Thursday 31 October 2019

The President, **Mr Farrell,** took the Chair at 11 a.m. and read Prayers.

RECOGNITION OF VISITORS

Mr PRESIDENT - Honourable members, I welcome students from Bracknell Primary School who are joining us in the Chamber today from a great town and a great community. We certainly hope all of you enjoy your time in the Legislative Council this morning. I am sure all members will join me in giving you a hearty welcome.

Members - Hear, hear.

TABLED PAPERS

Legislative Council Select Committee on Short Stay Accommodation in Tasmania - Report

Ms Armitage presented the report of the Legislative Council Select Committee on Short Stay Accommodation in Tasmania, and a copy of the evidence received.

Report received and printed.

CONDOLENCE MOTION

Raymond William Shipp

[11.17 a.m.]

Mr FINCH (Rosevears)(by leave) - Mr President, I move -

> That this Council expresses its profound regret at the death on 28 October 2019 of Raymond William Shipp, who from 1968 to 1982 was a member of the Legislative Council for the electoral division of Launceston, and places on record its sincere appreciation of his great service to this state.
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> And further, that the Council humbly and respectfully tenders to his family its deepest sympathy in their bereavement.

I will talk about Ray Shipp's service to us in the Legislative Council. He served for 14 years in the Legislative Council as the independent member for Launceston, as you heard, from 1968 to 1982. He is pictured in photograph No. 573 in the Long Room.

As the member for Launceston in the Council, he served on a number of standing and select committees, including as a deputy chairman of the Legislative Council, Chairman of the Joint House Standing Committee on Subordinate Legislation, a member of the Joint House Parliamentary Library Committee, the Printing Committee, and the Privileges Committee.

The select committees on which he represented strongly were Road Safety, (Alcohol and Drugs) Bill 1972; Tamar River Pollution; Murchison Highway Road Links to Arthur River; the Second-hand Motor Vehicles Bill 1974; Therapeutic Goods, Health Foods and Cosmetics; Ambulance Services; Hobart Passenger Bus and Ferry Services; Land Usage and Subdivisions in Rural Areas; Tourist Industry; Legislative Council Boundaries; and Transport Services.

He was very proud to be the Tasmania Parliamentary Delegate to Westminster in 1973.

I look now at his service to the Launceston City Council. He was first elected to the council in 1985. He served until 1986, was re-elected in 1994, was elected deputy mayor in 1996 to 1999, and retired in October 2011.

I note a comment made by the Mayor of the City of Launceston, Albert van Zetten, who said -

> Mr Shipp was hard-working, diligent, and always fought for the interests of ratepayers and the wider community. He was always extremely supportive of council staff and the other elected representatives around the table.

I thank Virginia Shipp who provided me with a dossier of the activities and a biography of Ray Shipp. He was in the Royal Australian Air Force in World War II. He was the proprietor of several driving schools. In the 1960s and 1970s he prepared, produced and compered his own weekly television program, *Roadworthy*, on Channel 9 about driver education. He prepared, produced and compered his own radio programs over 15 years on 7LA and 7EX, also during the 1960s and the 1970s.

He received the Queen's Medal in 1977 for community service. He was a Commissioner for Declarations and he was on a number of community committees, including Landcare, the Progress Association and Neighbourhood Watch. He was a former member of the Tasmanian Thoroughbred Racing Council and president of the Northern Tasmanian Region of the Thoroughbred Owners Association. He owned a dairy farm at Westbury for approximately five years and later owned a horse stud, Carrick House. He played grade cricket for 20 years with the Northern Tasmanian Cricket Association, and he was a member of the South Launceston club and the Tasmanian Turf Club, which he served as treasurer.

To make a note of his work on the Launceston City Council, he was chairman of York Park at the time of its redevelopment, chairman of the Launceston City Council Tender Review Committee, deputy chairman of the York Park and Inveresk Precinct Authority and a member of the Upper Tamar River Improvement Authority. He retired from the Launceston City Council in September 2011.

I refer to a speech made by Michael Polley in the lower House about the retirement of Ray Shipp in September 2011. Mr Polley made this speech in parliament in October -

> I feel it is only appropriate that I say a few words about his 27 years in public office. A local boy, he grew up in Launceston, where he and his father, Bill, built their driving school. Ray worked in the driver education business in Launceston, teaching new Australians and young people of Tasmania road safety and the correct attitude and responsibilities when driving. Ray spent many of the following years giving driving tips and road safety advice on local television and radio.

> Ray was a member of the Legislative Council for the seat of Launceston from 1968 to 1982. He then stood successfully for the Launceston City Council in 1985. He was re-elected at each election thereafter. Ray also held the position of Deputy Mayor from 1994 to 1999. Ray's dedication to his council responsibilities has been unwavering. I cannot overemphasise or overstate the contribution Ray has made to our community.
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> I also need to mention his wife, Gail. I know she has been Ray's biggest supporter over the years and I would like to place on the public record my thanks - and I am sure I speak on behalf of our local community in thanking her - for her wonderful support to allow Ray to make the contribution he has over so many years ...
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> You may be wondering why I have chosen to stand here tonight and speak about a local council alderman. I believe Ray Shipp is a shining example to all of us. Ray is a man who has devoted his life to the betterment of his city and surrounding area. He has given his time to the community and he has been a voice on important issues for the people of Launceston.
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> In my opinion, Ray is a man who reminds us all that we are here for a very important purpose. We are all representatives. We are here to be the voice for the voiceless, to stand up for the marginalised and to always ensure that the best outcomes are achieved for our country and communities.
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> As I said, Ray has made an outstanding contribution to our local community. He was never politically aligned during his time as a legislative councillor. He was an Independent, a true independent. ... Those genuine gentlemen are not always as obvious in our community as I think they ought to be.

Mr President, I am taking extracts from Mr Polley's speech -

> He was renowned, as I said, for speaking up for our community, for being there, for being a very good listener, being able to contribute to the debate but to bring a common sense point of view to whatever debate he was participating in.

Michael Polley quoted from an article by Martin Gilmour, a past editor of the Launceston *Examiner* -

> To spend more than 20 years on the council, in addition to 14 years as an MLC for Launceston is an extraordinary commitment to civic duty by any measure.
>
> True to form, Ray's decision not to contest the next election was not based on any selfish motives nor is he in ill health. Ray has decided to make way for someone new, because he has and always has had the best interests of the people of Launceston at heart. Ray said it had occurred to him that if he was successful this election, the next time he was faced with the decision to stand or not, he would be almost 90 years of age. He said - 'I thought it was probably time to make way for another person from Launceston who may have their eyes on a council career'.
>
> ...

> It could be said that Ray is of the old school. He was and is a true gentleman. He has always been first and foremost a listener. Then when he needed to make a contribution, it was always well thought out and relevant to the conversation, debate or discussion that he was participating in.
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> His long career added to these discussions, as he has an example or story for almost every situation. His life experience enabled him to contribute and participate in the Launceston community with knowledge and experience like no other.

Those words came from Michael Polley when he a member of the House of Assembly in 2011. Those thoughts were amplified to me by Ray Shipp's daughter, Virginia -

> We were so proud of him when he got into Parliament in the Legislative Council in Hobart and then equally as proud when he was an alderman with the Launceston City Council. His family will miss him taking any opportunity to give an impromptu speech. At any occasion he would always grab it and say a few words, even in the hospital on a few occasions he would make a speech or at Christmas like he was in parliament again. We're all going to miss him terribly. It is the end of an era. There won't be another Ray.

Mr Shipp leaves behind his wife Gail, his daughters Virginia and Adrienne, and son Andrew, along with his five grandchildren and a great-granddaughter.

Ms Shipp said -

> The community support during the last few days has been really comforting. There won't be another Ray. He was always so proud of all of us and anything we achieved. He was so encouraging.

Vale, Ray Shipp.

[11.28 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I formally place on record the Government's appreciation for the contribution of Mr Raymond William Shipp, not only to the parliament as a long-serving member of this Legislative Council, but also to the community more widely. Mr Shipp was 82 years of age when he was elected for his fourth term as an alderman on the Launceston City Council in 2007. He had about 27 years in public office, including 14 years as an MLC as well as 20 years on the Launceston Council. An outstanding accomplishment and a reflection of his long-term commitment to the people of Launceston and Tasmania.

It is a record of civic duty that certainly warrants our acknowledgement and appreciation through this formal condolence motion. I thank the member for Rosevears for bringing it forward.

During his time in the Legislative Council, Mr Shipp was an active participant in numerous select, standing and sessional committees. Particular areas of inquiry included the Murchison Highway road links and road links south of the Arthur River to Corinna, Ambulance Services, the Tourist Industry and Land Usage Subdivisions in Rural Areas as well as Legislative Council Boundaries.

I did not personally know Mr Shipp, but from all accounts he was an old-school gentleman with an unwavering desire to do what he could to improve his community and better the lives of his fellow citizens.

Mr President, on behalf of the Government, I pass on our condolences to Mr Shipp's family.

Mr PRESIDENT - As a mark of respect to Mr Shipp and his service to the Legislative Council and the wider community, I ask all members stand for one minute's silence.

Motion agreed to *nemine contradicente.*

Motion by **Mr Finch** agreed to -

> That a copy of the foregoing resolution be forwarded to the family of the late Raymond William Shipp.

PUBLIC WORKS COMMITTEE AMENDMENT BILL 2019 (No. 32)

Consideration of amendments made in the Committee of the Whole Council

Amendments agreed to.

Bill read the third time.

MAGISTRATES COURT (CRIMINAL AND GENERAL DIVISION) BILL 2019 (No. 27)

Second Reading

Resumed from 19 September 2019 (page 38)

[11.34 a.m.]

Ms FORREST (Murchison) - Mr President, I appreciate the Leader's not continuing the progress of this legislation at the time I was away because I wanted to contribute to this legislation.

I appreciate this bill has been many years in the making - at least 18 years - and over current and previous governments. It is an important bill. This is not an area in which I have personal experience from either side of the process, which I think is a good thing in many respects. I appreciate being given the additional time to consider the bill fully following the briefings we had at a previous sitting.

I understand the impetus for the project came largely from the Magistrates Court itself with successive chief magistrates and court staff. I certainly appreciate the opportunity to hear from people such as the Deputy Chief Magistrate, Michael Daley; Director of Public Prosecutions - DPP - Daryl Coates SC; and senior Department of Police, Fire and Emergency Management representatives and departmental staff who have worked for many years on this bill. I also appreciate the legislative framework this is intended to replace. It is needed to contemporise the

way the Magistrates Court works to increase the efficiency of the courts, and is intended to enhance access to justice.

For many years, we have experienced backlogs in accessing justice through the court system and as the saying goes, 'Justice delayed is justice denied'. Modernisation and the creation of a more efficient structure are certainly welcomed.

During my consultation on the bill before us, I heard further streamlining and greater efficiencies could be achieved. While I look forward to perhaps there being something that continues to be worked on, I am content to support this bill and its cognate bills as an important first step.

I am sure - and I hope - we will continue to see ongoing review of our judicial system to ensure we have an accessible, equitable and efficient process for all Tasmanians to access justice. I understand that over the years the various jurisdictions of the Magistrates Court have been statutorily divided. The divisions of Magistrates Court - for example, the Administrative Appeals Division, the Children's Division, the Civil Division and the Coronial Division - were each created by a separate act and operated in accordance with a purpose-specific set of rules.

In her second reading speech, the Leader explained that the only summary jurisdiction not yet incorporated as a division in the Magistrates Court is currently known as the Court of Petty Sessions. That court deals with a vast majority of matters coming before the Magistrates Court, including summary criminal matters and general matters, such as applications for restraint orders and family violence orders.

The Court of Petty Sessions is currently governed by the Justices Act 1959 and is an outdated piece of legislation that uses outmoded language and does not provide the necessary legislative basis upon which to operate a modern court. It is a 60-year-old piece of legislation, marginally older than me, which also predates much of the modern computer age. As the Leader stated, the Justices Act 1959 fails to provide a proper or modern procedural foundation upon which a new court and corrections technology platform can be built.

Mr President, with the rapid pace of change in the use of technology and it being such an integral part of our everyday life - almost all of us - we need to ensure our judicial system is also contemporary and capable of operating in the technological age in which we now live and work. This bill establishes the high-level framework for the criminal and general jurisdiction of the Magistrates Court to meet current demands on the current demands on the court system, and it aims to provide a sound statutory base for initiatives to enhance justice and improve efficiencies that have been trialled and evaluated empirically.

Besides establishing the Criminal and General Division of the Magistrates Court, the object of this bill is to provide for the administration of justice in that division, to provide for enhanced access to justice, to facilitate the timely dispensing of justice according to law, to ensure that all proceedings are conducted fairly, and to facilitate and improve the case management of proceedings.

The Leader stated that the Government recently has made significant commitments, including increased resourcing and procedural and technological reform across the courts and Corrective Services, to address court criminal backlogs and improve access to justice. This includes significant new funding for the Justice Connect technology replacement project.

I acknowledge these commitments but note that there remains a significant backlog, especially in the north of the state. I note that Rob Webster was appointed as a magistrate in Hobart recently after a very long wait for this position to be filled. This has left the Workers Rehabilitation and Compensation Tribunal Commissioner position vacant, which I understand - and I am happy to be corrected if it happened since I last spoke to anyone about this - has still not been filled.

Maybe it has in the meantime. There was a bit of a lag between when I was made aware of this and my standing here now. At the time, I do not think it had been advertised.

Could the Leader provide some advice about what is happening with the commissioner's position? Will it be filled? It is a very important role, which has a significant workload. Delays will be created if it is not filled because currently only a part-time acting commissioner is filling this role. What steps have been taken to fill this position? What is the expected time frame?

In terms of capital expenditure and the justice system, the Burnie court is terribly out of date, even more so than the legislation this bill seeks to address. It is no longer fit for purpose and urgently needs an upgrade. I know we all have projects in our areas that need attention. The Burnie Magistrates Court was in the member for Montgomery's electorate - the Leader's electorate - not so long ago. It is now in mine. The court really is out of date and not fit for purpose. I would like the Leader to give me some comfort that the Government understands this issue - the state of the Burnie court and its lack of appropriate facilities - and that the court will be considered for upgrade in the near future. This may be a matter the Public Works Committee will look at - who knows? I can guarantee it is needed.

In relation to some of the changes this bill seeks to make, I note a number of reviews of other states' jurisdictions into the management, conduct and processes associated with the hearing of some indictable offences have been undertaken. The recommendations resulting from those reviews include a number of what I believe are important and necessary changes to legislation in this state.

