



PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Wednesday 25 August 2021

REVISED EDITION

Contents

LIVING MARINE MISCELLANEOUS AMENDMENTS (DIGITAL PROCESSES) BILL 2021 (NO. 26)	1
.....	1
FIRST READING	1
FOOD AMENDMENT BILL 2021 (NO. 27)	1
.....	1
FIRST READING	1
SUPPLY BILL (NO. 3) 2021 (NO. 32)	1
.....	1
SUPPLY BILL (NO. 4) 2021 (NO. 33)	1
.....	1
FIRST READING	1
SUSPENSION OF STANDING ORDERS	1
.....	1
PASS ALL STAGES	1
MOTION	2
.....	2
ESTIMATES COMMITTEES - ESTABLISHMENT	2
MOTION	3
.....	3
ATTENDANCE OF HOUSE OF ASSEMBLY MINISTERS	3
ESTIMATES COMMITTEES - REQUEST FOR MINISTERS TO ATTEND	4
MESSAGES FROM THE HOUSE OF ASSEMBLY	4
.....	4
ATTENDANCE OF HOUSE OF ASSEMBLY MINISTERS AT LEGISLATIVE COUNCIL ESTIMATES COMMITTEES	4
BUDGET SPEECH - ATTENDANCE OF LEGISLATIVE COUNCIL MEMBERS	4
MOTION	5
.....	5
ATTENDANCE OF LEGISLATIVE COUNCIL MINISTER AT HOUSE OF ASSEMBLY ESTIMATES COMMITTEES	5
SUPPLY BILL (NO. 3) 2021 (NO. 32)	6
.....	6
SECOND READING	6
SUPPLY BILL (NO. 3) 2021 (NO. 32)	20
.....	20
IN COMMITTEE	20
QUESTIONS	23
.....	23
ANYTHING CAN HAPPEN ADVERTISING CAMPAIGN	23
EMPLOYMENT OF SCHOOL NURSES	24
TASMANIAN SCHOOLS - SUSPENSION OF KINDERGARTEN AND PREP STUDENTS	25
TASMANIAN SCHOOLS - STUDENT RETENTION	25
POINT OF CONSUMPTION TAX AND TASRACING	26
TASMANIAN SCHOOLS - TEACHING OF LANGUAGES	27
COVID-19 - SMALL BUSINESS BANKRUPTCIES	28
CALVARY HOSPITAL - CO-LOCATION	29
SUPPLY BILL (NO. 4) 2021 (NO. 33)	29
.....	29
SECOND READING	29
SUPPLY BILL (NO. 4) 2021 (NO. 33)	30
.....	30
IN COMMITTEE	30
JUSTICE MISCELLANEOUS (INCREASING JUDICIAL RETIREMENT AGE) BILL 2021 (NO. 15)	31
.....	31
SECOND READING	31
JUSTICE MISCELLANEOUS (INCREASING JUDICIAL RETIREMENT AGE) BILL 2021 (NO. 15)	41

IN COMMITTEE	41
GUARDIANSHIP AND ADMINISTRATION AMENDMENT (ADVANCE CARE DIRECTIVES) BILL 2021 (NO. 14)	43
SECOND READING	43
ADJOURNMENT.....	56
APPENDIX 1	57
APPENDIX 2	60
APPENDIX 3	65

Wednesday 25 August 2021

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

LIVING MARINE MISCELLANEOUS AMENDMENTS (DIGITAL PROCESSES) BILL 2021 (No. 26)

First Reading

Bill read the first time.

FOOD AMENDMENT BILL 2021 (No. 27)

First Reading

Bill read the first time.

SUPPLY BILL (No. 3) 2021 (No. 32)

SUPPLY BILL (No. 4) 2021 (No. 33)

First Reading

Bill read the first time.

SUSPENSION OF STANDING ORDERS

Pass all Stages

[11.07 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) (by leave) - Mr President, I move that so much of Standing Orders be suspended to allow the bills to pass through their remaining stages at such time as the Council may appoint.

Ms FORREST (Murchison) - I am aware that the Leader has moved this motion. Clearly, there will be a lot of questions to be answered during the debate on these bills should they come on later today or tomorrow, or whenever the Government intends to do so. There are some significant matters related to this, in terms of the overall budget process - assuming we proceed with that. It was not clear what happens with these bills, from the information in the second reading speech. We had a briefing yesterday that provided some clarification, but I am always reluctant to support suspension of Standing Orders, particularly with regard to matters of such importance.

I understand the circumstances. We hope we do not have to implement this act. Clearly, we hope COVID-19 stays out of our state. I will make some comments during the debate on

these bills. I will not oppose the suspension of Standing Orders but I emphasise there is a need for very clear reasons to be given.

Motion agreed to.

MOTION

Estimates Committees - Establishment

[11.09 a.m.]

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

That the Legislative Council establish two Estimates committees and that Committee A shall consist of 6 members and Committee B shall consist of 6 members:

And that

Mr Duigan, Ms Forrest, Mr Gaffney, Ms Lovell, Dr Seidel
and Ms Webb

be of Committee A

and

Ms Armitage, Ms Palmer, Ms Rattray, Ms Seijka, Mr Valentine
and Mr Willie

be of Committee B.

That the Estimates Committees report upon the proposed expenditures contained in the Appropriation Bills (No. 1 and No. 2) and budget papers by no later than Friday, 17 September 2021.

And that the schedule emailed to members on Tuesday, 24 August 2021 be adopted as the Estimates Committees timetable.

Monday 6 September 2021			
Commencing at 9.00 am	Committee A (Chamber)	Hon Michael Ferguson MP	Minister for Finance Minister for Infrastructure and Transport Minister for State Development, Construction and Housing Minister for Science and Technology
Commencing at 9.00 am	Committee B (Committee Room No. 2)	Hon Jacquie Petrusma MP	Minister for Police, Fire and Emergency Management Minister for Parks Minister for the Prevention of Family Violence

Commencing at 2.45 pm		Hon Jane Howlett MLC	Minister for Women Minister for Small Business Minister for Sport and Recreation Minister for Racing
Tuesday 7 September 2021			
Commencing at 9.00 am	Committee A (Chamber)	Hon Peter Gutwein MP	Premier Treasurer Minister for Tourism Minister for Climate Change
Commencing at 9.00 am	Committee B (Committee Room No. 2)	Hon Guy Barnett MP	Minister for Primary Industries and Water Minister for Veterans Affairs Minister for Energy and Emissions Reduction Minister for Trade Minister for Resources
Wednesday 8 September 2021			
Commencing at 9.00 am	Committee A (Chamber)	Hon Jeremy Rockliff MP	Minister for Health Minister for Mental Health and Wellbeing Minister for Advanced Manufacturing and Defence Industries Minister for Community Services and Development
Commencing at 9.00 am	Committee B (Committee Room No. 2)	Hon Sarah Courtney MP	Minister for Education Minister for Skills, Training and Workforce Growth Minister for Disability Services Minister for Children and Youth Minister for Hospitality and Events
Thursday 9 September 2021			
Commencing at 9.00 am	Committee A (Chamber)	Hon Roger Jaensch MP	Minister for State Growth Minister for Local Government and Planning Minister for Aboriginal Affairs Minister for Environment Minister for Heritage
Commencing at 9.00 am	Committee B (Committee Room No. 2)	Hon Elise Archer MP	Attorney-General and Minister for Justice Minister for Corrections Minister for Workplace Safety and Consumer Affairs Minister for Arts

Motion agreed to.

MOTION

Attendance of House of Assembly Ministers

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

That the Legislative Council having appointed two Estimates Committees reflecting the distribution of the Government ministers' portfolio responsibilities, request that the House of Assembly give leave to all ministers to appear before and give evidence the relevant Council Estimates Committee in relation to the budget Estimates and related documents.

Motion agreed and message transmitted to the House of Assembly.

Estimates Committees - Request for Ministers to Attend

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I move that the sitting be suspended until the ringing of the division bells to continue the briefing on Guardianship and Administration Amendment (Advanced Care Directives) Bill 2021.

I do not anticipate that will take more than half an hour.

Sitting suspended from 11.11 a.m. to 11.49 a.m.

MESSAGES FROM THE HOUSE OF ASSEMBLY

Attendance of House of Assembly Ministers at Legislative Council Estimates Committees

[11.49 p.m.]

Mr PRESIDENT - The House of Assembly has agreed to the following resolution communicated to it by the Legislative Council on 25 August 2021.

Resolved:

That the Legislative Council having appointed two Estimates Committees reflecting the distribution of Government ministers' portfolio responsibilities requests that the House of Assembly give leave to all ministers to appear before and give evidence to the relevant Council Estimates committee in relation to the budget Estimates and related documents.

Signed

Mark Shelton
Speaker
House of Assembly
25 August 2021

Budget Speech - Attendance of Legislative Council Members

A further message from the House of Assembly:

Mr President, the House of Assembly, having passed the following resolution begs now to transmit the same to the Legislative Council and to request its concurrence therein.

Resolved:

That the House of Assembly requests that:

- (1) All members of the Legislative Council attend in the House of Assembly Chamber following the first reading of the Appropriation Bills (No. 1 and No. 2) 2021 for the purpose of listening to the speech by the Premier and Treasurer in relation to the Tasmanian Budget 2021-22.
- (2) The Legislative Council gives leave to the Honourable Minister for Racing, Minister for Sport and Recreation, Minister for Small Business and Minister for Women to appear before, and give evidence, to the relevant Estimates committee of the House of Assembly in relation to the budget Estimates and related documents.

Signed

Mark Shelton
Speaker
House of Assembly
25 August 2021

MOTION

Attendance of Legislative Council Minister at House of Assembly Estimates Committees

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

That the honourable member for Prosser, the Minister for Small Business, Minister for Women, Minister for Sport and Recreation and Minister for Racing be given leave to appear before, and give evidence to, the relevant Assembly Estimates committee in relation to the budget Estimates and related documents.

Motion agreed to.

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

That a message be transmitted to the House of Assembly acquainting that House accordingly.

Motion agreed to.

SUPPLY BILL (No. 3) 2021 (No. 32)

Second Reading

[11.52 a.m.]

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

That the bill be now read the second time.

Mr President, as members are aware the 2021-22 Budget will be tabled in this House on 26 August 2021 with royal assent for the 2021 appropriation bills anticipated in early to mid-October 2021. The parliament recently passed supply bills to make interim provision for the appropriation of funds from the Public Account to enable the provision of government services until the enactment of the appropriation bills. The 2021 Supply Acts provided for the appropriation of \$2202.1 million to enable the continuation of the normal services of government, including services in respect of parliamentary and statutory officers for a period of approximately four months to the end of October 2021.

However, Mr President, given the increasing uncertainty with respect to the COVID-19 pandemic, the Government considers that it is prudent to plan for the unlikely but nonetheless real risk that the budget session of Parliament may be disrupted and that the 2021 appropriation acts will not be passed in the planned time frames. To this end, the Government seeks the parliament's support to provide for additional supply that will ensure that if the COVID-19 situation in Tasmania suddenly changes, the community is assured that government services will continue to be competently delivered and that sufficient funds are available to meet unforeseen expenditure.

Treasury estimates that a further interim appropriation totalling \$1660.6 million will enable the provision of government services including services in respect of parliamentary and statutory officers for three months from November 2021 to January 2022. Treasury has determined this amount based on the methodology that was used to calculate supply for Supply Acts (No. 1) and (No. 2) 2021. Supply Acts (No. 1) and (No. 2) were based on actual agency expenditure for the first four months of 2020-21 and the revised 2021-22 Estimates as presented in the 2020-21 Revised Estimates Report.

In accordance with current appropriation conventions two further supply bills have been prepared. Supply Bill (No. 3) 2021 makes an interim provision for the appropriation of \$1650.7 million for the services of the Government. This includes \$1531.4 million for expenditure on operating services. A further \$119.3 million is provided for expenditure for capital services to allow the Government's infrastructure program to continue to be delivered in the new budget year.

Supply Bill (No. 3) 2021 includes an additional supply of \$60 million for expenditure from the Treasurer's Reserve that increases the current supply to \$80 million to meet unforeseen expenditure in accordance with section 21 of the Financial Management Act 2016.

These supply bills are administrative in nature, as they provide for the continued provision of existing government services and capital expenditure pending parliament's consideration of the budget for the 2021-22 financial year. This bill seeks to ensure that, should

the budget session of parliament be disrupted by the COVID-19 pandemic, funding is in place for the continuity of government services to the Tasmanian community.

I will provide some further comments in relation to the queries raised about the implications of a hypothetical period of extended lockdown. Whilst a lockdown would be envisaged to be short and sharp and may impact on some proceedings, it is not anticipated there would be an ongoing, long-term impact.

In the event there was an extended lockdown situation, parliamentary committees can continue to fulfil their parliamentary scrutiny role by meeting electronically. There are also emergency provisions that exist to enable ongoing supply of public funding. The Government has already flagged that the budget will include additional flexibility given the ongoing challenges of COVID-19. I commend the bill to the Council.

Ms FORREST (Murchison) - Mr President, as I mentioned when we moved the suspension of Standing Orders to enable this bill to be dealt with today, I do not have an issue with the preparation of these bills, the way it has been done - as the Leader says herself, it is an administrative process.

What I have concern about is that, should these bills need to be enacted because we have a COVID-19 outbreak in the state - and that could be any time from today to the end of October, if the budget and appropriation bills that go with it receive royal assent. That is quite a period and you see how quickly things go pear-shaped. Ask the ACT residents, ask the Victorians, ask Jacinda Ardern in New Zealand and certainly ask any person living in New South Wales.

Queensland has been a bit luckier. They have been able to stamp on it fairly quickly, which is pretty amazing when they have a large border with New South Wales. Sydney itself is a fair way from it, but now there are cases right up on the Queensland border, in the Aboriginal communities in those areas; unvaccinated Aboriginal communities.

I listened to a podcast this morning, slightly off this topic but it is important we understand the significance of what we are facing here. The day they were scheduled to have these communities on the border vaccinated was the day there was a case in the vicinity. Dubbo is their central hub where they all get their main services, and it came up through that way. The vaccination clinic was cancelled. I can understand not wanting to send additional healthcare workers into these vulnerable communities, but why wasn't it done sooner? Why were they waiting until it reached this point?

