect not to require the grant to be repaid if, for example, the property was sold or transferred to another community organisation. This, however, will be a consideration for the Crown at the time.

Christ Church, Low Head - Return of Grant

[2.50 p.m.]

Ms ARMITAGE question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

I could find the previous answer to the question last year with regard to this, but do not recall there being any notation to do with 31 December 2020. When I asked the question with regard to the \$20 000 and the fact the property was likely to be sold, I was advised the grant agreement was varied to provide for the return of the funds. I do not remember anything about there being a date of 31 December 2020.

That means the church can hold on to the property for two years, sell it and keep the \$20 000. That certainly was not the answer I received. I will find the answer and would like the question answered if you can, please.

Member for Murchison - Answer to Question

Mr DEAN question to MEMBER for MURCHISON, Ms FORREST

[2.51 p.m.]

Does the member for Murchison have an answer to the question asked yesterday and taken on notice?

Ms Forrest - You were going to put it on the Notice Paper. That was my understanding.

Mr DEAN - No, that was not the case, Mr President. I simply said I had no problem with the member taking it on notice. That was my statement. I can look at *Hansard* again and get the correct wording. If the member is able to answer that.

Mr PRESIDENT - It is my understanding that it is the member for Windermere's onus to put it on the Notice Paper - that is, to write that letter to the member for Murchison to ask that question.

Mr DEAN - I will, Mr President. I can see what is happening and will make it perfectly plain and clear by way of notice in writing to the member. I can understand her reluctance to answer.

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

In Committee

Resumed from above.

Proposed new subsection 28D -
References to sex and gender

Mr DEAN - Earlier I raised the important issue of the police's position and attitude toward amendments that will impact on them.

I thank the member for tabling the document from the Commissioner of Police and I have now had some time to have a closer look at the document. I appreciate that. Mr Deputy Chairman, I seek leave to table a document.

Leave granted.

Mr DEAN - The document I tabled is the letter I received from the Commissioner of Police, which I have referred to on a number of occasions.

I want to comment on the letter provided to the member for Murchison, which we have now received. The member for Murchison spoke on this document on two occasions yesterday, and she also raised it again this morning on one or two occasions. I am not going to refer to the comments of this morning because I do not have a copy of that yet. Because of my war injuries, my hearing is not all that great at times so I will wait until that comes back to make reference to that.

This is what the *Hansard* identifies the member said yesterday in relation to the commissioner's letter -

Ms FORREST - I also consulted with the police commissioner and while I did not circulate his letter because he requested that I not do so, he was supportive.

We then go on further in the document where the member for McIntyre raises a question on this issue -

My question relates to the police commissioner's advice. I take on board the member has done a lot of work in preparing the amendments, and she took the opportunity to make contact with the police commissioner. What did the police commissioner comment on? Will that advice be available to us? Did he decide to release that advice?

There was further conversation. Then the member for Murchison answered -

Ms Forrest - By interjection, I will refer to that advice when we get to the section in the bill that relates to that. The overall advice was supportive of the legislation. As to particular aspects that have any real implications for police, we will deal with that at a later time.

I want members to remember exactly what was said there.

Members now have the letter from the Commissioner of Police, and I hope they have read it. At the beginning of that letter it says: 'Thank you for your enquiry regarding Tasmania Police's current policy in relation to searches.'

My questions from that are: What was the term of reference, or what was the position provided by the member in seeking this information from the Commissioner of Police? Was it simply his overall comment, or did she specifically mention to him her position on the amendments to 28D?

The commissioner later refers to that in his letter -

Tasmania Police notes your amendment (28D(4)(b) on page 16) in relation to a police officer asking whether the person wishes to have the search be conducted by a male or female, to maintain the validity of the search.

He refers to that. I am not going to read the whole letter because the whole letter relates to police powers and positions in relation to searches, how they are to do searches and by whom. The last paragraph in that letter reads -

It is the view of Tasmania Police that police officers should have the ability to operate on a person's apparent gender, unless it is otherwise disclosed or raised as an issue. The circumstances may not always allow for such questions to be addressed, for example if a person is violent or non-compliant. There needs to be an appropriate level of protection to ensure that searches will not be considered invalid or unlawful in such instances.

I ask members reading the document, is that document supportive of the amendments to clause 28D as indicated by the member for Murchison? Is there anywhere in the letter where the commissioner says he is supportive of those amendments? Is there anywhere in that document the commissioner says he is supportive of the legislation? If there is, please point it out to me. I am struggling with this matter, and some of the issues and evidence brought up. It is not surprising with everything we are trying to get through. There is nothing in the letter to support what the member has told us. Not a thing.

You can make any statements you like from what a person says to you in writing, if you are not going to produce that document. That is why I was careful when I quoted the document the member has queried me on, to ensure what I said was right and did not draw any improper conclusions. It is not surprising the member did not want to table it.

A comment made yesterday suggested I had not quoted properly the letter I just tabled, and the member gave some explanation this morning in relation to that. Again, I do not dare comment on that at this stage until I check the *Hansard* so I can read exactly what you said this morning. I suspect I will be making further comment on that in the future.

It is apparent to me the member is grasping at straws and going to any length to get support for her position and her proposed amendments. It has reached the stage now where I will be making an application - and I am not quite sure what I need to report progress or seek a deferment or an adjournment - because we should hear from the Commissioner of Police, who has been referred to. Documents have been referred to from the Commissioner of Police. I would like the opportunity to hear from the Commissioner of Police. I am not sure of the process and will seek advice on how I should do that.

Mr DEPUTY CHAIR - We need to deal with the subclause and then you can seek further advice after that. We need to deal with the subclause in front of us and confine our conversation to that.

Mr DEAN - My concern is that if we do that, we could ask to recommit it, depending on what the commissioner says, as to whether it could impact on proposed section 28D, which we are dealing with now. That is my concern. I can always ask it be recommitted and if that is the proper process I am happy to accept your advice.

Mr DEPUTY CHAIR - The advice I have been given is we have one question before the Chamber, which is the one we have to deal with. We cannot have a second question before us, so we must deal with the subclause as it is. Then if you would like to raise another one, you will have the opportunity to do so at a later stage if you recommit or discover some issue we need to go back to. At the moment we are dealing with clause 28D.

Mr DEAN - Mr Deputy Chair, when would be the right time to report progress for the purpose of hearing from the Commissioner of Police?

Mr DEPUTY CHAIR - My advice is we deal with this clause; once that is done, it is your right to seek to report progress and that is then dealt with by the Committee of this Chamber.

Ms FORREST - Now that this is a public document, I did not decline to table the document, other than through the request of the commissioner himself. I respected the commissioner's wish and I will not repeat all of my conversation with him. It is not appropriate and highly out of order even to expect me to.

I have spoken to the commissioner since I received this letter, confirming the last sentence the member referred to does support the amendment because it means searches carried out under those circumstances, such as someone being violent and noncompliant, which does happen on occasion, would not be unlawful. That is the protection the police were seeking. Other than that, they operate within their guidelines, policies, procedures and acts.

I am being put in a very difficult position to disclose private conversations, when the member keeps referring to things I have said. I am not going to go there, but that is the reality. If members are not willing to take me at my word, that is fine. You go through the minister's office or wherever feel you need to contact the commissioner, and I am sure that will be verified. If you are not willing to take me at my word and trust the commissioner's own words here, maybe you should have contacted him previously to ask the same questions I have asked about the policies and procedures around searches and whether any extra protection was needed. That is what I did, that is what was provided - a statement of fact - and that is where we are.

Mr Dean - Mr Deputy Chair, can the member tell us in the report -

Mr DEPUTY CHAIR - Sorry, the member for McIntyre has the Floor.

Ms RATTRAY - First, I acknowledge and thank the Leader for providing the letter. As I said yesterday, it is fairness and equity for all members of this place. My question is not questioning the integrity of the member for Murchison. I need to be absolutely certain what is in these amendments is what is being requested in the commissioner's letter, where he says there needs to be an appropriate level of protection to ensure searches will not be considered invalid or unlawful in these circumstances.

I do not know if these amendments actually do that because normally, through a process like this, we would have some police officers and people at the Table representing the police force who have the legal background to tell us whether these meet the requirements. It is no disrespect to the member for Murchison. It is simply doing my job. That is my view.

Ms Forrest - He references that in this particular amendment we are dealing with.

Ms RATTRAY - He notes your amendment.

Ms Forrest - That is right and then he speaks about -

Ms RATTRAY - But then he says there needs to be an appropriate level of protection to ensure searches will not be considered invalid or unlawful in the circumstances. It does not say, 'I agree'.

Ms Forrest - No, I sought clarification from the commissioner, after I received the letter.

Ms RATTRAY - Earlier I said we have always been able to interject in this place.

Ms Armitage - But we were stopped.

Ms RATTRAY - I made a point about that, so I am not so disturbed about the interjections because it is part of this process and has been for as long as I have been here and apparently quite a long time before.

The member for Windermere asking for some clarification from the police is entirely appropriate because we do not know whether these clauses - this amendment - actually do meet that. It says that he notes your amendment, but then it also says if he agreed with it, he would have said, 'notes and agrees', I presume - I do not know. Again, I have not asked him because I did not even know there was a letter until two days ago, like most people -

Ms Forrest - It only arrived three days ago.

Ms RATTRAY - I did not know there was a letter. I think it is a reasonable question to be asked. We would normally have someone representing the police commissioner or the police department sitting up there or here so they could verify that this is what is intended or what is needed for the police to undertake their work.

Ms Forrest - It is a problem now. The problem already exists and this will assist the police whether you change the law or not.

Ms Armitage - Did he say that in the letter?

Ms RATTRAY - That is the question. Does it say that? Do these amendments meet the requirements for the police to do their job? I do not know.

Mr DEPUTY CHAIR - Do you want to ask the Government that?

Ms RATTRAY - As far as I can see, over the past couple of days, it is not a Government amendment, and I would be very careful because I do not know whose amendment it was.

Ms Forrest - Yes, you do.

Ms RATTRAY - Whether it came from the other place?

Ms Forrest - No, it did not.

Ms RATTRAY - Okay, it is the member for Murchison's amendment then. That is what I am asking. How do we know that the police commissioner has authorised this?

Ms FORREST - As I said in my previous contribution, after I received this letter I spoke to the commissioner to clarify that it was the case and it was confirmed with me by the commissioner.

Ms ARMITAGE - I am probably along the same lines as the member for McIntyre. I wrote to the police commissioner yesterday about the letter. I believe the member for Windermere pointed out that he was away from the office yesterday. I have emailed him asking for some clarification, not having seen the letter.

Reading it, it is very different to what I imagined it to be. I was of the understanding, from hearing from the member for Murchison, that he supported the legislation. When she said he did not want it tabled, I thought it was a bit interesting. I wonder where in the letter it says he supports anything -

Ms Forrest - I did not say that.

Ms ARMITAGE - It says so in *Hansard*, with respect, and that was the insinuation I read. I emailed the police commissioner asking if I could have a copy of the letter so I could have a better understanding. I have the same concerns with the amendment because, while he notes the amendment and says what should happen, he does not say it does happen, so I am left a little in the dark.

Ms FORREST - Right from the start of this, I have consistently spoken about consulting a variety of people and organisations, one of them being the Commissioner of Police. I hate the way the Commissioner of Police is being drawn into this political fight at the moment, which is very unfortunate. However, I said from the outset and will continue to say, that I had conversations and communication via email with the commissioner and this letter was part of that. My comments in relation to what the commissioner has said refer to my conversations and this communication with him. They are not mutually exclusive; they relate one to the other. If members are not happy to take me at my word, that is up to them. The point here is that I consulted with the commissioner. I have also spoken to other police, but the commissioner is the head of the police force. We are criticised if we do not consult, and here I am consulting with the most appropriate person about this, and now I am being criticised for that.

Ms RATTRAY - Point of explanation. It was not a criticism.

Ms Forrest - Let me finish -

Ms RATTRAY - Do I have a point of clarification?

Mr DEPUTY CHAIR - You have just clarified that it was not a criticism.

Ms Forrest - It is not a criticism, but I feel I am being criticised for doing my job of seeking consultation with appropriate parties. I have made the effort to contact the police commissioner.

Mr DEPUTY CHAIR - Excuse me, it was not a point of order; it was a point of explanation and that has been explained and has been accepted, so please do not interject.

Ms FORREST - Mr Deputy Chairman, in doing my consultation I have had emails, phone calls and communication with the children's commissioner, the Anti-Discrimination Commissioner and a whole range of people on this. My comments are informed by both written and verbal communication.

When I received this letter from the commissioner, I thought, 'Does that say he is supportive and he agrees this protection is needed and he has noticed it has been inserted by that amendment?', and he confirmed it does.

It meets the requirement they believe is there, that searches carried out in a situation where a person is violent or noncompliant will not be considered unlawful. That is a real issue now. I am aware, from talking to police officers, that this happens, not on a regular basis, but they do have to search transgender or non-binary people, as they do anybody else who is subject to the provisions of those acts under which they can be searched.

This is a real issue for them. They do it under their guidelines, which I read out earlier and the members can read in the dot points on page 2 of his letter, that treat people individually according to their preferred gender. That is what he said they want to do. They should have the ability to operate under that way. This gives them the protection, should someone request they be searched by a person who perhaps they did not request, because they were searched by someone of the same sex, but the person may identify as a different gender. It makes sure those searches remain valid.

I am paraphrasing what he said. Unless I record and transcribe the conversation, which I certainly did not do, it is up to members whether they want to take my word for anything I have said. It is based on consultations I have had with a variety of parties.

Mr DEAN - It has been discussed and I will refer to it when I seek to report progress shortly. Nobody is being critical. I am not sure who the member is saying is being critical, but I am not critical of the member in approaching the Commissioner of Police. I have done that and I do not think anybody was critical of me doing that.

I am not critical of the member going to the Commissioner of Police; in fact I expected that to occur, with these amendments having a bearing on police.

I am challenging the member's position where she has told us clearly the Commissioner of Police is supportive. She goes further and says that the Commissioner of Police is supportive of the legislation.

It is those issues I have concern with. If I look at the letter received now and compare it with the other letter I have tabled, you will see there is a parallel with the two, where the commissioner in the first letter to me was of the position there was not sufficient consultation, they did not have an opportunity to look at this and so on. He raises all of those issues.

We have the letter now where the commissioner really is noncommittal. You can read whatever you want into that, and that is the reason we need to hear from the commissioner.

The member said she was paraphrasing the conversation with the Commissioner of Police, the added and extra conversations if she can recall what she said and what the commissioner said in reply. That is important.

These amendments impact policing and these other areas. I am not sure of those other areas these amendments in proposed section 28D impact, whether those people have all been consulted in those organisations and areas. Maybe the member can tell us whether that is the case. Hopefully they have, but that is my position. It is not to be critical and I do not accept that is the case.

Mr VALENTINE - The police need to know they are doing the right thing by having a female searched by a female and a male searched by a male.