As the Leader outlined, these recommendations seek to reorient criminal justice procedures away from the trial as a likely outcome, to facilitate early and fair disposition of criminal matters, to require prosecution authorities to disclose evidence and exhibits, to discourage delaying tactics in the court or hearing processes by constructing limits around the right to an adjournment, to encourage early pleas of guilty and to provide an ability for parties to engage in conferencing. They also provide for a summary disposition of less serious indictable offences and broaden the sentencing jurisdiction of the Magistrates Court to some indictable matters.

I believe these changes in the bill before us will go a long way toward meeting the objectives of the bill, as I noted earlier. I also found the data in the Leader's second reading speech very informative in relation to the workload of the Magistrates Court, and no doubt that has been a driving factor behind the need for increased efficiency. There were 16 648 criminal lodgements for adults and 16 176 criminal finalisations for adults in 2018-19. The Magistrates Court annual report indicates that in 2017-18 the criminal and general jurisdiction of the Magistrates Court finalised 18 047 criminal complaints, 4403 breaches of orders and 1644 other applications in that financial year.

Mr President, this is a significant workload and is so important. I note the 2017-18 figures do not include restraint orders and family violence applications. I will follow this up at a later time, as I believe domestic abuse is a huge area of hidden and unmet need.

I recently read Jess Hill's book, *See What You Made Me Do*. I encourage you all to read it. If anyone has not read it, it will take you some time and some headspace. It is the most harrowing, accurate account of domestic abuse in this country. Jess Hill is presenting at a function in Burnie on Monday week, talking - I do not have my diary in front of me - at a week of action around domestic abuse. I will be at that talk; I probably will not get to the Premier's drinks as a result because the Premier's drinks are on that Monday. This, to me, is such an important issue. If you have not read that book - I do not think many have, I know the member for Nelson and the member for Rumney have - it is a frightfully important book for all of us to read, particularly the men in the room, to understand how this works. We live in a very privileged society, as a whole. This lays bare the reality, the lived reality for some people. I encourage members to read it. It is harrowing. She warns readers as they start into it that they will need time to recover from reading it, but it is really important reading. I hope all the relevant ministers in our government have read it, or are seeking to read it. I warn you - it is hard going at times, such is the human suffering contained in its pages.

We must be informed and do more to prevent domestic abuse and hold perpetrators to account. I will also raise this matter in other forums. The member for Nelson asked questions today in relation to impact of gambling on domestic abuse - another major area are the AFL and rugby grand final days. Whatever grand final day it is, we know there will be a spike in domestic abuse; regardless of the outcome of the final, it happens. It is staggering. It is frightening for police to know that on the AFL grand final night, they will get so many more calls to attend instances of domestic abuse. I call it 'abuse' rather than violence because it is much broader than physical, much broader. It is a matter I will raise, but it is important to take the opportunities we have to try to raise awareness in this place and in the broader community of the very real issue that domestic abuse is.

Mr President, moving back to the bill. It provides the legislative foundation for a number of initiatives, procedural changes and changes to the law, and these were all outlined in the Leader's second reading speech. While all are important changes, I will not speak to all of them because they have been well articulated in the Leader's contribution. I believe the provisions will provide a new framework for disclosure of prosecution evidence in summary offences to ensure defendants receive disclosure of the case against them at the earliest opportunity. This will create a much fairer and efficient process, and will hopefully reduce the number of court appearances and increase the number of early guilty pleas, thus reducing court time.

While we are talking about books, I also read recently Bri Lee's *Eggshell Skull*. I do not know whether anyone has read this book, but Bri is a young lawyer who has been named as one of the 100 women of influence. She was in Sydney last week when I was there. Her book is an interesting account of family violence, abuse, sexual abuse of a child and children and her role through doing law and being a judge's associate. When you read her accounts, which are real accounts of what happened in her own practice, it makes you see the value of early guilty pleas and how it can assist victims.

These changes should result in defendants having their matters finalised more efficiently and quickly than is currently the case and the court needing fewer resources to resolve these matters. It may require increased resources for the police to ensure timely provision of information to ensure this actually occurs and that other measures have their desired effect and impact. I would like the Leader to respond to this point about police resourcing because without adequate resourcing, these changes will have limited impact on current waiting times and could ultimately result in delays in accessing justice. It is about providing resourcing to police to make sure they have the information they need to deal with these matters in a timely way.

Other measures listed in the Leader's second reading speech hopefully will also provide a fairer and more efficient and effective justice system, and will ensure timely access. This can only be achieved if we have enough magistrates, legal aid support when needed as well as a well-resourced police service to ensure all these measures will be effective. The Leader informed us that the average total number of attendances per finalisation and matters in the Criminal and General Division of the Magistrates Court increased in recent years from an average of 3.8 attendances per finalisation in 2011-12 to an average of 4.4 attendances in 2017-18. She said these changes aim to ensure every appearance in the Criminal and General Division of the Magistrates Court will be a meaningful one that is expected to reduce not only the time that would elapse from the date of the charging to the completion of the matter, but also the average number of attendances per finalisation.

As I said previously, there needs to be adequate resourcing for police and Legal Aid, as well as for the courts, to ensure this will actually be the result. The intentions are great, but we need to ensure organisations such as Legal Aid have that necessary funding to ensure it can keep rolling on.

I know the Leader provided some detail in relation to additional resourcing when she said there will be significant additional funding for an additional Supreme Court judge, a new magistrate for southern Tasmania and a replacement magistrate for north-west Tasmania, and additional funding for Supreme Court acting judges, the Legal Aid Commission of Tasmania, and the Office of the Director of Public Prosecutions, as well as significant new funding for Justice Connect.

It remains to be seen where this additional funding will actually flow, and whether it meets the current and emerging demands of our justice system, though I appreciate the commitments that have been made. I hope they can be targeted effectively to make sure these initiatives flow with the benefits that are expected and needed. I guess it will be a matter that will be followed up as the changes are implemented through questions and budget Estimates Committee B, which has carriage of Justice.

I also support the provision that includes important safeguards for victims to ensure that sensitive material, such as obscene or indecent material, or recording of an alleged victim of a sexual offence, are not required to be provided to the defendant but must be made available for viewing under controlled circumstances.

We know the long-term, serious, adverse physical and psychological harm and health impacts such assaults often have on victims. The importance of avoiding re-traumatisation cannot be overstated.

In Bri Lee's book *Eggshell Skull*, she gives a personal account of her experience, and the re-traumatisation that went on for her every time she listened to a case that was similar to what she had experienced. It really is very challenging to read through.

If any of you is unaware of the lasting impact that could have, even of what some may see as a minor sexual assault, on a young person's physical and mental health, I encourage you to read that book. You will see there is no such thing as a minor impact; it has a very serious and lifelong impact.

The inclusion of a statutory basis providing the opportunity to victims to make a statement to the court before the court is permitted to provide the defendant an indication of the sentence is also an important inclusion.

Another modernisation measure to provide for the court of its own motion, or for a party or witnesses to proceedings, to apply to attend court via an audio or audiovisual link is sensible in this current technological age. I understand this can be considered where it may be difficult for a person to attend court in person, and where the interest of justice would be affected by allowing or refusing such a person to attend by audiovisual link.

This measure should act to improve flexibility and efficiency in the courts, especially in examples provided by the Leader, such as when an expert witness is located interstate and is unable to attend the court, or where a party is unable to attend court because of illness or some other incapacity.

In terms of the changes related to increasing the jurisdiction of the Magistrates Court that generally deals with some re-offences, such as stealing of property with a low value, I believe this will also create a more efficient access to justice, but, again, only if it is adequately resourced.

The bill sets out the procedures for the court when dealing with an indictable offence that is either automatically treated as a summary offence or is categorised as one where the defendant may elect to have it dealt with summarily.

As the Leader indicated, the most significant area of reform in this area is an increase in the property value thresholds. Under the bill the property value thresholds for indictable offences, which are treated as summary offences, increases from $5000 to $20 000; and for electable property offences, the threshold increases from $20 000 to $100 000. These figures are more in line with current property values. Again, it has been over 18 years in the making so you can understand how property values have changed in that time.

The bill also expands a number of indictable offences that can be dealt with by the Magistrates Court if the defendant chooses. I support these new provisions, but I would like the Leader to provide more detail in her reply as to the expected impacts on the Magistrates Court of the number of extra cases now likely to be heard in the Magistrates Court, and what additional resourcing will be required to directly assist in the management of these.

I also support the provision that will see a requirement for a formal application to be made for an appeal against bail application with submissions before an appeal can be made to the Supreme Court. This is an issue raised by the Chief Justice where, at present, an appeal to the Supreme Court can be made without a formal application. This should ensure a fair, efficient and effective process regarding bail applications.

I note the implementation period of at least 12 to 18 months before this bill and its cognate bills can commence operation. However, some aspects of the bill may commence at an earlier time if it is considered necessary to address backlog issues in the Supreme Court, including the changes to jurisdictional boundaries that will allow additional matters to be heard in the Magistrates Court and the changes to bail applications.

I assume some of this relates to what resourcing and funding can flow where and when to enable some of these particular areas within the changes to be adopted a little bit earlier.

I also note, as advised in the briefings, there are likely to be further amendments to the bill and other legislation needed to support these changes. The consultation on these is to be undertaken during the implementation period of 12 to 18 months.

The court system is not an area I am overly familiar with and I appreciate the time made available to consult more broadly on the bill and the cognate bills, to enable me to better understand the proposed changes. There is likely to be more legislative change to further enhance these changes, and I look forward to that as from the consultation which I have undertaken I believe there is more that needs to be and can be done to achieve the overall aim and intention of the Government here, which is admirable. This is to increase access to a more efficient, fair and effective justice system for all Tasmanians.

I support the bill and look forward to seeing other reforms to promote the objectives and ensure that timely care and effective access to justice are the norm in Tasmania. I appreciate the responses to my questions to the Leader, particularly around the resourcing of the whole system, but also the Burnie court and other matters I have raised.

[11.57 a.m.]

Ms ARMITAGE (Launceston) - Mr President, I too support the bill. The changes manifest in the bill - which have been 19 years in the making - have been largely informed by those working in the court system. The consultation that has occurred with the likes of the Law Society of Tasmania and other stakeholders with legal expertise has resulted in a nuanced, informed and mature approach to reform of the Magistrates Court.

A letter dated 18 September 2019 to the Legislative Council from the Law Society regarding the bill, helpfully read to the Chamber by the member for Mersey, says as much. In this letter the Law Society clarified that while all the recommendations it provided were not incorporated into the iteration of the bill we have before us today, through the consultation process it, along with other stakeholders, was able to come to an understanding that the bill represents a compromise between all parties concerned and is a workable and achievable model for a modern Magistrates Court.

Further in this correspondence, the Law Society of Tasmania states regarding criticism of the bill on the basis it should include a greater level of disclosure of evidence similar to that which has been implemented in Victoria that it would become prohibitively expensive and place considerable burden to prosecuting authorities if implemented.

What has arisen from this, however, is the Law Society consequently believes the bill presents a framework, an opportunity for stakeholders to work together, to improve disclosure in a more sophisticated and tailored way which cannot be achieved by simple legislative amendments.

This is an extremely positive and mature approach by the Law Society and its associated stakeholders regarding this legislation, and the processes developed by it, free from the bureaucratic burdens of legislation, will inform future refinement of legislation concerning the role and operation of the Magistrates Court in Tasmania.

From the second reading speech, the fact sheet and the briefing we received on the bill, there are several objectives which the amendments seek to address. These are very clear in their intent and reasoning, particularly in conjunction with the bill's second reading speech. By way of example, the disclosure requirements set out in Part 6 of the bill are prescriptive in nature and explicitly set a period of time in which the contents of certain briefs have been provided.

This goes a long way to providing for an enhanced access to justice, facilitating the timely dispensing of justice, ensuring all proceedings are conducted fairly and facilitating improved case management of proceedings.

This bill contains many commonsense measures with the end of improving the Tasmanian Magistrates Court systems and processes, and it will assist those in the legal profession to do likewise.

I support the bill.

[12.00 p.m.]

Mr DEAN (Windermere) - Mr President, there has been much consultation on this bill. As the member for Murchison mentioned, it has been underway for a long period of time. We were told it was about 18 years in the making.

Mr Valentine - That is almost a generation.

Mr DEAN - You are right, it is a generation, or 19 years. It has been a long time. There has been plenty of time, obviously, to get it into a form we can proceed and be satisfied with, probably for the next - I am not quite sure it will go as long as the last one - but certainly for the next 30 to 40 years. There will probably be some changes in the meantime. I thank the department and the other people who briefed us. They were able to satisfy a number of the issues that I and some of the other members had.

The bill replaces the Justices Act 1959, which is said to be outdated. I raise the issue that many other acts are much older than the Justices Act 1959. When you look at some of those other acts we are still working with in legislation, it is quite new. In the briefing on 19 September we were told it was an older bill and with the many changes occurring within the law and court, it was past its use-by date. Since 1959, many amendments have been made to that act. It has not been an act that has just sat there without consideration and change. There have been quite a few changes. I will talk a little bit about my background with the act in a moment. I know a number of changes were made during that time, with an aim to keeping up with contemporary practices to some extent and for the purposes of gaining efficiencies within the courts.

There is no doubt that significant further change is necessary to bring it into 2019 and beyond. It is very important. I am thinking of the Boundary Fences Act, which was created almost in the nineteenth century, in about 1914. I submitted a report some time ago; I am not sure when we are going to update it to bring it at least into this time period.

Mr Gaffney - Did you find it difficult to work with?

Mr DEAN - It is interesting the member for Mersey should raise that. I have a number of issues in relation to that act. I have had to refer to it on a number of occasions to identify and sort out a number of issues. It involved an Invermay school and a problem with a boundary, fencing and the rest of that. I have worked with it recently. That is why I am a little familiar with it.

When you look at the court backlog, there has not been much gain made in the backlog over the past five years, despite some changes being made to the carriage of matters through the courts. The introduction of video interviewing by police, which was expected - we were told at the time it was expected - to see more pleas of guilty and less court time. With the appointment of part-time judges and the additional appointment of a judge, new position, and magistrates - we really have not seen any let-up in the current backlog in our courts, both in the Magistrates Court and in the Supreme Court. I will refer to a few numbers in a moment, as did the member for Murchison.

The Director of Public Prosecutions has often told us that cases coming before the courts now are more complex and time-consuming. A shift in drug offences and other violent crime has added to demand in court time now. Cases are becoming more complex. They are extended for longer times. We have recently had a murder case that went for three to four weeks, or possibly longer.