Our Aboriginal communities are extremely vulnerable. The Delta variant moves like wildfire and it certainly does not announce its entry into any place, whether into a premises, a state or anybody's life. It is there before you know it. We know the reproduction rate of this virus is very high and it is very contagious.

With those comments, I make some other observations about this bill. I note that clause 6 of the bill provides for this bill to be subsumed into the Appropriation Bills that will be delivered tomorrow. It is not clear from that provision in the bill what that means and how it will work. During our briefing the Leader's adviser read out a reasonably descriptive process for what would occur. Here we are, appropriating a not insignificant proportion of the Budget and, we will effectively start that process again tomorrow.

The issue is that if we do need to enact these bills, there is no scrutiny of the appropriation that is made through them. There is no way of knowing what line items in health, education, infrastructure, justice or any other department will receive. What we are signing off today is simply high-level numbers of the amount of funding that will be provided, based on calculations by Treasury - that is all legitimate and all done appropriately - to fund those ongoing services. There was a brief comment in the conclusion of the Leader's second reading speech, based on questions I asked at the briefing, relating to how the Government will ensure continued scrutiny. The Leader said that parliamentary committees can continue. Yes - but that is not the same as having the parliament meet and scrutinise legislation. Parliamentary committees do not scrutinise legislation. If there needed to be further emergency measures taken, I assume - and the Leader might need to address her mind to this, whether those notices under the previous COVID-19 emergency bills that we passed earlier in the year would still be able to be issued. The Subordinate Legislation Committee would be responsible for scrutinising those notices on behalf of the parliament. That is fine; but it is difficult to report on them in a way that can engage the rest of the members of parliament.

The three of us in this House who are members of that committee will potentially see all the information, but no one else will.

Ms Webb - Only some of the things that are done under those acts get scrutinised by the Subordinate Legislation Committee.

Ms FORREST - Yes, under the COVID-19 bill.

Ms Webb - Not the Public Health Act, not the Emergency Management Act.

Ms FORREST - The directions under the Public Health Act and Emergency Management Act do not.

Ms Webb - They are not scrutinised by anyone.

Ms FORREST - That is right, and that is the nature of those two acts they sit under. There is a range of reasons why parliament should be able to continue to meet. My question to the Leader remains: What is the Government doing about enabling parliament to continue to sit? What is the Government doing about that - not only ensuring that committees can continue, because we can meet virtually. I am sure there are measures that would need to be taken because I do not know that our Standing Orders provide for parliament to meet electronically. What discussions have been had with our Presiding Officers and with our Clerks to determine what can be done should this occur? I hope if it does happen - and chances are it will - that we have a short, sharp lockdown. However, as I said, no-one else has experienced that. I do not know why we would think we would be so special. We have a lot of vulnerable members of our community, and quite a dispersed population. A lot of people in my electorate do not like following the rules, at the best of times. We saw that in the last outbreak here - and that was not the Delta variant. The absolute fear that was in my community, and the vilification of health workers at that time, was disgraceful; as I have previously noted.

I do not know why we think we would be special, that we could suddenly stomp on this virus in a short, sharp lockdown. Yes, we would need to shut down sharply; but I do not know we can guarantee it would be short. This Supply Bill takes us to the end of January, which seems like a reasonably long time.

Ms Webb - It is not.

Ms FORREST - Let's hope it is.

Ms Webb - It is not though.

Ms FORREST - I am thinking about people in New South Wales and Victoria who thought they might have been going somewhere for Christmas. I suggest there is only a remote chance of that happening.

Mr Willie - There are 919 new cases.

Ms FORREST - I know - there are 919 in New South Wales today, but somewhat less in Victoria, thankfully. I have not seen the ACT figures for today, but they had increased again yesterday. It will be here in no time, in the scheme of things. If this does need to be used, I wonder what happens if we are still in lockdown without measures for parliament to sit. Do we have to somehow rely on all of the emergency provisions, to keep funding the departments? Surely, we can do better than that. It would be almost a year without scrutiny of the budget expenditure by the time that came around.

I also asked the Leader to inform us as to when next year's Budget is expected to be tabled. Last year's Budget was delayed, resulting in this year's Budget being delayed; and this year is a bit less delayed. I hope we are not delayed next year. Can the Leader indicate the Government's intent in that regard?

I note the second reading speech provides for contingency funds, through an additional \$60 million being provided to the Treasurer's Reserve. When we had the first outbreak last year, a \$150 million contingency fund was put in place, predominantly to assist with health expenditure.

I believe some of those funds were also used to support small business, through the small business grants. Certainly, if we have another outbreak there will be calls for support for small business - indeed all business. I expect the Government will be willing to support businesses again during that period. One can only hope the federal government might step up a bit more than they have in recent times. Once New South Wales had the major outbreak, the federal government seemed to change their tune a little; but this has to be 'all in this together' approach.

I realise it is only for a three-month period, and \$60 million would be enough. We are probably slightly better prepared this time, in terms of our PPE and our access to all the necessary equipment in our health services. We do not have to buy the most expensive equipment as we did last time, when there was a world-wide shortage of gowns and masks and even hand sanitiser. You know how hard it was to get hand sanitiser; you had to make your own.

From the evidence we received in a report tabled yesterday from the Public Accounts Committee, you will see that although there were some areas that were not so well done - as reported by the Auditor-General - overall it seems that we are more prepared for such an outbreak. However, it will also mean that we will have to increase testing, contact tracing and the like and that draws professionals from other areas.

Tasmania is doing quite well with our vaccine rollout, and that is positive. However, there are certain areas in our state that are not doing so well, and my area is one of them. You ask why - and I can tell you that there are still people who are fearful, or sceptical; people are being drawn in by conspiracy theories and all sorts of misinformation. Another issue is when you are told you will have to drive from Marrawah to Launceston to be vaccinated, and you do not have a car or a licence. What do you think is going to happen in that instance?

Clinics have been offered in Circular Head and similar locations, but they need to be there more regularly. We need to have Pfizer clinics there more often as well as availability of AstraZeneca. Pharmacies now are providing the AstraZeneca vaccine. We will have Moderna, which I understand is expected to arrive next month; however, we need to take vaccination to the people. We need to make it easier for people from very remote areas to access vaccination, and provide them with accurate information. We cannot expect people who are vulnerable, who often do not have a car or, if they have a car, they do not have a licence, to travel to receive a vaccination.

I received a message from a former constituent of mine who now lives in Lutana, in the member for Elwick's electorate. Letterbox dropping has been going on there, with misinformation about vaccination. This person sent me a photo of a very screwed up copy because that was her first reaction to it; but then she saw fit to flatten it as best she could, and photograph it and send it to me.

I forwarded that on to Mr Rockliff's office, on the basis that some action must be taken because there are people who are not well-informed, and who are drawn into this misinformation. It becomes a real challenge then, to help them to appreciate the importance of vaccination not just for themselves, but for the whole community about vaccination.

I dared to put a post about vaccination on my Facebook post the other day. If anyone saw the thread you see it brought out some really sad comments and misinformation. Thankfully most of the informed people who hopped on behind them put up posts discrediting claims that have been made by various others with evidence-based information.

That is a constant battle. I thought it was easier to step out of it and not say anything. It is easier not to say anything publicly because you do get vilified. You do get hammered. You do get threatened with all sorts of stuff. But if I don't, who will?

We all have an obligation as leaders in our community, not to step away from these hard conversations; to be out there putting the accurate information in front of our people, our constituents, our fellow Tasmanians, guiding them to credible information and resources. Some people you will never convince, but if you just convince one person. I know on the Facebook thread there is at least one person who has been convinced through the process. It was interesting watching that process. Do not give up on anybody. But you have to get engaged to do that. It is easy to sit back and say nothing, it is much less stressful, much less tiring, but you are not being the community leader you are supposed to be if you do not. You do need to step up. And it is lonely at times because there is criticism everywhere.

I would like the Leader to address her mind to the \$60 million in the Treasurer's Reserve and the actual key purposes for that - I know it is a contingency and assume that will be picked up in the budget tomorrow - if the intent is there to deal with unexpected expenditure related to an outbreak or whether it is there for more broad purposes. I always have concerns when

we top up the Treasurer's Reserve, because that is something that the Treasurer can dip into at will.

Mrs Hiscutt - With regards to the \$60 million, that is what it is there for, for stuff that has not been thought of but it may be required for.

Ms FORREST - There is always a concern about topping up the Treasurer's Reserve without any clear intent because that then makes \$60 million available for pork-barrelling if you like.

Mrs Hiscutt - That is not the intention of course. We do not know what is going to happen, but you have to plan for what you think may happen. The \$60 million is set there for something that might happen that we have not thought of.

Ms FORREST - Sure. Members would also have received the letter from the Minister for Finance, Mr Ferguson, regarding his desire for us to deal with these bills in a prompt manner. And attached to that email are two letters signed by Her Excellency, The Governor. I have never seen anything like this before and wondered if this is usual practice. I will read out the message from the Governor:

In accordance with the provisions of Section 38 of the Constitution Act 1934 (25 Geo. V. No. 94) the Governor recommends to the House of Assembly the payment out of the Public Account of the sum of...\$1 650 703 000

and that number is repeated in number form -

for the purpose of set forth in Schedule 1 to the Supply Bill (No. 3) 2021.

There is a similar message related to Supply Bill (No. 4). Is that normal practice?

Mrs Hiscutt - I did think I would just pass that on. It is not normal practice for us, but that letter is read out in the other place to begin the process of these bills. I just thought you would be interested in it.

Ms FORREST - My question - is this done with every bill? Is the Governor right to be sending -

Mrs Hiscutt - It is just money bills.

Ms FORREST - Does the House of Assembly receive such a message when the budget is tabled?

Mrs Hiscutt - Whatever the process is. We should get the member from the lower House down here to tell us about it. Normally that does not come to us.

Ms FORREST - No, I appreciate it normally does not.

Mrs Hiscutt - It is a process from the other place with supply bills.

Ms FORREST - This occurs with any money bills?

Mrs Hiscutt - Supply bills. I do not think it happens with the budget bill, it just happens with supply bills. Sorry, it does happen with money bills. Correction there - it does happen with money bills.

Ms FORREST - Did anyone else know that?

I have learnt something.

Mrs Hiscutt - I also have not seen it before.

Ms FORREST - That is right. We are not in the House of Assembly, that is why you have not seen it because it was in the other place.

I am not going to oppose the passage of the bill. I hope we do not need it, but I would like the Leader to address the matters I have raised, particularly how this bill was subsumed into the budget process, assuming we continue. We are still here in budget Estimates and then the budget wrap-up towards the middle of October, so I will not oppose the bill.

Ms WEBB (Nelson) - Thank you, Mr President, I have a few remarks to make although I agreed with much of what the member for Murchison has just said. For the record, we had similar thoughts on a number of those things so let me pick up on a few of them.

At the outset it is worth noting there does not appear to be anything untoward or suspicious regarding these two Supply Bills (No 3) and (No 4) and no reason to dispute the Government's reasoning for their necessity.

Clearly, given the identified ongoing uncertainty due to the COVID-19 pandemic and the need to be prepared for the risk of going into a snap lockdown, we need to ensure we keep paying our hardworking public servants, our essential frontline workers and keep providing the services that Tasmanians rely upon. Nobody is disputing that, I believe.

Also, it is worth acknowledging the Government did attempt to provide a courtesy heads-up that not only would they be asking parliament to consider these two supply bills prior to the established appropriation bill processes but to also allow the highly irregular and arguably undemocratic rushing through of these bills to the extent of tabling, debating and passing the bills in one sitting day.

As I said, we were provided with that prior notification, the bills and their support information and the reasoning alongside them was provided via email to us at approximately 4 p.m. on last Friday 20 August.

However, via the media the public were notified on Monday of this irregular request. That was the day before the resumption of parliament and the expected debate on these bills in the other place. However, I am not really aware and might be corrected, that the public did not have access to those bills prior to them being tabled and debated on that same day. They were tabled, they were debated and although it had been put into the public domain that they were coming, they themselves were not available.

This gets me to the point that really needs to be made that no matter whether the intention is good or not, a rushed and unnecessarily secretive process here in this parliament is problematic.

Mrs Hiscutt - I object to the secretive process. This was an emergency to take care of an emergency plan that was here and now; it was not worked on for months and months and then introduced.

Ms WEBB - If I may continue then. The withholding of information from the public is the antithesis of an open, transparent and accountable government, no matter how genuine and good the intentions may be. Yes, it may only have been three days since we were provided with the bills and with the justification for the irregular and extraordinary processes which see the bills debated and passed on the same day, but the principle here is important. This approach, unfortunately, makes the rest of us here in this place complicit in what is an undemocratic process because we were provided earlier access. We were taken into the Government's confidence to some degree and it is unclear to me why the Tasmanian people could not also have been taken into the Government's confidence at the same time. Why not put it into the public domain on that same day it was provided to us?

Yes, it was a matter of a couple of days, but it is the principle that democracy is open and transparent.

The point I want to emphasise and request is that the Government seriously consider, yes, the ongoing nature of the pandemic, and the serious risks of Tasmanians being plunged into lockdown does provide challenges. Extraordinary ones that have to be tackled and yes, we as a parliament need to be prepared and flexible, but it is imperative we still deliver on those fundamental democratic parliamentary principles, rather than just resorting to shorthand ways of getting around them as if those principles are expendable inconveniences. In fact, we need to make an effort - and be seen to overtly be making an effort - to demonstrably be delivering open and transparent governance at these extraordinary times under these significant challenges.

The manner in which these supply bills are being dealt with cannot be considered, I think, to represent a precedent or a prototype, should the Government find itself in a legislative bind due to the pandemic disruptions at some further point down the track.

To reiterate, I do not dispute the genuine intent of the Government to secure essential supply with these bills. However, I do hold reservations with the current process. I warn that the support for parliament for the passage of these supply bills should not be interpreted by the Government as an endorsement of this process as some sort of precedent for future pandemic-related reasons to rush legislation through this place.

Instead, this situation and the identified need to be prudent highlights that the next step the Government should already be considering as part of its COVID-19 lockdown planning, should be to work with other MPs and MLCs in this place as to how to keep the Tasmanian Parliament functioning appropriately and safely should a lockdown be required.

There are other examples, nationally and internationally, of quorum-only parliaments or parliamentary sessions being held remotely, et cetera. Today's debate is not the forum for us to resolve the specifics of what that could look like. However, given that today's debate is

being conducted on the premise that we need to be prepared for the likelihood of our parliamentary schedule being disrupted again by a lockdown, it is reasonable to expect that the Government must also be preparing to safeguard the functioning of our parliament more broadly in the case of that eventuality.