When it comes to transgender people, they may not have an appropriate transgender person available to do the search. The police commissioner has been drawn into it. With all due respect, the police commissioner comes here and we are putting him in a very difficult situation where he has to express what his feelings are. He does not want to be political and it is a political thing he is being drawn into. What he says here is very clear and I will read the second last paragraph -

Tasmania police notes your amendment ... in relation to a police officer asking whether the person wishes to have the search be conducted by male or female, to maintain the validity of the search.

because it has to be for a valid search, male to male, female to female -

It is the view of Tasmania Police that police officers should have the ability to operate on a person's apparent gender, unless it is otherwise disclosed or raised as an issue. The circumstances may not always allow for such questions to be addressed ...

He is being open and honest here. For example, if a person is violent or noncompliant, there needs to be an appropriate level of protection, so if this goes through it is giving them extra protection, ipso facto. It is, of course, because it means the commissioner is getting the permission of the person for a male or a female to do the searching. You do not have to be Einstein to see that. Bringing the police commissioner here is wasting time and he is probably going to say exactly what he has said here anyway. We need to get on with the job.

The Committee divided -

AYES 8

Mr Farrell
Mr Finch
Ms Forrest
Mr Gaffney
Ms Lovell
Ms Siejka
Mr Valentine (Teller)
Mr Willie

NOES 6

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt
Ms Howlett (Teller)
Ms Rattray

Proposed new section 28D agreed to.

Proposed new section 28E -

Recognition of certificates issued outside State

Ms FORREST - Mr Deputy Chair, new section 28E, which was read earlier, updates the mutual recognition process for people whose births are not registered in Tasmania to reflect the requirements for registration of a change of gender under this bill. This was carried forward from the bill as presented to this place and is to ensure that where there are provisions in other states that issue a certificate of recognition for a change of gender, they are recognised by this state.

Mr DEAN - Section 28E, Recognition of certificates specifying gender issues outside of Tasmania; clause 22, Removal of amendment to section 40 of the Principal Act - this is an unnecessary sequel to the member for Murchison's removal of the amended section 16(3) requiring collection of information about sex or gender under section 50 of the principal act.

Ms FORREST - This is the wrong clause.

Mr DEPUTY CHAIR - It is 28E.

Mr DEAN - Sorry, I have gone two steps too far. Are such certificates limited to Australian jurisdictions?

Ms FORREST - These recognition certificates were put in by the other place. As far as I am aware, it would be for any recognition of any certificate that is recognised by the state if it is being presented for a purpose in this state. As long as it is recognised by the jurisdiction, I expect.

Ms RATTRAY - I will support this amendment because throughout the same-sex marriage debate I felt strongly that all Australians should be recognised together in that arena. I feel it is appropriate here as well that all Australians be treated the same way by each state.

Mr DEAN - In respect of the answer provided by the member for Murchison, there seems to be a little uncertainty as to exactly what the position is there. If that is the situation, surely there should be some clarity around this. If the first person moving this amendment is suggesting or indicating that it is not absolutely clear what the situation is in relation to the question I asked, there needs to be clarity. Why would you move amendments when you are not aware of what they really do, what will be accepted and what will not be accepted? I would have thought we need clarity on it.

Again, it raises the issue of the way these matters have been handled and the matters we are dealing with here today.

I would have thought it does require some answers if there is that uncertainty. What inquiry has been made if that is the case? What inquiry has been made to establish whether it will impact other matters outside of this country as to what we will receive and not receive? What institutions or persons have been consulted to get some certainty around what it means?

Mrs HISCUTT - I did find the answer a little bit ambiguous, too. I am fairly sure it is a Labor amendment. I wondered whether a Labor person could perhaps clarify the 'ifs' and 'buts' around this particular amendment.

Ms RATTRAY - I indicated my support because I thought it was within the Australian jurisdiction. I would also be interested to know if that is the understanding.

Ms Forrest - The question is, why would you exclude recognition certificates? If they have got recognition certificates, they are recognised by their jurisdiction, is that not a reasonable thing to do? We recognise same-sex marriages from other jurisdictions.

Ms RATTRAY - That was the principle behind my support. I felt that all Australians should be treated the same in each state, but it is a good idea to have these things clarified. It appears to me, Deputy Chair, that the clarification is that anyone, whether they be an Australian resident or from any other jurisdiction, would be recognised under this if they have a recognition certificate. That is my understanding. In that case, I will still support the amendment, but it is important to get the clarification. That is what I am voting on.

Ms LOVELL - From my reading of this amendment, my understanding is that because it does not state it would be limited to recognition certificates issued inside Australia, it could well apply to recognition certificates issued outside of this country. It does say 'for the purposes of, but subject to, any law in force in this State' so, quite frankly, I do not see that it would make much difference. The question, as the member for Murchison raised, would be why we would not recognise transgender people who have identified as a particular gender from any country in the same way that we would anyone in Australia.

Proposed new subsection 28E agreed to.

Mr DEAN - Mr Deputy Chair, I have a number of amendments in this area, but I have to say I am in no position to move forward with them, and I have not been able to look at them simply because some errors have been picked up. I thank the member for Hobart, who was able to pick up one error.

Ms Lovell - It was clause 21.

Mr DEPUTY CHAIR - We still are in clause 21, so I am not sure if you are -

Mr DEAN - I have that wrong, have I?

I had an amendment here to invite voting against clause 21 and the first of clause 22. I am not going to proceed, because some errors have been picked up, some of the reasons some of these things should occur and the member for Hobart picked up an amendment in one of these areas, which I thank him for.

I will not be proceeding with my proposed amendments to clause 21 at this time. The issues are probably not the OPC's problem. My instructions were less than ordinary in some situations, so I am not blaming them for it. I want to make it clear I will not be moving my amendment.

Mr VALENTINE - On a point of clarification, an error was picked up in clause 20.

Mr Dean - I missed that one.

Mr VALENTINE - Not clause 21, and the other was in new clause C.

The Committee divided -

AYES 8

Mr Farrell
Mr Finch
Ms Forrest (Teller)
Mr Gaffney
Ms Lovell
Ms Siejka
Mr Valentine
Mr Willie

NOES 6

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt
Ms Howlett (Teller)
Ms Rattray

Clause 21, as amended, agreed to.

Clause 22 -

Section 40 amended (The Register)

Ms FORREST - Mr Deputy Chair, in respect of clause 22, I wish to -

Invite defeat.

The intent of defeating this clause is to ensure all information currently on the register continues to be recorded on the register, not separately under section 50 of the principal act. I have spoken to that a number of times. It is very simple. All the information currently recorded by the registrar will continue to be recorded by the registrar on the register and nothing will change in that regard.

Clause 22 negatived.

Clause 23 -

Section 46 amended (Issue of certificate)

Ms FORREST - Mr Deputy Chair, I move -

That clause 23, be amended -

Leave out all the words after 'is amended'.

Insert instead 'by inserting after subsection (2) the following subsections:

- (3) Subject to subsection (7), information about the sex, or gender, of a person may only be included on a birth certificate if -
 - (a) the information is requested by a person who has attained the age of 16 years and who is the person to whom the certificate relates; or

- (b) if the person to whom the certificate relates has not attained the age of 16 years - if the information is requested by a parent or guardian of the person; or
 - (c) if the information is requested by an applicant who is the child of the person to whom the certificate relates, or a member of a class of prescribed persons, and if the Registrar is satisfied that -
 - (i) there is a valid reason for the child or person, respectively, to have access to the information; and
 - (ii) the person to whom the birth certificate relates is unable to consent to the disclosure of the information due to death or incapacity; and
 - (iii) there are unlikely to be negative consequences to the person to whom the certificate relates.
- (4) An applicant for a birth certificate in relation to a person must, if there is a registered sex in relation to the person -
- (a) request the Registrar not to include on the birth certificate any reference to sex or gender; or
 - (b) request the Registrar to include on the birth certificate the registered sex in relation to the person, without a notation as to each previous registered sex in relation to the person; or
 - (c) request the Registrar to include on the birth certificate the registered sex in relation to the person, with a notation as to each previous registered sex in relation to the person.
- (5) An applicant for a birth certificate in relation to a person must, if there is a registered gender in relation to the person -
- (a) request the Registrar not to include on the birth certificate any reference to the sex or gender of the person; or
 - (b) request the Registrar to include on the birth certificate the registered gender in relation to the person, without a notation as to any other sex or gender in relation to the person; or

- (c) request the Registrar to include on the birth certificate the registered gender in relation to the person, with a notation as to each previous registered sex, and each previous registered gender, in relation to the person.
- (6) If an application is made to the Registrar for a birth certificate in relation to a person and the applicant -
 - (a) has made a request under subsection (4)(a) or (5)(a), the Registrar is not to include on the birth certificate any reference to sex or gender; or
 - (b) has made a request under subsection (4)(b) or (5)(b), the Registrar is to include on the birth certificate the registered sex or registered gender in relation to the person, without a notation as to any other sex or gender; or
 - (c) has made a request under subsection (4)(c) or (5)(c), the Registrar is to include on the birth certificate the registered sex or registered gender in relation to the person, with a notation as to each previous registered sex, and each previous registered gender, in relation to the person.
- (7) The Registrar must ensure that, on a birth certificate that is issued, in relation to the birth of a person, in accordance with a request under subsection (4)(b) or (c) or (5)(b) or (c) -
 - (a) any denotation of the current registered sex or registered gender of the person by a word or phrase is made without any reference to sex and with a denotation that the word or phrase relates to gender; and
 - (b) any denotation of the previous registered sex, or previous registered gender, of the person by a word or phrase is made without any reference to sex and with a denotation that the word or phrase relates to the previous registered gender of the person.
- (8) If a change of name is registered under Part 4 in relation to a person, a birth certificate issued in relation to the person is to -
 - (a) show the name so registered without any notation or indication that there was another name previously registered in relation to the person; or

- (b) if a request is made to the Registrar under subsection (9) in relation to the person and the Registrar is not prevented under subsection (10) from complying with the request, show the name so registered with a notation or indication as to each other name that was registered in relation to the person before the change of name was registered.
- (9) An applicant for a birth certificate in relation to a person whose change of name is registered under Part 4 may request the Registrar to issue a birth certificate in relation to the person with a notation or indication as to each other name that was registered in relation to the person before the change of name was registered.
- (10) If the person making a request under subsection (9) in relation to an application for a birth certificate in relation to a person is not the person to whom the birth certificate relates, the Registrar must not comply with the request unless the applicant is the child of the person to whom the certificate relates, or a member of a class of prescribed persons, and the Registrar is satisfied that -
 - (a) there is a valid reason for the child or person, respectively, to have access to that information, and
 - (b) the person to whom the birth certificate relates is unable to consent to the disclosure of the information due to death or incapacity, and
 - (c) there are unlikely to be any negative consequences to the person to whom the certificate relates.

This fairly long amendment effectively seeks to achieve three things. This is about the issue of certificates. It amends section 46 of the principal act to provide a framework for the registrar to issue a birth certificate when a person applies for one.

Only certain people can apply for a birth certificate and that is outlined currently and will continue to remain the same so an individual's privacy is protected.

This section seeks to provide for an application for a birth certificate and enable the registrar to issue a birth certificate that includes facts as recorded on the register. Only what is recorded as facts on the register can be printed on a birth certificate.

The registrar may issue a birth certificate that includes the gender of the person as it is currently registered. It does not include the sex or gender of the person who is currently registered. That includes the gender of the person as currently registered and a notation of the former sex or gender if there has been a formally registered sex or gender, as requested by the applicant.

In this case, everyone is treated the same. Everyone is given the option of applying for a certificate with only their currently registered name and/or gender on it and a notation as to their previous name and/or gender. There may be times when a person might need to have that historical information printed on a birth certificate.

New section 23(3)(c) will provide for persons other than the person to whom the certificate relates to apply to birth certificates, such as an adult child of the person, a person's spouse or other prescribed persons, subject to provisions of new section 23 (3)(c)(i), (ii) and (iii). Section 45 of the principal act continues to apply in terms of protection of privacy. We are not changing anything to do with the protection of privacy.

Members will note in the amendment the registrar is not to issue birth certificates to a person if they feel there was likely to be some negative consequences to the person to whom that certificate relates.

Sometimes spouses do need to apply for birth certificates for their partners. Sometimes a child of an older parent, an adult child of an older parent, may need to apply for the issue of their parent's birth certificate to enable them to travel for medical treatments if they are unable to do it themselves or whatever. This is to enable that process; there are still strict limits around who can apply, but it does provide that access.

Subclauses (8) and (9) replace clause 20 of the amendment bill, which we voted against a little while ago, and adds provisions related to issuing birth certificates where a change of name has been registered.

After discussions with OPC, it was felt it was much more appropriate to put all matters relating to the issuance of birth certificates, whether it be a change of name, a change of gender or just following the registration of a birth, all in one place. It is all about issuance of certificates and that is why that was moved here.

These amendments include a provision that provides for persons other than the person to whom the certificate relates, such as an adult child or a person or other prescribed persons, the opportunity to apply for a birth certificate subject to the provisions of subclause (10).

References to the term 'gender' on birth certificates, if 'gender' is to be included on the birth certificate system, is to enable everyone's birth certificate to be consistent so that everyone is treated the same. Everyone has the same notation and so future birth certificates would be issued where 'gender' is noted on the birth certificate, the term will be 'gender', so that everyone is treated the same. No-one is treated differently. Equity is important in this in a truly inclusive society. I encourage members to support this amendment, which replaces name change provisions we have removed earlier in the debate, to include both changes of name and changes of gender and the issuance of birth certificates related to that.

Mrs HISCUTT - This clause was yet again put in the bill by opposition parties in the other place and the Government does not support the inclusion of the clause in the bill. I acknowledge all the efforts made by members to try to fix the clauses inserted by opposition parties in the bill. However, the Government's position remains the same.

Ms RATTRAY - Again, a lengthy amendment, considering that the original bill this is replacing is two paragraphs. It was clause 46, Issue of certificate, and it is actually two paragraphs and now we have -

Ms Forrest - This is because it is combining name and gender. The other was just name.

Ms RATTRAY - When I first contacted OPC about the amendments I was seeking to pursue, I was told, first, that I would have to wait until the member for Murchison had all hers in place, and, second, I asked for the opt-out process, not the opt-in. I was told that this covers the opt-out, but when I read the clause notes, they say -

The Registrar may issue a birth certificate:

that includes the gender of a person (as currently registered);
that does not include the sex or gender of a person.

I want some clarification about whether this is actually the opt-out or the opt-in because this is where many people felt it was automatic and not that they had to opt in. The opt-out part is the one for the small percentage, if you like, so I need to be absolutely certain because I am not entirely sure with all those amendments that it is actually doing what I was hoping.

I would like a full list of 'a member of a class of prescribed persons'. I know you quoted one here, such as the adult child of a person or the person's spouse or other prescribed persons. It would be useful to have all those prescribed persons listed if that is possible.

Ms Forrest - I am listening.

Ms RATTRAY - Thank you, that is what I am particularly interested in because there was quite a bit of concern in the community that it would just be a matter of course, which it is now, that you would have to opt out, not opt in.

Ms FORREST - The decision of OPC and myself in dealing with this issue - and I understand what the member for McIntyre is saying - is that the only way you can really do this in a way that works is to make it completely neutral, in that everyone is treated the same. It is important that everyone is treated the same.