Mrs Hiscutt - Is that the tattooist you are talking about?

Mr DEAN - Yes, the tattooist. It went on for a long time. These cases consume a lot of court time. It is abundantly clear change is necessary in the process with a view to relieving the pressures on the courts and to look after the best interests of those charged with crimes and offences. We are told that the changes being made in this bill will provide relief - or should - for the courts in speeding up court actions. Some of the changes made will cause some of those charged and appearing before the court to accept their actions without a lot of delay, thereby passing through the courts much quicker.

They may get through the Magistrates Court, but I am not quite sure that those on indictable charges that must go to the Supreme Court are going to get through the Supreme Court much quicker at the end of the process. We will get them through one area, but we have to get them through the other area as well. I was a police prosecutor for about eight or nine years. I started off in the Children's Court, as it was known in the 1970s, and I then progressed to the Court of Petty Sessions and then into dealing with criminal matters in that jurisdiction.

It was an interesting time of my life; I enjoyed it. I remember the good times, I remember the bad times and I remember the embarrassing times. Thankfully, the good outnumbered the others. I recall on one occasion when I was appearing before the magistrate, Mr Rodney Wood - I am not quite sure if too people many in this Chamber remember magistrate Rodney Wood, a very astute man. He gave me a lesson on grammar. He once told me not to use the phrase again - I had no idea of the phrase I was using that he was chastising me about, so, of course, I used it again. I had a similar response from the magistrate. He still did not say what it was; I used it again and he absolutely erupted. He stood up, adjourned the court, stormed out and demanded I go to his chamber immediately. I remember it as clearly as if it had happened yesterday.

I was told the annoying and grammatically erroneous phrase was 'how come'. I have listened to many people use that phrase, but I might add I have never used it since.

Mr PRESIDENT - How come?

Mr DEAN - I was told by Mr Wood at the time - I must admit I admired Mr Wood; he was an extremely astute man - that if I ever used that terminology again in his court, I would be debarred from it.

Mrs Hiscutt - I am interested to know what words you had to use?

Mr DEAN - There was another way of putting it rather than saying 'how come' but when you are questioning people, it comes out fairly quickly at times. It should be 'why did you do that' - there are other ways of phrasing it. Mr Wood saw that as a grammatically poor use of the English language. It was a lock-up day when all the people on bail and in the cells came before the court to have their matters decided, when they would be heard. So the court was absolutely packed. A number of lawyers were sitting around the table as well, and I was caught in that position so I learnt very quickly. I still do not think the term is that bad, but I never used it again.

I learned more in my time as a police prosecutor and engaged with the Justices Act as that legislation controlled the Evidence Act, in particular, and the Acts Interpretation Act and just about every act going. You had to have a reasonable knowledge of those acts to be performing those functions.

During my time in the courts, I learned a lot here from the late Michael Hodgman. He took me aside on a number of occasions to give me some advice, and it was always good advice. I have always admired that man ever since for the way in which he went about his business and what he did. I was not the only one lambasted by the magistrate, Mr Wood. Mr Hodgman was lambasted a number of times, as were other lawyers. It was not just police prosecutors.

I want to refer to the backlog of cases we have had. In the Magistrates Court, the total lodged pending completion in 2013-14 was 5938 cases, and in 2017-18, it went up to 7788. This information is taken from the annual report. Between six and 12 months in that jurisdiction: in 2013-14, 897 were six to 12 months old, and in 2017-18, that went out to 1650. Greater than 12 months: in 2013-14, it was 698, and in 2017-18, it went out to 1166 cases on hand. That is just in one part.

In Youth Justice, the total lodged pending completion in 2013-14, was 412; 2017-18, a great effort here, it was simply one more, 413. Obviously, great emphasis is being placed on that court, and so it should be. Between six and 12 months in 2013-14, there were 48, and in 2017-18, it had gone out to 55. Not too bad. Greater than 12 months in that jurisdiction: in 2013-14, we had 43 cases, and in 2017-18, we had 29. It is great it has been brought back to an acceptable number.

In the Supreme Court - lodgements across Burnie, Launceston and Hobart: in 2013-14, there were 454, and 2017-18, there were 575. Lodgements increased by 121 cases, with 493 finalisations. As at 2013-14, there were 348 pending cases, and in 2017-18, there were 524 pending cases. Pending cases increased by 176 over five years, despite the relief judges sitting. I made this point during Estimates and at other times as well - we brought in these additional judges, but the matters waiting for completion did not decrease.

Cases pending for more than 12 months in that jurisdiction increased from 92 in 2013-14 to more than double, 185, in 2017-18. It would be interesting to see where these numbers change after this act comes into place, whether it has any bearing on those matters in the Supreme Court and those figures. The backlog continues to grow, despite numerous changes made with a view to disposing of the cases quicker and decreasing the backlog. It is clear other action is necessary. We will be seeing changes in the way the Supreme Court handles cases in the future.

There is an old saying - Michael Hodgman was always using this terminology, I have heard him use it in this place as well - 'Justice delayed is justice denied'. I think for many alleged offenders that is certainly the case. To have a criminal charge - and one that could see you jailed, if convicted - hanging over your head for 12 months or longer would be extremely hard and would be an additional penalty to any imposed by the courts. That is particularly the case for first-time offenders, for a person who has never seen the inside of a jail. It is important that any changes being made will speed up the processes as best we possibly can.

I have talked about the consultation on this bill and the time taken. This has been adequate time. I think we were given some information on this during the briefings, to draw on the experience of the other states and territories, to pick the eyes out of it, to try to ensure that what we have here is good and will see us moving forward in the right way. There has been plenty of time for it to

happen. There was some discussion about that in the briefing; it was a while ago now, but I am pretty sure there was.

Legislation controlling court processes must ensure absolute fairness to all parties, in particular for those who unfortunately find themselves in a position of where they need to, or are forced to, confront the courts. It is not just about speeding up the courts. It is also about being fair to those who are unfortunate enough to have committed crimes and other offences and appear before the courts.

There is also the need for court processes to adequately care for the victims of criminal actions or civil activity, and protect and care for people or children required to give evidence to a court. It is not all about offenders. That is good and a number of areas within this bill provide for certain positions and conditions relating to witnesses. That is an important part of it.

When the livelihoods of people are being removed or detrimentally impacted, the process must be scrupulously fair, and therefore modernising of all legislation necessarily follows.

My view is, and I have said this on a number of occasions, that acts should probably have a sunset clause on them as well, similar to regulations. There comes a time when acts should be reviewed and reconsidered. I think it is 10 years with regulations; I think it is still the same, unless there has been an extension provided through the parliamentary process to the time that they will be reviewed. I am of the view that our acts all ought to be considered in a similar way.

The Committee stage is the time to go through all the clauses of the bill, but at this stage I want to refer briefly to a few changes this bill makes. I have gone through some of them.

The arrest procedure, following arrest and bail, in clause 15, provides police with an opportunity to rearrest a defendant admitted to bail in certain circumstances. That is the way I interpret it, but if this is not right - as I understand it the police only need to satisfy a justice of the peace on one of seven different points to be able to rearrest a person who has been admitted to bail.

All points referred to are points that would have, or could have, been considered when the defendant was first admitted to bail. I will be asking questions about that in the Committee stage. I need some further explanation of this because it could be a case where a magistrate has admitted a defendant to bail, and a bench justice is being asked to overrule that decision. I just need some further explanation in that area.

Does it have to be new evidence that is brought up in such cases and that could not have been there in the first instance when bail was given, when something new has come up?

A number of changes made in this area and throughout the bill are to make use of electronic communication, and it will be interesting to see how effective and fault-free these changes prove to be. When we look at technology, many issues arise. We only have to look at our own use of technology and the problems that arise from time to time with it. It will be interesting to see how these changes will impact and whether there will be issues from time to time.

I note that in the bill, where a person has legal representation, any document or other thing may be served on the legal practitioner. I will raise this again in the Committee, asking the question, what is the responsibility on the lawyer to serve that document on his or her client? If they do not, if they forget or service is delayed, what are the repercussions or circumstances?

On witness attendance notices, it is good to see that the bill ties up closely the circumstances around the attendance of witnesses to court proceedings, particularly those who deliberately avoid service. The court can issue an arrest warrant in certain circumstances, and those arrest warrants have always been there where a witness fails to attend. The courts have been able to do that, but to identify it here is a good position.

Interestingly, I can see no avenue provided here for electronic service of witness attendance notices. This is where electronic service could have come into this. Because 60 to 70 per cent of witnesses are straightforward witnesses - business people, victims in some way who are eager to be able to tell their story and come before the court to have the matter behind them - do they need personal service? Electronic service would save time and costs, and would probably be more effective in many situations. If I have it wrong, I would like the Leader to explain this to me.

The bill has many interesting parts to it. A witness, for instance, can apply for expenses incurred and it has always been the case and not changed, but if the court is not happy with the demeanour of the witness - if the witness is rude or not forthcoming with their testimony - the court can order less expenses be paid or none at all. There you go, witnesses, toe the line when this bill is enacted. I think I have that right.

The bill provides for ex parte hearings; while it has always been there and provided for, the circumstances have been widened in this regard. Ex parte hearings during my time, and probably even now, normally related only to the more minor issues. Mainly traffic matters were commonly dealt with ex parte; where the offender or the defendant was not available, would not or did not attend court, they could be heard in their absence. It normally related to those more minor matters.

The court is not admitting to bail, but it has always been there where anybody is charged with murder or treason. It is just lifted from the current act. I have not heard of too many people in the state being charged with treason, but maybe it is likely to happen sometime.

Charge sheets - there is a fair amount in the briefing in relation to this part. In my time, in the Justices Act 1959 these were referred to as the complaint or complainant's summons and this document contained a list of the charges proffered against the defendant. It is similar to the charge sheet; it has not changed a lot. It could contain a multiplicity of separate charges if connected in time or if by way of commission that was there. The prosecutors were required to take out the complaints and sign off. In my time, I would have taken out thousands of them as a prosecutor, but also as a detective, I would have taken out thousands of these complaints and summonses. It is good to see this covered and clear in this bill.

Some charge sheets complaints will include or have included a hundred or so charges and this is not absolutely uncommon, especially in the case of activities involving fraudulent behaviour, particularly forgery, uttering and all of those charges. There can be a whole raft of charges on the one charge sheet or one complaint. They can include several defendants, and that was always there.

The court - we all know the presiding magistrate or the bench justice has control over the operation of the court and this includes the capacity to correct defects and make changes to complaints or to charge sheets. They can make those changes, including dismissing further proceedings. These people are powerful. A bench justice having that position is an indication of how qualified they need to be and are, and I will mention more on that in a moment.

Records of interview - the bill spells out what is meant by record of interview. In my time, it was sitting behind a manual typewriter, interviewing an offender and typing both the question and answer and getting it word-for-word perfect. It was not an easy task. I can remember being cross-examined in the courts as a detective - 'Is that exactly what my client said? Did my client use the word 'and'? Did my client use the word 'the'?' That went on and on and on. It was a really difficult process to be able to get that evidence before a court - 'That is exactly what your client said. That is exactly the way I asked the question.' It was a very drawn-out process; it was not an easy task. Moving to an electric typewriter was wonderful and now the videorecording -

Mr Valentine - You would have gone through a bit of carbon paper.

Mr DEAN - I went through a bit of carbon paper, and I went through a lot of white-out fluid. Now, videorecording and audio recording have been breaths of fresh air. It is interesting that when videorecording and audio recording were first considered, police were reasonably resistant to it, thinking it probably was not in their best interests, but it is now welcomed. Police see that as one of the greatest things that has happened in some police officers' careers, I would say - a big leap forward.

Has it helped with more pleas of guilty as first said would happen? I do not know, but with the court blowouts, there is no evidence to show that it has. That was certainly referred to a lot when they went into this process of videorecording. It was the same with body worn cameras. They were also treated with some caution when first introduced, but now I think the angst and concern have disappeared.

Will this technology lead to fewer complaints against police and more pleas of guilty? The jury is still out on this as well. These things all change with new police coming into the job and being trained in the use of these devices. Working with those requirements is normal to them. It is the serving members who have to make the changes and adapt to them overnight who are the ones who find it more difficult. It is interesting that written records of interviews are still provided for in this bill.

A preliminary brief is to be provided in the case of indictable offences within set periods of time. I raised this in the briefing, as I saw it as putting police under additional pressure. They do not need this. The member for Murchison raised this. I was pretty much assured during the briefings that this will not entail any greater input by police. It will certainly involve quicker actions for police. All that evidence and information have to be provided some time anyway. The initial information required in a preliminary brief is normally what the police have available to them at the time they charge, or arrest and charge, a person. It is normally there. It should not really put a greater impost on police. I think it came out in the briefing as well that the police were reasonably satisfied with what this will do to them, or cause them to do once it is enacted and put into place.

I will just touch on the viewing of audiovisual recordings, which I will raise during the Committee stage as well. As I interpret this clause, where a video recording of an interview is completed, the defendant is entitled to a viewing of it, but only in the presence of the prosecutor, police and, I take it, their lawyer. I will ask the question there: is the defendant - the person who is the subject of that video recording - allowed to have any other persons present with them in the viewing of a video recording?

Ms Forrest - You would have to have, surely? Logic would say you would need all sorts of mental health and other support.

Mr DEAN - That is what I am getting to; you are absolutely right, I agree with that.

Ms Forrest - It beggars belief to think you would allow someone to watch it unsupported.

Mr DEAN - Yes, even a husband, wife, partner or what have you.

Ms Forrest - I think you would need a professional.

Mr DEAN - Or a professional person - psychiatrist, medical support. I will be asking a question on whether they will be able to have that person present during their viewing of a video recording in the first instance.

Mrs Hiscutt - Before you move on, are you talking about a witness having someone with them?

Mr DEAN - The defendant, the person charged.

Mrs Hiscutt - While they are viewing a recording of what they were supposed to have done?

Mr DEAN - Yes, a video recording.

Mrs Hiscutt - Can that person have who with them?

Mr DEAN - This is before they appear in a court. This is not in the court; during the court, it is a whole different process. Prior to that, at the time of the preliminary availability of all the evidence going to be used in the first instance against a defendant.

Mrs Hiscutt - Can that defendant have a support person with them?

Mr DEAN - Yes, obviously they have a lawyer.

Mrs Hiscutt - Other than a lawyer?

Mr DEAN - I would think so. Entering pleas on summary matters, the defendant will be required to plead to the charge on the first appearance, unless the court determines otherwise. During my time where you had defendants appearing before courts, it was not until their third, fourth, fifth, sixth, seventh appearance that they would plead to a charge. That was done for a number of reasons - it was done for drawing out a charge, and for other proper purposes as well, but this bill identifies there will be a requirement that they plead early but in certain circumstances quite obviously there would be allowances made in relation to that.