Members here would recall that this Chamber did vote last year in support of the establishment of a joint house select COVID-19 response and recovery committee, which, unfortunately, did not receive Government support in the other place and did not get up. Suffice to say, this rushed debate today on supply bills outside the standard appropriation process illustrates one of the reasons that committee was necessary and remains necessary.

How to maintain democratic and responsive parliamentary scrutiny during a lockdown is another reason it remains necessary. We are now 18 months into this pandemic. One of its first impacts 18 months ago was to shut down this place - our parliament, the foundation of our democracy - for a period during which the Tasmanian people were deprived of their right to democratic representation.

When parliament is shut down, we are effectively operating in a dictatorship. The primary mechanism by which we hold the government of the day to account is not available in that circumstance and our representative democracy is not in operation. While many may regard what occurred as a benevolent dictatorship, perhaps, and did not observe any overt or inappropriate misuse of power during the times we have seen, without our parliament in operation it is a dictatorship nonetheless. It is unnecessary that we remain in a situation in which the risk of a parliamentary shutdown still hangs over our heads.

While our focus today is on continuing our financial arrangements so that they can operate during a possible COVID-19 shutdown, and that is important and necessary, I have to question why we have not also seen this Government presenting parliament with a plan. Where is the plan, Mr President, and, potentially, the associated legislation to give effect to that plan to put in place arrangements for parliament functioning during a lockdown period? Where is the demonstration from this Government that it regards the full functioning of our parliamentary democracy as a matter of utmost priority?

Let me remind us here that in our system of parliamentary democracy, parliament is supreme. The executive is answerable to parliament. If, through this Government's neglect to plan and legislate for alternative arrangements, this parliament is shut down for, potentially, an extended period the state of Tasmania will be operating under a dictatorship again. A dictatorship that has been facilitated, whether by design or neglect, by this Government.

I call on the Government to demonstrate immediately that it is not in the business of securing unfettered power for itself. I call on the Government to present forthwith its plan to secure instead the proper and effective functioning of our parliament in these uncertain times.

[12.25p.m.]

Mr VALENTINE (Hobart) - Mr President, I thank the Leader for the briefings we received yesterday. I certainly hear the messages that are coming across from the other members with regard to this. My concern during the briefing, which I questioned, was with regard to being assured that there are no new initiatives that these new bills are allowing to be progressed without proper scrutiny. I was assured that these bills are not in addition to the appropriation bills that will come before us shortly.

They are calculated on the same model as the supply bills and that is, I think, the metrics that were given to us during the briefing, which was 58 per cent including the CPI of about seven-twelfths of the budget, and that takes us up to the end of January. It does incorporate funding that has been required under request for additional funding of those approvals; it actually incorporates those that have already been through the system, if I can put it that way.

I do think the point that has been made with respect to being prepared, if you like - can parliament sit, have electronic sittings? Is any further legislation required to be able to enable that to happen? These are points well made and I think you would have to agree with me that business out there that is operating in this very difficult environment, many of them would have business continuity plans. In my past roles with the department of health services in the ICT area, business continuity planning was a very important part of running that business if I can put it that way.

It is important this parliament has a business continuity plan. To that end, I would ask the Leader whether she can give us some confidence that indeed business continuity planning is progressing. Can she give us evidence that is underway and that work is being done to see whether or not legislation is needed to be able to operate in an environment where we are shut down, and maybe for significant periods of time, as to whether we can function as a parliament?

I would like the Leader to provide that information just to give us a comfort that it is on the radar. It is something that we ought to be able to hear today that indeed it is occurring in the background and that there is perhaps something that might come forward to us indicating exactly what is involved in that planning, what is being achieved to be able to make sure we can continue to function as a parliament.

The fundamental purpose of this House is one of review. To my mind, the absolute essential purpose of this House as the House of review. If we cannot undertake that function because of a lockdown circumstance then the member for Nelson is right, it is basically a dictatorship. Rightly or wrongly, we know that has occurred when we were locked down last time. Emergency provision of powers were made available but it is not a desirable thing to have; it is more desirable that parliament continues to function and is able to function fully.

I ask the Leader to respond to that, to give us an understanding of just exactly what is being done to ensure that we can continue to operate as a parliament and whether or not legislation is needed. Is there any thinking that has gone on in that regard and to communicate to us any legislation that we might expect to come before us shortly to make sure that if we get an immediate lockdown of some description that we can function? The points that have been made, I think, are very important.

I do not have any issue with passing these particular bills providing they are not new initiatives that have yet to be fully scrutinised through the Estimates process.

[12.30 p.m.]

Ms ARMITAGE (Launceston) - My contribution will be brief. I thank the Leader for the informative briefing. It was really good and certainly answered a lot of questions. This bill is in addition to the existing Supply Bills (No.1) and (No.2) and, we are told, is merely contingency to ensure the services of government continue in the event of a state lockdown. If parliament is unable to sit to pass and ultimately get royal assent for the appropriation bills,

this supply bill and the next supply bill allow government to continue to the end of January. If not required, it will be subsumed by the appropriation bills.

These bills are not an addition, as is my understanding, to the appropriation bills. The Appropriation Act will continue forth from there. I believe this is a prudent measure as a contingency based on recent experiences with other states and if that were to occur here we would at least be prepared for the next few months. Obviously, we do not want that to happen and we hope it will not happen but, having seen what is happening in New South Wales, Victoria, the ACT, and the other states that all of a sudden are involved with small numbers that increase, I believe that it is a sensible measure. We must continue to pay our public servants and to operate in some form.

The amount required here, we were advised in briefings, is 58 per cent or seven-twelfths, taking us up to the end of January if, we were told, the Government is unable to consult with agencies given the short lead time in order to calculate this and to prepare the legislative documents that received agency approbation initially. Given it is seven-twelfths of last year's approach, it is believed there should be enough to keep things ticking over until the end of January.

As mentioned, it is important to ensure that we can continue to pay our police, our doctors, our nurses, our ambulance officers and other public servants should a shutdown occur. To reiterate, we have been told that this obviously depends on timing. None of us has crystal balls and should the budget appropriation bills get passed quickly and be enacted, and once the appropriate bills get royal assent, they will incorporate these bills. Section 6 of the Supply Bill makes it quite clear so I certainly support the bill before us.

[12.32 p.m.]

Ms LOVELL (Rumney) - Like others, I will support the bill. I recognise that there is a need to be prepared and to plan for circumstances that we have seen eventuate in other states which, I am sure, we are all hoping will not occur here but we do need to be prepared just in case.

When COVID-19 first struck early last year, we did have to think and act on the run and it was a big challenge. That presented some enormous challenges for the parliament, as it did for our entire community but we do not have that excuse any more. We need contingencies in place and it would be irresponsible at this stage in the pandemic to not be taking steps like this so I do support the Government in taking this action.

However, as other members have made the point, supply is one thing and that is obviously an important function that we can continue to pay our public sector workers and provide services that our communities are relying on. However, there are other functions that we should be looking to maintain and I believe that parliament is a very important one of those. I would hope that the Government is looking at ways that the parliament can continue to operate safely in the event of a lockdown and is taking steps to make that happen.

Across the country and, indeed, here in Tasmania, we have seen so many businesses adapt in really innovative ways and there is no reason that this should be any different. I do look forward to the Leader's response to that question that has been raised now by a number of members but in the instance of this bill I certainly will be supporting the bill.

[12.34 p.m.]

Ms RATTRAY (McIntyre) - I am just addressing the housekeeping rules before I make what is probably going to be one of the briefest contributions as well. Just to really endorse some of the words that other members have shared with us in regard to their concerns. I absolutely agree that the review process of this House is absolutely of the highest importance. To keep that function going is really important. To have that plan is a fair and reasonable call on the Government to have a plan as to how we might be able to continue that scrutiny.

The member for Murchison and, by interjection, the member for Nelson talked about the role of the Subordinate Legislation Committee. It is only three members of this House that sit on that committee and three members from the other place. In itself, it can be difficult to have those reports tabled. I believe there should be a plan in place for appropriate scrutiny, as we have a plan in front of us for the financial side of it. We do need that plan for appropriate scrutiny as well.

I commend the Government, particularly the Minister for Finance, for sending the letter we received on Friday. I thought that was a really respectful thing to do when we would be asked to suspend Standing Orders. As soon as I read it I thought, the member for Murchison is not going to be happy about this, and rightly so. She always raises a very good point about the suspension of Standing Orders. We should all be reminded that there is a process in place for a reason.

We do live in uncertain times and never before have we had to continue to deal with the challenges on behalf of our community. When we had the lockdown last year I had one day away from my office. I felt like I needed to be available. If nobody came - they did not come in very often - we had calls and emails and did what we could when we could. I wanted people in the electorate I represent to know that I was there for them every day if they needed me. I did feel that the communities I represent had representation, had a vehicle and a voice.

I did not necessarily feel that they did not have that because parliament was not sitting. As we know, sometimes parliament does not sit all that often, particularly in the year of an election for the House of Assembly. Things are postponed and we are not sitting but we are always working in our electorates and that is what we do. Sometimes the wider community do not necessarily realise the work we undertake outside of sitting in parliament.

I know the Public Works Committee that you really enjoy being part of, Mr President, has been on the road. I can tell you, I have been to Smithton; I have been to Queenstown. The member for Hobart and the Chair of that committee, we have been everywhere man. Every week we have another invitation from the secretary, Mr Hennessy, asking if we are available on any of these days. It is a busy committee but certainly a very interesting one and it is something we need, as we know, because we have to keep those projects going. People want to see we still have confidence and they have to see something going on.

I notice it is an additional \$60 million, so there will be \$80 million available in the Treasurer's Reserve. We do not know whether the Treasurer will need to use some of it, all of it or even have to ask for more. Knowing how frugal the Treasurer is, I think most people in Tasmania feel that the Treasurer does keep a very close eye on the finances of the state and does a pretty good job, and I am one who agrees with that. He will not spend any money unnecessarily on behalf of the people of Tasmania. I support the Supply Bill that has been brought forward and look forward to the scrutiny of whatever money is spent, whenever we

can, however we can and I look forward to hearing from the Leader. She has probably had a phone call or an email already talking about how the Government is putting together a plan to continue that scrutiny. That was not as brief as I thought it was going to be.

[12.40 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Thank you Mr President, my first page here was to reiterate - and the member for Launceston stood up and pretty well said what I wanted to reiterate - was that these bills are to keep government business running in the case of a pandemic breakout or a possible lockdown. I would like members to bear in mind that this is going to pay for doctors, nurses, police, teachers and others like that in the case that there may be a lockdown, so just bear that in mind.

In the event of a prolonged lockdown as opposed to a short sharp lockdown, which is what we are planning for - but like you say this is a crystal ball and I do not have that crystal ball - the options for an extension of supply beyond January would include those things I mentioned before as you mentioned yourself. Also, using the emergency provisions in section 30 of the Financial Management Act 2016 would involve the Auditor-General and the Governor to oversight that.

In terms of scrutiny during a prolonged lockdown, I have already mentioned the Subordinate Legislation Committee but there is also the Parliamentary Standing Committee of Public Accounts (PAC). They can continue meeting via digital means and the secretary of Treasury could provide a verbal update to PAC. This is in addition to the quarterly report to 30 September which will be provided in December within 45 days of the Auditor-General clarifying accounts to 30 June 2021 and the Revised Estimates Report to be presented by 15 February 2022.

The secretary of Treasury has advised that it would be possible to provide the RER in two parts, estimates in December and the actuals on 31 December 2021 by 15 February 2022. You also asked whether the budget would be in its usual space next year in May. I do not have this crystal ball, I do not know what is going to happen. It is anticipated it will be on time next year, but looking into that COVID-19 crystal ball it is only anticipated. That is the best answer I can give you.

Ms Forrest - So you are not planning a delayed budget? That is the question.

Mrs HISCUTT - The intention is that all things being equal within that crystal ball that it should hopefully be in May. I have just got to put a cursor on that; heaven knows what is going to happen.

Ms Forrest - There is no plan to enable the parliament to keep meeting in some way?

Mrs HISCUTT - At the moment we are planning for a short sharp lockdown which would only be three to five days. There is nothing more I can add to that.

Ms Webb - So the answer is no plan.

Mrs HISCUTT - I will get to that. Let me work through this. Clarifying the \$60 million, I think the member for McIntyre clarified this. The \$60 million dollars under the supply bills is in addition to \$20 million dollars in existing supply acts so that is a total of \$80 million. That

will meet unforeseen expenditure in accordance with section 21 of the Financial Management Act of 2016 which may include something like business, financial support, is that correct? That may cover off some of those.

The question about the supply bills include an act expiry date of 30 June 2022 which is the same expiry date as the appropriation bills. This means that when the appropriation acts are in force the supply acts will also still be in force, and you asked that question.

Under which act is the expenditure taken to have occurred? Before the Appropriation Act comes into force the Supply Act appropriation amount and expenditure that takes place before the Appropriation Act is in force occurs under the Supply Act. The Appropriation Act cannot retrospectively authorise an appropriation or its expenditure. When the Appropriation Bill is from that point forward passed it becomes the definitive statement of the total amount that may be appropriated for the financial year and includes and subsumes in the amount appropriated by that act the amounts that were appropriated by the Supply Act.

Clause 6 of the Supply Bill states that the amount of money issued and applied, or to be issued and applied under the Supply Act, are to be incorporated in the estimates of expenditure for the Appropriation Bill as if that amount were to be appropriated afresh by the Appropriation Act. That is, the Appropriation Act appropriates an amount that includes the amount previously appropriated by the Supply Act but it does not appropriate it afresh. It simply becomes the definitive statement of all that from the time at which the Appropriation Act comes into force may be appropriated for the financial year, including the amounts previously appropriated under the Supply Bill. The statements in the Appropriation Bill about how the amounts appropriated are to be issued and applied also apply from that point on.

Subsequent expenditure after the Appropriation Act commences will occur primarily under the authority of the Appropriation Act. Some subsequent expenditure up to the amount included in the Supply Act could also be said to occur under the Supply Act. Since the Supply Bill will have appropriated a lesser amount, it only provides for expenditure of part of the amount that the Appropriation Act would have authorised the expenditure for.