Ms Rattray - So you do have to opt in?

Ms FORREST - Or opt out.

Ms Rattray - Tick the box, that is what we meant.

Ms FORREST - Yes. The registrar talked about this in the briefing we had - I think you were there at that one?

Ms Rattray - Yes.

Ms FORREST - If it is a paper form, it will effectively be that you will fill out the form - your application - to have a birth certificate issued and you will tick the form 'yes' or 'no'. It is completely

agnostic in that regard. You are indicating your preference. Everyone is being given the choice and the choice is clear.

If it is an online form - and the registrar indicated a lot of applications are made online these days - it will be a drop-down box and you just tick the box. It is neither opt-in nor opt-out; it is about individuals making proactive choices about what they want on their birth certificate so that everyone is treated the same.

It is about creating choice for everyone - it is not limiting choice - so it is neither opt-in nor opt-out. It is treating everyone the same, so the process is the same.

With regard to your question about prescribed persons, that is something that would be made under regulation and is up to the registrar. That is one thing she queried me about. She was interested in who I envisaged this to be and I said that predominantly it would be a spouse or a guardian of a person who was unable to make that application themselves. That is something that she would look at in terms of who may be appropriate to grant that access, if you like.

Again, as TLRI has made clear, once this bill is dealt with and the policy intent is clear it can look at whether there needs to be regulations made under this to guide that process. Does that answer your question on that?

Ms Rattray - Yes.

Mrs HISCUTT - I was looking for a little bit of clarification also. This was a Labor amendment inserted in the other place. Are you saying that if a child is being registered and the dropdown boxes come up and I do not do anything, I get a neutral certificate?

Ms Forrest - No. I will answer your question in a moment.

Mr ARMSTRONG - This is one of the issues brought to me a number of times in the community that we should not have to opt in. It should be if you do not do anything, you should have your birth recorded as male or female or whatever. It has been really huge out there, I find, and even when we had briefings down there, it was raised at different times.

A person may fill out a form when they are excited or whatever they may be, and I think the member said that the box could possibly work. Do we know how it actually will work? It has just been a possibility, I think you said, in *Hansard*, 'I would imagine this is how it would possibly work'.

'Think' or 'possibly' is no good. We need to know exactly how it will work because you could miss that and then you are not recorded. I could not support this unless it goes back to being that you have to opt out if you do not want it recorded. Ninety-five per cent of people would want it that way. That is how it should be. I cannot support the amendment unless that is what the amendment says.

Ms ARMITAGE - I seek clarification. Is it a compulsory question? That makes a difference. If it is not a compulsory question and you do not answer it, it is opt-in. I assume if you do not put yes or no, it will automatically not have gender. If it is a compulsory question, you have to answer it. If it is not, obviously it is opt-in.

Ms FORREST - I thank members for your questions. Under these provisions the registrar will not be able to issue a birth certificate unless a person has completed a form. If they fail to tick a box, the registrar will not issue the certificate. It is like receiving a notification of birth form that is incomplete, and that happens fairly often; the registrar will send it back to the person and say 'The form is incomplete, please complete'.

Everyone is treated the same. When you read through the amendments here, in order for this Registrar to be able to issue a certificate, a person has to make one of those decisions. They either tick they do want it, they do not want it, or they want one with both.

Ms Armitage - If you can clarify: is it a compulsory question?

Ms FORREST - Yes, it is a compulsory question. The registrar cannot issue a certificate unless the question is answered.

Ms Armitage - Sometimes you will have a form where most of the questions are compulsory, but there are some that are not.

Ms FORREST - I will sit down if you want to ask another question. The registrar cannot issue a certificate unless the form is complete. If the form is not complete, the registrar will not issue any certificate.

Mr DEPUTY CHAIR - The member is trying to answer and we are either going to have one question at a time or when the member sits down, members can stand up, otherwise it becomes too unruly or too difficult to manage.

Ms FORREST - There is a process in the amendments that clearly outlines the process. A person will apply for a birth certificate and in doing so, in order for the registrar to be able to issue a birth certificate, they will need to indicate what they want. It is a proactive action. If they fail to do that, the registrar will be unable to issue a certificate, because the provisions will not allow for it and the registrar will have to go back to them, as the registrar does now with other forms lodged without information or with missing information. They say, 'You have not completed the form. Please complete the form to enable me to issue the certificate.' The registrar cannot issue a certificate unless the form is complete.

Mr ARMSTRONG - At the moment, when a child is born, it is registered as male or female. Why can it not remain the same, but with the option to opt out of putting that in? It would be simple not to change how it is today. Just put a box there you can tick if you want to opt out of having it recorded. That would be quite simple. Instead of going through this, you have to opt in, male or female or whatever you want to do. We are making it harder, when it could be so simple.

Mr VALENTINE - There is a slight confusion going on here. This is an application for a birth certificate. It is not an application to change what is on the record. It is simply a form being filled out. Which elements do you want on the birth certificate? That is the way I see it. It is just a matter of software whether they put a star next to it saying it is mandatory to answer this or otherwise. There is no issue here. It satisfies everybody. It is not an impost, it is just a matter that when you fill out the form, you go tick, tick or tick.

Mr DEAN - Clause 23 is a rewrite of the amended section 46 of the principal act providing for the inclusion or non-inclusion of information about sex or gender on an individual's birth certificate.

Issue of a birth certificate without information about sex or gender, or with information about current registered sex or gender, or with information about current registered sex or gender and information about each previous registered sex or gender, is to be decided by the applicant if over 16 years or by the parent or guardian applying on behalf of a person under the age of 16 years.

This appears to be the clause that offers people a choice about the inclusion of information about sex or gender on a birth certificate.

Proposed new subsection 46(3) of the principal act provides that the registrar may only include information about sex or gender on a birth certificate if requested to do so by the applicant.

Proposed new subsection 46(4) provides that if a person for whom there is a registered sex applies for a birth certificate, they must do one of three things: request no information about sex or gender on the certificate; request information about sex with no notation of any previous registered sex; or request information about sex with the notation of previous registered sex.

Proposed new subsection 46(5) makes similar, but not exactly the same, provisions for a person for whom there is a registered gender when that person applies for a birth certificate.

The proposed new subsection 46(4) says, 'if there is a registered sex in relation to the person'. How can there not be a registered sex in relation to a person unless their birth was not registered? How can there be no registered sex for a person born after the enactment of the member's amendments given they require, under proposed new subsection 16(3), that the registrar is to register the sex of the person as being either male or female?

How will the registrar administer this system? According to the current system of birth registration and issue of birth certificates, the registrar records all the information on the birth registration statement submitted at birth and issues certificates with the standard complement of information.

How will the registrar handle a variety of legally registered sexes or genders for one person, and opt-in alternatives for sex or gender information on birth certificates?

Will there be any safeguards in place to prevent the issue of several varying birth certificates for one individual? This has been raised on many occasions by a number of people. Chris Gunson talked about this to us as well.

Proposed new subsections 46(4)(b) and 46(4)(c) refer to each previous registered sex in relation to the person. Proposed new subsections 46(5)(b) and 46(5)(c) refer to any other sex or gender in relation to the person, and each previous registered sex and each previous registered gender in relation to the person.

Clearly, the member's amendments anticipate there could be several registered sexes and genders for one person. Is that right? That is the way I see it. Would it be preferable to give the registrar discretion to issue a birth certificate with or without sex or gender information, as requested on an application?

Also, proposed new subsections 46(4) and 46(5) are unnecessarily wordy and possibly inconsistent.

An intention could be expressed far more simply. For example, why do 46(5)(b) and 46(5)(c) refer to sex and gender, and 46(4)(b) and 46(4)(c) refer only to sex? Perhaps I could be given an explanation for that.

Proposed new subsection 46(3)(b) refers to a parent or guardian applying for a birth certificate and specifying the nature of the information of sex or gender to be included thereon on behalf of a person under 16 years. What happens if there is a dispute between the parents or guardians of a person under 16 years about the inclusion of such information on their birth certificate? Is there a dispute resolution process? Will it involve a magistrate? Or will the registrar adjudicate? On what basis will an adjudication be made?

Further, proposed new subsection 46(6) seems to indicate the registrar cannot be trusted to process such an application correctly. The clause reiterates the registrar's obligations in relation to such applications and clearly indicates the registrar has no discretion regarding the inclusion of information about sex or gender on birth certificates. Is this section anticipating legal proceedings against the registrar for failing to issue a birth certificate as requested? The workload on the registrar is going to increase as a result of this legislation.

Proposed new subsection 46(7) effectively removes the word 'sex' from any birth certificate issued by the registrar and replaces it in all instances with the word 'gender'. Gender can, according to the member's definition in new section 3A of the principal act, be anything an individual wants it to be. I have read that there is something like 70-plus genders. How will birth certificates function as reliable identifiers under this system? Recently I heard of a person whose gender identity was hetero-romantic pansexual. Never heard that one before, have you? This is what is happening.

Such a designation, if included on a birth certificate, would offer no reliable identification information for the person concerned. I ask members to look at the list of 76 on one document of the list of gender terminologies. It is just mind-boggling. I go back a number of years and I thought there was only two or three, now it is 70-plus. I said to an American citizen that I understood there were 45 and he said in America, there is 'no research this area and you will see there is a lot more than that, you guys are well behind it'. Is the registrar required to keep a database of all possible genders for reference purposes or do they simply make it up as they come along?

Finally, proposed new subsection 46(3)(c)(iii) refers to a situation where there are unlikely to be negative consequences to the person to whom the certificate relates. How is the registrar to determine what are negative consequences and whether they are unlikely? There are a number of questions there and I have not done too well with getting answers to my questions, but we will see how we go this time.

Ms FORREST - The member has asked a lot of questions; it is a little bit hard to keep up at times when he jumps from one to the other. He could have given these to me in advance and it would have made it much easier to address all his questions in this manner, but we will go through this. These amendments as drafted have been in circulation for some weeks now.

Mr Dean - I did not know what was changing and what was not.

Mr DEPUTY CHAIR - Honourable member, you were not happy when someone was talking behind you.

Mr Dean - No, I was not.

Ms FORREST - Just going to an overarching comment, the member for Windermere suggested there are different references to sex, and sometimes sex and gender and sometimes just sex. This legislation has to deal with previously registered sexes. Under the act we have been dealing with for some time a person could have a previously registered sex had they had sexual reassignment surgery, and changed their sex according to the act - they would have a previously registered sex. You need to be sure those people are not disadvantaged. If they need to have that information retrieved from the register that the previously registered sex is referred to because that is what it is currently.

The member for Huon talked about when babies are born their sex is registered; yes, it is and absolutely nothing changes with that so I am not sure he was -

Mr Armstrong - It does change because you have to tick the box now.

Ms FORREST - No, you are not listening. When a baby is born and the sex is registered by the parents, nothing changes with the registration. I am not talking about issuance of certificates; I am talking about when the baby is registered.

The reference to sex or gender, or just sex or just gender, is that if this bill is supported, we will have previously registered sex because all registrations to date have been a registered sex - even for those who have changed, it is the previously registered sex. We need to cover that. We also need to cover when people have registered a gender under the provisions we have agreed to and to enable that information to be stored on the register. Should that person change their gender, you have to have a provision that enables that.

It is wordy, yes, and I commend the dedication of Robyn Webb to get this right. To hear the honourable member say it is unnecessarily wordy and confusing, I think is an insult to OPC. When you read it through and read it in its entirety and look at all the particular circumstances we need to cover here, Ms Webb has done a fantastic job and has not missed anything. That is the important part to remember here. She has not missed anything. I continue to be amazed by how her brain works. She is an incredibly intelligent woman.

That is why a number of provisions make sure we do not miss anybody. We do not miss anybody whose sex is registered under the current arrangement, whose change of sex was registered under the current arrangements, whose gender may be changed in the future and the issuance of the birth certificate, if you did not complete the form correctly and missed your date of birth off - say you put your application in and you are doing a paper form and you put in your name and did not put your date of birth or perhaps put your incorrect date of birth, which sometimes we can do. I read numbers wrong here all the time as we have witnessed a number of times today, so it can happen. The registrar would not issue a certificate until all that information was complete, so it is no different and everyone is treated the same.

That is the reality. The registrar will not be able to issue a certificate unless all the fields are completed and as she does now; if a form is received incomplete she will send it back saying 'please complete otherwise I cannot issue a birth certificate'.

The other references to sex and gender and the previous registered sex or gender are done in such a way as to ensure that you can only have one currently registered sex or gender. When you go to the principal act, which we are amending here, in section 46 the two current clauses in that stand.

Honourable members will note that we insert after subsection (2), so for members' benefit, get them to focus on section 46 of the principal act, which is about the issue of certificates. On first completing a search of the register, the registrar may issue a certificate certifying particulars contained in an entry, certifying that no entry is located on the register but the relevant registerable event. The registrar first has to go to the register to see if there is anything there. Nothing there means you were not registered in Tasmania and they cannot issue a birth certificate. Pretty simple. If there is information there, the registrar can then go on to look at how they issue the certificate.

A certificate under subsection (1)(a) is admissible in legal proceedings as evidence of the entry to which the certificate relates. So the information on the register has to be accurate in terms of the currently registered information. If someone changes their name, that is their currently registered name; if they change their gender, that is their currently registered gender. The facts are recorded in the entry. The registrar can only produce on a birth certificate information that is currently recorded on the register. That is why those provisions we dealt with previously said that if you register a different name or a different gender, that former name or former gender ceases to be your currently registered name or gender. You only have one at a time, which deals with some of those issues raised by others about potentially having two identities and having two Medicare cards and two this and that.

Robyn Webb has been particularly forensic in this, and to suggest it is wordy and unnecessary is a little bit inappropriate with the work put into this.

There may be other questions I have missed. The member has two more calls so he can ask them.

Ms ARMITAGE - Do you agree, member for Murchison, that there could have been a default on the form that birth certificates or gender/sex was included on the actual certificate unless there was a box to opt out? I think that would have been much more comfort to the people that have contacted me. A lot of people within the community have been concerned about that. Is that possible? I appreciate the work that Robyn Webb has done but, of course, she has only done it on instruction. That is the thing. It has not been her idea. She has done it on instruction so she is not being political. I would have thought the form could have been just 'tick a box' if you do not want gender included. It would have given the same outcome, but would have given more comfort to people.

Ms FORREST - We had long discussions about this and my view is that we should treat all Tasmanians the same. That is why it has been drafted this way - so that all Tasmanians are treated the same, regardless of their background, their socio-economic status, their gender, their sex, their marital status. Whatever it is, we treat all Tasmanians the same. That is the Tasmania I want to live in and that is the Tasmania I believe we do live in. That is why it has been drafted this way. I do not want to enter into another policy decision. I issued these instructions to Robyn Webb as the instructor of the amendments and it is my intent. Other members can vote against it if they do not like the intent that we treat all Tasmanians the same. I am for an inclusive, equal Tasmania where we treat all Tasmanians the same. That is the Tasmania I want to live in.

Ms ARMITAGE - I could have stood up for a point of explanation or from my seat.

Ms Rattray - You still can.