My concern is you could have a person pleading not guilty on that first or second appearance, when in actual fact they are still considering their position. It might well be their intention to plead guilty just for the purposes of getting the time they need to consider their position about where they are going to go and what they are doing. When a person pleads not guilty, there is an enormous amount of work afterwards for the people responsible for putting that person before the courts. For the police, it is a matter of going out and getting all the evidence. At that time they interview all the witnesses, get their evidence, and forensic examinations and all those other things this creates.

Ms Forrest - Isn't this supposed to prevent this and make sure they have all that information so they know what you have on them?

Mr DEAN - They do not have to have all of it in the preliminary part of it. If you look at the bill, there is preliminary information they have to have and be able to provide.

Ms Forrest - Which is a lot more than they are getting now.

Mr DEAN - No, not necessarily. It makes the police, in this instance, provide it more quickly with preliminary evidence for the brief, but there is still a lot more evidence after that, a lot more that is sometimes sufficient evidence to make the arrest and charges in the first instance.

Mr Valentine - It is clear the defendant actually has more information up-front and that has to be a good thing.

Mr DEAN - And quicker.

Ms Forrest - They know what evidence they have against them, so it might encourage an early guilty plea.

Mr DEAN - Yes, you are right. I have raised that as an issue. Having said that, courts do consider early pleas of guilty in sentencing offenders and often say that. The defendant in this instance has accepted their guilt; they have not put anybody to the extra problems, trauma and troubles for a witness or victim, and that is able to be taken into account in identifying penalties. There is also incentive on a person charged with an offence or crime to finalise their matter fairly quickly if they are guilty of the offence.

The sentence indications are interesting. This is where the court can tell a defendant what the penalty might be during a case management hearing. It is pleasing to see victims are also included in this process, which is an important part of this. They should always be critical to any of these matters. To do this, the court needs to know the defendant's police history and, if that is the case, that court would then be excluded from hearing a complaint on a plea of not guilty, which is clear in this bill.

I can see nothing in clause 90 that would exclude a defendant from shopping to get a magistrate of choice. That used to happen in my time. Certain magistrates were known for dishing out severe penalties for certain crimes, on certain issues. It used to happen where astute lawyers, for their clients, would do some shopping to get their matter before the right magistrate for their matter.

Ms Rattray - Is there a right magistrate?

Mrs Hiscutt - I thought the law was the law.

Mr DEAN - I am not saying that any magistrate acts illegally. I am not saying that at all. What I am saying is that some magistrates' actions were more lenient than others in relation to some types of offences and crimes. The lawyers knew that.

Mr Valentine - They might have looked at it in a different way.

Mr Dean - If a person went to one magistrate, and the magistrate was to give an indication of penalty, they have to have their prior police history to do that. They are then excluded from that hearing. If the person then goes before another magistrate and requests from that magistrate, 'What are you likely to do to me if I plead guilty?' How many times can this happen?

That is the way a defendant or a lawyer, if they are able to do that two, three, four times, could get before the person of their choice at the end of the day. What are the controls over that? There need to be some there in my view.

I would have thought that there should be a limit on it, but I am not sure. Maybe I can get an explanation of that.

I had a passage here saying that at one stage I could just about recite the Justices Act word for word - and I could. There are still sections in the old Justices Act that I can recite word for word. It was embedded in you, to know it and understand it.

During the briefing, I raised the issue of what constitutes 'published'. It is not defined, which I find interesting, 'to publish'. In the briefing we were told there is no reason to, that everybody knows what to publish is. I do not think that is right. I do not think they do.

If I was to put the details of the court, in a closed court situation, on Facebook, would that constitute being published? If I were to do a joint email to several people, would that constitute published? If I was to raise it at a Lions meeting or a Rotary meeting, would that constitute published? I would like more information and evidence on that point.

It is extremely important, because the penalty is severe. An $80 000 fine, and it could include two years jail. In my view, it is a matter that needs to be clearly understood and clearly defined.

Those are the only matters I want to refer to, but during the Committee stage, I certainly will raise other issues. I certainly support the bill.

[12.39 p.m.]

Mr VALENTINE (Hobart) - Mr President, I thank the Leader for arranging the briefings, as we always do. In this case, I thought they were particularly useful because you have people who are working in the system, so I think it was very useful.

Eighteen years to review an act - it is a long time but over those 18 years you would get it right, one would hope. It is two years short of a generation as we know it. That is pretty significant. What is in this bill is a modern legislative framework that replaces legislation that has been around for 60 years, as the member for Windermere pointed out. That is some period of time. Not quite as old as me.

It has a lot of outmoded language in it, as you were demonstrating. There is a need to make sure that language follows the times and from my reading of it and comments received, the framework of the current act is simply inadequate. I expect it is a new framework for the disclosure of prosecution evidence, and that has to improve things for the defendant. Thankfully, I have not been on the angry end of a court situation in my life too often. It would be pretty daunting and with regard to prosecutors and evidence, having as much information as you could up-front about the charges has to be a benefit.

I had a concern that there might not have been enough time for a defendant to get legal advice in the period provided but after listening to the briefings, I was convinced that there is not too much of a worry in that regard. If we put certain processes in place, it might disadvantage somebody in getting timely advice before their appearance because their appearance could be quicker under this system than it is under the current system.

For me, having the Deputy Chief Magistrate, Michael Daley there, somebody of his calibre, was fantastic. He was only commenting on processes and procedures. At no time did he comment on policy. It is important to make that statement here because of the separation of powers issue. He has been sitting on this review for quite a long time and it was very useful to have his perspective on some of those issues this bill covers. I wanted to make that quite clear. It is important to hear from those who are in the system and need to work with it.

It also increases the range of offences that can be dealt with in the Magistrates Court rather than the Supreme Court, and it will require defendants to give notice of alibi and opinion evidence and make provisions for witnesses to give evidence via a video link. That has to be a benefit. That is going to save time, expense and disruption. That is good.

Also, with this review we have people beavering away in the background with the new information system: $24.5 million is a significant amount of money to put into any information system, and I wish them well. Currently, there is a disparate set of ICT systems and no doubt there will be plenty of glitches to be ironed out, as there is with any new system. Whenever paper-based systems are being recast into a digital solution, there is potential for something to be missed or misinterpreted. Little marks at the top of a physical record card for instance, put there by some operative who has since moved on and the corporate knowledge is lost as to why that mark is there. You might laugh at that but it is the case with a lot of things. I have had 38 years of experience in this field and it can happen. I am not saying it is going to happen with this one, but there is always that possibility. I wish them well. Obviously there is a big education exercise with the introduction of new systems like this. You are not just talking about one aspect of the whole; you are talking about a system that is going to cover the whole. With so many components within that, you are going to have the opportunity for glitches to occur. No doubt with proper and good project management that will be handled, and we will see a much better system in place.

I am told that the streamlining this system will bring is more about streamlining rather than extra work for police. I heard the member for Windermere querying that. From the briefing we have had, it changes when police have to put things up-front rather than doing it later. In fact, it could save them time because it saves them tracking down the offender and those sorts of things. It has to be of benefit.

Ms Forrest - In terms of getting an early plea; that is the intent.

Mr VALENTINE - Yes, that is right. If you can get an early plea, you are speeding up the system.

Electable offences in Schedule 2, as to where they are tried, are not exhaustive we were told, as other acts determine certain offences. An example given of that was the Firearms Act.

Most of this has been covered. I support this bill. I hope it delivers in the way it is intended to deliver. I hope it brings greater justice to parties, either those who are victims or those who are

supposed perpetrators. If overall it provides a better streamlined process, it has to be good for everyone. I support the bill.

[12.47 p.m.]

Mr ARMSTRONG (Huon) - Mr President, like some who have spoken previously on this bill, I understand it is far too complicated for me to fully comprehend, despite having concentrated on the intent of the bill and what is broadly included among those other things. They are the provision for enhancement, access to justice, facilitating the timely dispensing of justice, and ensuring that all proceedings are conducted fairly. They are worthwhile intentions and they are to be commended.

I can only agree with other contributions in that we need to be guided by the experts and those who need to work with the legislation. In that regard, the fact that the Law Society of Tasmania, the Director of Public Prosecutions and the Deputy Chief Magistrate say they are comfortable with what is being put forward is good enough for me.

I will be supporting the bill.

[12.49 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, there were quite a few questions asked, with lengthy answers. I will start from the top. I thank all members for their contributions. I agree with the member for Huon: for those of us who are not former lawyers or police officers, it was a difficult bill and we trusted those who briefed us and presumed they had done the right job.

We will start with a few answers for the member for Murchison. She talked about the Burnie court complex. The Government recognises the need to upgrade the court facilities in Burnie and has committed $15 million to address this. About 50 000 Tasmanians rely on access to the court house in Burnie each year.

Mr Dean - How many?

Mrs HISCUTT - Fifty thousand across the year. It is absolutely essential this work occurs in a way that keeps disruption to service delivery to a minimum. An architect has been engaged for the project, and the development of concept designs is well underway. The process is starting here.

Ms Forrest - I assume the local magistrates and people involved in the operation of it would be involved in the consultation?

Mrs HISCUTT - Every step of the way, yes, they certainly will.

The member for Murchison also asked about the resourcing impact on police. It is anticipated there will be at least 12 to 18 months of implementation work required by the courts and the Department of Police, Fire and Emergency Management before the package of legislation can commence. Some of the preparatory work will be dealt with as part of ongoing information technology upgrades in both the Department of Justice and the Department of Police, Fire and Emergency Management. Implementation of the new process and procedures will require additional and repurposed resources for the Department of Justice and the Department of Police, Fire and Emergency Management.

While some preliminary model work has been undertaken already, the resourcing implications have not yet been fully assessed. Further modelling will be undertaken as part of the implementation. Everyone is well aware of this and there will be some juggling as to how it is going to happen. They are looking at it.

Ms Forrest - I am sure Estimates Committee B will be all over it in the budget.

Mrs HISCUTT - I am sure.

The member for Murchison also asked about the replacement of Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal. The Attorney-General is particularly aware of the importance of replacing Mr Webster as Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal. Having previously practised in that area, the Attorney-General is very aware of the important work the tribunal undertakes. Expressions of interest for the position have closed. The selection panel has convened and interviews for the position were finalised this very week. The selection panel advises it intends to get recommendations to the Attorney-General as a matter of urgency. A final time frame for appointment is subject to Executive Council processes. Member for Murchison, I hope you will be pleased to hear that process is well underway.

You also asked about the impact on the Magistrates Court arising from the readjustment of the jurisdictional boundaries. In 2017-18 the Magistrates Court had approximately 20 000 lodgements in its criminal jurisdiction in the adult and youth justice system. By comparison, the Supreme Court had about 600 criminal committals in that same time. It would be to engage in speculation as to the number of matters these changes will move to the Magistrate's Court. We note from the briefing with the DPP, the DPP's view was that the number would be measurable in dozens.

Such a change will see a noticeable reduction in matters for the Supreme Court, but will have a negligible impact on the number of matters being dealt with in the Magistrates Court. That said, the Government recognises the importance of ensuring the Magistrates Court is properly resourced. To that end, the 2019-20 Budget commits funding for an additional magistrate from 2020. Though the situation will, of course, be monitored, the Government is of the view the Magistrates Court is well placed to deal with the changes brought about by the shift in the jurisdictional boundaries.

The member for Windermere asked a couple of questions. Before the onset there, we look forward to working our way through the Committee stages. I can see you will have a number of questions. Things I may not have covered during the summing up, I am sure we can cover then. One of your first questions was: what happens if a lawyer is served with disclosure, but the lawyer does not pass that on to the client? The duty a lawyer owes to their client is a fiduciary one and includes the obligations to act in the client's best interests as well as a duty to act in a competent and diligent manner. A failure in that duty can result in serious sanctions to the lawyer involved.

Clause 30(1) provides the magistrate with the discretion to adjourn a matter without plea on a first appearance. It is unlikely that a magistrate would prejudice a defendant by requiring him to enter a plea when they have not seen their preliminary brief due to the failings of their counsel, so that makes sense.

The member for Windermere also asked: does clause 90 allow for 'magistrate shopping'? If a sentence indication is given and not accepted, the matter would need to be determined by a different magistrate under clause 90(6) to ensure fairness to an accused person. During the course of a sentence indication, the magistrate will have regard to a defendant's prior convictions. In such a

case, it would be inappropriate for that same magistrate to go on to determine that matter at hearing if a plea of not guilty is maintained, where a defendant's prior matter should not be known to the court.

Regarding concerns of magistrate shopping, ultimately the management of individual matters, and before whom they are listed, is a matter for the Magistrates Court on a case-by-case basis. That is how it should work.

Mr Dean - My question was: could a defendant, an accused person, ask a second magistrate for an indication of a penalty that might be imposed?

Mrs HISCUTT - It is sort of indicated here that it is directed by the Magistrates Court on a case-by-case basis, but that may be something you might like to drill down into a bit further through the Committee stage. I have some more questions coming up and that may be part of that.

I have some more answers I will get in a moment, but before I do that, I want to talk about the briefings that were held. I really want to thank very much those who attended - Michael Daley, who is the Deputy Chief Magistrate; Daryl Coates, the Director of Public Prosecutions; Luke Manhood; and Kathrine Morgan-Wicks, the chair of the steering committee - briefing us so comprehensively. I cannot see a lawyer among us and we have to work our way through these bills as we go. Having those experts give us those opinions was excellent and I appreciate that from them.

Mr President, I will just seek some more information now. I can see a pile there.

The member for Windermere also talked about the definition of 'publish'. He asked: if it were on Facebook, how would that work? I think he mentioned some other things, like talking about it at a Lions Club or something like that. The definition of 'publish' is quite detailed and lengthy. I will make a start on it anyway.

The question was: is there a definition for the term publish in the bill? What is the meaning of 'publish' should the term be defined? That was your question.

The term publish is not defined in the bill and it is not defined in the Acts Interpretation Act. However, it is a term commonly used in legislation. The *Encyclopedic Australian Legal Dictionary* - who would have thought there would be a legal dictionary - explains the meaning of the phrase 'publish or cause to be published' in the following way:

> **Generally, to communicate or convey, or cause the communication or conveyance, of conceptual material** to one or more persons by one or more means including: inserting it into a newspaper, journal, magazine, or other periodic publication; sending it to any person by post or by any other means of delivering letters; delivering it to any person or leaving it on any -

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

Mr PRESIDENT - Members, before calling on Question Time, it is fairly warm outside and it may warm up in here. If it does warm up, I welcome any members who may feel too warm to remove their jackets if they so wish.