Both supply and appropriation acts have always remained in force for the same period.

There was one last question from the member for Hobart. I have Treasury advisers with me here today. You asked: what is the Government's plan in the future with regard to parliament, is it legislation or is it regulation? I do not have that answer here today but I will take that on notice for you if you are happy with that?

Mr Valentine - Basic business continuity planning for the parliament.

Mrs HISCUTT - Yes, we will take that on notice for you.

Ms Forrest - It is probably as much of interest to Treasury as much as it interests us.

Mrs HISCUTT - Yes. They cannot answer it here today though so I will take that on notice and get back to you.

Mr Valentine - I certainly would appreciate their response.

Mrs HISCUTT - Thank you very much, Mr President.
Bill read the second time.

SUPPLY BILL (No. 3) 2021 (No. 32)

In Committee

Clauses 1 to 3 agreed to.

Clauses 4 and 5 postponed.

Clauses 6 and 7 agreed to.

Schedule 1 agreed to without request.

Department of Communities Tasmania, Minister for the Prevention of Family Violence,
Operating Services - **item agreed to.**

Minister for Sport and Recreation, Operating Services - **item agreed to.**

Capital Services - **item as read to stand part of the bill.**

Minister for Disability Services, Operating Services - **item agreed to.**

Minister for Children and Youth, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Aboriginal Affairs, Operating Services - **item agreed to.**

Minister for Women, Operating Services - **item agreed to.**

Minister for State Development, Construction and Housing, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Community Services and Development, Operating Services - **item agreed to.**

Minister for Veterans' Affairs, Operating Services - **item agreed to.**

Division agreed to without request and without amendment.

Department of Education, Minister for Education, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Division agreed to without request and without amendment.

Finance-General, Treasurer, Operating Services - **item agreed to.**

Minister for Finance, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Division agreed to without request and without amendment.

Department of Health, Minister for Health, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Mental Health and Wellbeing, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Division agreed to without request and without amendment.

Department of Justice, Attorney-General, and Minister for Justice, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Corrections, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Workplace Safety and Consumer Affairs, Operating Services - **item agreed to.**

Minister for Local Government and Planning, Operating Services - **item agreed to.**

Division agreed without request and without amendment.

Ministerial and Parliamentary Support, Premier, Operating Services - **item agreed to.**

Division agreed to without request and without amendment.

Department of Police, Fire and Emergency Management, Minister for Police, Fire and Emergency Management, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Division agreed to without request and without amendment.

Department of Premier and Cabinet, Premier, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Science and Technology, Operating Services - **item agreed to.**
Capital Services - **item agreed to.**

Minister for Climate Change, Operating Services - **item agreed to.**

Minister for Local Government and Planning - Operating Services - **item agreed to.**

Division agreed to without request and without amendment.

Department of Primary Industries, Parks, Water and Environment,
Minister for Primary Industries and Water, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Aboriginal Affairs, Operating Services - **item agreed to.**

Minister for Heritage, Operating Services - **item agreed to.**

Minister for Parks, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Environment, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Racing, Operating Services - **item agreed to.**

Division agreed to without request and without amendment.

Department of State Growth, Minister for Skills, Training and Workforce Growth,
Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Infrastructure and Transport, Operating Services - **item agreed to.**

Capital Services - **item agreed to.**

Minister for Energy and Emissions Reduction, Operating Services - **item agreed to.**

Minister for State Growth, Operating Services - **item agreed to.**

Minister for Resources, Operating Services - **item agreed to.**

Minister for Hospitality and Events, Operating Services - **item agreed to.**

Minister for the Arts, Operating Services - **item agreed to.**

Minister for Tourism, Operating Services - **item agreed to.**

Division agreed to without request and without amendment.

Tourism Tasmania, Minister for Tourism, Operating Services - **item agreed to.**

Division agreed to without request and without amendment.

Department of Treasury and Finance, Treasurer, Operating Services - **item agreed to.**

Minister for Finance, Operating Services - **item agreed to.**

Division agreed to without request and without amendment.

The schedule as agreed to without request and without amendment.

Postponed Clause 4.

Postponed Clause 5.

Item agreed to.

Bill reported without request and without amendment.

Bill read the third time.

Sitting suspended from 1.00 p.m. to 2.30 p.m.

QUESTIONS

Anything Can Happen Advertising Campaign

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

[2.32 p.m.]

Recently the Minister for Education and Training launched an advertising campaign called Anything Can Happen which included a government website to increase attendance and engagement in school.

- (1) What is the total advertisement budget?
- (2) How much did the website cost?
- (3) How many website visits have there been?
- (4) How many inquiries have been generated through the campaign?

ANSWER

I have a couple of answers here for the member for Elwick.

- (1) The cost of production of the new attendance advertisement was \$16 000 plus GST. The cost of placement of the new advertisement as well as previous advertisements on television and social media channels was \$35 000 plus GST.

Please note that the previous Anything Can Happen advertisements are currently running free of charge as a community service announcement on television stations.

- (2) The design of the new Anything Can Happen website was \$7 000 plus GST.
- (3) For the period of the 23 June 2021 to 16 August 2021 there have been 6 577 visits to the Anything Can Happen website. The videos as part of the Anything Can Happen website campaign have been viewed over 73 300 times on social media and have attracted over 422 200 impressions on social media feeds.
- (4) The primary point of contact advertised on the website is the local schools, so it is not known how many inquiries the schools have received as a result of the campaign.

Employment of School Nurses

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

[2.34 p.m.]

During the 2021 election the state Government committed to the employment of additional school nurses.

- (1) How many additional nurses have been employed?
- (2) Which schools now have school nurses?
- (3) What is the time line for employment of the remaining nurse positions?

ANSWER

I thank the member for her question.

- (1) Since the 2021 election the Government announced another 11.4 FTE Grade 4 nurses will be employed to work in schools. Recruitment is underway and this will add to the current 42.7 FTEs.

I will go to question (3). Advertising for the 11.4 FTE closed on 30 June 2021. Recruitment processes are now underway and expect to be completed in September.

With regards to question (2) as it is a table I seek leave -

To table the table and have it incorporated into *Hansard*.

Leave granted; see Appendix 1 for incorporated document (page 58).

Tasmanian Schools - Suspension of Kindergarten and Prep Students

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

[2.35 p.m.]

Recently, it was revealed that kindergarten and prep students are being suspended in Tasmanian schools. In response, the Minister for Education and Training, Sarah Courtney, said: 'It isn't acceptable but there are special circumstances'.

What are the special circumstances for suspending kindergarten and prep children?

ANSWER

I thank the member for his question. The suspension of students in kindergarten and prep is unacceptable except in rare and severe cases such as in response to physical assault, in order to ensure the safety of other students. Principals exercise their professional judgment when managing student behaviour, within a clear legislative and policy framework set by the Education Act 2016, Division 5, Parts 128, 129, 130 and 131; and the Secretary's Instructions (No. 4).

The Secretary's Instructions (No. 4) outlines that suspension of a student is the last resort, and it is expected that all efforts should be made by the school to resolve the unacceptable behaviour before suspension of a student occurs.

Tasmanian Schools - Student Retention

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

[2.36 p.m.]

My question relates to retention:

- (1) Can the Government provide the retention data for year 11 and year 12 for each Tasmanian extension school for 2020 and 2021 to date?
- (2) Can the Government provide the retention data for year 11 and year 12 for each Tasmanian college for 2020 and 2021 to date?
- (3) Can the Government provide the attainment data for each Tasmanian extension school for 2020?
- (4) Can the Government provide the attainment data for each Tasmanian college for 2020?

ANSWER

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - This is a lengthy answer with many tables.

Mr President, I seek leave to table this answer and have it incorporated into *Hansard*.

Leave granted; see Appendix 2 for incorporated document (page 61).

Point of Consumption Tax and Tasracing

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

[2.37 p.m.]

From Department of Treasury and Finance liquor and gaming industry data showing the total of the point of consumption tax (POCT) collected and with the POCT commencing on the 1 January 2020, could the Leader on behalf of the Treasurer provide the following information:

- (1) What is the percentage figure used of the POCT allocated to Tasracing?
- (2) For the period 1 January 2020 to 30 June 2020 the POCT collected was \$5.996 million. For that period, how much of the tax was allocated to Tasracing and when was the payment made?
- (3) For the period 1 July 2020 to 31 December 2020, again the POCT collected was \$7.708 million. For that period, how much of the tax was allocated to Tasracing and when was that payment made?
- (4) For the period 1 January 2021 to 30 June 2021, the POCT collected was \$6.943 million and for that period how much will be allocated to Tasracing and when will the payment be made?
- (5) Can the Government confirm that Treasury holds the first \$7.5 million of the POCT?
- (6) Is this correct, and what is the quantum used for, and what is the total per calendar year or financial year?
- (7) Is this percentage allocation of POCT funds to Tasracing calculated before the \$7.5 million is held by Treasury?

ANSWER

I thank the member for her question.

- (1) 80 per cent of the additional revenue generated by the POCT is provided to Tasracing.

- (2) Annual funding is paid in arrears on the actual receipts for the previous year. In 2020-21, the amount of \$2.537 million was paid to Tasracing in relation to the POCT revenue received in 2019-20, and this was paid to Tasracing in June 2021.
- (3) No calculation is made using half-year data.
- (4) The amount payable to Tasracing in 2021-22 based on total 2020-21 POCT receipts is estimated to be \$6.829 million.
- (5) The Government retains totaliser wagering levy receipts as was the case prior to the introduction of the POCT.
- (6) Totaliser levy receipts was \$7.614 million dollars in 2020-21. Totaliser wagering levy receipts form part of the Government's own source revenues and support the provision of vital government services such as Health, Education, Housing and Police.
- (7) Refer to question (1) - that is, 80 per cent.

Tasmanian Schools - Teaching of Languages

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

[2.41 p.m.]

Thank you, Mr President, another education question. My question is to the Leader of the Government. The Alice Springs statement from 2019 was signed by former Minister for Education and Training, Jeremy Rockcliff. The statement recognises the importance of learners that are 'informed and responsible global and local members of the community who value and celebrate cultural and linguistic differences, and engage in global community, particularly with our neighbours in the Indo-Pacific regions'.

- (1) Can the state Government provide the number of language teachers employed by the Department of Education in FTE and head count?
- (2) Can the state Government provide the number of languages taught in Tasmanian government schools and a list of the languages taught in Tasmanian government schools?
- (3) Can the state Government provide the number of primary and secondary schools currently teaching languages and a list of schools teaching languages?
- (4) Can the state Government provide the recommended guidelines regarding the provision and timing of the teaching of languages?
- (5) Can the state Government provide the number of language graduates employed by the Department of Education in the past five years?

- (6) Can the state Government provide a list of the language teaching qualifications its employees hold?
- (7) How many language curriculum officers are employed by the Department of Education in K to 8, how many are employed in years 9 to 12?
- (8) Can the state Government provide the Department of Education policy on languages?

ANSWER

Thank you, Mr President. Again, member for Elwick, there are numerous pages of answers and two pages of schools; are you happy to have them tabled.

Mr Willie - Yes.

Mrs HISCUTT - Mr President, I seek leave to table this answer and have it incorporated into *Hansard*.

Leave granted; see Appendix 3 for incorporated document (page 66).

COVID-19 - Small Business Bankruptcies

Ms RATTRAY - question to MINISTER for SMALL BUSINESS, Ms HOWLETT

[2.43 p.m.]

I thank the minister for providing the answer to my question from yesterday that she took on notice and returned in a timely manner. Minister, how many bankruptcies of small to medium-sized businesses have occurred in Tasmania since the COVID-19 emergency measure period was declared on 18 March 2020?

ANSWER

I thank the member for her question. The total insolvency activity statistics released by the Australian Financial Security Authority reported that Tasmania recorded 48 bankruptcies in the June quarter 2021 - an increase of 14.3 per cent over the same quarter in the previous year. Tasmania recorded 145 bankruptcies in the year to the June quarter 2021 - a decrease of 52.3 per cent from the number of bankruptcies in the year to the June quarter 2020.

It should be noted the data reported does not provide the breakdown of numbers of small businesses, but by the number of registered businesses.

This information had been provided based on the information from the Department of Finance and Treasury economic data release for Tasmania bankruptcies' administrations June quarter 2021.

Calvary Hospital - Co-Location

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

[2.45.37 p.m.]

My question has been on the Notice Paper since July 1 2021. Can the Leader advise me why seven-and-a-half weeks ago, with simple questions I asked of the Minister for Health with regard to the co-located hospital - that three years ago was given an unsolicited bid to Calvary Health - he cannot answer the questions when on August 10 I received a response from the Minister of Health on some other issue? He mentioned in it: 'I am aware you have questions related to the Calvary co-located hospital currently on the Notice Paper and I always respond accordingly'.

These simple questions. They are asking about public consultation. They are asking simple questions with regard to the new hospital. Can the Government guarantee this co-located hospital will not simply be a combination of both St Luke's and St Vincent's campuses on one site with no additional services?

There are six questions, none of which I would have thought to be difficult to answer and I would be very grateful if I could get the answers at an early opportunity considering they have been there for seven-and-a-half weeks and that was ample time to come up with an answer.

ANSWER

I do apologise to the member for Launceston for the delay. I have seen something in train and I do live in hope we will have an answer for you tomorrow.

SUPPLY BILL (No. 4) 2021 (No. 33)

Second Reading

[2.47 p.m.]

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

The bill be read a second time.

In accordance with current appropriation convention, two supply bills have been prepared. One to provide funding for the services of the government and the other to provide funding for the services of the government in respect of parliamentary and statutory offices.

I recently outlined the need for the supply bills to be introduced to parliament this financial year in my second reading speech on the Supply Bill (No. 3) 2021. The information provided in that speech applies equally to this bill.

Supply Bill (No. 4) 2021, seeks parliament's approval to provide for the appropriation of \$9.8 million out of the Public Account for expenditure on operating services in 2021-2022 until the budget appropriation bills are enacted.

Mr President, I commend the bill to the Council.

Bill read the second time.

SUPPLY BILL (No. 4) 2021 (No. 33)

In Committee

Clauses 1-3

Agreed.

Clause 4-5

Postponed.

Clauses 6-7

Agreed.

Schedule 1

House of Assembly, Speaker of the House of Assembly, Operating Services

Item agreed to.

Division agreed to without request.