Ms ARMITAGE - I am happy to do it here. I am happy to make a comment. I do not believe that I specified any particular group of people for not wanting it. I am not transgender but I might not have wanted gender on the birth certificate. The member for Murchison has assumed I am targeting a group of people. Many people in the community have come to me very concerned about gender or sex on birth certificates. It does not matter who it is. My children might decide not to have sex written on their birth certificates. It does not mean that I will. All I am saying is that the norm is that gender is there and if you do not want it, it still gives everyone equal opportunity.

I am incensed and quite offended that the member for Murchison implied we are not treating people equally. We are treating people equally. Just because I do not agree with the member does not mean that I am not treating people equally. My question is: could there not be a form to get a birth certificate with that default? Many times we have a default on forms. People - I did not say they had to be transgender people, they could be anybody - could just tick 'no'. If they did not tick the gender, it could be anyone. I am very offended that the member implied I was actually referring to a group of the people and not treating them equally, because I do treat people equally.

Ms RATTRAY - I will not support the amendment but not because I do not want to treat people equally. It is because I could not get my amendment up to change the age to 18 years. I did not want to delay the Chamber, so I will stay my course there. That is the reason I will not support the amendment, but it is not because I do not treat people equally.

Mr ARMSTRONG - I also take offence to that. I treat everybody equally. It does not matter where they come from or who they are. I treat them equally. I take offence at what the member for Murchison said.

I still do not see why we cannot have, as the member for Launceston stated, a position where you could have the default automatically recorded, if you do not opt out. I certainly will not support the amendment now.

Mr DEAN - I want to comment on a couple of things said by the member for Murchison. Can we treat all people the same? No, we cannot treat all people the same because different people require different support, different things need to occur financially - food, housing and all those other things. You cannot treat all people the same. It is not the right word to use. If we did that, we would be in all sorts of trouble.

Mr Valentine - Where we can, mostly.

Mr DEAN - Where you can, you will. You treat people fairly and you give them the support necessary and equally, but you cannot treat people all the same.

My electorate is a very good example of that, where many people are treated differently because they require that because of their circumstances they find themselves in. It is not always because of their doing, but because of unfortunate circumstances. You cannot treat people the same.

The member challenged me on the amendments - that they have been out for a long time and I could have taken advice and come back to her and so on. I was sending the amendments as they were coming in. They were going to advisers, the people I was talking to, not only one. In the main it was one group, but I was sending them out to other advisers.

They kept changing in subtle areas. It came to a stage where I could not keep up and I said, 'I am not doing it anymore'. I made it clear to my staff until it was finalised. Even after I thought it was finalised, we still have more amendments coming in, to proposed section 28D in particular, that I need to seek further advice on, so I went back out again.

The member throws these words around - the ones referred to by the members for Launceston and Huon. When we raise issues about some of these amendments being wordy et cetera, that it is insulting to OPC, to Robyn Webb. It is not insulting. I raised the issue a number of times.

As some member said, Robyn is brilliant at her job. How she has brought all of this together, I am not too sure. It is on our instructions, so what we want and the way it should be written and what we want included determines, in many instances, how the amendments will be written and drawn up.

I ask the member: how many times has she challenged the way in which amendments and bills have been written? Many times. Is that insulting to those persons in OPC who put it together? No, it is not. It annoys me when members throw those words around. It is just not good enough. Some members need to be more careful with some of the words they are choosing to label others with.

That is my position on that. Other members have mentioned the opt-out provision. Without a doubt, that has been the main matter brought to my attention. I raised two or three other issues the other day. That is what is in the newspaper. If you read and listen to the media, they are saying this is all about opting in or opting out of sex registrations on birth certificates. Have a look at the media headlines and statements on it, how they are written. That is how it starts, with the opt-in, opt-out thing. That is a major concern to people.

It ought to be very clear and it should identify the position we currently have, but with the opt-out clause if the circumstances arise. You could simply have male, female or other. Some other places have gone down that path, including, I think, the Northern Territory.

Mr Armstrong - Move an amendment.

Mr DEAN - I could move an amendment; if we think we need an amendment, we could ask for that to be considered. Mr Deputy Chair, I seek leave to consider -

Mr DEPUTY CHAIR - We have a question before the Chair already. You have to finish that one and then seek a postponement. Members, we have a question before the Chair, so we have to dispose of that one way or the other. Then another question will be put. You could seek to postpone and it could be dealt with in the Chamber or it could come back at the end. If we postpone, you have to deal with it when we have finished the other clauses.

While there is a question before the Chair, we cannot postpone. We have to deal with that question and then there will be an opportunity to seek further clarification.

Mr DEAN - Will you give me the nod when the opportunity to do that arises? I will test the Floor on that because it is a big issue and an important matter.

Mr DEPUTY CHAIR - You will have the opportunity. You can either postpone or seek leave to report progress, but we will deal with that once we get through this.

Mr DEAN - Thank you very much.

Mr VALENTINE - Administrations change their processes all the time to create new forms and no-one kicks up. To be quite honest, this is neutral. Let us be in the real world here - we are talking about filling out a form, for Pete's sake. We are talking about two microseconds of time, which box do we tick? I might get offended because I cannot put my sex on my licence again because they do not put it there anymore. Am I going to kick up and say, 'Look, I want an option; I want to be able to have it there'? Honestly, it is 4.30 p.m. We have this and another bill to get through. I am here until 3 a.m. tomorrow if need be. Do we want to be here until 3 a.m.? I do not think we do. This a neutral thing. It is not opting in or opting out. It is saying what you want and what is recorded on your record. What do you want on there in regard to these things? You choose. That is neutral. It is not opting in or opting out.

The Committee divided -

AYES 8

Mr Farrell
Mr Finch
Ms Forrest
Mr Gaffney
Ms Lovell
Ms Siejka (Teller)
Mr Valentine
Mr Willie

NOES 6

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt
Ms Howlett
Ms Rattray (Teller)

Amendment agreed to.

Mr DEAN - Mr Deputy Chair, I move -

That the Committee report progress.

Mr DEAN - Mr Deputy Chair, I seek leave to report progress. In speaking to this, I am not going to go right through everything I went through before, but this area we are talking about concerns people. This area has probably been the most discussed and reported.

Mr Valentine - It is gender that would have been most discussed.

Mr DEAN - That as well. But the opt in, opt-out thing, I venture to say, based on the information and emails I received, has been raised by nearly everybody who contacted me. It will impact so many people - let us be realistic, I would be surprised if 90-something per cent of people would not do what we have done forever, which is include sex on their birth certificates. I would be surprised if that were not the case.

Why should there be any impediment to people in the way we make this change? I am confident it is not the right way to go, hence I seek simply to move a motion with a view to seeking an amendment, to ensure we can move in the direction of opting out rather than the position we have just debated.

I ask members to support that motion. I suggest it could be put together fairly quickly by OPC as they have a good handle on what is happening.

Ms FORREST - I question the need to do this for a couple of reasons. The amendments in their current form were put out following that meeting in January. We all attended and agreed on a process, and this section did not change in February. The reason we did that, why I took it out as soon as I possibly could, was to give members time to prepare amendments to my amendments, which members have taken the time to do in a number of areas.

Here we are, at the last minute saying that we now want to amend my amendments because we want an opt-out. I put out clause notes and I made myself available to talk to anybody about it, and here we are. I do not believe it is a simple, quick rewrite of this section by OPC because effectively, what this Chamber has just agreed to is a process that enables everyone to be offered the same opportunity to indicate their preference. It provides a complete choice for everyone to be treated the same in this process.

I am not saying we can treat them the same in every other way. I am saying in this place that where it is possible to treat people the same, we will. As the member for Hobart said, it takes two nanoseconds to tick a box on a form indicating your preference. Surely you can call it an opt-out because you have to opt out if you do not want it there. It is an opt-out. You have to opt out, otherwise you have to opt in.

It is nonsense to suggest we need a different approach. That will take a complete rewrite of this process when we can offer every Tasmanian the opportunity to have the same process for what is a simple procedure - applying for a birth certificate - when you have to fill out the form anyway. You have to write your name, put your date of birth in, and the other fields you have to complete enable the registrar to search the register to see if you are there, first up, and, if you are, what the currently registered information is to put on your certificate. I will not support this proposal. There has been plenty of time. This amendment went out in February, with every opportunity to further amend it. I will not support the motion to report progress.

Ms LOVELL - I will not be supporting this motion either. The Chamber has just supported a process put together by the member for Murchison after much work and consultation with OPC. All members in this place have had this amendment before them for more than a month now. If the member for Windermere is saying this is the clause that has been most talked about, caused the most issues to be raised with him, why is he waiting until a quarter to five on Thursday afternoon when we have just supported a process to talk about moving an amendment? Why was this not addressed earlier? Everyone has had plenty of time. No other member in the Chamber has flagged a further amendment in the month and a half they have had to consider this. We have been here all week -

Mr Dean - It had been flagged.

Ms LOVELL - The amendment to this amended clause that you are just talking about to have an opt-out process instead of an opt-in or whatever it is.

Mr Armstrong - It is neutral.

Ms LOVELL - It is neutral now, but that is not what the member for Windermere wants.

Yes, member for Windermere, everyone is going to be affected by this. Everyone is going to have to fill out a form, just like they do now, and just as we do several times a year for many different reasons. We all have to fill out forms and sometimes those forms are in a format that we prefer sometimes they are not. Big deal.

It is a simple change. We have found a solution that is neutral which affects everybody in the same way so let us just get this done.

Mr ARMSTRONG - Mr Deputy Chair, the member for Rumney talks about process. Look at the processes that came through the other place 10 minutes before the link went up and before the legislation came through. The amendments that came through. We talk about process. Think about that one.

You have had amendments here all day. They have been coming all the time. We had 20 different versions from the member for Murchison -

Ms Lovell - All ahead of time.

Mr ARMSTRONG - We talk about process. I do not think anybody has ever been denied the opportunity to put an amendment up in this place while I have been here, but; now we are going to do that to the member for Windermere. I will support the member for Windermere.

Mrs HISCUTT - It has been the usual procedure of leaders in this Chamber for any member who asks for time, for whatever they may wish, to draft an amendment, or for the Government to organise a briefing for the Leader to grant that. It does not matter which member -

Ms Forrest - It has not always been granted, the briefings, not always.

Mrs HISCUTT - I have bent over backwards to help at the time, and with this particular one, as with other members who have asked in the past, the Government will support anyone who wants to move amendments as such.

The Committee divided -

AYES 6

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt
Ms Howlett
Ms Rattray (Teller)

NOES 8

Mr Farrell
Mr Finch (Teller)
Ms Forrest
Mr Gaffney
Ms Lovell
Ms Siejke
Mr Valentine
Mr Willie

Motion negatived.

Mr DEAN - Mr Deputy Chair, I accept I lost that one, and it was not surprising. I wanted to see where I could go, whether I could move that the clause be postponed at this stage. That would

have allowed us to move on and not waste any of the time that members have talked about. We can come back and conclude it. I can consider my position with a possible amendment during that time.

Mr Deputy Chair, I seek leave -

To postpone the clause as amended.

The reason is so that we do not waste time. We can continue to move on and I will consider my position in relation to this matter. I ask the members to support this. It is a reasonable request in the circumstances. I ask for your support in postponing the amended clause.

The Committee divided -

AYES 6

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt
Ms Howlett (Teller)
Ms Rattray

NOES 7

Mr Farrell
Mr Finch
Ms Forrest
Ms Lovell
Ms Siejka
Mr Valentine (Teller)
Mr Willie

Motion negatived.

Clause 23, as amended, agreed to.

Clause 24 -

Section 51 amended (Additional services)

Ms FORREST - Mr Deputy Chair, I move -

That clause 24, proposed new subsection (1A) be amended by -

Leave out 'the gender of a person as registered or collected under section 50'.

Insert instead 'the sex or gender registered in relation to a person'.

This is just to remove the reference to sex- and gender-related information being stored off the register under section 50. That is the only change it makes.

Mrs HISCUTT - The clause was put in the bill by the opposition parties in the other place. The Government does not support the inclusion of this clause in the bill. Our position remains that these issues need to be properly considered.

Amendment agreed to.

Clause 24, as amended, agreed to.

Clauses 25 to 31 agreed to.

Clause 32 -

Section 3 amended (All children to be of equal status)

Ms ARMITAGE - Mr Deputy Chair, I move -

That clause 32 be amended by -

First amendment

Paragraph (a) -

Leave out the words 'the person's parents'.

Insert instead 'the person's father, mother or parents'.

Second amendment

Paragraph (b) -

Leave out the words 'person's parents'.

Insert instead 'person's father, mother or parent'.

Third amendment

Paragraph (c) -

Leave out the words 'either of the person's parents'.

Insert instead 'the person's father, mother or either of the person's parents'.

These amendments are purely for consistency because we reinserted the words 'mother' and 'father' earlier in the bill. This is simply to put them back to make this section consistent with the rest of the bill.

Mrs HISCUTT - The bill has gone a long way down the track and this would be a good amendment to see in there, so we will be supporting these amendments.

Mr VALENTINE - I support this.

Amendments agreed to.

Clause 32, as amended, agreed to.

Clauses 34 to 35 agreed to.

Postponed clause 20 -

Section 26 amended (Registration of change of name)

Mr DEAN - Mr Deputy Chair, I move -

That clause 20 be amended -

Leave out all words after 'Section'.

Insert instead '27 is amended by omitting from subsection (3) all words after "for the person" and substituting the following:

"must -

- (a) include both the name to which the person's name has been changed and a notation of each name of the person that was previously registered; or
- (b) if the Registrar thinks fit and has been requested to do so by the person applying for the birth certificate, include only the name to which the person's name has been changed, without a notation of any name of the person that was previously registered."

I am going to be extremely brief with my comments. It might be a little unusual. I think it was the member for Hobart picked up that there was an error in this. Originally this amendment was drawn to be inserted into 26. I cast no aspersions. My instructions might not have been clear about what I wanted and what I was doing here. I thank OPC for coming back. We are in the right area. I thank them for that and the work they have put into this matter. The alternative amendment to section 27 of the principal act allows the registrar discretion to include or omit notations of previously registered names on a birth certificate. That is it in a nutshell. It is a reasonable amendment. I ask members to consider the amendment seriously. It will improve the bill as it currently stands.

Ms FORREST - Mr Deputy Chairman, this matter is covered in the amendments we have just dealt with, in terms of how the issuance of a birth certificate appears. Section 27(3) of the principal act says -

If a change of name is noted in the Register under subsection (2), a birth certificate issued by the Registrar for the person must include -

- (a) both the name to which the person's name has been changed and a notation of each name of the person that was previously registered; or
- (b) if the Registrar thinks fit and has been requested to do so by the person applying for the birth certificate, include only the name to which the person's name has been changed, without a notation of any name of the person that was previously registered.

The amendments we have just agreed to provide exactly for this are under the issuance of certificate, which is where it is probably placed. The reason I encourage members to vote against clause 20 in the bill presented to us, and again, against this amendment, is because it is covered under issuance of certificate, where it rightly should be. It is confusing to have two similar provisions in different parts of a bill or an act that relates to exactly the same thing and is essentially seeking the same outcome. This was a decision we made after discussions with OPC. All matters relating to the issuance of a birth certificate, whether a change of name or the issuance of a birth certificate after the birth of a baby, for example, or the change of gender, will be in that one spot. It makes it much cleaner and logical, and does not create any issue of competing amendments that cover exactly the same matter.