As a further warning, if the member for Mersey chooses to remove his jacket, members are permitted to wear sunglasses.

QUESTIONS

Laser Tag

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

[2.32 p.m.]

On Tuesday, 4 June 2019, it was reported that the Minister for Education and Training, Jeremy Rockliff, had lifted a blanket ban on school excursions to laser tag venues following outrage from community members and businesses. This followed a petition of more than 2000 signatures that said the Government had failed to consult the community and provide evidence laser tag was not in line with community expectations.

(1) Was there an incident or feedback from a school community that led to the original decision to ban laser tag activities?

(2) What consultation was undertaken before the original decision to ban laser tag activities?

(3) Which other states have banned laser tag activities for students?

(4) Previously, laser tag was a popular activity for grade 6 end-of-year excursions and grades 5/6 camp activities. Has the blanket ban really lifted, when primary schools are still not permitted to undertake laser tag activities?

(5) Why is laser tag the only off-campus activity that requires school association approval for secondary and senior secondary students when individual parental consent is already required, as well as the normal risk management process?

(6) Has the Minister for Education and Training met with the industry to understand the impacts of the modified policy?

(7) Does the Minister for Education and Training agree the Department of Education modified policy will hurt local business and cost jobs?

ANSWER

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

(1) to (7)

The decision around laser tag was an operational one made by the Department of Education, based on a request for clarity from principals about whether laser tag was deemed a shooting

activity and, accordingly, whether it was one schools are permitted to undertake. As indicated in June, laser tag is allowed for secondary and senior secondary students under certain conditions, including support from the school association, parents and most importantly, the students themselves. It is entirely appropriate laser tag for secondary and senior secondary schools requires support from the school association. School association members are impartial community representatives who have no stake in the decision apart from the wellbeing of the children at their school. There is no suggestion the association must approve each individual excursion, merely that the school association supports excursions that involve laser tag.

Recently, the Department of Education communicated with a local business about a non-gun alternative to traditional laser tag weapons for primary school-aged students. The alternative involves a super hero theme to promote teamwork and physical activity.

It is also important to note the decision around laser tag only extends to school groups; parents and community groups are welcome to make their own decisions about laser tag.

Henty House

Mr FINCH question to LEADER of the GOVERNMENT in the LEGSLATIVE COUNCIL, Mrs HISCUTT

[2.25 p.m.]

Is Henty House a state asset, fully occupied and utilised by the state Government?

ANSWER

Mr President, I thank the member for Rosevears for his question.

Henty House is a privately owned building. The state Government has a lease over the whole building -

Mr Dean - Which is up for sale again.

Mrs HISCUTT - with multiple agencies in occupation across the four levels.

Waratah Road - Murchison Highway Junction

Ms FORREST question to LEADER of the GOVERNMENT in the LEGSLATIVE COUNCIL, Mrs HISCUTT

[2.36 p.m.]

With regard to the section of Waratah Road from its junction with the Murchison Highway into Waratah and further heading towards Savage River -

(1) Is the Government aware that this section of road, which has a high volume of traffic into Savage River Mine, has deteriorated and is in need of repair?

(2) Are repairs and maintenance of this section of the highway scheduled in the near future? If so, what is the time frame for these repairs?

ANSWER

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

(1) The Government is aware of the condition of the Waratah Road. Waratah Road is inspected weekly, with the latest inspection occurring on 25 October 2019.

(2) During these inspections localised road defects are identified and programmed for repair to ensure the safety of the travelling public until long-term repairs can be undertaken. Significant roadworks are planned to commence in December 2019, with follow-up road surfacing works due to commence during February 2020.

Proposed Northern Regional Correctional Facility

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

[2.37 p.m.]

(1) Was the Land Use Planning and Approvals Amendment (State and Regional Strategies) Act 2009 considered for the proposed northern regional correctional facility, because that legislation facilitates projects of regional significance?

(2) If yes, why was this option not progressed? If not, why not?

ANSWER

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

(1) and (2)

The Government decided not to have the proposal assessed as a project of regional significance and has been very clear from the outset that this project should go through standard council planning and related consultation processes.

The Government will need to proceed with a two-stage approval process with both stages undertaken by the council as the independent planning authority.

The first stage is for approval to create a particular purpose zone allowing a unique or tailored approach both to use and development standards to suit the development of the northern regional prison.

The second stage approval is the standard development application process used for most developments across the state. The application will also need Tasmanian Planning Commission approval. Both stages incorporate further community and stakeholder consultation.

Risdon Prison Complex - Staff

Ms SIEJKA question to DEPUTY LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Ms HOWLETT

[2.38 p.m.]

Can you provide a breakdown of the quantum of staff at Risdon Prison Complex on stress leave and workers compensation, and the length of their leave over the last five years broken down by year?

ANSWER

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

For the financial year 2015-16, the total claim number was 60, of which 17 were stress- or psychological-related claims. For 2016-17, the total claim number was 65; of these, eight were stress- or psychological-related claims. In 2017-18, the total number of claims was 73; of these, 13 were stress- or psychological-related claims. In 2018-19, the total claim number was 120; of these, 39 were stress- or psychological-related claims. In 2019-20 to date, the total is 17; of these, 4 were stress- or psychological-related claims.

The department has responded to the increase in claims by changing its approach to managing claims to increase our success at getting people back to work, including increasing the staff involved in injury management, wellbeing, and health and safety. The department is also creating further opportunities for redeployment to alternative duties.

These initiatives have had an impact, with the first quarter of 2019-20 showing a marked improvement. The department has also responded with a review of all Corrective Services Tasmania staff rostering and through its recruitment of additional staff to match the increase in prison numbers. Through the current wage agreement process, the department has put forward a focus on further recruitment and wellbeing of staff as two key objectives.

In 2019 Tasmanian Government legislation to enable Tasmanian public servants to more readily access work-related compensation for diagnosed post-traumatic stress disorder received royal assent. These nation-leading changes now apply to all Tasmanian government employees and are of particular benefit to Tasmania's hardworking paramedics, police officers, firefighters, correctional officers and other emergency service workers who keep our community safe in sometimes traumatic and trying circumstances.

Lilydale District School - Bus Transport

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

[2.41 p.m.]

This is a rehash of a question asked here a couple of weeks ago.

(1) How many students are picked up from the Rocherlea, Ravenswood, Waverley and St Leonards areas and are attending school at Lilydale District School?

(2) What is the annual cost to the department of transporting these students to and from the Lilydale school?

ANSWER

Mr President, I thank the member for Windermere for his question; I also thank the Deputy Leader for picking up for me there - it was very much appreciated.

(1) I can confirm that the information provided in the previous response is an estimate of how many students catch the two buses contracted under contract 1814, which operates from locations within Launceston to Lilydale District School. These buses carry students only to and from Lilydale District School. This service collects students from central Launceston, Mowbray and Newnham as well as the suburbs named by your good self, being Rocherlea, Ravenswood, Waverley and St Leonards. It is estimated that 85 students per day use this service.

(2) This service cost the department approximately $170 000, excluding GST, in 2018.

Consultancy - Bus Review Project

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

[2.43 p.m.]

In relation to the $200 000 contract awarded to Phillip Boyle & Associates for consultancy services to provide strategic and tactical advice on bus contracts and services for the Department of State Growth bus review project, specifically -

(1) What strategic and tactical advice has been provided to date?
(2) Is any further advice anticipated?
(3) In what way has this improved the operations of the department?
(4) Why was a consultant needed to perform this work as opposed to departmental staff?

ANSWER

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

(1) To date, Phillip Boyle & Associates has -

(a) participated in the funding and contract negotiations with the larger general-access operators;

(b) provided advice on network and operational design issues with the general-access network; and

(c) provided independent expert technical knowledge and advice on tender processes for all new services. Phillip Boyle & Associates services under this contract are paid on an hourly/daily basis up to $200 000. To date, their services have cost $36 119.

(2) Ongoing advice during the term of this contract is expected.

(3) Phillip Boyle & Associates has provided critical input and guidance to assist the Department of State Growth bus service review project team in negotiations and network design for general access services. This will help deliver better outcomes for the Tasmania community in terms of improved access to bus services and in the design of future bus services.

(4) The negotiation of bus contract and public transport networks are highly specialised and complex matters. While the department has staff skilled at administrating contacts, negotiations of this scale have not been undertaken for over a decade. Because of this the project steering committee considered it appropriate to supplement the resource of the project team with Philip Boyle & Associates Pty Ltd, as they have extensive national and international experience and knowledge on bus service design and contract negotiations.

Facial Recognition Data - Tasmanian Driver Licences

Ms RATTRAY question to the DEPUTY LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Ms HOWLETT

[2.46 p.m.]

Ms RATTRAY - Following my question on the 8 October, which was answered yesterday, regarding the collection of facial recognition data, and given that the federal Parliamentary Joint Committee on Intelligence and Security 2019 advisory report on the Identity-matching Services Bill 2019 and the Australian Passports Amendment (Identity-matching Services) Bill 2019 recommended that both of these bills be redrafted and amended due to the concerns around privacy, my questions are -

(1) Will the Government cease the initiative of uploading Tasmanian driver licence details to be used for national identity matching until the bill has either been revisited or amended to address the concerns around privacy?

(2) Given the concerns around privacy raised by the federal parliamentary committee, will the Government consider reviewing its position and allowing Tasmanians who do not want to participate to be able to opt out?

ANSWER

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

(1) and (2)

Tasmanian driver licence details will remain quarantined in a segregated area within the face matching services until the legislation is passed. Use of these records for validation by another organisation will not occur until the legislation is passed and individual participation agreements with organisations that wish to validate individual Tasmanian identities are in place.

These agreements will specify the details in which validation of images and associated data will be granted. This initiative is designed to protect the identity of Tasmanians and the provision as an option to opt out will significantly compromise its effectiveness.

Children - Emergency Ward Presentation

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

(1) How many children aged zero to five years presented to all Tasmanian public emergency rooms between the hours of 1700 to 0900 in the past 12 months?

(2) How many of these presentations had private health cover?

ANSWER

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

(1) From October 2018 to September 2019, 9689 children aged zero to five years presented to all Tasmanian public emergency departments between the hours of 1700 and 0900. This level of demand is consistent with the previous four years.

(2) Of these, 178 children or their parents/carers on their behalf elected to use private health cover.

Justice and Related Legislation (Marriage and Gender Amendments) Act 2019

Mr DEAN question to DEPUTY LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Ms HOWLETT

This question relates to the Justice and Related Legislation (Marriage and Gender Amendments) Bill 2018 (No. 47) recently enacted as the Justice and Related Legislation (Marriage and Gender Amendments) Act 2019. Will the Leader please advise -

(1) I understand the Tasmania Law Reform Institute issues paper 'Legal recognition of sex and gender' includes Appendix 3: Implications of JRL Act for existing legislation, which lists 35 Tasmanian laws that will potentially be affected by the JRL act. TLRI indicates 22 of these laws will require amendment to be consistent with amendments introduced. When will these law changes be progressed in the parliament?

(2) Does Appendix 3 of this issues paper comprise a complete list of existing laws that will need to be considered and/or amended in response to the passage of the JRL act?

(3) Will potential effects on existing laws be thoroughly investigated to identify all possible negative consequences? If that is the case, who will undertake the investigation?

(4) Has the Registrar-General identified any problems or deficiencies with the new birth registration, gender registration and birth certificate application processes?

(5) Have any issues arisen from the JRL act that compromise in any way federal law and/or documentation?

(6) Is the full impact of this legislation on existing laws yet realised?

(7) Appendix 3 of this issues paper makes some policy recommendations in respect of changes to existing legislation. For example, TLRI suggests local governments should consider implementing an inclusive approach to public facilities; laws related to the composition of statutory boards should be revised to achieve the objective of gender diversity rather than equal representation by sex; reforms should be considered to clarify the default retirement age for gender diverse Tasmanians; reforms should be considered to ensure eligible long-term employees continue to receive certain superannuation contribution exemptions. TLRI also offers a view that the wishes of competent minor children, in respect of gender-affirming medical and surgical interventions, should be respected regardless of what others or a court may consider to be in their best interests.

Will the Government consider these recommendations and conduct further consultation on these issues?

(8) When will the full report of the TLRI on the legal recognition of sex and gender be handed down?

ANSWER

Mr President, I thank the member for Windermere for his question.

(1) The Government will consider advice and recommendations contained in TLRI's final report on legal recognition of sex and gender before deciding what legislative amendments may be appropriate to make in response to the Justice and Related Legislation (Marriage and Gender Amendments) Act 2019.

(2) The Government will, of course, consider the list of laws TLRI recommends amending. However, the Government will give separate consideration to all our laws in determining what amendments might need to be made in response to the Justice and Related Legislation (Marriage and Gender Amendments) Act 2019.

(3) Consideration of the effect of amendments to the Births, Deaths and Marriages Registration Act 1999 is already occurring within the State Service. The State Service has established a committee to capture and document what system changes or policy decisions may need to be made across government to adhere to the new birth certificate requirements.

In addition, separate work is being undertaken with the Department of Justice to respond to the legislative issues arising from the passage of the Justice and Related Legislation (Marriage and Gender Amendments) Act 2019. This work will be finalised following consideration of the TLRI's final report.

(4) The Registrar found that the new restrictions regarding the issue of birth certificates, including gender and change of name details under section 46 of the Births, Deaths and Marriages Registration Act 1999, have inconvenienced some applicants. For example, the parents of a child, 16 years or over, applying for their child's birth certificate must now provide evidence

of the individual's consent if the certificate is to include gender and/or change of name details. A child applying for a parent's birth certificate including gender and/or change of name details faces the same situation. These applications are often being lodged to obtain a birth certificate to support a passport application so gender and change of name details are required. Some applicants have expressed dissatisfaction with the new additional requirements.

There is some confusion about which type of certificate is required for different purposes. Births, Deaths and Marriages staff do their best to provide general advice, but different organisations have differing requirements.

(5) The Government has not been advised of any specific cases where amendments as a result of the Justice and Related Legislation (Marriage and Gender Amendments) Act 2019 have compromised any Commonwealth laws or documentation. However, the option for birth certificates not to show gender or change of name has already caused some concern about identity security within the Commonwealth Department of Human Services. Therefore, it would like to explore the possibility of accessing the Tasmanian registry change of name information in some way.