Integrity Commission, Attorney-General and Minister for Justice, Operating Services

Item agreed to.

Division agreed to without request.

Legislative Council, President of the Legislative Council, Operating Services

Item agreed to.

Division agreed to without request.

Legislature-General, President of the Legislative Council and Speaker of the House of Assembly acting jointly, Operating Services

Item agreed to.

Division agreed to without request.

Office of the Director of Public Prosecutions, Attorney-General and Minister for Justice, Operating Services

Item agreed to.

Division agreed to without request.

Office of the Governor, Premier, Operating Services

Item agreed to.

Division agreed to without request.

Office of the Ombudsman, Attorney-General and Minister for Justice, Operating Services
Item agreed to.

Division agreed to without request.

Tasmanian Audit Office, Treasurer, Operating Services
Item agreed to.

Division agreed to without request.

Schedule agreed to without request.

Postponed clauses 4 and 5 agreed to.

The bill was taken through the remainder of the Committee stage.

Bill reported without amendment and without request.

Bill read the third time.

JUSTICE MISCELLANEOUS (INCREASING JUDICIAL RETIREMENT AGE) BILL 2021 (No. 15)

Second Reading

[2.54 p.m.]

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

That the bill now be read for a second time.

This bill delivers on the Government's commitment to undertake reform to provide Tasmanians with a more effective and efficient justice system. We are committed to ensuring that our courts are best placed to administer justice according to law.

This bill will increase the mandatory age of retirement for judges and magistrates from 72 years of age to 75 years of age. This will include associate and puisne judges and the Chief Justice of the Supreme Court of Tasmania, magistrates, the Deputy Chief Magistrate, the Chief Magistrate in the Magistrates Court. It will not apply to acting judges or part-time magistrates who are instead appointed for shorter, fixed-term periods.

It is a small increase in age but a big advance in meeting community expectations on age equality while remaining consistent with a range of positions in other Australian jurisdictions on judicial retirement. It will also support the courts' ability to operate effectively and retain valuable institutional knowledge from our most practised judges and magistrates if they choose to continue in office.

Allowing for longer retention of judges and magistrates will contribute to expedient disposition of cases to reduce the backlog of cases in the courts and support jurisprudential

development and mentoring and leadership in the courts. This would be a sensible change in any event and more so now given the impacts of COVID-19 on the justice and other sectors which shows that flexibility is key to quickly adapting to new challenges.

Tasmanians are living and working longer and retiring later than their predecessors. The age of judicial retirement was last increased in 2005 from 70 to 72. Since then, average life expectancy has increased by three years, from approximately 81 years of age to approximately 84 years of age.

It has become increasingly common for people to choose to remain in the labour force beyond their retirement age. In public consultation, certain stakeholders suggested that the mandatory retirement age should be removed entirely. On the other hand, some stakeholders suggested that increasing the retirement age could hinder rotation of the judiciary.

What is intended by this reform is to continue to strike an appropriate balance between these competing considerations as well as those I have previously mentioned. Maintaining a mandatory retirement age promotes predictability and a degree of regularity in new appointments to our judiciary. It ensures the best legal practitioners of each generation are represented, who bring with them different perspectives, practice expertise and ideas on decision-making.

There continues to be varied approaches to mandatory judicial retirement ages in Australia. In fact, Australia originally did not maintain a judicial retirement age. However, no Australian jurisdiction is moving back to that position or proposing to do so. The Constitution Alteration (Retirement of Judges) referendum in 1977 introduced a mandatory judicial retirement of 70 for federal judges, which remains in force today. However, states and territories now have a range of different mandatory retirement ages which fall within a similar age range.

Through this reform I am pleased to highlight that Tasmania will join New South Wales in having the most progressive judicial retirement age in Australia, allowing our judicial officers to remain working longer should they wish to do so.

I commend the bill to the Council.

Ms ARMITAGE (Launceston) - Mr President, I rise to make a brief contribution in support of this bill. Maintaining a retirement for judges allows the judiciary a greater degree of separation from influence from the legislature and the executive, gives them certainty of tenure and secures the impartiality for a judge carrying out their role.

A retirement age, in essence, sets a guaranteed period during which a judge can work, which thereby reinforces judicial independence, somewhat like tenure in academia. Judicial retirement ages are the product of a long history and in Australia have gone between periods of indefinite judicial appointment to lower retirement ages, which are gradually increased as time has gone on in some jurisdictions. We are now looking at increasing it again here in Tasmania.

For the purposes of maintaining judicial independence, I see the increase of the Tasmanian retirement age as being a good thing. It is one of the many issues that need to be

considered when ensuring the independence of the judiciary and while it might be debated it should be scrapped altogether at this stage an increase from 72 to 75 is not unreasonable.

These additional three years will help to ensure continuity of leadership and knowledge in the courts, retain valuable institutional knowledge as it is passed on from older judges to younger ones and will contribute to more expedient disposition of the backlog of cases we have in Tasmania, as the Leader discussed in her second reading speech. I am sure we are all aware of the backlog that just keeps getting longer.

It is undeniable that with age comes knowledge and expertise that can only be gained with experience. These additional three years could potentially make a great deal of positive difference in the way our judiciary develops. Judges do not merely become judges overnight, they become judges after a number of decades of distinguished service to the legal profession and to the administration of justice. The longer we can retain these highly specialised skills it would follow that the better our legal system can be.

Mr President, I support the bill.

[3.01 p.m.]

Ms RATTRAY (McIntyre) - As I remembered, do I get five gold stars? If this legislation passes, which I expect it will, some of our judges will probably be thinking they are getting gold stars.

When I read through the second reading speech and I saw the age of judicial retirement was last increased in 2005, I thought I would have been here in 2005 so I was here when we did the last increase and now I am here doing the next increase.

Mr PRESIDENT - And you have had an increase of your own in the meantime.

Ms RATTRAY - That is exactly right.

By interjection, and I did not necessarily mean it to be funny, but since the average life expectancy has increased by three years and I do think that is a really good thing, particularly when I am ageing with it, from approximately 81 years to 84 years of age, this is fair and reasonable to have that increase.

Last time we only actually did from 70 to 72. We have made a larger increase this time around, 72 to 75, and I have no idea why those numbers have changed but the Leader might be able to provide that fact. Two years last time, three years this time. For my own information, I am not sure that anyone else would be at all interested.

I did note again through the second reading speech that we are in line, we join New South Wales in having the most progressive judicial retirement age in Australia. It certainly will allow judicial officers to remain working longer. There is quite a different range of those judicial officers who will come under this, the Chief Justice of the Supreme Court; permanent full-time magistrates; Deputy Chief Magistrate and Chief Magistrate of the Magistrates Court.

It also talks about acting judges and says there is no mandatory age for the retirement for acting judges or part-time magistrates in Tasmania. Obviously, they can work for as long as they wish to do so and I expect that given, as the member for Launceston indicated, we have

such a backlog in our courts - and in a couple of weeks that will be further explored through the Estimates process. I am sure the Department of Justice is working hard on some of those numbers as we speak to make sure that that information is available, because it is always asked through that Estimates process. I support the bill. I support the opportunity for people to work longer if they so wish. I would like to work a bit longer myself, Mr President. I support the bill.

[3.05 p.m.]

Ms WEBB (Nelson) - I have some brief comments on this bill. I also believe it is appropriate to extend the retirement age for our judges. As has been pointed out in the second reading speech and by others here, we are all living longer and are able to contribute in all kinds of way as we do so.

We also have particular challenges in our court systems and it is important to have some availability to address those challenges. We can acknowledge there is no reason to assume that with increasing age comes diminished capacity. That is not the case in many ways, and in many different professions. We can assume and acknowledge that with increasing age we have some very particular benefits that come from the benefit of experience and the wealth of knowledge that can be drawn on. The judiciary is potentially a particular example, where the benefits of that experience and knowledge really come to the fore.

I acknowledge that the argument has been made by some who participated in the consultation process and also in forums in other jurisdictions that perhaps there should be no retirement age for judges. That is an interesting question, which would present us with issues and questions about who would decide on the right time to retire.

It can be hard for individuals to have appropriate objectivity to make that decision for themselves. If we were not to rely on people to make that decision for themselves, we would be faced with the need to devise some mechanism as to who would make that decision and the framework that decision would be made within. I understand why we have landed on a retirement age being identified and, in this case, extended.

On the other hand, as I was reading some material related to this bill I was also acutely aware that we have a lack of diversity amongst our senior judges in Tasmania. They are predominantly senior white males. Retirement provides an opportunity for renewal and improving diversity. If we extend the retirement age and apply it to sitting judges, the potential result is an extension of that lack of diversity. I consider that issue should be contemplated and we should consider ways we can make improvement.

The Government has made some comments around improvements to diversity and efforts towards that end. We can think more carefully about that also, and have that in mind as we go forward. One issue I will raise in relation to this bill arose as I was looking into past discussions in other jurisdictions and at the Commonwealth level, when changes have been made to judicial retirement ages.

I noted that a generally expressed view, in almost every instance where the question arises, is that any change being brought in should not apply to sitting judges but should be prospective - to apply to future judges. I question what consideration was given in this instance about the appropriateness of applying the change to sitting judges.

I will share some of the information that prompted my question. When retirement ages for judges were first introduced at the Commonwealth level, the then federal Attorney-General, Bob Ellicott, said in his second reading speech that the legislation was, ‘an important safeguard’, to ensure:

There can be no suggestion, therefore, that the amendment is directed against any existing judges or that those judges will be prejudiced in any way by the amendment.

They were mindful of applying this only to prospective judges rather than sitting judges. I encountered that same sentiment in the consideration of retirement age in the Northern Territory. In a submission put forward by the Criminal Lawyers Association of the Northern Territory, I noted some points raised about this issue of bias. In their submission from December 2018, the association noted:

Changes to judicial tenure risks the appearance of interference with judicial independence if they apply to sitting judge...To avoid this perception of bias any increase in the retirement age should only apply to future appointments and not to any current sitting judge.

The same issue arose in *Hansard* from a Senate committee - the Legal and Constitutional Affairs References Committee - during a hearing held on 11 June 2009. This is a brief comment but it speaks to this general view. The comment was made by Professor George Williams. During questioning, he discussed changes to the retirement age for judges. He commented: ‘Of course, any changes to the retirement age should not affect any sitting judges. It should only operate prospectively.’

I will mention one more example, from an academic paper published by Alysia Blackham in 2016. She is a senior lecturer in the Melbourne Law School at the University of Melbourne and an affiliated lecturer for the Faculty of Law at the University of Cambridge. In her paper, ‘Judges and Retirement Ages’, the similar sentiment is expressed. I quote, from page 743, ‘The changes to S72’ - which was that Commonwealth legislation:

... and any subsequent changes to retirement ages operated prospectively to safeguard judicial independence. Judicial independence requires ‘the absence of certain connections’ between the judiciary and other arms of government to secure impartiality in the conduct of the judicial role.

Former Chief Justice of Tasmania, Sir Guy Green, defines judicial independence as the capacity of courts to perform their constitutional functions free from ‘actual or apparent interference’ and, to the extent possible, ‘actual or apparent dependence’ on the executive.

According to Lane, guaranteed judicial tenure is essential for securing judicial independence. Thus changes to judicial tenure under S72 risked impairing the appearance and reality of judicial independence if they applied to sitting judges.

To manage this risk, the changes to section S72 only affected new judicial appointments ...

I encountered this concept from a range of sources as I did some reading on the issue. It was brought to mind because at a local level, we have seen that the Chief Justice has been advocating for this change. In an article on 3 February 2021, in the *Mercury*, Chief Justice Alan Blow is quoted as saying, it seemed:

... inevitable that recruitment and retention of talented judges will become more and more difficult if we did not increase the age.

... suggesting the state Government raise the retirement age to 75 in a bid to alleviate recruitment problems as well as to enable current judges to make better provisions for their retirement.

I believe it is of concern, to have a chief justice advocating for an extended tenure to make better provision for his retirement. It also highlights for us whether we have contemplated sufficiently and dealt with that matter of appropriateness of a prospective change looking ahead to future appointments compared to the application of this change to existing justices.

It is important the court can operate without that connection between judicial and executive either for better or for worse. There is no benefit or disbenefit that has occurred as a result of a decision on the executive side of things that then makes the judiciary inclined or disinclined to maintain their impartiality in their decisions.

Could the Government give me some detailed answer as to how that has been contemplated and assessed and then the decision made that this would not be prospective instead of applying to existing judges?

[3.16 p.m.]

Ms FORREST (Murchison) - Thank you, Mr President, I am certainly not in opposition to the bill but I do have similar questions as the member for Nelson raised. I wanted to speak a bit to some of those matters, I also have a couple of areas I would like to go to.

I note as the Leader said in the second reading speech that life expectancy has increased and that is a positive thing for everybody or most people anyway - some will not unfortunately live as long as others - and it is right to make these adjustments from time to time. I know the federal government also keeps moving the goalposts as to what retirement age looks like. We need to be contemporary in our approach to this and I understand the arguments for and against having a mandatory retirement age. This is a decision that has been made and is where we have landed at the moment and I do not have any problem with that as such. Many 75-year-olds are still quite capable of working, whereas some others may not be. If you think back to my grandparents' day 75 was very old, and their lifestyles, their access to health care and that sort of thing was very much less than what we have now. Things do change over time and we do need to be adaptable.

A couple of comments also made by the Leader where she said that allowing for the retention of judges and magistrates will contribute to expedient disposition of cases to reduce the backlog of cases in courts and on it goes, mentoring, leadership in the courts and everything. I am not quite sure how that actually happens, because we only have a set number of judges. Obviously, they are replaced when one retires or dies and there is a process for this. I am not

sure how this bill raising the retirement age will actually assist in reducing the current backlog of cases. I will be interested to know how that is supposed to happen. I also ask what the gender mix of the current judges are and it is one of these things that if you do not get renewal in a timely manner we end up with - as the member for Nelson alluded to - a very non-diverse judiciary and that is not good for anybody. Most of us would have watched with interest when the notorious Ruth Bader Ginsburg sadly passed away just before the last US election.

Ms Webb - Our Supreme Court is six to one, male to female.