I encourage members to vote against this clause. The member's intent is picked up already. We have already done it.

Amendment negatived.

Clause 20 agreed to.

New clause A -

Ms FORREST - Mr Deputy Chair, I move -

New clause A to follow clause 1 in Part 1 -

A. Commencement

- (1) Except as provided by this section, the provisions of this Act commence on the day on which this Act receives Royal Assent.
- (2) Part 4 commences on a day to be proclaimed, but if that Part has not commenced before 90 days after the day on which this Act receives Royal Assent, that Part is taken to commence 90 days after the day on which this Act receives Royal Assent.

I acknowledge the member for McIntyre has a subsequent amendment to this amendment. I will speak to the intent and then she can have her turn.

When we voted against clause 2 in relation to the commencement clause in the bill, I pointed members to this new clause, which provides a staggered commencement time. Other changes unrelated to the births, deaths and marriages component of these amendments can be enacted on royal assent, but all the changes related to the Births, Deaths and Marriages Registration Act 1999 will commence on a day to be proclaimed but will not commence before 90 days after the day on which the act receives royal assent. It still takes some time to receive royal assent. This part was taken to commence 90 days after the day on which the act receives royal assent. The reason this provision was considered and included was to ensure there was time for the necessary background work, the new form and any necessary regulations that needed to be developed in relation to this, could be prepared. There would not be many but there may be some, particularly in terms of the question asked earlier by the member for McIntyre.

Once this bill receives royal assent and the other parts are enacted, the policy intent to this parliament is clear: the TLRI can commence work on those other set matters they cannot deal with currently because they are in our policy matters before this House. After discussion, I was of a view that 90 days was adequate. I know the member for McIntyre is suggesting 120 days. It could be proclaimed earlier; there is nothing to stop the Government proclaiming it earlier. It is really to stop it being left sitting and not proclaimed, which would be a travesty.

This gives adequate time to enable it to be dealt with and any consequential amendments, regulations or process work that the registrar spoke to us about regarding the form and the process she needs to undertake within her office and liaisons with other departments, can occur. The registrar is well aware of what we are doing here, do not worry about that, so that will give adequate time. I encourage members to support this new clause.

Mr Deputy Chair, I move -

That new clause A be read a second time.

Mrs HISCUTT - The registrar has indicated BDM software developers have said technical changes to the system will take approximately four months, so the 90 days is way too short a time to commence the proposed amendments.

Mr VALENTINE - I certainly agree with the clause. There does need to be a time frame and I would be inclined to support the 120 days.

New clause A read the second time and made part of the bill.

New clause A -
Commencement

Ms RATTRAY - I acknowledge the member for Murchison's contribution in regard to the 90 days. My concern is we know very well the wheels of government departments do not always turn as quickly as we would like. That is no disrespect to the people who are here from a government department. It can be difficult to get everything in. We do not know everything that needs to be done in regard to this. In moving my amendment, I will speak more in a minute.

Mr Deputy Chair, I move -

That new clause A, proposed subsection (2), be amended by:

Leave out '90 days' (twice occurring).

Insert instead '120 days'.

I acknowledge the registrar will be watching, but I also would expect the registrar would not have been able to commence any work, or it would not be prudent to have actually commenced any work, until the bill passes the House. We still have a third reading to go and it still has to go to another place. We do not know how long that is going to take, so no work can be done for a while.

In light of the Leader's contribution, it will take the BDM software - and the member for Hobart will know exactly what that means from his prior experience with software programs, I expect that

it does not just happen overnight. I respectfully request that we consider allowing a bit of extra time to get things in place which could well be needed. It is prudent that the House allow that. I urge members to support the amendment.

Mr VALENTINE - To clarify, they have to get functional specifications and all sorts of things together to suit this new paradigm that we are putting them into. Clearly, they have to call for either a tender or for consultants to do the job. It does take some time and 120 days is a good time frame.

Amendment agreed to.

New clause A, as amended, read the second time and made part of the bill.

Mr DEPUTY CHAIR - Member for Windermere, for the record, are you now not proceeding with your amendments to the new clause amendments?

Mr DEAN - That is so. I am not going to move those amendments because of what has happened, the mood and the position that we have in the House. It would be an absolute clear waste of time. I accept that with the voting going the way it is, it is not going to change. I will not be moving my amendments.

Mr DEPUTY CHAIR - Thank you.

New clause B -
to follow clause 11

Ms FORREST - Mr Deputy Chair, I move -

B. Section 3A inserted

After section 3 of the Principal Act the following section is inserted:

3A. Meaning of, and designation of, gender

(1) In this Act -

'gender' means -

(a) male; or

(b) female; or

(c) indeterminate gender; or

(d) non-binary; or

(e) a word, or a phrase, that is used to indicate a person's perception of the person's self as being neither entirely male nor entirely female and that is prescribed; or

- (f) a word or phrase that is used to indicate a person's perception of the person's self as being neither entirely male nor entirely female.
- (2) For the purposes of the definition of *gender* in subsection (1) -
 - (a) a reference, in paragraph (a) of the definition, to "male" is to be taken to be a reference to the male gender; and
 - (b) a reference, in paragraph (b) of that definition, to "female" is to be taken to be a reference to the female gender.
- (3) Without limiting the grounds on which the Registrar may refuse to register a gender in relation to a person, the Registrar may refuse to register, as a gender in relation to a person, a word or phrase (other than a word or phrase specified in or under paragraph (a), (b), (c), (d) or (e)) if the Registrar is of the opinion that the word or phrase is not within paragraph (f) of the definition of *gender* in subsection (1).

Mr Deputy Chair, I move -

That the new clause B be read a second time.

In speaking to this new clause it seeks to insert a new section to define gender.

We have had some discussions about definitions and that sort of thing and I have mentioned earlier that the clear advice from OPC is that you do not need to define sex but you do need to define gender because the dictionary is not helpful.

This is to define gender and clarify that references to male or female for the purpose of this definition are taken to refer to the male gender or the female gender. The section includes as standard registerable genders 'male', 'female', 'indeterminant', 'non-binary' and allows for other terms to be prescribed as registerable genders and for the registrar to determine whether another term sought to be registered is appropriate.

This took a lot of discussion, a lot of work to try to get this definition right. The dictionary is not at all helpful in this regard. Effectively, what it means is that if a person is seeking to register a gender they apply to register a gender; they lodge an application with the registrar doing the process we have already agreed to register a gender; and they seek to register as a male or a female or indeterminant gender or non-binary that would be approved because they are already listed.

Proposed paragraph (e) provides for a prescribed list so if there are other recognised terms - and this is where it came to the question the member for McIntyre may have and that is, what will be prescribed? That is a matter for the registrar to consult on. At this stage there are the four and the registrar may well prescribe other terms if the registrar believes they are recognised and will be recognised on an identity document where gender may be required, which is very few these days but that is right.

Those will come through the Subordinate Legislation Committee and can be listed by any honourable member if they felt it was not appropriate, but I am pretty confident the Registrar will

not register things that are not clearly identified genders. The members have said how many there can be, but the registrar will make a determination on that. We need to have some faith in the registrar here. Because it is a legal document and she is putting information on the register, I believe she will be very sensible in her approach to this. She is an independent statutory officer and not appointed to that position without the proper skills, knowledge and experience.

Paragraph (f) provides for the registrar to consider another term that may not yet be prescribed and not one of the above four, but the registrar has the power here not to register that. If someone sought to register a term that was clearly not a gender, or she had some real concerns about whether it is a recognised gender, the registrar could refuse.

If a person applies under the first four, a gender that is prescribed, notionally it will be registered and she will go through the process of noting that on the register as the current registered gender of that person. Proposed subsection (2) clarifies those matters I have just spoken of, and proposed subsection (3) makes it clear that the registrar can refuse to register a gender if someone is seeking to register a term that is not a gender or that she believes is inappropriate, just as the registrar can refuse to register a name. It is basically the same power - if the registrar believes a name is inappropriate, the registrar has that power. This is treating that in a similar way and ensuring that the genders that are registered are recognised.

Mrs HISCUTT - The Government does not support the inclusion of this new clause into the bill.

Ms RATTRAY - Mr Deputy Chair, I take on board what the member for Murchison said - and this is with no disrespect for the registrar - but we are placing a lot of faith in the registrar to be able to choose what is appropriate as one person deeming that appropriateness. It is interesting we will not see the prescribing until a much later date. We understand that a joint House committee and individual members of parliament can always move disallowance motions.

Going to proposed subsection (3) of the amendment, where it says -

Without limiting the grounds on which the Registrar may refuse to register a gender in relation to a person ...

There are more words after that, but is there an appeal process or is the registrar's word final on this? Can somebody take offence?

Ms Forrest - You can appeal to a magistrate.

Ms RATTRAY - You can. It does not actually say that. Is that a known fact?

Ms Forrest - You can appeal to the Administrative Appeals Tribunal.

Ms RATTRAY - If someone is offended by that, would they be able to take that issue to the Anti-Discrimination Commissioner if they feel very strongly they want to present as that and would like to have that gender acknowledged? If the registrar says, 'I do not feel that is appropriate', the person may be offended by that. Does the member think that might cause any issues? I accept there is a process through the magistrate, but it does not outline that. Once we get that on the public record, people will know and understand.

Ms FORREST - In terms of whether someone could go to the Anti-Discrimination Commissioner, again, they would have to have grounds. It is no different from changing your name. If someone sought to change their name to something the registrar refused to register, it is no different.

Ms RATTRAY - I know the member by interjection said it can go to the Magistrates Court.

Ms Forrest - Probably the Administrative Appeals Tribunal. It is the same as a change of name.

Ms RATTRAY - I wanted to have that clearly on the record. As long as *Hansard* has picked up those interjections, I am happy with that.

New clause B read the second time and made part of the bill.

New clause C -

To follow, in Part 4, clause 20

Ms FORREST - Mr Deputy Chair, I move -

C. Section 27 amended (Entries to be made in Register)

Section 27 of the Principal Act is amended by omitting subsection (3).

We voted against clause 20, which amends section 27 of the principal act, which says-

If the change of name is noted on the Register under subsection (2), a birth certificate issued by the Registrar for the person must include the person's name as changed under this Part.

That is because we moved all the issuance of birth certificate detail into the current section 46 of the Births, Deaths and Marriages Registration Act. It is to complete that so all that information related to issuing of birth certificates remains in the same place.

Mr Deputy Chair, I move -

That new clause C be read the second time.

New clause C read the second time and made part of the bill.

New clause D -

Section 52A inserted

Ms ARMITAGE - Mr Deputy Chair, I move -

A. Section 52A inserted

After section 52 of the Principal Act, the following section is inserted in Division 8:

52A. Solemnisation of marriage

A person may discriminate against another person on the ground of religious belief or affiliation or religious activity by refusing to solemnise a marriage if the circumstances mentioned in section 47 of 47A of the *Marriage Act 1961* of the Commonwealth apply to that refusal.

Mr Deputy Chair, I move -

That new clause D be read the second time.

I have had correspondence from one person pointing out that they believe this was not necessary. I will not name them although I am sure they would be quite happy for me to. If a couple who were turned away by a religious minister lodged a case with an anti-discrimination authority, there is no chance at all the case would proceed because the federal Marriage Act effectively overrides all state anti-discrimination statutes. I have been told it is a matter of opinion. It is not clear and that other jurisdictions do have other kinds of legislation.

The Tasmanian Anti-Discrimination Act 1998 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 be potentially in breach of the Tasmanian Anti-Discrimination Act, even though they are meeting the requirements under the Commonwealth 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 Practice for Marriage Celebrants.

A complaint could also 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. It has also been mentioned that should a case be taken up by the state Anti-Discrimination Commissioner, it could put priests through a potentially costly and lengthy process. There is a real question about whether Tasmania's anti-discrimination legislation would be consistent with the Commonwealth's law, if this amendment is not made. The laws in each jurisdiction differ and it is important we legislate to make Tasmania's laws clear.

I have been approached by several people of religion, asking if I would move this amendment. I hope members support it. It does not affect anyone, apart from priests. At the moment, it is already felt it is unnecessary because they can already discriminate on the grounds of their religion. As I have pointed out, I have been told by a number of people, and I have taken some opinion, that it is not clear and it is a matter of opinion. I have had the opinion from one person saying it is not necessary. I have the opinion from many other people saying it might be. It is unsure, unless it is tested. I ask members to support the amendment.

Mrs HISCUTT - This provision was removed from the bill by the opposition in the other place. Therefore we will support this amendment.

Ms FORREST - I will not be supporting the amendment for a number of reasons. First, it is unnecessary. The federal Marriage Act already provides religious ministers and celebrants with a positive right to turn away any couple. By virtue of the Australian Constitution, that positive right already effectively overrides all state discrimination protections. That is why, as far as I know, and

other people who I have spoken to about this, no other state has bothered to legislate in this regard. They have not needed to. It is not necessary.

Of more concern, when you read this amendment, this provision does not do what the member for Launceston suggests it does. It allows a religious minister, for argument's sake, to turn away a same-sex couple on the basis of the minister's religious beliefs. That is what she is saying. That is wrong. The provision only gives the religious minister the right to turn away a couple on the basis of the couples' religion. It says, 'a person may discriminate against another person on the ground of religious belief or affiliation or religious activity by refusing to solemnise a marriage.' The person can discriminate against the person on the grounds of their religion.

Ms Armitage - The word 'their' is not in there.

Ms FORREST - That is what it means.

Ms Armitage - That is your opinion.

Ms FORREST - This is because attributes under anti-discrimination laws, such as religion or sexual orientation, protect those who experience discrimination, not those who commit it. The other issue is it stigmatises same-sex couples particularly, as a far greater threat to marriage and religion, and other couples whose marriages ministers of religion may not wish to solemnise. Ministers of religion have the right to refuse to marry anyone, including partners who have been divorced, who have children out of wedlock, or who are of mixed faith, another faith or have no faith.

At the same time, it has been illegal to discriminate on grounds of relationships in Tasmania for 20 years.

It is not necessary and does not achieve what it sets out to achieve. The federal legislation overrides these. That is why other states have not done it. I do not support it because it is not necessary and it does not do what is sought to be done.

Mrs HISCUTT - I point out to the member that with all OPC drafting, unless there are numbers or things like that, we tend to believe that they do achieve what has been asked. I presume that is what the member requested to be asked. Therefore, we presume that OPC has drafted the intent of what they are trying to achieve.

Mr VALENTINE - I thought that anything that was covered by the field of the Commonwealth law is not something that we can deal with in this state, as far as I am aware.

Ms Forrest - That is why marriage equality has to be the Commonwealth law.

Mr VALENTINE - That is right. We had that debate with the same-sex marriage bill that came in here. They were the contentions. I do not support it for that reason.

Ms ARMITAGE - I can only give the advice that I have been given, in that a complaint could also be made under the Tasmanian Anti-Discrimination Act if the changes in the bill were not included in our act to provide a similar exemption in the state.