(6) The full impact of the Justice and Related Legislation (Marriage and Gender Amendments) Act 2019 on existing laws is almost certainly not yet fully realised. As with most significant legislative change, the full impact on these amendments may take years to determine.

(7) The Government will carefully consider all recommendations and advice contained in the Tasmania Law Reform Institute's final report. If the Government's response to the TLRI's final report involves legislative reform, draft amendments will be consulted on.

(8) In its issues paper, the TLRI wrote that after considering all responses and stakeholder feedback, it is intended that a final report containing recommendations for reform will be published. The Government understands that the TLRI is still working on its final report.

MAGISTRATES COURT (CRIMINAL AND GENERAL DIVISION) BILL 2019 (No. 27)

Second Reading

Resumed from above.

[2.58 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, we were discussing to publish or not to publish. The Encyclopedia from the Australian Legal Dictionary says that 'to publish' means -

> **Generally, to communicate or convey, or cause the communication or conveyance, of conceptual material** to one or more persons by one or more means including: inserting it into a newspaper, journal, magazine, or other periodic publication; sending it to any person by post or by any other means of delivering letters; delivering it to any person or leaving it on any premises; broadcasting it by radio or television; exhibiting it by means of posters, film or videotape; or bringing it to the notice of the public by any other means: ....

That pretty well sums it up.

It would be highly undesirable for this term to be defined because whether the behaviour in question would be an offence should turn on the facts of the case. This should be decided by the court, which would examine what information was communicated and how it was communicated.

It is not desirable to define 'publish' for this reason. Also, trying to define it, may have unintended adverse consequences at another stage. It should be noted that clause 114(2) provides that the prohibition on publishing preliminary proceedings -

> … does not apply to the publication of information, or an account, by the prosecutor or the defendant to another person if the publication is necessary for the prosecutor or defendant to effectively conduct his or her case in relation to the prosecution of the offence to which the preliminary proceedings related.

That is a lot of words; I can go through it again, if you like.

Mr Dean - I will investigate it further in the Committee stage.

Mrs HISCUTT - The member for Windermere also asked: is there an avenue for electronic service of witness attendance notices in the bill?

The issuing of witness attendance notice is dealt with under clauses 23 and 24 of the bill. There is no express provision in the bill for electronic service of witness attendance notices.

Mr Dean - I did not think there was, which is why I raised it.

Mrs HISCUTT - No.

A key issue of electronic service particularly is that there is no effective way to confirm receipt of the witness attendance notice. A magistrate would not be expected to issue a warrant for non-attendance of a witness unless they could be assured the witness had been served with the notice.

Although the prosecution would seek by far the majority of witnesses' attendance notices, this would also be an issue for the defence if it was to occur.

There was one last question from the member for Windermere about magistrate shopping. I addressed it a little earlier but over the break we have a little bit more to add.

The provisions that provide the sentence indications in the bill provide for in legislation a current practice called the contest mention list. If a contest mention is required, the matter is referred to the contest mention list. This operates as a separate list. You cannot just appear before any magistrate and ask for a sentence indication.

The contest mention magistrate gives a sentence indication, if that is what is required, and the defendant either accepts it and the matter is finalised, or does not accept it and the matter goes back to the referring magistrate's list to be determined, as it normally would following a plea of not guilty. That is by a hearing on the evidence.

The court has advised that there is no opportunity for forum shopping, either under the current regime or that proposed under this bill, which essentially reflects the current system.

If it provides further comfort on this issue, clause 163 of the bill provides a power to make rules in relation to all matters relating to procedures, in the case management by the court, so if required there is a mechanism to prescribe certain procedures relating to sentence indications.

As you can see, this will be a fairly interesting Committee stage because it is all legal talk, and we are happy to take as long as we need to get through it.

Bill read the second time.

MAGISTRATES COURT (CRIMINAL AND GENERAL DIVISION) BILL 2019 (No. 27)

In Committee

Clauses 1 to 6 agreed to.

Clause 7 -
Bench justice

Mr DEAN - I asked some questions during the briefing on this point. It relates to bench justices who will have the authority and power to sit in courts and pass penalties and sentences. What actual experience is necessary for a person to be identified as a bench justice? Is that a completely separate title to that of a justice? The average justice of the peace is a justice of the peace, but does a bench justice have a different title? Is that a specific title? What criteria must be met by people before they are considered to become a bench justice?

Mrs HISCUTT - Nothing in this bill changes from the former situation to the way it is now. The Chief Magistrate pools the bench justices. Only bench justices are drawn from this pool. There are several stages in the selection of bench justices. Tailored training is delivered to prospective bench justices by a magistrate over several evenings. The training course includes a minimum of 20 hours court observation. After the training course and observation requirements are completed, prospective bench justices are interviewed by a magistrate to ensure they have a thorough understanding of the legislation and their obligations under it. Once selected, a bench justice's handbook is provided to all bench justices as a reference tool. They then sit in tandem with an experienced bench justice for at least three months, or until they and the supervising magistrate are satisfied that they can competently convene their own court. Courses are run across the state on a needs basis.

A recent course was conducted in Devonport with four bench justices participating. Regular quarterly training meetings with bench justices are convened with the Deputy Chief Magistrate in the south and other magistrates across the state, with videoconferencing being considered as a future efficiency.

Bench justices are volunteers and rostered with a back-up bench justice identified for availability. A duty magistrate is also separately rostered to be available to sit if a matter is complex, high-profile or specialised, such as a court-mandated diversion. Bench justices are always provided

with contact details of the administrator or a registrar of the courts, or a magistrate, if they wish to seek advice or discuss a matter. Bench justices are typically called upon for night court matters, such as applications for bail, arrests made out of hours and bail oppositions. They are also utilised to preside over preliminary proceedings. That is a fairly intensive training course.

Mr Dean - Are they compensated in any way?

Mrs HISCUTT - They are volunteers. A bench justice is a volunteer.

Clause 7 agreed to.

Clauses 8 to 15 agreed to.

Clause 16 -
Manner of issuing arrest warrant by district registrar or justice

Mr DEAN - This clause sets out the manner of issuing arrest warrants by a district registrar or justice, and this allows and provides for a police officer to apply to a district registrar or justice for an arrest warrant in person or by use of electronic communication. It used to be the case that police officers applying for an arrest warrant had to do so under oath; they had to swear to the contents of the information being provided for that arrest warrant to be considered.

What is the situation particularly where it can be asked for by electronic communication? Will that simply mean the police officer who jumps on a computer to apply for a warrant to arrest a person will provide the facts, but there is no requirement in any way to do that on oath or to swear to the contents of the information being provided? Is that the case?

Mrs HISCUTT - The requirement to swear on oath was removed to allow electronic communication. The requirement to swear on oath is not necessary as any misinformation would amount to perverting justice.

Mr DEAN - It was always considered that to take out a warrant, it was necessary for the police officer to swear on oath that the information and detail they were providing was accurate. Now if an application is made and very clearly is erroneous - and I am not saying the police have made anything up at all - there is no comeback on the police at all in all the circumstances.

It used to be that a justice of the peace would cross-examine police on taking out a warrant - 'Why do you need a warrant? What is the evidence you have?' You would explain the evidence to them and they would say 'I need more; I need this extra information to satisfy me signing a warrant for the arrest of a person'. I take it is now deemed there are no real risks, and to satisfy an electronic version, all that has been removed for the sake of electronics.

Where a police officer now will go and apply in person to a justice or a magistrate or whoever for a warrant, they will not have to do so on oath. It will simply be, 'I want a warrant to arrest Bill Smith who has just broken into a house up the road', and that is about it.

Mrs HISCUTT - What the member for Windermere is saying is right except you must take into consideration clause 15, which talks about arrest warrants against defendants and what needs to be considered when sending them. You need to read in conjunction with clause 15.

Clause 16 agreed to.

Clauses 17 and 18 agreed to.

Clause 19 -
Representation by legal practitioner, &c.

Mr DEAN - I raised this matter during my second reading contribution and an answer has been provided. Where it says in subclause (2) -

> that document or other thing may be served on or otherwise provided or made available to the legal practitioner.

I heard the answer being provided, but other than an act of negligence the lawyer might commit in notifying or serving that document on their client, there is no other comeback on that lawyer in any way at all. It has happened where information provided has not been passed on to defendants. You only have to go through the court processes to hear and see what happens from time to time.

I want to know very clearly the lawyer involved in this sort of situation, while they are expected to do that, has no lawful obligation. It says -

> that document or other thing may be served on or otherwise provided or made available to the legal practitioner.

It needs to go so far as to say - and must be provided to the client at the earliest opportunity or possible time. There should be some requirement of the lawyer at law to provide that to his or her client.

Is that not seen as being necessary?

Mrs HISCUTT - Any law in relation to professional misconduct is what you are alluding to might happen.

Mr Dean - Not necessarily misconduct, it could be that they have forgotten.

Mrs HISCUTT - Or unprofessional - if you happen to forget, as a lawyer that would be unprofessional. Any law in relation to professional misconduct or, as was just said, legal practitioners would be covered by other relevant legislation, including the Legal Profession Act, the Rules of Practice 1994, which are statutory rules, and those laws are covered in other acts.

Mr DEAN - I can see the police clapping their hands over that. I would if I were still in the job. Tracking down persons where a court requires some further activity or further things to be served on them is not an easy job, particularly in cases of family violence at times where actions are taken and there is a need to serve a document on an offender. I think, from the police perspective, they would like that to be the case. I take it this is right across the board for any situation, as it says that if a party is represented by a legal practitioner and this act requires anything to be done by that party, or any document or other thing to be served on or otherwise provided or made available to that party, that can be served on the lawyer or their representative. I understand that is the case. It does not relate to only specific things, it is just open-ended. I can say for police it would be very good legislation. It is a pity it was not there during my time.

Mrs HISCUTT - The lawyer has to be acting in that manner. Police cannot serve new matters on lawyers because the lawyer would not have been engaged at that stage. For this section to operate, a lawyer would need to be instructed to act in that particular manner. This largely replicates the current section 38 of the Justices Act.

Mr VALENTINE - Where a legal practitioner wants to requisition footage from a police officer's body worn camera, can they do that under this clause? Clause 19 says -

> If a party is represented by a legal practitioner and this Act requires anything to be done by that party, or any document or other thing to be served on or otherwise provided or made available to that party -

So that is the legal practitioner -

> (a) that thing, if appropriate, may be done by the legal practitioner; and
> (b) that document or other thing -

That could be video evidence from the body worn camera of another officer who might have been present at an event, where the defendant thinks a particular officer's camera is going to catch different evidence to what the prosecuting officer might have. Are they able to gain that?

Mrs HISCUTT - Some of this is dealt with in other clauses of the bill, but the provision only covers a lawyer doing or receiving what a party would otherwise be entitled to do or receive. This would only give a lawyer that power if there is footage required to be disclosed.

Clause 67(2) requires the prosecutor to -

> (a) provide to the defendant any information, document or other thing, or a copy of any document or other thing, that would have been required… to be included in the preliminary brief, summary offence brief or indictable offence brief …

And allow the viewing of those things that would have been allowed -

> as soon as reasonably practicable after the information, document or other thing comes to the prosecutor's notice or into his or her possession.

If the police disclose body worn camera footage to a defendant, yes, it could be provided to the lawyer, but the police do not supply footage automatically. It would form part of a not guilty disclosure so it is covered in all clauses.

Clause 19 agreed to.

Clauses 20 to 22 agreed to.

Clause 23 -
Witness attendance notice

Mr DEAN - I also raised this matter in my contribution to the second reading debate. It relates to a notice issued to a person under this section which is a summons to witnesses. I heard the

response in relation to this, and the main thing was that proof of service has to be identified and that is not easy electronically.

I think issuing a receipt electronically would be just as easy as a police officer rocking up and serving a witness summons on a person. I give an example here. Recently, it took two police officers some time to track me down to serve me with a witness summons. To me, it was just a wasted police activity. I could have been summonsed as a witness electronically - my email address is well known. I think that would be the case for most witnesses.

Is it specifically because of the concern that there would not be any way to identify absolutely that a witness had received the witness summons? I would have thought it would be quite easy. They were using it for warrants. A police officer can apply for a warrant electronically, and a justice can issue the warrant electronically, yet we are saying the witness summons, which is quite an insignificant sort of document, requires the attendance of a witness in court. I think it could be done electronically. I ask again: Was it considered? What was the strong argument or position against issuing it electronically? It could save an enormous amount of time.

When I was in charge of the prosecution section, hundreds of these documents went to witnesses weekly, more sometimes. I think we should look at this closely.

Mrs HISCUTT - Your point is definitely understood. However, if, for whatever reason, a witness does not attend, if there is no evidence of personal service, a magistrate would be unwilling to issue a warrant, causing significant delays.

It is a different scenario to applying for a warrant electronically, which involves communication between police and the court.

The issue that causes the problem is not delivering, but the proof of the service a magistrate requires. In practice, it can be posted or left at the residence of a witness. It does not have to be served personally if the witness is likely to be cooperative.

The problem with email is there is no way to confirm receipt. It may be unknown if an email address is current or checked, and there is no way to confirm if it has been read.

Applying for warrants is different because it can be the police communicating with the court usually, and there will be a response.

Mr Dean - I receive many emails where a receipt is requested. I have it on my email to provide a receipt electronically.

Mrs HISCUTT - You still have the option to say do not send receipt or not to read it.

Clause 23 agreed to.

Clauses 24 to 41 agreed to.

Clause 42 -
Form of charge sheet

Mr DEAN - This clause relates to the form of the charge sheets. Clause 42(2) says a charge sheet must be signed by -

(a) an individual who has a right to complain of the behaviour of the defendant -

That could be a police officer, a prosecuting officer -

that is alleged to constitute the offence, or the legal representative of such an individual; or

Can I have an explanation as to exactly what that is? Could that be in relation to the police? A legal officer working within the department? Could that be signed by them? For instance, could Mr Miller in the Police department take the summons out, or could he sign the charge sheet in the circumstances? 'Or the legal representative of such an individual' - I take it such an individual also includes the police? They are the person taking out the action or preferring the charge sheet against the offender, preparing that.

Mrs HISCUTT - This clause refers to private prosecutions by individuals. This happens very rarely, but they do have the right to do that.

Mr DEAN - I must have missed 'private', did I? Form of charges - the charge sheet is to be in writing, in the form prescribed by the rules of the court et cetera, specify the name of the prosecutor, be signed as specified, specify the offence and identify, charge sheet must be signed by 'an individual who has a right to complain of the behaviour of the defendant'. I am just wondering where the 'private' comes -

Mrs Hiscutt - While the member is on his feet, if Madam Chair permits, clause (a) is for an individual; clause (b) is a body corporate, and on it goes. Clause (c) is a police officer, and there is (d), (e), (f) and (g). Yes, it could be that the police could do that, but also a lawyer acting for a council or statutory authority, or a lawyer brought in by the DPP.