Ms FORREST (Murchison) - I need the Leader to clarify that for me. We do need to ensure we a much more diverse judiciary and particularly, in terms of our female representation. There are obviously other areas of diversity which we should also be looking at, but at least we could start there - females being half of the population as it is. The law has traditionally been a male-dominated area, with no excuse, zero excuse in terms of not elevating women through the ranks. I would like the Leader tell me how this is going to reduce the backlog and what the actual make-up is in terms of gender in that current judiciary.

The other comment made was talking about whether we should even have a mandatory retirement age for judges. On the other hand, some stakeholders suggest an increase in the retirement age could hinder rotation of the judiciary and what is intended by this reform is to continue to strike the appropriate balance between these competing considerations.

Raising the retirement age at a point in time may potentially slow down the appointment of a new member of the judiciary just for that three-year period, but surely that is only a temporary matter. Once it is raised then everyone starts off at the same footing essentially. I am not sure how it actually hinders the rotation of the judiciary, other than we do not get a lot of new blood in very often anyway.

The member for Nelson has talked about the retrospective effect of this legislation. I also read the article in the *Mercury* with comments attributed to Chief Justice, Alan Blow which were a little bit concerning. I had also looked at other jurisdictions where changes have been made and they generally recommended against a retrospective application. Like the member for Nelson, I am wanting to understand the Government's desire to make this retrospective.

Is that necessary, rather than saying current judges will retire at 72, unless they retire earlier or die, and then if any new judge is appointed, that is the new playing field? It is concerning when you change the rules midway. You could argue to reduce the retirement age should also not apply retrospectively - not that we are doing that - but the same thing would apply: that one is employed under the current expectation and arrangements should not have a change. This does set a potential financial benefit of an additional three years of not insignificant income for these people. I am not saying they do not deserve the money they get, they do, but I question that retrospective application.

Can the Leader explain why that approach has been taken?

Other than that, in broad terms, 75 is a reasonable age; whether it is right or not, well, that is a decision that is being made. I am not going to argue it is right or wrong or indifferent but we need to keep a watching brief on this to see what is happening in other jurisdictions, and also to take note of the changes made federally to the retirement age and also the life

expectancy for Australians generally - which we have a lot to be grateful for that ours is increasing rather than decreasing as in some parts of the world.

[3.22 p.m.]

Mr VALENTINE (Hobart) - Mr President, a couple of small things for clarity. Obviously, this is talking about a mandatory retirement age. One assumes it means it is the oldest one can be in holding the position and not that you cannot retire until that age. It is slightly ambiguous, but if the Leader is listening she can put on the record this is the oldest you can be in such an office not that you have to retire at that age, that is you cannot retire earlier.

Ms Forrest - Without dying.

Mr VALENTINE - Yes, without dying.

I found it interesting that the Federal Court is still 70.

The other interesting thing is we do not have a mandatory retirement age in this Chamber. We do not carry out the same job as a magistrate or a judge in court, but we do sit in judgment on legislation.

I often refer to our role here in the House of Review as a bit like a magistrate who weighs up the arguments put by the Opposition and the defence being the Government and the Opposition downstairs, and we weigh that up and I often refer to us as being not in a dissimilar situation here when we are looking for unintended consequences.

Mr PRESIDENT - Honourable member, we probably have around 25 000 people who will make the decision when it is our age to retire.

Mr VALENTINE - That is true, but I can quite honestly say that I will be a month off the age of 74 at the end of my term and I will not be recontesting. I am just putting that out there. I won't have reached the age of 75, if it were to be applied to this House.

Mr PRESIDENT - There will be signs going up already, I can see that.

Mr VALENTINE - I do not know about that. I am interested in the male/female split that was mentioned; 6 to 1 is an interesting number and there is room for improvement to be fully representative of the general community. In fact, I think there are more females than males in the general community, 52 per cent or something in that order.

I am not quite sure of the circumstances with our magistrates across the state. I think that a lot of our judges come from having been magistrates in the past. It does take time to change these sorts of things and it may well be that in the magisterial ranks there are a significant number of women who may come to that role of Supreme Court judge, for instance. We are progressing, some might say we are not progressing fast enough and I can appreciate why that might be the thinking of some.

In the final part of the second reading speech, 'I am pleased to highlight that Tasmania will join New South Wales in having the most progressive judicial retirement age', I suppose it depends on where you sit or stand on that. Some would see it as progressive; some might say, well maybe that is a bit too old. How do they relate to the younger generation if they are that

old? How can they be seen to be more progressive by being that old? Is that hanging on a little too long? We all know of cases we hear of, places where on some occasions, people simply do not know when to leave if there is no retirement age.

This does have a little bit of a balance about it in the sense that it is setting a maximum age and it is important that the people who occupy those positions are able to do so, having a really good understanding of society and the pressures that are on people in different age ranges, to be able to come down with good decisions.

I will support this bill, except for one part which is the last sentence where it says:

... the most progressive judicial retirement age in Australia allowing our judicial 'offices' to remain working longer.

I do not think it has a lot to do with the fabric that these people occupy, I think it means 'officers'.

[3.28 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - I have a couple of answers here, Mr President.

On the judicial retirement age bill, the member for Murchison asked about the number of judges. The act enables the number of judges up to seven and we currently have six and we are in the process of finalising the seventh judge appointment.

Ms Forrest - And gender of those judges?

Mrs HISCUTT - I have that about three down here because you were not the only one who asked that.

The member for McIntyre. Why 75? The 75-year age cap was selected taking into account these factors:

- (1) The three-year increase in life expectancy since the 72 mandatory retirement age was set.
- (2) The current statistics on dementia provided by the Australian Bureau of Statistics demonstrating that there is about 1 per cent prevalence rate of dementia in the community among people aged up to 75.
- (3) Policy among other jurisdictions, noting that New South Wales has adopted a mandatory retirement age of 75. It was also observed that since this policy was announced, the United Kingdom announced an increase in its mandatory retirement age for the judges, magistrates and coroners to 75.

The members for Nelson and Murchison, this next answer will probably cover off on two of your concerns.

The Government is committed to addressing COVID-19 challenges and reducing the courts' backlogs in criminal matters. Increasing the mandatory retirement age of our judges

and magistrates is important in ensuring that we have enough judicial officers to hear matters, administer justice to Tasmanians and reduce the backlogs.

Importantly, and as I said in the second reading speech, it recognises that Tasmanians are living and working for longer than they were in 2005 when the retirement age was last increased. The bill will provide our courts with the flexibility to have judges and magistrates sitting for longer. It mitigates the risk of too many judicial officers retiring at around the same age.

Ms Forrest - Does that mean that most members of the judiciary are of a similar age at the moment? Otherwise, that makes no sense.

Mrs HISCUTT - I will come back to you on that one. The bill is not, of course, a single panacea. However, it is an important part of our Government's strategy in addressing the backlog in criminal matters. We are not sure of all the judges' ages but it appears that a number of them are in their late 60s.

Mr PRESIDENT - Still relatively young.

Ms Rattray - Very young.

Mrs HISCUTT - The member for Murchison also asked a question on the gender split. There are five male judges, one female judge; one male associate judge; and one additional judge to be appointed shortly. Of the magistrates, nine are male and six are female. I would like to think that is increasing with the equity split there.

Ms Forrest - Not judges, just magistrates, yes.

Mrs HISCUTT - That is true. The member for Nelson, any changes should apply to future judges. In the instances referred to by the member, they are noted. In the case for the Federal and the High Court judges, previously there had not been a retirement age as it was considered interference in the judiciary. In this instance, the bill extends the eligibility to hold office rather than restricts it. It remains open to the judiciary to retire at 72 up until the age of 75.

Ms Forrest - So you can go earlier, member for Hobart. You are safe.

Ms Webb - In terms of that, if the benefit or disbenefit is the underlying principle of that objection to applying it retrospectively, so, putting a restriction that was not there before, as they did at the Commonwealth level, is a disbenefit; extending it is a benefit - either way, it can influence the relationship between the judiciary and the executive. So, although it is the opposite side of the same coin, the argument stands, which is why it is mentioned in other circumstances. Is there a further answer that would explain that?

Mrs HISCUTT - I think we had just noted the report. I will think about that in a minute. The member for Hobart - can you retire earlier than 75? Yes, that is entirely the judge's discretion on retiring early.

Mr Valentine - Thank you for that clarification.

Mrs HISCUTT - I will just seek a little bit more advice. I am hearing that what you quoted was in the Federal Court and what we have here at the minute is 'that is the way it is here at the minute'. This is just extending the age of something that is already in existence.

Ms Webb - That is not answering my issue. I raised and asked for an explanation of the principle underlying that initial issue raised at the Commonwealth level. One of the things I quoted related to the Northern Territory and the issue of changing the age there. It is the impact it has on the relationship between the judiciary and the executive, either for a benefit or disbenefit, that could then bias judgments made. That does apply, whether you are imposing a lower or higher retirement age or putting one in place for the first time, potentially.

It is the issue of bias I am interested to have an explanation on. I think the way I initially asked it was, to what extent did the Government contemplate that and how did you address whether that was a relevant issue here in this circumstance? These judges may have to sit in judgment of the Government on an issue, who may either have benefited or not benefited them.

Mrs HISCUTT - I was just contemplating the fact that we have had a retirement announcement here and now.

Mr Valentine - I announced it before in this Chamber. You must not have been listening.

Mrs HISCUTT - I must not have been listening. I listen to most things you say.

Mr President, there was no retirement age federally. Given the new imposition upon the judges it would only apply prospectively.

The benefit referred to was the pension. We do not have a pension in Tasmania. Therefore, it only extends the age they must retire at. It has no effect on the independence because judicial officers have a choice.

Ms Webb - In this instance, extending the age allows for three more years of paid employment so the financial benefit remains. I am not disputing the circumstances of the Commonwealth; I want to know how it is being dealt with and that that benefit was considered.

Mr PRESIDENT - It might be something you choose to pursue in the Committee stage when you will have advisers at the table and they will have all the answers ready.

Bill read the second time.

JUSTICE MISCELLANEOUS (INCREASING JUDICIAL RETIREMENT AGE) BILL 2021 (No. 15)

In Committee

Clauses 1 and 2 agreed to.

Clauses 3 and 4 agreed to.

**Clause 5 -
Tenure of Office**

Ms WEBB - This may or may not be the right spot to continue to ask these questions but I will put it here and see. This seems to apply to tenure of office. The question I have is in applying the extended retirement age to 75 to sitting judges. This one is actually the Magistrates Court Act but the one I am thinking of is the Supreme Court example and how it is being dealt with that this should be applied retrospectively to sitting judges, rather than prospectively to future judges appointed.

Madam CHAIR - Judicial officers because this is under the magistrates' section.

Ms WEBB - Perhaps I should leave it to the Supreme Court section.

Madam CHAIR - A point for both and then you can do it but...

Ms WEBB - Judicial officers then, yes, so for both. I presume the principle applies in both instances. There is a clearly identified issue around the potential to create bias by retrospectively applying the change to retirement age in the judiciary amongst judicial officers. I understand it is a different circumstance with the Commonwealth, where there was the initial application of the retirement age, but the principle remains the same.

There is a financial benefit to be gained by sitting judges to have their potential tenure extended by three years. We know that because the *Mercury* article quoted in the second readings speeches from the Chief Justice Blow talked about providing for his retirement. As a benefit to extending the age at which he can retire.

How is that matter of bias being addressed and dealt with, potential bias in applying this to a sitting existing judicial officer rather than prospectively?

Have you got an example of another jurisdiction that has applied it to existing rather than prospectively to future justices?

Mrs HISCUTT - I will just seek some advice, but the example where this happens we have so far is New South Wales.

The Department considered the issue of retrospectivity and noted New South Wales had extended increased age option to sitting judges. The objective of Tasmania was to retain the judges to assist with backlog.

In consideration of the University of Melbourne's paper referred to by yourself, benefit was considered as the benefit of pensions, not the extension of paid work. The Government therefore considers no bias applies or interference because it is paid work and does not refer to a pension.

Clause 5 agreed to.

Clauses 6, 7, 8, 9 and 10, agreed to.

Bill reported without amendment.

GUARDIANSHIP AND ADMINISTRATION AMENDMENT (ADVANCE CARE DIRECTIVES) BILL 2021 (No. 14)

Second Reading

[3.51 p.m.]

Ms PALMER (Rosevears) - Mr President, I move -

That the bill now be read a second time.

This bill seeks to amend the Guardianship and Administration Act 1995 (Tas), the principal act, for the purpose of establishing a legislative framework for the making and implementation of advanced care directives.

Advance care directives are instructions about a person's future decision for medical treatment or health care, made by a person when they had decision-making ability in anticipation of a time when they do not have the ability to make those decisions due to injury or illness.

The bill inserts provisions in the principal act that will enable persons with decision-making ability to give directions in relation to their future health care, ensure the health care is delivered in a manner consistent with those instructions, provide protection for health practitioners and other authorised decision-makers who give effect to an advance care directive and facilitate the resolution of disputes in relation to the advance care directive. The bill will increase the confidence of those making advance care directives that their directions, values and preferences are respected at a time when they lack decision-making ability.

The bill gives effect to the 2017 Tasmanian House of Assembly Standing Committee on Community Development Inquiry into Palliative Care report, which recommends that the Tasmanian Government establish a legislative basis for advance care plans. It also implements recommendations arising from the Tasmania Law Reform Institute's Review of the Guardianship and Administration Act 1995 (Tas) Final Report, which was completed in December 2018.

The bill codifies the common law relevant to advance care directives, which are already in use in Tasmania. This will bring Tasmania into line with most other jurisdictions that have legislation governing the use of advance care directives. A statutory framework for advance care directives currently exists in every Australian state and territory except New South Wales and Tasmania.

Proceeding with legislation to amend the Guardianship and Administration Act 1995 to provide a legislative basis for advance care directives is the first stage of broader reforms to the Guardianship and Administration Act, which will be pursued by the Government in successive tranches to respond to the TLRI review of the act.

Consistent with this staged approach, the current bill advances key approaches recommended by the TLRI which, it is envisaged, will be reflected in future reforms to the principal act. These include a revised test of decision-making ability, a consistent definition of health care and the inclusion of a greater role for the Public Guardian in providing preliminary

assistance to resolve disputes between parties. These changes will ensure that key concepts in the bill are contemporary and reflect best practice.