The member for Murchison mentions priests as being discriminatory. I could not get married in a Catholic church. They discriminate against many people. I am a Catholic but they will not

marry me because I am divorced. I accept that. I also accept that priests have an issue with same-sex marriage, the same as with me being divorced.

This is necessary. I understand the member for Murchison saying she does not believe it does what it is supposed to do. That is her opinion. I did not question her opinion with Robyn Webb's amendments with the member for Murchison's amendments.

This is an OPC amendment. It says 'a person may discriminate against another person on the ground of religious belief'. It does not say 'a person may discriminate against another person on the grounds of their religious belief'. It has the objective it is meant to have and I ask members if they do not feel it is necessary, what is the problem with putting it in? It is going to be an extra pair of belts and braces.

Mr VALENTINE - You do have to clearly read it and understand it. A person, me if I am a minister, may discriminate against another person on the grounds of religious belief. It has to be their belief, not the minister's belief - on the ground of religious belief. I am discriminating against you because you are such and such, not I am discriminating against you because I am different from you.

Ms Armitage - I am discriminated against here because of my religion. It is opinion.

Ms RATTRAY - I am not entirely sure who is right here. I certainly understand the member for Hobart. It does read like that as well. You could take it that way or the other way. I am wondering if it is clear enough for us to make a decision? That is why I am not inclined to support it. Again, through the same-sex marriage debate I was very clear that it belonged with the Commonwealth and they had that jurisdiction and -

Ms Forrest - I disagree with -

Ms Armitage - Mr Deputy Chair, this is the Anti-Discrimination Act we are talking about not the marriage act that they can come under.

Ms RATTRAY - This is in the Commonwealth Marriage Act.

Ms Armitage - Yes, but a complaint could be made under the Tasmanian Anti-Discrimination Act.

Ms RATTRAY - Again, there is a bit of conflict. I completely understand you are representing your constituents, and that is certainly admirable, but I find it is difficult in this position to be able to support it for the reason it is not clear.

If the member is willing to get some clarification around that, perhaps that might -

Ms Armitage - I do not think that would get through if I tried to postpone the clause.

Ms RATTRAY - Thank you. That is my brief offering on that.

Mr DEPUTY CHAIR - The question is that new clause D be read the second time

The Committee divided -

AYES 5

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt
Ms Howlett (Teller)

NOES 9

Mr Farrell
Mr Finch
Ms Forrest
Mr Gaffney
Ms Lovell
Ms Rattray
Ms Siejka
Mr Valentine (Teller)
Mr Willie

Amendment negatived.

New Clause D -

To follow, in Part 4, clause 24

Ms FORREST - Mr Deputy Chair, I move -

D. Section 54 amended (False representation)

Section 54 of the Principal Act is amended -

- (a) by renumbering the section as subsection (1); and
 - (b) by inserting the following subsection after subsection (1):
- (2) A person must not, with intention to deceive, produce to another person a birth certificate, a copy of a birth certificate, or a copy of an extract from the Register, issued for the person, that -
- (a) if there is a registered gender in relation to the person -
 - (i) shows a previous registered sex, or previous registered gender, in relation to the person; and
 - (ii) does not also show the registered gender in relation to the person;
or
 - (b) if a change of name of the person has been registered -
 - (i) shows a previous registered name in relation to the person; and
 - (ii) does not also show the last registered name in relation to the person.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years, or both.

Mr Deputy Chair, I move -

That new Clause D, to follow in Part 4, clause 24, be read the second time.

New clause D inserts a clause to create an offence for producing to another person a birth certificate, a copy of a birth certificate or a copy of an extract from the register with intention to deceive if the person has had a previously registered sex, gender or name.

Currently there are provisions in the act for creating an offence for making a false or misleading representation. The penalty is lower; when you look at the offence in section 55, which is about unauthorised access or interference with the register, the penalties have been replicated in this provision because I believe this is a serious matter.

If someone intentionally used a birth certificate with the intent to deceive, that should be unlawful and should be subject to a reasonable penalty. The intent is to ensure that, whether it is a name or gender that is misleading in the document, if they are seeking to mislead by producing a document to perpetrate an identity fraud or any other illegal act and intending to deceive by producing it, that should be an offence that attracts a reasonable penalty.

Ms RATTRAY - I support the amendment. It is a reasonable approach. We have spoken quite a bit over the past few days about the fact that somebody potentially has the opportunity for fraud through this process that will pass the parliament. This is a reasonable approach that sends a message to anyone who might be inclined to test the waters that it is not acceptable and it will be met by the full force of the law.

I received a message from the media this morning asking me if I was going to be amending this clause and increasing the penalty, but 100 penalty units and a term not exceeding two years should be a reasonable deterrent for anyone.

Mr Valentine - About \$15 000 or \$16 000.

Ms RATTRAY - I know that the penalty is \$150-something. I should know that off the top of my head. It is not insignificant money and the fact that it says 'or imprisonment for a term not exceeding 2 years' sends a very strong and clear message to anyone who might take advantage of this opportunity to manipulate the system. I support the member and we might need to get it out in the community that it is not on, do not even try it.

Mr DEAN - This is an amendment to section 54 of the principal act and it makes an offence to fraudulently use a previously issued birth certificate or a birth extract that shows either a previous registered sex or gender or a previous registered name. Policing of this will be extremely difficult. I am not sure how police would go about getting the information. If a person is out there with several of these fraudulent birth certificates and using them for the purposes of committing crime, the only time it will be able to be policed is after the crime has been committed and complaints are being made. The police start an investigation after that. That is the sad situation here in relation to this matter.

There is no limit specified for the number of times a gender can be registered for a person. I do not see there are any limits and I did have 'or how frequently' but now the amendment I put forward identifies it cannot be done within a 12-month period. If there is one change of gender the next one cannot happen until after the 12-month period expires. That is taken care of, but gender

could be changed. As the member for Launceston, or member for McIntyre, said on a number of occasions today, we do have people who will take advantage of situations and positions that arise.

We do have those people and there are cases and members have seen those cases brought to our attention in America, Canada and the United Kingdom, where there has been fraudulent behaviour in relation to these matters. It is no good saying it will not happen; it is likely to happen. We need to ensure that we have the appropriate mechanisms in place. I have real concerns with this. How frequently could a person have a number of birth certificates showing a variety of registered names and genders? The potential for fraud is real.

Also, proposed subsection 54(2) refers to a series of documents that must not be used for fraudulent purposes. The list includes a copy of an extract, but I cannot see where it relates to an original extract. Can an original extract be used for fraudulent purposes? The amendments provide no guidance to the registrar for their administration. Was advice sought from the registrar about these amendments? If it was sought, perhaps we might be told what was the position. I have a number of concerns with this bill.

Another issue could have been satisfied had stakeholders been involved in this, had the police made comment in relation to this matter, because this is an important area. The police are the ones likely confronting this. I would have liked to have seen exactly where they fit into all of this and what their issues and concerns are in relation to this. It is a police matter.

It ought to be concerning all of us, because it can happen. Sadly, we have paedophiles amongst us in all walks of life. I have concerns and will not be supporting it.

Mr ARMSTRONG - In principle, I support this amendment. However I do have a problem with the fine not exceeding 100 penalty units or imprisonment for a term of not exceeding two years, or both. The way I read it, a person could actually falsify their birth certificate and commit a crime for millions of dollars through fraud. But this is saying that they cannot be fined any more than 100 penalty units, or cannot be jailed for any more than two years. Yet it could be a multi-million-dollar fraud. I do not think there should be a maximum on it. I have an issue with it because you could have a multi-million-dollar fraud and yet you are going to get a maximum of two years jail or 100 penalty units. It does not seem right to me.

Ms FORREST - I will address the member for Huon's comment and his last question. This fine, or potential fine or penalty, is just for producing a document with the intent to deceive. If you commit a fraud for millions of dollars you are going to get another big hefty fine and probably some prison time for that as well. This is just for that. The fraud does not go away. This does not override that. You get both. I imagine they would be served concurrently, if you end up in prison. That is not an issue.

To respond to the member for Windermere's comments about the police dealing with this, managing it, I do not know how they do it now then. If it is going to be such a problem under this, how do they do it now? In the current act, and it has been there for some time now, it says that a person must not make a false and misleading misrepresentation in an application or a document knowing it to be false or misleading. We are not changing that. We are just putting it in a slightly different way and making it relate to gender changes as well as name changes. If the police are having trouble now, I guess they will still be having trouble then. But I am not aware of any trouble the police have had. The police are very good at identifying these sorts of frauds. If it exists currently, it will exist in the future potentially. But this makes it very clear there is a hefty penalty.

Mr Valentine - It is 10 times what it used to be.

Ms FORREST - That is right. Of course, it is a serious matter. If they do that, and then commit a fraud or another crime, then they will be done for that as well.

Mr ARMSTRONG - I am saying that you have not heard of the police having any of those issues, but have we asked the police? We have not asked the police. The member for Murchison might have. I do not know.

New clause D read the second time and made part of the bill.

New clause D agreed to.

New clause E -

To follow in Part 4, clause 24

Ms FORREST - Mr Deputy Chair, I move -

E Transitional provisions

(1) If an application under section 23 of this Act -

- (a) has been, before the gender amendments day, made in relation to a change of name of a person; and
- (b) has not been determined before that day -

this Act, as in force after that day, applies in relation to the application and the Registrar is to advise the person that the person may make to the Registrar an application under section 46(9) of this Act as in force after that day.

(2) If an application -

- (a) has been made under section 28A of this Act before the gender amendments day; and
- (b) has not been determined before that day - the application lapses, but the Registrar must return to the applicant any fee paid by the applicant in relation to the application.

(3) Subsection (4) applies in relation to an application under this Act if -

- (a) the application is an application for the issue of a birth certificate or of an extract from the Register in relation to the registration of the birth of a person; and
- (b) the application was made before the gender amendments day; and
- (c) the application has not been, before that day, determined under this Act by issuing, or refusing to issue, a birth certificate or extract.

- (4) If this subsection applies in relation to an application -
- (a) the application is to be taken to be an application under section 46 of this Act as in force immediately after the gender amendments day; and
 - (b) this Act, including section 46, as in force immediately after the gender amendments day, applies in relation to the application; and
 - (c) the applicant is -
 - (i) if a request, in relation to the application, was made under section 28D(2) of this Act as in force before the gender amendments day - to be taken to have made, in relation to the application, a request under section 46(4)(b) of this Act as in force after that day; or
 - (ii) if a request, in relation to the application, was not made under section 28D(2) of this Act as in force before the gender amendments day - to be taken to have made, in relation to the application, a request under section 46(4)(c) of this Act as in force after that day.

This is a transitional provision to address applications for birth certificates or change of sex or name under the current act that have not been processed prior to the commencement of these amendments. This is one of the problems with the bill as presented. It did not have transitional arrangements in it, which could have created problems for people who are part way through the process.

Subsection (1) makes clear applications for change of name that have not been dealt with by the registrar before the provisions of this bill come into force, remain in force, but requires the registrar to inform applicants they will be able to choose whether only their new registered name is to be shown on the birth certificate or both their newly registered name and/or other previously registered names.

Subsection (2) causes those applications by people for registration of change of sex applications under part 4A of the Births, Deaths and Marriages Registration Act, which have not been dealt with by the registrar before the new provisions of the bill under 28A, related to the registration of gender or change of gender, come into force to be void, and for fees for such applications to be returned. That process has to be recommenced under this new process.

Subsections (3) and (4) provide transitional arrangements enabling the application of the new requirements in relation to issue of birth certificates or extracts introduced by these amendments, for applications that have not been dealt with before these provisions come into force.

Mr Deputy Chair, I move -

That new clause E be read the second time.

As you often see in bills where you are changing a currently existing act you do need to have transitional arrangements to deal with people who are halfway or part way through a process and these seek to do that. I urge members to support the second reading of the new clauses.

Ms RATTRAY - This is probably more a comment than a question. This proves why the art of drawing up legislation is such a specialised field. The whole suite of amendments reflects that. Certainly, that transitional clause shows the intricacies and the length of detail you need to go to, to have it right. It is no wonder we do not have many private members' bills either here or in the other place because it is such a specialised area.

I acknowledge we need some transitional arrangements through this process, otherwise people could well be caught in the middle and not know which way to go and have to withdraw. At least it provides some options.

Regardless of what happens at the end of this, I take my hat off to Robyn Webb and her team for the work and the effort they have put in to providing the best legislation that they could possibly come up with at members' requests. I acknowledge everyone's work and efforts through this.

New clause E read the second time and made part of the bill.

Title agreed to.

Mr DEAN - Mr Deputy Chair, earlier today I flagged I intended at the appropriate time to move to report progress for the purposes of calling the Commissioner of Police before us for a briefing. Mr Deputy Chair, I move -

That the Chair do report progress and seek leave to sit again.

I do not want to go through everything again. In respect of new section 28D, I said that following a session with the commissioner it might be that we might need to recommit new section 28D.

The commissioner is involved inasmuch as we have correspondence from him and it could certainly be said, on reading the information in the report, that he has been misrepresented. It is not fair for either the commissioner or those here to let this slide. The best way to address this is to ask the commissioner whether he would brief us on this matter. That is proper in the circumstances. The commissioner may elect not to do so for whatever reasons.

It will be suggested that there is no need to politicise this for the commissioner. However, if we do not report progress to look at these issues, does that mean in future I can get correspondence or have an expert person provide me with a report in relation to any matter then come into this place, choose not to produce that document and misrepresent that person on their views and their position in support of my cause? Does it leave it open for that to occur? Yes, it does.

In the circumstances, the commissioner might want to explain his position if his support was in the document. However, we are told there was also a verbal discussion with the commissioner. We have got no idea what came from that discussion. We were told it was also referred to in *Hansard* by the member for Murchison that the commissioner agrees with the legislation -

Ms Forrest - Agrees with the principle, I think.

Mr DEAN - I will quote what you said by way of interjection -

Ms Forrest - By interjection, I will refer to that advice when we get to the section in the bill that relates to that. The overall advice was supportive of the legislation. As to particular aspects that have any real implications for police, we will deal with that at a later time.

You are saying that the overall advice was supportive of the legislation, that the commissioner is supportive of the legislation. There is nothing ambiguous about what you said there about the Commissioner of Police's position in relation to this bill. My view is that we ought to give the commissioner the opportunity to come before us and to clarify some of the issues.

I ask members to support it. I know where the blocs are going to go. I know exactly what is going to happen, but I needed to put it forward. I know there are other courses of action open to me and I will consider them as well, but the quickest and best way to do this is to hear from the commissioner.

Ms LOVELL - We are so close. There were - there are still - enough people in this Chamber happy to take the member for Murchison at her word, as we were happy to take the member for Windermere at his word on the consultation that he undertook.

Mr Dean - I produced it; I produced the document.

Ms LOVELL - And the various documents that he produced and the various pieces of advice that he spoke about and the list of questions that he asked on behalf of other people. We have all been happy to take him at this word. We have been happy to take other members at their word and we were happy to take the member for Murchison at her word. The member for Windermere has had ample time to consult - himself - with the commissioner if he wished to do so. He has not done that.

Mr Dean - I tried to.