Mr DEAN - It does not specifically relate only to a private prosecution, though, as given in the answer to me just a few moments ago. That is the question.

Mrs HISCUTT - The law as it stands in section 27 of the Justices Act provides that a summary prosecution may be conducted by a private individual or their lawyer rather than the police. To be clear, this subclause relates to this one scenario. As you can see, clause 42(2)(a) to (g) lists the people who can do this. This is just one clause that relates to an individual; that can happen under section 27 of the Justices Act.

Mr Dean - What was said originally was not quite right; that it specifically only related to private prosecutions.

Mrs HISCUTT - This subclause relates to an individual.

Ms Forrest - Can you name the subclause, it might make it clearer.

Mrs HISCUTT - Clause 42(2)(a) relates to an individual and the other clauses go on to say who else.

Mr DEAN - Looking at clause 42(2)(a) -

… an individual who has a right to complain of the behaviour of the defendant ...

Surely a police officer would have to be an individual and have the right to complain of the behaviour of the defendant?

Mrs Hiscutt - The policeman is at clause 42(2)(c).

Mr DEAN - I can see that, so in this case 'individual' means a private citizen only. I wonder why it is not in a private capacity, as it were.

Mrs Hiscutt - Yes, it would probably be a victim who makes a complaint.

Clause 42 agreed to.

Clause 43 -
Joinder of charges in charge sheet

Mr DEAN - From my background, I am aware that if the matters are closely associated, in times and the way they are committed, they can be joined in the same charge sheet. Does this also mean indictable and summary charges can all be included in the same charge sheet? Or do they need to be separated? You have some re-offences or indictable offences. There are indictable offences where there is a choice in some cases. An indictable offence is where they have to go to the Supreme Court, so can there be a mixture of all those charges in the one charge sheet?

Mrs HISCUTT - The joinder only applies to matters the Magistrates Court has jurisdiction over - summary offences, electable offences et cetera. If a matter must go to the Supreme Court - for example, for wounding - this clause does not allow it to be kept in the Magistrates Court. It depends on the courts. It cannot go between the courts. It is generally in line with section 29 of the Justices Act.

Clause 43 agreed to.

Clauses 44 to 60 agreed to.

Clause 61 -
Preliminary brief to be provided

Mr DEAN - In raising my issue with this clause, I will refer to clause 62 because they virtually go together. This is matter was raised during the second reading debate. I think the member for Murchison talked about this, and certainly did by way of a couple of questions to me as well. This clause relates to the preliminary brief that is to be provided. Clause 61, paragraphs (a) and (b) are clear -

> (a) if the defendant's first attendance before the Court is under section 18, at that attendance or as soon as reasonably practicable after that attendance; or
>
> (b) if the defendant's first attendance is in an accordance with a court attendance notice -

there is a specified time when it would be provided. If you look at the next clause, clause 62(3) says -

> However, if a preliminary brief is provided in instalments, the last instalment is to be provided to the defendant as specified in section 61.

What actually makes up the preliminary brief? So that we have that clear, I had a bit of a go, between second reading contributions, at finding out what would make up the preliminary brief. What is expected in the preliminary brief? If provided in instalments, as referred to in subclause (3), I take it that means during that period of time as required here, it is provided to the defendant in dribs and drabs; in the last part of those dribs and drabs, the instalments must be provided to the offender as is scheduled under clause 61. Is my view on that right , and what satisfies a preliminary brief in the circumstances?

Mrs HISCUTT - It says here at least 21 days, but there is an ability to provide it earlier if need be. When you talk about what is in section 62, without my reading it out, it clearly says a preliminary brief is to include (a), (b), (c), (d), (e) and (f). I hope that satisfies the member's question.

Mr DEAN - That pretty well covers it. We are talking about the preliminary brief to be provided and what makes up the preliminary brief.

Madam CHAIR - If you want to prosecute that, it might be best to do that in the next clause and what is in it.

Mr DEAN - If you prefer it that way, Madam Chair.

Clause 61 agreed to.

Clause 62 -
Contents of preliminary brief

Mr DEAN - It says -

> A preliminary brief is to include -
>
> (a) a copy of the relevant charge sheet; and
>
> (b) a summary of the material facts; and
>
> (c) if the prosecutor is a police officer, the Director of Public Prosecutions or the Commonwealth Director of Public Prosecutions, a copy of the criminal record of the defendant or a statement that the defendant has no previous convictions; and
>
> (d) A copy of the record of interview; and
>
> (e) a statement specifying that if an audio-visual recording of the formal interview of the defendant has been made, the recording may be viewed by

the defendant and the name and contact details of the person with whom the defendant may arrange for such a viewing; …

That requires, at the time, for a viewing of the video recording; I raised this during my second reading contribution as well. I take it that in providing access to the video recording, it could entail a good friend of the defendant, or it could include a sibling or a parent or what have you, viewing that. Is that the way I interpret that? I understand that the video recording is not made available to the defendant. They can only view it at that time. Do I have that right?

If that is the case, what are the reasons behind that? If the police officer takes a written record of interview, which is still able to occur, a copy of that written record of interview is provided to the defendant or to their lawyer so they can do whatever they want with it, but because it is a video recording, they do not have the capacity or ability to be able to do that, as I understand it. They have to view it in the presence of the police in all circumstances. Is that right?

Mrs HISCUTT - Before I start, I note the member for Windermere's intense scrutiny of this bill - well done.

The answer is they are provided just an audio copy of the video. There were concerns over privacy and security of interviewing officers if the video were to be provided to the defendant, who might then share it on social media et cetera. The actual physical video to look at, for privacy reasons, will not be shared, but the audio copy is and all you hear are voices. Yes, police would be accommodating a person having a reasonable support person with them when they are interviewed.

Mr Dean - They can, and this covers that. The member for Murchison raised the psychiatrist.

Mrs HISCUTT - I would like to clarify a person may get the video in some cases, but the audio is a minimum requirement.

Mr VALENTINE - I go back to the body worn camera situation. They are relatively new and under this preliminary brief it may well be the video image is captured by the body worn camera. It may well be very important to the prosecution of the case and finding the defendant guilty as there they are doing it. Would this be made available for them to view? Maybe under the same sort of circumstances with somebody else there?

Would this be made available, given every police officer wears these cameras? As I said before, it may well be that the camera of another officer, who is not the person bringing the charge, could show a different perspective which might be pertinent to the case. If the defending lawyer wished to have that image, could they gain it under this particular clause, or not?

What are the restrictions around images from body worn cameras and their availability to be defended?

Mrs HISCUTT - We are talking about a copy of a record of interview; clause 59 defines what a formal record of interview is. This is most likely to occur in an interview room, so with regards to body worn camera footage, it would more likely be disclosed under the requirements triggered by a plea of not guilty. We are talking about clause 62(d), a copy of record of interview, and that is clearly defined in clause 59 of the bill.

Mr VALENTINE - I am not talking about a record of interview. I am talking about -

(f) if the relevant offence is a summary offence, any other information, document or other thing that the regulations require to be included in the preliminary brief.

Are you saying the regulations do not require footage like that to be made available?

Mrs HISCUTT - The regulations have not been developed yet.

Mr Valentine - Are they likely to?

Mrs HISCUTT - They were working on them. They will have more to add. The requirement to provide or view video is only for the formal interview. Video is only for formal interview, for purposes of preliminary disclosure. In some cases, this would include a body worn camera, but not in most. It is not feasible to disclose in preliminary disclosure for every case, but it would be provided in the summary offence brief - that is, the not guilty disclosure. Lawyers can also request additional disclosure beyond the mandatory one set out in the act. Tasmania Police is working with the Law Society of Tasmania on this.

Mr VALENTINE - My feeling is that if it is material to the case, and the person is not able to view it, they are at a disadvantage. That is where I come from on this. To me, it seems unfair if a person is not made aware of all the material the prosecution is going to rely on to bring a case against them, or they are made aware of it at the last minute - they will have no way of building their defence properly. That is the reason I ask the question. I will hear your answer on that score.

Mrs HISCUTT - If it is material to the case, it is required to be disclosed following a plea of not guilty in a summary or indictable brief.

The bill does not derogate the common law requirement to provide ongoing disclosure. The common law obligation to disclose certain information is explained as follows. The DPP Prosecution Policy and Guidelines advise that -

> prosecutors are under a continuing obligation, prior to trial, to make full disclosure to the accused of all material known to the prosecutor which can be seen on a sensible appraisal to -
>
> - be relevant, or possibly relevant, to an issue in the case
> - raise, or possibly raise, a new issue whose existence is not apparent from the evidence the prosecution proposes to use
> - hold out a real, as opposed to a fanciful, prospect of providing a lead to evidence which goes to either of the previous two situations.

I think what we are saying is common law obligations.

Mr Valentine - Thank you.

Mr DEAN - I thank the member for Hobart for bringing some more detail out in relation to the body worn camera situation. This matter was also raised by the member for Murchison during her second reading contribution.

Madam CHAIR - It was in the briefing.

Mr DEAN - A body worn camera, for instance, records both audio and visual. I think it would be possible, for a formal-type interview to take place on that product, on the body worn camera. At a time when the vision is being taken, a police officer would most likely be talking to the offender as well, which could be considered to be a formal part of an interview.

In that situation, I take it that under clause 62(c) a body worn camera, audio and visual, would need to be produced and provided for a viewing by the offender. I am going to take it one step further than that: what about the witness?

Mrs Hiscutt - Can I just clarify it has to be provided if requested, after a conviction. Is that correct? Plea of not guilty.

Mr DEAN - If it meets that definition. A viewing would need to be required of the police to the defendant, in that circumstance.

Mrs Hiscutt - Yes.

Mr DEAN - In that instance, would the recording be provided to the defendant because in that situation the police officer is not on the visual side of it; there is no identification of the police officer other than by audio. In that instance, would the visual be provided to the defendant and/or to the defendant's lawyer? During the briefing there was quite a lot of discussion around this. The member for Murchison may well have been told then that it did not relate to the body worn cameras. There needs to be some clarification on this matter to ensure we have it right.

Mrs HISCUTT - If it fits the definition of record of interview, it would be provided - at minimum, the audio, but the video may also be provided. It remains the case that though it is possible for formal interviews to be conducted on body worn cameras, this would be in limited circumstances and a decision for the investigating police at the time.

Clause 62 agreed to.

Clauses 63 to 67 agreed to.

Clauses 68 -
Duty to allow viewing of audio-visual recording and certain other documents and things

Mr DEAN - Clause 68 deals with the duty to allow the viewing of audiovisual recordings and certain other documents and things. The viewing is in the presence of a prosecutor or the police. No copy is provided to the defendant, as we are told. Is there an obligation on police, to whom it normally relates, to allow a second, third or fourth viewing of that audiovisual recording? In many cases a lawyer would want to look at it if they cannot be given a copy. We were given the reasons for that, and understand and accept that, albeit I would have thought today they could erase the police officers if they were on the audiovisual material. Do they have the right to do that? Under this legislation, can they require that to happen? That is my only point at this stage.

Mrs HISCUTT - If a person has a lawyer, the lawyer will probably get the video copy with an undertaking. The bill does not speak about multiple viewing, but the police would accommodate

what is reasonable. The bill does not speak about multiple viewing, but it does not restrict multiple viewings. The police would look at that.

Clause 68 agreed to.

Clauses 69 to 79 agreed to.

Clause 80 -
Time limit for commencing proceedings for summary offence

Mr DEAN - Clause 80 relates to time limit for commencing proceedings for summary offences -

> Proceedings for a summary offence must be commenced -
>
> (a) within 6 months after the time when the alleged offence occurred

I may have this wrong and I should have checked it - has there been an increase in that period to a 12-month period? In some acts where a period of time is identified, it identifies and stipulates six months from the time in which the offence becomes known. It is possible for offences to have been committed seven, eight months ago, but the commission of it has not been identified until after the time for taking out a charge or summons exists. I obviously have that wrong; I thought it was in the Justices Act. Obviously, the police were involved in the processes here and obviously they were content to accept six months. With some offences - it could be a serious act, a speeding offence - it takes a lot longer than six months to track down an offender in some circumstances: is there a way by which a summons can be taken out without a name on it? There must be a name on a complaint and summons or a person identified. They cannot identify somebody as John Doe for the purposes of taking out a complaint and summons so that they have it there; it is a matter of inserting the name of the offender when the offender is identified. Is there any area in the law to cover that sort of situation? I would be interested to know.

I have something written here about summary offences, but I will get to that later. It identifies a list of what are summary offences included in that area.

I take it that where a series of offences have been committed and when the offender is identified, and it is found some of those offences were committed longer ago than the six-month period, they cannot be included in any way and could not be included as evidence either. You may get an offender who commits a series of offences over a period of time. Would that relate to the time of the last offence? I would not think so, but I raise that issue and ask what the circumstances are.

Mrs HISCUTT - I will say it again: I certainly admire your intense scrutiny of this bill, member for Windermere. While I am waiting for advice to come, I mention how I appreciate my three advisers here and our backup police adviser in the back. They are doing a wonderful job in getting across this very thick bill and cross-referencing it with other acts.

Mr Dean - They have done very well. Their knowledge is very good.

Mrs HISCUTT - Yes. This cuts across different sections of different bills, which is why it took a little while to locate it all.

Section 26 of the Justices Act provides for 'within 6 months from the time when the matter of complaint arose'; the bill maintains this.

Mr Dean - The time the complaint arose.

Mrs HISCUTT - As a default. However, other acts may specify a different period. Clause 80(1)(b) provides for this. If, for example, it is 12 months for common assault or two years for a minor drug charge, the six months does not apply to minor crimes triable summarily or for electable offences. Clause 80(2) provides for this. It is cross-referenced throughout this bill and throughout the Justices Act.

Clause 80 agreed to.

Clauses 81 to 85 agreed to.

Clause 86 -
Case management hearing

Mr DEAN - I would like some information and details of exactly how this occurs. This is when the defendant charged with a summary offence pleads not guilty. As I read it, very clearly the court is able to intervene here on its own motion and can determine that a case management hearing in respect of the charge should be conducted, or the defendant or the prosecution can do that. Is that conducted in a court? I suspect it would be in a closed court. Or is it an open court ?

It goes on to say under clause 86(2) -

> Despite subsection (1), the Court may not determine that a case management hearing be conducted in respect of a charge for a summary offence that is an offence to which the defendant may file a written plea of guilty unless the Court considers that it is in the interests of justice to do so.