I will now turn to the key provisions of the bill's objectives and principles. The objects of the bill are to enable adults with decision-making capacity to give future directions about their health care and to ensure their preferences and values are respected. The bill also aims to protect health practitioners and others giving effect to those directions and to provide mechanisms for disputes to be resolved. The bill is underpinned by a set of overarching principles which provides a contemporary rights-based approach to the provision of health care to those who lack decision-making ability. It does not displace common law rights in relation to future health decisions but provides mechanisms for greater certainty about how those rights may be exercised.

Mr President, we now turn to decision-making ability. The concept of decision-making ability in particular is central to the way in which the new law in relation to advance care directives will operate. The bill provides that a person must have decision-making ability to give an advance care directive and that the advance care directive will only come into effect once the decision-making ability is lost in relation to the decision at hand.

Importantly, the bill contemplates that decision-making ability may fluctuate. It recognises that different decisions require varying levels of decision-making ability and seeks to support a person making their own decisions for as long as they are able to, and allows for when a person may regain decision-making ability following a period of lost decision-making ability, should this occur.

Once the criteria for impaired decision-making ability have been met, for the purposes of the law of the state, to consent to particular health care given or refused in an advance care directive is taken to be the consent or refusal of the person making the advance care directive. It has the same effect as if the person who gave the advance care directive were capable of giving such consent or refusal at the time the health care decision is required.

The bill does not allow a person to use an advance care directive to appoint an enduring guardian or power of attorney; nor does it provide for the appointment of any other substitute decision-maker. These appointments will still be made under the provisions contained in the principal act. It does, however, require that any person appointed as an enduring guardian must attest that they have obtained a copy of any advance care directive given by the appointor and understood its terms.

All other persons providing health care to a person with impaired decision-making ability, whether they are an authorised decision-maker or a health practitioner, must also take reasonable steps to ascertain whether that person has an advance care directive and is to give effect to its terms. The bill recognises that, in the absence of any law to the contrary, an adult is presumed to have decision-making ability in respect of decisions about their health care.

It provides an approach to determining whether a person has impaired decision-making based on their ability to make a decision, not on the outcomes of their decision-making process. The reasonableness of the decision that they make is irrelevant, as any person with capacity has the right to make the health care decisions they choose to.

Decision-making ability is determined by whether a person has the ability to understand relevant information, retain that information to the extent necessary to make the decision, use

or weigh that information in the course of making the decision or communicate the decision whether by speech, gesture or other means. Nor is the existence of a disability a prerequisite for determining whether a person has impaired decision-making ability in respect of a health care decision.

This approach provides equal rights to people with disability to exercise their legal capacity where they have the ability to make decisions in relation to a particular health care matter and ensures that disability is not a standalone test for whether a person has decision-making ability. This is consistent with the Convention on the Rights of Persons with Disabilities and represents a significant step towards people with disability being treated equally before the law in respect of future health decision-making.

Provisions have also been included to allow children under the age of 18 years to give an advance care directive. Consistent with common law principles it is proposed that a child who is Gillick competent be able to document their wishes and instructions in relation to future health care in an advance care directive.

The Gillick principle holds that a child who is a mature minor can consent to their own health care or treatment provided that they have sufficient understanding and intelligence to enable them to fully understand what is proposed. Safeguarding provisions have been included to require an advance care directive prepared by a person under 18 years of age to be witnessed by a registered health practitioner who is qualified to attest that the child is sufficiently mature to make the decision.

Mr President, looking now at form of advance care directives and witnessing requirements. Rather than including a particular form for an advance care directive in the legislation, the bill provides that a form for completing an advance care directive is to be approved by the Secretary of the Department of Justice.

The intention is to ensure that the form is one that has the greatest input from community stakeholders. In fact, a group of health stakeholders has recently updated the current common law advance care directive form used by the Tasmanian Health Service and this excellent work will inform the development of the new form under the act.

To promote access to advance care directives, the bill has not mandated a requirement to seek medical or legal advice to complete the form. This means that individuals can complete the form without assistance. However, a health practitioner may be a witness to the advance care directive and persons making an advance care directive will be encouraged in the written advance care directive form and related material to seek medical or legal advice to ensure that their advance care directives are clear and effective.

In addition to completing a written advance care directive form the bill provides as much flexibility as possible in the way in which an advance care directive can be given. The ability to give oral directives under common law is preserved and it is envisaged that an advance care directive could be completed by other means such as through audiovisual recording. For those who do not have access to the form, a form to similar effect can also be used.

To provide certainty as to the intent of the person making the advance care directive, strict witnessing requirements have been included in the bill. These provisions have been designed as a protective measure to ensure that no undue influence has been placed on the

person giving the advance care directive. The witnesses must be two people who are not a close relative, carer or person delivering services to the person giving the advance care directive. Witnesses must also certify that the person giving the advance care directive appears to understand the nature and effect of each statement in the advance care directive and that they were not acting under any form of duress or coercion.

In certain circumstances, such as in the case of a child completing an advance care directive or a person giving an oral advance care directive, the bill requires that a registered health practitioner be a witness to the advance care directive.

In the case of a person under 18 years of age, the health practitioner will also need to attest that the child has decision-making ability to complete the document.

The bill's definition of 'health care' for the purposes of an advance care directive extends beyond the current definition of medical and dental treatment in the principal act to cover any care, health service, procedure or treatment provided by or under the supervision of a health practitioner for the purposes of diagnosing, preventing, assessing, maintaining or treating a physical condition or mental illness. It also includes a person's ability to give advance care directives in relation to medical research procedures and forensic procedures. This broad definition of health care will enable those making an advance care directive to provide instructions on a wide range of matters beyond simply medical treatment decisions at the end of life.

Mr President, binding, non-binding and void directives.

The bill provides that certain directives will be void or of no effect. This includes instructions that are unlawful or would require an unlawful act to be performed, refusals of mandatory health care such as that ordered under the Assessment Order or a Treatment Order under the Tasmanian Mental Health Act 2013 or instructions that, if given effect, would cause a health practitioner or another person to contravene a professional standard or code or otherwise amount to professional misconduct.

If any of these matters are contained in the advance care directive, they will not invalidate the advance care directive in its entirety but will void that part of the advance care directive that is in contravention of the act. This will not prevent a person giving directives about their values and goals of care, what is important to them and what factors they wish to be taken into account when their decision-making capacity is impaired. No restrictions are placed on what may be included in the advance care directive.

The bill provides that certain instructions are binding. Refusal or instructions to withdraw health care that are clear and ambiguous are binding. This is consistent with the common law in relation to advance care directives. The bill provides that health practitioners and authorised decision-makers must give these binding directives effect. All other directives such as those expressed a person's preferences and values with regard to their future health care are non-binding. Non-binding instructions must be complied with as far as is reasonably practicable. They must guide decision-makers and health practitioners in the care they provide.

Certain circumstances may give rise to situations where a health practitioner is not obliged to comply with the terms of an advance care directive to provide further safeguards. In particular, where the health practitioner believes on reasonable grounds that the person who

gave the advance care directive did not intend the provision to apply in a particular circumstance or where the provision is ambiguous or does not appear to reflect the current wishes of a person.

Where the instructions contained in the advance care directive seek a particular kind of health care, such a provision may only be used to guide a health practitioner. The decision of whether to do so is to be determined by the particular health practitioner on the basis of their clinical expertise and judgment where the provision of health care will be futile in the circumstances.

Health practitioners are also not bound to abide by the terms of an advance care directive in circumstances where the health care is urgent or being provided in an emergency. This provision has been included to ensure there is no impediment to health practitioners providing care in circumstances where decisions are required immediately or where it is necessary to administer care to prevent the person from suffering significant pain or distress.

Nor are health practitioners forced to comply with provisions of an advance care directive to which they have a conscientious objection. The bill requires that in such circumstances the patient must be referred to another health practitioner and that no action is taken to provide treatment that would prevent the provisions of the person's advance care directive being given effect.

We are looking now at registration and revocation of advance care directives.

Under the bill, a person can seek to have their advance care directive registered by the Guardianship and Administration Board. This is not a mandatory requirement and an advance care directive is not invalid merely because it has not been registered. The board may refuse to register the advance care directive if it does not comply with the formal requirement for completing an advance care directive, including the witnessing requirements. A register for this purpose will be maintained by the board and new regulations will be developed to set out the terms of access to the register.

The bill also includes provisions for a person who wishes to revoke an advance care directive. In the case of a person who has decision-making capacity, the matter will be dealt with by a simple process of notification made to those who have been given a copy including any person appointed as an enduring guardian and the board if the advance care directive has been registered.

In circumstances where a person who lacks decision-making ability may wish to revoke or vary their advance care directive, provisions have been included for an application to the board to make a final determination as to whether the advance care directive should be revoked or varied.

The bill sets out principles that the board must follow in making such decisions to ensure that the revocation or variation genuinely reflects the wishes of the person to whom it relates.

Protection from liability. Health practitioners, authorised persons or other persons acting under the authority of the principal act are afforded protections from civil and criminal liability for acting in accordance with an advance care directive in good faith and without negligence.

Turning to dispute resolution and powers of the Public Guardian and the board, the bill sets out comprehensive dispute resolution provisions to enable the differences over the effect and application of an advance care directive to be settled.

The bill confers on the Public Guardian the ability to provide preliminary assistance in resolving differences between parties, including through the use of mediation. This may include ensuring all parties are aware of their rights and obligations under the act, identifying issues in dispute, canvassing options that may obviate the need for formal proceedings and facilitating full and open discussion between the parties. If agreement is reached on ways to resolve the dispute through mediation, the Public Guardian is to record the outcomes and cause a copy to be provided to each of the parties and to the board.

At any time during the course of the mediation, the Public Guardian may bring the matter to a close if, in their opinion, the matter is best dealt with by the board or at the request of a party to the mediation. Consistent with their current jurisdiction, the bill provides the board with more formal powers in relation to settling disputes over advance care directives. On application, the board may review a matter dealt with by the board and cancel, vary or revoke the agreement.

The board also has the power to make binding directions in relation to an advance care directive, including in relation to whether the person making the advance care directive did or did not have the decision-making ability to make the advance care directive, whether an advance care directive is valid and whether a person has authority to make a decision in relation to an advance care directive. These new powers in the bill are in addition to those provided under the principal act that enables the board, for example, to appoint a guardian to act on behalf of the person who has made the advance care directive.

Offence provisions are included in the bill to provide that a person by dishonesty or undue influence must not induce another person to give an advance care directive. S35G(4). A person must not require another person to give an advance care directive as a precondition of providing a service. S35G(5). Parties must act in accordance with any direction made by the board to revoke or vary an advance care directive, S35Z(6); and parties must comply with a determination of the board made in relation to dispute resolution proceedings, S35ZK(9).

As I noted earlier, a statutory framework for giving advance care directives exists in every state and territory except New South Wales and Tasmania. The bill enables legal recognition of advance care directives made in other jurisdictions as if they were made here in Tasmania. Provisions contained within those advance care directives that are unlawful in Tasmania will, however, continue to be unlawful regardless of their status in the jurisdiction in which they were made.

Provisions have been included in the bill to ensure the authority of superior courts, including the Family Court, are maintained and other legal rights, including the right to prepare an advance care directive under common law, are not affected. In order that the legislation remains relevant, provisions have been included in the bill requiring an independent review of the new part as soon as practicable after the fifth anniversary of its commencement. This will ensure that provisions contained within the principal act continue to meet community expectations into the future.

A clear and legally binding framework for giving and implementing advance care directives will be welcomed by many Tasmanians wishing to give instructions about their future health care. Public consultation was undertaken on a draft version of this bill. I thank the many individuals and organisations who made comments in response to the draft legislation. Also to Parliamentary Counsel for drafting the legislation, which provides a robust and contemporary statutory framework for advance care directives in Tasmania.

The overwhelming sentiment from the public consultation was that the bill provides a welcome addition to the advance care planning in Tasmania. I commend the bill to the Council.

[4.15 p.m.]

Ms FORREST (Murchison) - Mr President, I welcome this bill. This is something I have talked about for a long time in this and other places - the need for a legislative framework around advance care directives to enable people to make decisions that cannot be overridden by others about their health care. As the Deputy Leader said, the overwhelming sentiment from the public consultation was this bill provided a welcome addition and I absolutely agree.

Talking about death with loved ones is one of the hardest things you have to do in many respects. No one really likes to acknowledge their own mortality. It is difficult facing your own mortality, but also facing the mortality of a loved one, whether it be a parent, sibling, a child, is never easy but if we do not have these conversations -

Mr Valentine - They are essential conversations.

Ms FORREST - They are essential conversations and if we do not have them then it is almost impossible to be able to even appreciate the person's wishes. You cannot assume what you think a person might want is what they actually want. It is only through these discussions that it can become apparent sometimes people want some quite - what you might individually think is quite strange things, but it is their wish and made with their full capacity and understanding of what they are actually asking or not asking for, depending on what the case may be, and they have every right to do that.

I can recall many conversations over the whole time from the time when I was here when voluntary assisted dying was first introduced - the member for Mersey might know the year. Was 2013 the first time?

Mr Gaffney - Here?

Ms FORREST - Yes.

Mr Gaffney - Yes, 2013.

Ms FORREST - Yes, I remember having many people come into my office then talking about they want to have choice and I said, 'You do have choice already. It is just we do not have a legalised process that is binding.' There was a process to encourage people to appoint an enduring guardian, to make their wishes known, to talk to their loved ones, as we do with organ donation and things like that.

You have got to talk to your families about these things to ensure you know what they want, they know what you want and then you can back up the plan or be more confident in fulfilling their wishes. I do congratulate the Government on moving on this. In many respects

for the year we have had since the Tasmania Law Reform Institute released that quite substantial report, we have had a few other things on.

Ms Rattray - The blue brick?

Ms FORREST - Yes, the blue brick. We have had quite a few other things on but I commend the Justice department for getting on with this. It is a big body of work and something that has to be done right because we are talking about people's decisions that may mean that their life ends and it is okay if that is what they choose. If they want to refuse treatment, if they want to have treatment stopped, then they have every right.

Personally, only recently I assisted my dad through this whole process when he was facing a life-limiting illness. I can assure you every decision made about his health care was made by him and backed up by us - my mum and myself who were acting as his support in that process. We need to be very cognisant of the fact some of the older members of our community, like my dad, are very hard of hearing -

Ms Rattray- Pardon?

Ms FORREST - Yes, exactly, including myself in many respects. It is really important we ensure options for treatment and the choices a person has are clearly explained to them so they can make an informed choice. You cannot assume someone understands without checking back with them. I did speak to the minister, Mr Rockliff about this.