Mr Finch - Should we take him at his word that he did that?

Ms LOVELL - Precisely. We are so close. This is not going, in my opinion, to change the outcome of this bill and of the decision we have reached tonight.

Mr VALENTINE - What the member for Murchison did or did not say to the commissioner to my mind is actually not relevant because the letter has been tabled. I took my understanding of that letter into account when I made my decision. What the member for Murchison said the commissioner said is of no relevance to my decision because I have his letter there and it speaks to me. I read it as support myself.

Mr Dean - Of course you do.

Mr VALENTINE - It gives them a better option. What do you mean 'Of course you do'?

Mr DEPUTY CHAIR - Member for Windermere, under standing order 99, that is quarrelsome. I do not mind an interjection if it is a fair question but to try to talk over or through another member I do not think is parliamentary and I will not allow it. If you have a question, wait

for him to draw breath and then ask the question, but please do not get into an argument. I will allow a question but I will not allow interjections in a quarrelsome manner.

Mr VALENTINE - I am not making my decision on any aspect of this bill based on what the member for Murchison may or may not have said to the Commissioner of Police. I am taking it from what the Commissioner of Police says in his letter. That is my stand on it and I am not interested in getting the Commissioner of Police in here and putting him into a political situation, which would be wrong.

Ms ARMITAGE - I agree with the member for Hobart. I have the letter. My stance on the bill was that it should have gone to a committee. That was how I felt. It did not go to a committee. I accept that and we move on. Some amendments I have supported; some amendments I have not supported. We have the letter from the Commissioner of Police. I understand where the member for Windermere is coming from. I have read the letter and I do not see in the letter that he is supportive of the legislation. I see that he is quoting sections of the Tasmania Police legislation and the Police Offences Act. I do not believe that getting him in will make any difference to the amendments that have gone through, so why would we do it? I can understand the member for Windermere wanting him to come in, but I do not think he would want to come in because I believe it is politicising him.

I probably disagree with the member for Murchison. The letter certainly does not say he supports the bill. Whether the member for Murchison had that verbally from the commissioner or not, to me it is irrelevant to the bill. It is not going to make any difference to the amendments that have gone through.

Mr Dean - I can take a number of actions, though.

Ms ARMITAGE - Whatever you want to do, I cannot support it. I vote on something because I agree or do not agree. If I cannot win, I move on. I have supported some of the amendments and not supported some of the amendments. I would have liked it to go to a committee, but it did not. I am concerned about where we are now. Win, lose or draw, you have to move on and put your best foot forward. I do not see having the commissioner coming in will change anything. It is irrelevant and he would not want to be involved in politicising.

Mr ARMSTRONG - I will support the member for Windermere's motion. It would be good to get the commissioner in because there have been accusations going back and forth, and it would clear it up once and for all. He can answer in camera if he wants to, I assume. It would clear the air about whether he supports the legislation or does not support the legislation. We can get it one way or the other.

The member for Rumney said 'we' when she was talking. I hope she was not counting me in the 'we'. I do not know how many people she was talking for when she said 'we', but it certainly was not me.

Mr Willie - All Labor members.

Mr ARMSTRONG - I support the member for Windermere in asking the commissioner in. It would clear the air one way or the other.

Ms FORREST - I was not going to speak on this but it is important I clarify some matters because some things have been taken out of context. I did not say the letter clarified any support for the principle of the bill. I said my consultation with the commissioner indicated support for the principle of the bill. The commissioner, as we all know, and his police department have done an enormous amount of work engaging with the LGBTI community. There has been an enormous effort to create inclusive workplaces for the police, for the people they deal with, and often the police deal with individuals in the most difficult of circumstances, regardless of whether they are a member of the LGBTI community or not. What I said was that the consultation I undertook with the commissioner indicated that any legislation that will strengthen and build on the work done by police to assist them in treating members of the LGBTI community fairly and equally, as we want them to treat all of us if we have to have dealings with them, is supported. That was the point I was making. There is a constant picking out of little bits, but you have to look at it in the context of what topic was being discussed at the time.

Mr Dean - It is the report being discussed at the time.

Ms FORREST - I absolutely support the comments of the member for Launceston and member for Hobart because I do not believe it is appropriate to insert the police commissioner into a political discussion here.

Mr DEPUTY CHAIR - Member for Windermere, we discussed what is appropriate and what is not. We have discussed what is appropriate and I do not believe your last comment was.

Ms FORREST - I want to make it clear what I say is what I say, and it should be taken in the context of what it was being referred to. I was referring to the consultation I had with a range of parties in reference to the Commissioner of Police. I feel he will not want to speak to any of us ever again after this. When we are undertaking our job - and I take my job very seriously, as I am sure all members do - I am not casting aspersions on anybody. I am talking about me and what I do. I take my job very seriously and when I consult on a bill, particularly one that is complicated, contentious and challenging, I make sure I talk to and communicate with all the people I feel can give me advice or information about aspects of the legislation.

I have done this. On this occasion I have talked to hundreds of people, because it is hundreds of people and organisations that represent hundreds of people. I have done so by email communication, text messages, Facebook messages, the whole bit and in person, and I will continue to do this.

I fear the way this has been politicised, and demanding the police commissioner front up to tell us what is in his head, may well make him reticent to participate in requests for consultation. It would be a very sad day if the police commissioner were being coerced - if he is not being allowed to talk to us from a ministerial level, that would be even worse, but he was willing to talk to me. He was willing to communicate. He communicated with the member for Windermere. I am sure he would have responded to anyone else who contacted him. He is that sort of person, so let us not politicise this.

You make your own decisions. I thought we had decided - frankly maybe we have not, but I believed we had. The Chamber voted in a democratic process and the member for Launceston talked about the democratic process. You lose some, you win some. I have lost a lot in here. I mean a lot of votes, but you get on and keep going. Okay, let us respect the process, respect democracy and not take each other out of context.

I wanted to clarify the record on that, and I believe I have. I will not support the member's motion.

Ms RATTRAY - In regard to the call to report progress, I will not support the motion. I have certainly made my points through the process and I was particularly disturbed and disappointed we had not all seen the letter. I made that point earlier and then we were provided with it. For some of the reasons the member for Launceston indicated, I do not think it will be of any benefit to this bill, to the Chamber or perhaps to the broader public, but I acknowledge it is every member's right to put these motions forward and ask for a debate. We should be reminded of that as well. We do not always get what we want. That is life, but we should always feel we are able to stand at the lectern, debate an issue and ask for information. If it does not see favour in this place, it does not, but we need to be reminded that it is every member's right to put forward a motion and then the Chamber will decide on it.

Motion (by leave) withdrawn.

The Committee divided -

AYES 8

NOES 6

Mr Farrell
Mr Finch
Ms Forrest (Teller)
Mr Gaffney
Ms Lovell
Ms Siejka
Mr Valentine
Mr Willie

Ms Armitage
Mr Armstrong
Mr Dean
Mrs Hiscutt
Ms Howlett
Ms Ratray (Teller)

Bill, as amended, taken through the remainder of the Committee stage.

ELECTORAL AMENDMENT BILL 2019 (No. 3)

Second Reading

[6.35 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Mr President, I move -

That the bill be now read the second time.

This bill is a preliminary step in the review of Tasmania's Electoral Act. It proposes a first tranche of amendments to the Electoral Act 2004, to address issues arising from delays in postal delivery times and makes other changes to improve the operation of the act. The bill also removes the ban on newspaper advertising, commentary and reporting on election day.

Following the state election last year, the Premier announced on 3 May 2018 there would be a review of Tasmania's Electoral Act and associated laws, to be jointly conducted by the Department of Premier and Cabinet and the Department of Justice.

Terms of reference for the review are:

- (1) modernising the current Tasmanian Electoral Act, with specific examination of sections including sections 191(1)(b), 196(1) and 198(1)(b);
- (2) whether state-based disclosure rules should be introduced and, if so, what they should include; and
- (3) the level of regulation of third parties, including unions, during election campaigns.

The review is to be guided by two principles - protecting freedom of speech with note to constitutional implications and minimal cost to the taxpayer.

The Premier indicated an interim report would be released within six months of the review's commencement, with a final report to be provided within 12 months. The review commenced in June 2018, with a call for public submissions on the terms of reference. The interim report was released for public consultation in December 2018.

The closing date for submissions on the interim report was initially set at 18 February 2019. However, following the release of the interim report, the High Court of Australia handed down a decision - *Unions NSW and Ors v NSW* - which was directly relevant to aspects of the review.

An addendum to the interim report was released on 18 February 2019, providing an overview of the High Court decision and posing further consultation issues for feedback. This consultation period was extended to 15 April 2019 to allow the High Court decision to be considered appropriately by stakeholders and further feedback to be provided.

As indicated in the interim report, it became apparent during the early stages of the review and through the consultation process that a number of reasonably straightforward technical and administrative changes could be made to modernise and improve the operation of the act and electoral system. It was recommended in the interim report these amendments should be made as soon as possible to commence prior to the next state elections - which are the upcoming Legislative Council elections in May this year.

The Government has accepted those recommendations and is implementing them through this bill. At this point, I would like to emphasise this bill is only a first tranche of reforms with the full review not yet completed. As such, it only contains administrative and technical changes. It does not propose any reform in relation to more complex policy issues, such as disclosure of donations and regulation of third parties. These matters are still being considered by the review and I expect there will be recommendations in the final report to be provided to the Government later this year.

I will now provide some detail on the proposed amendments in this bill.

First, there are a number of amendments to address difficulties arising from recent changes to postal delivery times. These difficulties were raised by the Tasmanian Electoral Commission in its submission to the review. TEC observed in the 2018 elections that it experienced longer time frames than estimated by Australia Post in the delivery of postal vote applications and postal votes, making it difficult to meet the time frames set out in the act. It noted using priority mail services would impose a significant additional cost on taxpayers.

A key change in relation to postal delivery times relates to postal vote applications. Currently, the act requires a postal vote application to be lodged by 6.00 p.m. on the second day before polling day - that is, the last Thursday before the polling day - if the postal vote is to be sent within Australia, and 6.00 p.m. on the fourth day before polling day - that is, the last Tuesday before the polling day - if the postal vote is to be sent outside Australia. For a postal vote ballot paper to be counted, it is to be marked and returned by delivering it to a polling place or posting it to the returning officer, before the close of poll. As noted by TEC, if a postal vote application is lodged on the final Thursday before the election, it is unlikely a postal vote will be delivered prior to polling day to anywhere outside of Hobart, which means that the elector will not be able to cast their vote in time.

Under the bill, it is proposed the deadline for the lodgement of all postal vote applications be brought forward to 4.00 p.m. on the eighth day before polling day. This time frame was recommended by TEC and will mean all postal vote applications will be required to be lodged by 4 p.m. on the Friday a week before the election. This should allow TEC to use regular mail services to deliver postal votes within the state, thereby minimising costs.

Other proposed amendments to time frames in the act to take account of longer or delayed postal delivery times include -

- including a time frame for applying for replacement postal vote information consistent with the postal vote application time frame;
- extending the period to lodge, post or send a nomination to contest a recount from 10 days to 14 days;
- extending the minimum period between nomination day and polling day from 15 days to 22 days; and
- clarifying the time allowed for postal responses to a notice of failure to vote.

In addition to the postal time frame amendments, the bill proposes some minor technical and administrative amendments to improve the operation of the act and electoral system. Again, these changes were suggested by TEC.

The bill makes an amendment to section 127 of the act to allow postal vote information to be made available for viewing at the TEC office. Currently, the act provides for this information to be made available at the office of the returning officer. However, returning officers are generally situated in short-term premises which are vacated shortly after an election. It is more practical for this information to be made available at the permanent office of TEC.

The bill also includes amendments to modernise various provisions in the act so information and documents can be transmitted by electronic means, such as email rather than by facsimile. Along similar lines, there are also amendments to TEC meeting procedures to allow the commission to determine an electronic method by which a proposed resolution may be distributed to and voted on out of session by members. The bill also allows a returning officer to delegate a number of administrative duties to election officials.

A significant amendment in the bill is the removal of the ban on newspaper advertising, reporting and commentary on election day. Section 198(1)(b) of the act prohibits a person from publishing or causing to be published in a newspaper an advertisement for or on behalf of, or relating in any way to, a candidate or party on the day fixed for polling. It also prohibits the

publishing in a newspaper of a matter or comment relating to a candidate or a question arising from, or an issue of, the election campaign. This provision was specifically raised in the terms of reference for the review, as it has caused concern in the community. It has long been seen as being anachronistic and an unfair fetter on the ability of newspapers to report or comment on election issues and candidates on election day.

During consultation on the terms of reference for the review, there was strong support for the removal of this provision - particularly in relation to the restriction on newspaper reporting and commentary. The general consensus was the ban is outdated and unfairly penalises newspapers given it does not apply to other forms of media, such as online and social media platforms. No other Australian jurisdiction prohibits newspaper commentary and reporting on election day. It was therefore recommended in the interim report of the review that the ban be removed by the repeal of section 198(1)(b)(ii), with this amendment to be included in the first tranche of reforms so it can come into effect prior to the Legislative Council elections coming up in May. During consultation on the bill, there was feedback that the ban on newspaper advertising on election day was also out of step with other states and territories and because of the repeal of section 198(1)(b)(ii) it was decided to remove this as well, by repealing section 198(1)(b) in its entirety in fairness to all candidates.

I reiterate this bill is very much a preliminary step in the review and reform of Tasmania's electoral laws. Many other more complex issues were canvassed in the interim report for the review including disclosure of donations and regulation of third parties. These issues were directly raised in terms of reference 2 and 3 of the review. Consultation on the interim report is due to close on 15 April and the final report is due later this year. I expect the final report will make recommendations for further reforms.

Mr President, I commend the bill to the House.

[6.46 p.m.]

Mr ARMSTRONG (Huon) - Mr President, I support the bill. It does some good things, particularly the extension of the postal vote from 14 days or how many days it is. It is a great initiative because you will always hear stories where people do not get their postal vote in on time. The only area I do not really agree with, but I know it had to happen, was the area where we had the Saturday on the day of the election. I thought it was great to be able to get up and get the Saturday paper and still not have to read about all the elections going on. It brings us in line with the other states. I support the bill.

[6.47 p.m.]

Ms RATTRAY (McIntyre) - Mr President, that thought expressed by the member for Huon had crossed my mind as well. By the time you get to polling day when you have been through a campaign, you just want to go and vote and spend some time with your family. You have done all you can. My dear old dad always said that you cannot fatten a calf on market day. You have to have done the work prior. He left me with that one and I remember it quite often.

I agree with the member that it does bring us in line with other states and social media is so prolific now. We cannot do anything about the robo calls; they still come on the morning, so we still have those things to deal with. We cannot stop the electronic media. In fairness to our daily papers, in this day and age they struggle a bit. I have started getting the newspaper online. I found myself a couple of weeks ago where there was a newspaper and I could not wait to get my hands on it. I like to sit down and read it and turn the pages. It is not the same. I know that it is convenient

for us because sometimes we are not in our offices and we can check what is going on in online news.

Mr Armstrong - Particularly on a Saturday morning.