I would appreciate an explanation of exactly what that is and what it means.

Mrs HISCUTT - Case management hearings occur in an open court unless ordered otherwise. These provisions largely replicate current policy-based procedures.

Regarding clause 86(2), written pleas of guilty can be made on minor offences. It is intended that case management hearings be used, in the main, for serious potentially complex matters. It preserves the ability for a magistrate to hold such a hearing if it is in the interests of justice.

Clause 86 agreed to.

Clauses 87 to 100 agreed to.

Clauses 101 -
Electable offence may be tried summarily

Mr DEAN - I refer to clause 100(2) where it says -

> That despite subsection (1), if -

This is to do with the value of property going before the court and identifies what court they are able to go to and through.

> (a) the defendant is charged with more than one offence referred to in that subsection; and
>
> (b) the total value specified in the charge sheet in respect of which those offences are committed exceeds $100 000 -

Then it says -

> … the defendant may not elect to have any of the offences dealt with by the Court or Supreme Court.

What does that actually mean? Does it mean the offence is dealt with by 'the Court or Supreme Court'? Does it mean that the matter of election is simply removed from the defendant and must go to one of those courts? Is that what it says? It is just a funny way to say it.

> … the defendant may not elect to have any of the offences dealt with by the Court or Supreme Court.

I would like an explanation of it.

Mrs HISCUTT - The effect is to remove the election as the aggregate is in excess of the $100 000 threshold for electable offences. It must go to the Supreme Court.

Clause 101 agreed to.

Clauses 102 and 103 agreed to.

Clause 104 -
Alibi evidence if elected summary offence

Mr DEAN - This clause relates to alibi notifications, and in this case the prosecution has a certain time to notify the defendant of their intention to alibi; they have to notify. If that notification is failed to be given to the defendant, they are still able to call that alibi evidence, which is covered under clause 104(5) -

> The Court, under subsection (3), must not refuse leave for a defendant to adduce evidence in support of an alibi if the Court considers that the defendant -
>
> (a) was not warned by the Court under section 103; or -

Mrs Hiscutt - Just before the member moves on, it is the defendant who has to give notice, not the prosecutor.

Mr DEAN - Yes, sorry, if the defendant 'was not informed', but the defendant has to be informed by the court, as I understand it, under clause 103, which says -

> … and the defendant enters a plea, other than a plea of guilty, to the charge, the Court is to warn the defendant that he or she may not be permitted to adduce evidence in support of an alibi, or call a witness to give evidence in support of an alibi, unless he or she serves on the prosecutor, in accordance with section 104, a notice giving particulars of the alibi.

That must be done within a certain period of time, to the prosecutor.

How is it done? Is it done by formal documentation? Or is it simply the defendant in this instance in a letter simply saying, ' I intend to call alibi evidence in relation to this matter', and that is it? Or are they required to give the full details of what that alibi evidence will be? In other words, 'I was with Joe Blow, I was in the tavern at the time of this crime. I could not have been there.' Do they have to stipulate that alibi in detail, and is that a formal document, signed and recorded? What are the formalities around it?

I think it would be easy for a defendant to say, 'We notified the police; we called into a police station one night and I told the guy behind the desk that I was calling alibi evidence in this situation'. What are the formalities around that?

Mrs HISCUTT - Clause 104(7) talks about 'notice required to be given ... in accordance with the rules of court' This bill has not had royal assent yet, and those rules of court will be developed before this bill takes effect. It is the same process that currently applies under the Criminal Code, section 368A of the Criminal Code Act.

Mr Dean - Sorry, what was that?

Mrs HISCUTT - Section 368A of the Criminal Code Act.

Mr Dean - I do not remember exactly what that was about. What does it say?

Mrs HISCUTT - Notice of alibis. Do you want me to read the whole lot of it? I would have to look up the act. There is a lot here, it says -

Mr Dean - No, I do not require you to read through it.

Mrs HISCUTT - Perhaps the member might take the opportunity in his own time to read it; it is section 368A of the Criminal Code, Notice of alibi.

Mr DEAN - I take it from that the formalities around the alibi will be included in the regulations? The rules.

Mrs Hiscutt - The Rules of Court.

Mr DEAN - The Rules of Court. That was referred to by the member for Hobart when he also raised an issue about these rules and the regulations. When are we likely to see them?

Mrs Hiscutt - Before the bill has royal assent.

Mr DEAN - Are they being done as we speak? Are they waiting to see where this bill goes? It is provided for here? The member for Murchison often raises this about the regulations when we

are dealing with bills. The position of the regulations comes up frequently. They will be done in the future; if you had them and knew what they were at the time we were going through these bills, it would be of great interest and help.

Mr Valentine - It is chicken and egg.

Mr DEAN - That will be covered in the rules.

Mrs HISCUTT - To be clear, the Rules of Court and the regulations will be developed before the bill has royal assent. We anticipate that being between 12 to 18 months.

Madam CHAIR - Royal assent or proclaimed?

Mrs HISCUTT - Proclaimed, I am sorry. Thank you, Madam Chair. They are being worked on. We anticipate it will take between 12 to 18 months to have all that in order.

Clause 104 agreed to.

Clauses 105 to 124 agreed to.

Clause 125 -
Interpretation of Part 12

Mr DEAN - This clause relates to appeals and reviews. I have notes saying that 'formal bail application means an application for bail made by a defendant to the court, either orally or in writing, where submissions are made in support of the application'. This is appeals to Supreme Court. The Director of Public Prosecutions, Mr Coates, commented on the number of bail orders or applications going through the Supreme Court; he said that in 2012-13 there were 77 applications, but last year there over 400 applications.

What does that do in relation to bail orders? Does it ease the process? Does it make the process better because there was a lot of time spent on this? That is what Mr Coates was telling us in the briefing. Does it make it easier or better and how does it do that?

Mrs HISCUTT - The bill introduces a new measure that restricts the making of a bail appeal in the Supreme Court to matters where a formal bail application was previously made before the magistrate. The bill defines a formal bail application as an application for bail made by a defendant to the court, whether orally or in writing, where submissions are made in support of the application. This provision will ensure an appeal to the Supreme Court in respect to a bail order can only be made where a bail order has been made by a magistrate as opposed to a justice, in circumstances where the defendant had made submissions to the magistrate.

There is no requirement for submissions to be made in writing. It will be sufficient if they are made orally. This new measure will reduce the number of bail appeals being heard before the Supreme Court that lack merit.

The Government has also committed to undertaking further bail law reform.

Mr VALENTINE - How is that then recorded? When the magistrate hears this orally and they approve it, there must be something they fill out or enter onto a computer or whatever to say it has been granted and formalises the record. Is that how it happens?

Mrs HISCUTT - There is what is called a record of proceeding which is held by the Magistrates Court for each matter. This records orders and outcomes of each appearance. That is all recorded by the clerk of the court.

Mr VALENTINE - Does the person who has applied for bail have some physical form of notice that they have been granted bail they can put in their records? Is it sent to them by email or some such thing?

Mrs HISCUTT - Yes, they receive a piece of paper from the court that states this.

Clause 125 agreed to.

Clauses 126 to 155 agreed to.

Clause 156 -
Publication of proceedings

Mr DEAN - I covered this to some degree in my second reading contribution and during the briefing sessions. I appreciate the answer given by the Leader in her closing of the second reading and the definition as taken from the law dictionary in relation to this matter. I am not sure if I understood you correctly, Leader, in identifying what the law actually says in relation to the definition of 'publish' or what it means. I wrote one comment down - that it is to pass from one person to another or something to that effect, so you might just read exactly what was said on that point.

I reiterate: we have a penalty here of 500 penalty units or imprisonment for a term not exceeding 24 months or both. We need to know exactly what 'to publish' means. There would be people out there who could get caught up in this if there is no absolute understanding. I raise the question again. Because of the significant fine it provides, why is there no definition in the bill of what to publish actually means?

Under the definition read out under the dictionary referred to, I ask specifically again: Will that cover a person who posts on Facebook to their 20 friends the proceedings of a closed court situation? Will it be an offence for the person to go to a Rotary meeting and during the meeting simply say these matters arose in closed court today in relation to a certain matter?

Would that be to publish? Would it be to publish if I emailed a couple of my mates to simply say 'This is what happened in the court today.'? Would that meet the criteria to publish? I would like some very clear understanding because while the word 'publish' is defined in the law dictionary, there is nothing in this bill to say that will be the case. The law dictionary might say whatever it wants, but there is nothing in this bill to say that publish in this instance is governed by or will have the same meaning as it has in the law dictionary with an identification. This does not relate to that all - really what the law dictionary says means nothing. I ask those questions because it is not covered in the bill.

Mrs HISCUTT - To start with, I will not read the definition out again; it is already in *Hansard*.

Mr Dean - I think you mentioned something about one other person.

Mrs HISCUTT - It finishes with 'or bring it to the notice of the public by other means'. Perhaps I should repeat it so if anyone is reading it, they will know exactly what we are talking about. The original definition is -

> **Generally, to communicate or convey, or cause the communication or conveyance, of conceptual material** to one or more persons by one or more means including: inserting it into a newspaper, journal, magazine, or other periodic publication; sending it to any person by post or by any other means of delivering letters; delivering it to any person or leaving it on any premises; broadcasting it by radio or television; exhibiting it by means of posters, film or videotape; or bringing it to the notice of the public by any other means: ...

That is a direct definition out of the *Encyclopaedic Australian Legal Dictionary*. The answer to your question is that it could, though it would be determined on a case-by-case basis, and prosecutions are undertaken if in the public interest. There is a need for flexibility so it should not be legislated. The issue raised by the member is best dealt with by a fact sheet or information on a website. In this instance, the penalty is high because it relates to the breach of a court order.

Clause 156 has subclauses (1)(a), (b) and (c), then it goes 'if the Court, by order'. It is breaching a court order. I hope that is clear.

Mr DEAN - It is a breach of a court order to publish - whatever that means - anything coming from a closed court. It is accepted that it is a serious matter to breach any court order. I understand that. In the definition you have just referred to - and they were the words I was referring to when I first spoke on this - when it is passed on to another person, you have just reiterated that to communicate it to one or more persons constitutes to publish.

How many people would really know and understand that when there is no cover? There is nothing to identify to them what the restrictions are, unless the court at the time - the magistrate or the judge - were to say, 'You are not in any way to publish anything from this court, to publish means to pass to another person' or whatever. Would a court go that far? I have never heard them go that far. I have been in courts where they have said, 'This is a closed court and nothing in this court is able to be published'. Sometimes I have heard them go to that extent.

I raise the issue, 'allow' - it even goes further than that. I could say to the member for Hobart, 'I have just been into a closed court and Bill Smith was there and Bill Smith was charged with whatever and Bill Smith said this'. I do not know about it but the member for Hobart determines, 'Well, I am going to tell a couple of other people about this as well.' This clause is wide open and to me the way it is described in the bill is really not fair. To have a person placed in a position where their livelihood could be jeopardised, where they could go to jail for two years, to me it requires more than is in this clause.

I am almost inclined to seek deferral of this clause to have a look at an amendment. I am thinking of the people who could get caught up in it. It could be that the person who tells their partner about the court process is actually breaching this proposed section of the act. Is that fair in all circumstances? What is the Leader's position?

Mrs HISCUTT - I see the honourable member wants to get down to the nitty-gritty, but they are breaking a court order. The scenario he has described between the members - if the member for Hobart went and told the local media and it was in the paper, there would be a heap of trouble, somebody would be in trouble.

Mr Dean - He would not even have to do that; he only has to go and tell another mate.

Mrs HISCUTT - Someone would be in trouble but if you were to tell the member for Hobart your secret and it was kept a secret, you cannot prove that. There is no damage done. You have to see how far it goes. It is breaching a court order if a person - and I will keep it in the third person now - if a person is caught and it is open in public, there will be trouble without a doubt. I have more information coming and I will wait until that is finished.

Mr Dean - It does not have to be open in public in the definition referred to.

Mrs HISCUTT - 'Published' is used elsewhere in Tasmanian criminal statutes. It is included in the current Justices Act, as well as the Criminal Code. It is not defined. There is a code I read out earlier - the explanation is as it stands. It has been defined in these instances and has not caused any issues before. It is fine, it works well; it seriously works well. To define it in statute risks narrowing the common understanding of the word, which will evolve over time. There is the definition. That is what it is. It has worked well in other statutes.

Mr Dean - What did you say? The definition?

Mrs HISCUTT - As per the encyclopedia. We can undertake to consider the issue as part of the implementation steering committee and reference group, which includes the Law Society. They will determine how best to publicly communicate with what it is to 'publish'.

Can I finish by saying that this bill has gone through a very rigorous 'going over' by the DPP, the Chief Magistrate, the Law Society and other eminent people who have been involved in its implementation. The point of is that publishing is a well-established term. It has worked well over the years. The advice from these people, these eminent people, is this is right. In the meantime, the department will give an undertaking to consider the issue.

Clause 156 agreed to.

Clause 157 -
Powers in relation to goods in police custody

Mr DEAN - This clause deals with powers relating to goods in police custody and where police do not know who the owner is or cannot find the owner. I take it that the court the police would need to go to for directions for disposal of the property would be the court dealing with the suspect matter. Is that what it is if police are in possession of property in relation to which an offence is alleged to have been committed and they are not satisfied as to who is entitled to the property or the owner of the property is not known or cannot be found? The police officer may apply to the court for direction of disposal of the property.

Is it the case, if it relates to an indictable charge, that it must be disposed of in the criminal court or Supreme Court? Is it the case of the application simply being made to a court, which could be the Magistrates Court or the Magistrates Court (Criminal and General Division)?

Mrs HISCUTT - I can confirm the assumptions are correct.

Clause 157 agreed to.

Clauses 158 to 166 agreed to and bill taken through the remainder of the Committee stage.

MAGISTRATES COURT (CRIMINAL AND GENERAL DIVISION) (CONSEQUENTIAL AMENDMENTS) BILL 2019 (No. 28)

Second Reading

Resumed from 19 September 2019 (page 39)

[5.19 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I have finished my second reading speech.

Bill read the second time and taken through the Committee stage.

DOG CONTROL AMENDMENT BILL 2019 (No. 43)

JUSTICE LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2019 (No. 39)

First Reading

Bills received from the House of Assembly and read the first time.

ADJOURNMENT

[5.24 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move -

That the Council, at its rising, adjourns until 9 a.m., Friday 15 November 2019.

Motion agreed to.

The Council adjourned at 5.25 p.m.