Ms RATTRAY - I really did enjoy picking up that paper and it was when I was here for the Public Works inquiry and I stayed overnight. The next morning the paper was sitting on the breakfast bar and as I was on my own I could actually really look at the paper. I enjoyed it and I thought, 'I have really missed this' because I get it online now. I appreciate that some people, like me, still like to read the paper in paper form.

I support the bill, certainly around the postal votes. That is really important because, sadly -

Ms Forrest - Australia Post is slow.

Ms RATTRAY - You have nailed it, member for Murchison. They call it 'snail mail' and it is true. It is ridiculous to think that it takes three or four days to get a letter. If you post a letter in Winnaleah and you are sending it to Scottsdale it comes to Hobart to get sorted. Then it goes back to Scottsdale to be delivered.

Mr Valentine - It could be a climate change issue.

Ms RATTRAY - Is it a climate change issue? It is an Australia Post process, with all due respect. In the good old days, and I know they are long gone and I have felt that a bit of late, they would stamp it at Winnaleah, which they still do, and if you caught the mail that morning, it could possibly be delivered that afternoon if you had a post box, or at least the next day if it was by delivery. Things have changed.

Now I find that when I am at Winnaleah and Mum says, 'You could drop this in for me, that would save it going to Hobart and back', I have become the postie in some respects. Whenever I am home, Mum gives me the letters and I post them. That is the way it is. I am not sure everyone wants to hear what I do in my time as the member for McIntyre but I do all sorts of things, including go around and post letters for my mum if it means getting there quicker.

I support the principle. I look forward to the rest of the reforms because that is what many of us are waiting for. This is only a smidgen. I am looking forward to getting my teeth into some of those other areas that have been annoying me for some time. I look forward to the rest of the reforms and I believe it will be the end of the year they will be completed. Is that correct?

Mrs Hiscutt - Yes.

Ms RATTRAY - I support the ones we have here before us and I look forward to the rest of the suite of amendments that are to follow. That is what will be the interesting part and the one that will gain more discussion.

[7.11 p.m.]

Mr VALENTINE (Hobart) - Mr President, this deals with a number of matters, which is good. It is the fact that mail moves slower these days when it is going by snail. That is the way it is.

To pick up on the member for Huon's concern about section 13, I am not in favour of section 13. It is a backward step. With daily papers and the few of them we have in this state, at least with multimedia you choose which media platform you follow and you can get a number of opinions with multimedia. But with this we are talking about private enterprise papers that have an agenda to push sometimes and they might pick and choose as to which stories they decide to run on a Saturday. I enjoy being able to have space to think about what I want to do from the pamphlets I get or from the media I do have access to. To let this go for newspapers, we are losing a bit of democracy. In that sense it is opinion that is driven and controlled in some part by particular interests. That is not a good thing for Tasmania. I know people might shout me down but I will not be voting for section 13.

[7.15 p.m.]

Mr DEAN (Windermere) - Mr President, I support most of the amendments. I have some concern, as does the member for Hobart. The press is strong.

Ms Rattray - They can make or break you.

Mr DEAN - You are right. They can make you or break you. I recall an election, and I will not say where it was and what it was. I remember a journalist approaching me on one occasion saying, 'We can put you in or we can put you out'. That journalist was seeking something from me at the time, a story. If I had agreed to do something, they would give me a lot of publicity, they would give me a front page and goodness knows what else. That is the sort of thing.

Ms Rattray - I thought the journalist would have learnt from that.

Mr DEAN - There are further amendments to come in and I am looking forward to those because the Electoral Act does need work on it. There are many issues there.

There are a number of offences under the Electoral Act. There are concerns around the capacity and ability of the office to police and take actions where complaints are made.

We have one thing happening this year with the Legislative Council elections. You may have heard the Electoral Commissioner talking the other morning on radio. The honourable Don Wing would be absolutely ecstatic because they are going to amend the voting slips to papers and include both instructions at the top. As you know, what has been there is that you must vote for all candidates, then get down to the bottom and read that to make your vote valid you only have to vote for the number of seats that are there, which could be two, three or even one.

Ms Forrest - Too late.

Mr DEAN - Too late, you have already filled the whole thing in. Don Wing pushed this for a long time.

Ms Forrest - He was right on every occasion.

Mr DEAN - He was, and the honourable Greg Hall moved an amendment in here.

Ms Rattray - He did. He was the one who got 'independent' put next to our names. That was Greg Hall's amendment.

Mr DEAN - I am very pleased that the Electoral Commissioner has seen fit to trial it. I put a report in to the Electoral Commission saying there was no need for legislation on that. They could

make that decision. It did not require any amendments to legislation to do that. That is happening and will please many people. We need these amendments and they will be in there for this election coming up in May, which is the reason for this.

I take it the other place's passing it next week will be early enough. I support the legislation.

Mr PRESIDENT - The election will be at this time next month.

[6.57 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - I thank members for their contributions. The only question I heard was when will the final report come. At the moment, it will be later this year.

Bill read the second time.

ELECTORAL AMENDMENT BILL 2019 (No. 3)

In Committee

Clauses 1 to 3 agreed to.

Clauses 4 to 6 agreed to.

Clause 7 -

Section 126 amended (Application for postal vote)

Ms RATTRAY - I asked a question in the briefing to do with the application for a postal vote. It used to be on the fourth day before polling, but because of Australia Post it has been changed to the eighth day. That lessens the time. Would it be open earlier at the other end? Would postal votes be available earlier than in the past? I want to get on the record that is the case and they will be available earlier. I know you can only do them once they have been printed and everything is ready, but I want to know the time process around that once nominations have closed, the ballot papers are printed and then they are available for people to apply for a postal vote, and confirm that also reflects less time to apply for a vote.

Mrs HISCUTT - While the deadline for the receipt of postal vote applications is being amended in section 126 to the Friday a week before polling day, it is noted that the amendments to section 70(1) will extend the minimum time between nomination day and polling day from 15 days to 22 days. This will effectively provide up to seven days in which postal vote applications can be made.

Clause 7 agreed to.

Clauses 8 to 12 agreed to.

Clause 13 -

Section 198 amended (Campaigning on polling day)

Mr VALENTINE - As I said in my second reading contribution, I believe newspapers will have the opportunity to print stories and do editorials if they wish. Correct me if I am wrong, Leader, if that is not the case, but I believe this allows them to do that. It allows them to pick and

choose which stories to run and I believe it means they can possibly favour a candidate over another candidate. To do that on election day would be wrong, but please correct me if I am wrong on that score. That is my understanding.

Mrs HISCUTT - The member is right. They will be able to print newspaper articles on the Saturday. Your concerns are noted but this brings us into line with the rest of the country.

Mr GAFFNEY - I agree with the member for Hobart. My concern with this is that material is printed on that day when people vote and it could be incorrect. It might not be totally kosher and the person has no chance to defend themselves in the public arena at all. I am going to vote against that one because I do not think it is necessary. I would like to think that people have thought very carefully about their vote before they happen to pick up the paper on Saturday, there is a splash out on the front page about something that has happened, and then on the following Monday it says, 'Oh, sorry, we made a mistake on Saturday'. They were misquoted but they got on the front page of the paper just when I was going up to vote. I listened to the member for Hobart and I am inclined to agree with him. I do not like section 13 and will be voting against it.

Ms RATTRAY - I certainly have some empathy for what is being proposed here when you think about that it can happen, but I have never seen a newspaper in my time that has printed a retraction in any reasonable time frame. If they put something in the paper on Friday and you rang them up and said that is not right, you would never get a retraction on Saturday, and the member for Windermere will agree with me here. I know you were trying to get a retraction in the newspaper and it took you weeks to get a retraction. I believe that is the issue. If they have gone down that path they are not going to fix it in a timely manner.

Mr Gaffney - The difference is, if it happens on a Friday there are other forms of media that a person could use to say that was incorrect, such as social media. They can flip it out there. If I am picking the paper up on Saturday to go and vote and I see a bit on page - do you know what I mean? I agree with what you are saying.

Ms RATTRAY - It is an interesting point. I also take on board that particular scenario but I wanted to make the point that I have never seen a newspaper undertake a timely retraction and then they put it on about page 54 - no, there probably would not be that many pages in some of the newspapers anymore - somewhere where it is not very visible. They have possibly made a statement that was very visible on page 2 on the left-hand side. That is the prominent place. Somebody told me once that was a good place. Page 3 is the most expensive. I have never paid for an ad on page 3 obviously. I do have some sympathy and I certainly listen and if I think that my vote will sway to get him over the line then I might be inclined to vote for the honourable member.

Mrs HISCUTT - Consultation on the terms of reference for the review and also subsequently on the draft bill indicate support for the removal of the ban. Some of the concerns raised during consultation were that the ban is outdated and unfair in that it is discriminatory to the newspaper rather than other forms of media such as online and social media platforms. It prevents newspapers from reporting important information on election day and it is not consistent with other Australian jurisdictions.

It has been suggested that this ban should remain on the basis that voters should have a period free from media commentary in which to make their own decisions. However, it is noted that this concept seems to be less realistic or relevant in the current times where information is increasingly

available and accessed online in real time and where there is a significant rate of early voting, meaning that fewer voters are captured by this blackout.

There was support for removal of the section 198(1)(b)(ii) ban on newspaper commentary and reporting from various stakeholders, including academics as well as media organisations.

Mr FARRELL - This is an interesting one. My thoughts hark back to the comment that the member for McIntyre made about her father's saying about fattening the calf on market day. I believe if you are out of favour with the press you have probably already been done over, so I take on board the comments - I have to be careful here; it could get reported.

As wonderful as the newspapers are, and accurate and true, you will always get journalists with opinions one way or the other. The discrimination angle is a fair angle because other forms of media can just keep going all the time.

In this day and age, you do not get the right of reply with anything. There has been a case today where the member was severely misquoted on a - was it a Facebook page or a Twitter page or one of those things? - and you see that happening all the time. Even I had a little misquote on another page. I will not mention the author of that page.

Mr Valentine - It made you famous.

Mr FARRELL - Yes. I believe that all the other states have it and it is the one form of media that is discriminated against, as much as we do not like it. This all came out of an issue around the last election anyhow. There was a story that the paper could not use because of this law so, rightly or wrongly, a newspaper or any form of media will take a particular angle and report it as such.

To be fair to the papers, we probably should support this.

Mr VALENTINE - The member points up an interesting thing. The fact is you can have a Tweet go out about you that is wrong but immediately you can put one out yourself to defend it and this is before the people's eyes - immediately. You cannot do that with a paper. This is what it is going to say, 'A person must not on polling day fixed for an election or on a day to which the polling for an election has been adjourned, distribute any advertisement'. You cannot distribute an advertisement, you cannot send out a 'how to vote' card, you cannot do a handbill or pamphlet, poster or notice containing any electoral matter, but your newspaper can.

Where is the discrimination? No thanks.

Mrs HISCUTT - I totally agree that you cannot fatten a calf on market day. I have here in front of me the submission from the TEC. I will read a direct quote from the submission. The TEC says -

The current restriction on newspaper election reporting on polling day does not take into account the shift to online information from a range of sources provided at any time during the day or night. This subsection also places additional restrictions on newspaper online sites that are not present for other news services, such as the Australian Broadcasting Corporation's website. It could also be argued that the impact of campaigning on polling day is reducing as Australia

sees a steady increase in early voting. Therefore, the TEC supports the removal of 198(1)(b)(ii).

And academics - it is not just media pushing this.

Mr VALENTINE - I will take up my third speak on this. I acknowledge all of that but I think we need to look at ways of being able to stop other avenues for influencing people on polling day. Just because some groups can do it - and let us face it, you can choose what you look at when you go online. You cannot choose to go around Hobart and say, 'Can you please take your paper billboard down'. You know, the paper billboard that says what is on the front page because it is spreading a message to all the voters who are out there, that someone has done something wrong or there has been some inference that is put up there.

I am not trying to cast aspersions on newspapers particularly, but it is an agency for opinion. You are not even allowed to spread your own opinion but a newspaper can. So I believe there is more discrimination in letting this go through than the discrimination that is continuing by not letting it go through.

I suppose there is balance there and people have to make their minds up as to whether they are going to vote it in.

Mrs HISCUTT - I urge members to support this amendment because every other state does this. This is discrimination in Tasmania. It is not only the media that wants this. There are academics and the TEC, and we really are out of step with the rest of the country.

You say it discriminates in the angle that you are thinking about, member for Hobart, but this does discriminate against this particular section of media as well. I believe we should come into line with the rest of the country. There may be very important information that needs to be reported on the day. They are hamstrung and I think we need to support this.

Academics, the TEC and others are saying we should be doing this. We have done the review and this is what we have come up with. I urge you to please support this.

Clause 13 agreed to.

Clauses 14 to 16 agreed to and bill taken through the remainder of the Committee stage.

ELECTORAL AMENDMENT BILL 2019 (No. 3)

Suspension of Standing Order 279

[7.15 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) (by leave) - Mr President, I move -

That standing order 279 be suspended to enable the bill to now be read the third time.

[7.17 p.m.]

Ms FORREST (Murchison) - Mr President, as I have indicated in the past, it is a matter of principle that the bill would not appear downstairs until next week when the lower House resumes, as we do, on Tuesday next. The third reading could be done then and it appears on their Table the same day as it would now. I do not believe it is necessary but at least four members are going to vote in favour of it so I can do the numbers too.

[7.18 p.m.]

Mr FARRELL (Derwent) - Mr President, I did during the course of this week, where we have had quite a heavy legislative agenda, the Leader did do as she indicated she would, to make sure things progressed through and following the briefing we had. The briefing was comprehensive and straightforward, and we have not amended the bill. I take on board the member for Murchison's words. I have heard them a number of times. In this instance, I support the Leader's motion.

Standing order suspended.

Bill read the third time.

ADJOURNMENT

[7.19 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

That at its rising the Council adjourn until 11 a.m. on Tuesday, 9 April 2019.

Motion agreed.

Mr Barry Roberts - Tribute

Mr ARMSTRONG (Huon) - Mr President, I am sure you will correct me if I am out of order here but this week we received an email that one of the long-serving staff members from the other place is retiring, and that is Barry Roberts.

I want to put it on record that when I came into this place, Barry was the person I found down in the Bistro who you could always have a talk to. He was a very friendly bloke. He has had 45 years of service in the other place. I just wanted to put it on record that I wish him all the best in his retirement and thank him for the friendship he showed me when I came here.

Members - Hear, hear.

Mr Barry Roberts - Tribute

[7.20 p.m.]

Ms RATTRAY (McIntyre) - Mr President, I want to endorse what the member for Huon said about Barry Roberts and to share a little story. When they were moving out of the old building when the new building was being built, an email was sent around and it gave a list of where items were that you could have a look at if you wanted to buy them. I ended up in Barry's office looking at a piece of furniture and, my word, did he put me on my way! He was not giving up his furniture.

I did manage to get the piece of furniture. He has always been very friendly and always said the nicest things when he would see you anywhere around the parliament. I certainly endorse those best wishes - 45 years is a long time to put up with members of parliament, I expect. He has done a wonderful job and I wish him all the best for the future. If you have a chance, sign the card at the front desk.

The Council adjourned at 7.21 p.m.