After the experience with my dad, it would be really helpful for many people to actually have what I would call a health advocate who can go with them and who understands how the health system works, who understands some of the medical language health practitioners, myself included, slip into without actually realising at times. While the person is busy trying to figure out what a comment you just made means in reality, they have missed a lot of the other commentary.

I might have mentioned as a midwife talking about having a flat baby. It was a common thing - does that mean it has been ironed or what? A flat baby is not responding well at birth. It needs suction, oxygen, some support to make sure he keeps breathing and gets on with life. As midwives and other health professionals associated with the birth, we use that term quite freely and we know what it means but for a parent of a new baby to hear it can be a bit frightening. You do need to have some of those people around who can interpret what is being said in a way that person can understand. That level of understanding, level of background in health and health literacy will vary enormously from person to person so we can never assume someone understands what is being suggested or what is being recommended or what their options actually mean.

Ms Rattray - I recently had an experience where my sister and I took my mum into the Launceston General Hospital and we were not allowed to go in with my mum; we had to wait outside so it can become difficult. We would expect we were advocates for my mum, but were not allowed in the room.

Ms FORREST - There needs to be a more formal process if that is happening. It certainly did not happen to me. Maybe it did, but they were too scared to say 'no' to me maybe, and I can understand that.

Ms Rattray - How long do we know COVID-19 is going to be around for and whether the rules will remain in place?

Mr Valentine - That is right.

Ms FORREST - The rules that were around the urgency of COVID-19 when there was an outbreak in Tasmania were right to a point in that, but now I firmly believe that should not be happening. Every person has a right to have someone with them when they are getting medical advice if they feel they need it. If you are getting bad news, you do not hear half of what is said so how can you possibly make an informed decision or choice?

I will talk about some of the aspects of the bill and some of the other practicalities of it because it is important we understand why this is so important and why it is important to get it right.

As it says in the second reading speech:

Advance care directives are instructions about a person's future decisions for medical treatment or health care made by a person when they had decision-making ability in anticipation of the time when they do not have the ability to make those decisions due to illness or injury.

As was made clear in the second reading speech and in our briefing, this capacity can come and go. A person may have a fall and be knocked unconscious and hopefully that is a temporary thing. Look at all the footballers. Someone would wonder whether they ever got capacity when they get off the ground and try and walk, as one did last weekend and I was horrified watching it because he fell over again while the commentators were all cheering him on. That does my head in.

The really important thing is this would only be appropriate to be used if it is for that period while that person does not have capacity. As soon as the person regains their capacity, they then can make their own decisions. They may well change their mind once they have recovered from that episode and regained their capacity. The bill does cover for that and enable the advance care directive to kick in at those times when it would be necessary.

Yes, we do already have advance care directive use in Tasmania. Many people have advance care directives but they can be overwritten, ignored and there is no real formal process around having them registered at all. An enduring guardian is registered and would hopefully have had that discussion in agreeing to be the enduring guardian. I am not sure why anyone would agree to be an enduring guardian if they did not have any idea what the person wanted. I hope that does not happen. The question for the Deputy Leader is where there is an enduring guardian already in place - who hopefully would have had discussions with the person who has made an advance care directive - that if that person decides to make a new advance care directive then that enduring guardian would need to be re-established because that person, as I understand this bill, requires the enduring guardian to acknowledge and sign off basically on the fact that they are aware of the advance directive and what it means and the person actually understands it. This could be a really important body of work for the Government to get out into the general public because there are many enduring guardians. I do not know how many have been registered and am sure there is a lot in Tasmania. All of those people probably need to be contacted to be told you need to talk to the person for who you are enduring guardian.

For the person who has appointed them to say you need to re-do this form to make sure it is valid and that person does have an updated advance care directive, if they make a forward advance care directive. I hope I have made myself clear in what that question is.

I strongly believe people have a right to refuse treatment provided they are doing it with a full knowledge of what the implications of that refusal will mean and of course, no one can play god in this. Doctors and medical professionals make their very best judgments all the time and sometimes we do not know exactly what the course of events will be of any one person. People do have that right to request treatment be withdrawn or they might want to stop the chemotherapy as it is just too hard to continue, the side effects are too great. They do have that right currently, they should always maintain that right and this bill will help enshrine those rights. The way I read it will be binding directions where a person makes it very clear and unambiguous they do or do not want a certain treatment.

The other things that are not binding, but still important, are other preferences and wishes of a person and how that is described will obviously be different. I did ask during the briefing, under the object of the act and the purpose of the act where it talks about a person specifying outcomes or interventions they wish to avoid or they wish to have or certainly wish to avoid the outcomes, what sort of guidance they will have in determining that. Because when you start talking about what is it that you really value, what sort of life do you want, what sort of treatment do you want to have that you would deem to be acceptable based on what you expect the likely outcome to be? Someone may feel very strongly they do not want to be in a wheelchair, surgery is offered that could have a 90 per cent chance of paralysis and they may refuse that, but for another person they think 10 per cent is a pretty good chance. It is dependent on your risk of appetite or the way you see things.

Ms Rattray - Like amputation.

Ms FORREST - Everyone should have that right to decide about what they see is important for the outcomes they would be happy with. There are provisions in the bill when we think the decision they are making is a bit strange and not something we would do ourselves in clause 15 it says:

However, an adult or child does not have impaired decision making ability in respect of a health care decision for the purpose of this Part merely because ... a decision made by the adult or child is unwise in the opinion of other persons.

That is terribly important, I do not have to agree with the other person's decision, I just have to respect their right to think, well, that is their tolerance level. I was somewhat bemused--

Mr Valentine - You do not know what their experience is.

Ms FORREST - by the subsection (j), 'the adult or child is perceived to be eccentric'. I am not quite sure how that plays out but to me, that is a bit similar. I might think the decision someone is making is a bit strange because they are eccentric or because they think differently from me, but it does not make it wrong and it does not invalidate the advance care directive and that is important too. It is really important that these wishes cannot be over ridden.

Mr Valentine - You do now know what their experience is that shapes the decision that they are making.

Ms FORREST - That is right, yes. Sometimes people's perception changes over time. New medical treatments become available, side effects of treatments can become less onerous and a person may change their mind. There are provisions in the bill to allow an advance care directive to be revoked and a new one put in place. That is important, too.

The other protection that is important is protection for the health care professionals who are providing health care. This is pretty clear, in proposed section 35M, Binding and non-binding provisions:

- (1) Subject to this section, a provision of an advance care directive that comprises a clear and unambiguous refusal or withdrawal of particular health care is a binding provision.

You have to abide by it, and I consider this is a very important provision. It does go on with subclause (2):

If a binding provision of an advance care directive is expressed to apply, or to be binding, only in specified circumstances, the provision is to be taken to be a binding provision only in respect of those circumstances.

There are circumstances where the health professional may not abide by those circumstances. In the briefing I mentioned an instance which was relayed to me by a health professional, whereby a person had undertaken to prepare an advance care directive. It was not legally binding because it was prior to this bill. I am not sure whether this person had already had tattooed across his chest, 'do not resuscitate', but, I know there are people who do, because of their great fear that someone is going to do something to them that they do not want to be done.

They do that as a desperate measure to make it clear that no-one can claim that they did not specify they did not want to be resuscitated. This person had been very clear that he did not want to be ventilated and he did not want life support. It was written down, I do not know if he had the tattoo as well. For him, resuscitation included being on a ventilator. That was one of the key things he had named as the issue. I am not sure what his concern was about it - maybe he thought once you were on a ventilator you would never come off. He may have had some other experience with a loved one that made him fearful of being on a ventilator. Not the most wonderful experience, I must say, but necessary for some.

This man was only in his mid-50s at the time. From my conversation with this doctor, I learned that he developed a very serious sepsis, an infection in his blood, and without receiving significant treatment he would have died. The advance care directive said do not resuscitate, do not put me on a ventilator. The doctor knew, from his experience, that appropriate treatment of this patient would be to sedate him, ventilate him and treat him with some high-powered drugs and other treatment you really would not want to be awake for. He would have a fairly good chance of a full recovery back to the way he was, not a third of his earlier lung capacity for example.

The doctor made that decision, the patient's wife was very angry and very upset. She was pointing to the advance care directive and saying, this is what he wants, you have put him on a ventilator and you have gone against his wishes. The doctor, dutifully, wrote down everything he did, why he had made those decisions, all of those things because you have to and you should, particularly when you have gone against a person's wishes. Eventually, the man fully recovered. On a subsequent visit to the doctor for a follow-up appointment he was very grateful and thanked the doctor sincerely for saving his life.

That was a clinical judgement made by that doctor at the time, because on his clinical assessment he believed, and rightly as it turned out, that this patient would survive with a good quality of life. He made the assessment that 'do not resuscitate' and 'do not put me on a ventilator' did not relate to circumstances such as a treatable condition. He made the call that advance care directive would relate to something along the lines of this man arriving with a serious head injury and was brain dead, and that would then be an appropriate course of action.

It is about clinical judgment. This bill provides that framework. That is one of the things I was looking for, because the last thing a health professional wants is to have to front up to a court to defend themselves for their decision when there is a lack of clarity around the legislative provisions providing for that. Having read through this, I consider it is covered off in a way that would give that comfort to health practitioners.

The other point I make relates to the fact that the reasonableness of the decisions that people make is irrelevant, as it says in the second reading speech and in the bill. Decision-making abilities are determined as by whether a person has ability to understand relevant information, retain the information to the extent necessary to make the decision, use or waive the information in the course of making decisions or communicate the decisions whether by speech, gesture or other means.

It also talks about the use of colloquial language and understanding of that. I consider this does come down to communication - making sure that if someone has written something that is a bit strange, and you are not really sure what it means, that it is clarified with the person. Because we all have our colloquial language use for different things and when we are talking about personal body issues, often we do use words that perhaps may not be used in normal medical texts. This provision is also important.

I have one question I request the Deputy Leader to follow up. We talked about the child being able to give consent as long as the doctor or health professional is willing to acknowledge their capacity to do so. The second reading speech describes that to some extent. The Gillick principle holds that a child who is a mature minor can consent to their own health care or treatment provided that they have sufficient understanding and intelligence to enable them to fully understand what is proposed. I consider that to fully understand what is proposed is a pretty high bar here, because I do not think some adults would fully understand what is proposed all the time.

There are provisions in the bill that I do not believe require an adult to be able to demonstrate full understanding of all the consequences. I may be wrong, but I wondered whether it is really meant to be that the Gillick principle will determine a child's decision-making capacity, but is it actually determining that they have a full understanding of what is being proposed? It does need clarifying because of that statement in the second reading speech.

I also have a question around capacity and access to voluntary assisted dying, which is a separate issue in some respects. If the person has indicated a wish, and that wish is in their legally binding advance care directive, but the person has not gone down the pathway of the voluntary assisted dying process, could that wish be enacted?

Mrs Hiscutt - I was fairly clear and I am sure the member for Mersey will clarify it. But no, that was excluded and it was to be included in the review on the voluntary assisted dying bill when that was due.

Mr Gaffney - It may be included in the review; but no, they would not be eligible under our bill.

Ms FORREST - This is a question that people will be asking; if they put it in their advance care directive, does that not mean I can access it? We need to make it clear that no, they will have to go through the process outlined in the End-of-Life Choices (Voluntary Assisted Dying) Act. I believe it is important to clarify that point, because people will have an expectation that it should tick all the boxes.

The other question I asked in the briefing was with regard to the regulations that will be made, particularly in terms of access to the register. It is important that any relevant health professional can access an advance care directive for a person because you need to access it when that person has lost capacity. It is not like you can ask them to hand it to you. Hopefully, others - loved ones - will have copies of an advance care directive so that they can ensure that it is made available. I would hope that all members of the community who make an advance care directive give their GP a copy, even give their local hospital a copy if they have been a patient there so it can go on their medical record to make it easy to access. You could be anywhere in the state or around the country and we have the reciprocal recognition of other states. Just do not let it happen in New South Wales at the moment.

You might be in a place where you have never had any medical history to be drawn on in the absence of an electronic record so I will be interested to see how that is going to be managed. There was some discussion in the briefing about having a national register and access through that. I am interested in who can access it because there will be sensitive personal information contained in many of these advance care directives so it should not be a free-for-all by any stretch. It will be a balance between maintaining a person's privacy but ensuring that such a document can be accessed when necessary because it may need to be accessed fairly promptly.

I appreciate the increased role and responsibilities of the Public Guardian. I ask the Deputy Leader if additional resourcing will be needed for this. I assume it will. Has that been committed to?

I know in previous legislative reforms such as the non-registered health practitioners' complaints process that was handed to the Ombudsman and the Health Complaints Commissioner - which still has not been enacted by the way - it would put an enormous strain on his office if it had been enacted with no resourcing and no real idea that he was actually getting it. I want to be clear that the Public Guardian - I know they have been consulted in this, but what additional resourcing will be provided to them and when to ensure this can operate properly from the start?

I asked in the briefing what the likely time frame was for implementation of this because there is a fair bit of work to do. The answer was six months to 12 months, which sounds reasonable. So it will take a little while. Those things need to be considered and if it is in six months, one would expect there to be some sort of comment about that in this year's Budget, which will be tomorrow. Committee B might like to follow that up to make sure there is funding for the Public Guardian to give effect to this because it will take extra funding. It sits under Justice.

I conclude my comments there but I thank the Government for moving on this and getting it to the point where it is a good piece of legislation. I think it will work well. There is a lot of work to be done in the education of the public and communication with current enduring guardians out there to ensure that they are aware that this is coming as well as the people who have made other advance care directives and appointed enduring guardians, and the funding for the Public Guardian and the Guardianship and Administration Board as well. They will have a role to play in this potentially as well.

It is a very welcome piece of legislation. I strongly support a person's right to choose what is done to them in terms of treatment or not having treatment and making informed decisions about their health and the treatment they might receive.

I will ask that the debate stand adjourned.

Debate adjourned.

ADJOURNMENT

[4.44 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I would like to remind members of our briefing tomorrow morning at 10 a.m. That is the briefing on the Justice Reform Initiative and Just Desserts have made a request through the President to come and brief us.

Mr President, I move -

That at its rising, the Council adjourn until 11 a.m., on Thursday 26 August 2021.

The Council adjourned at 4.44 p.m.

Appendix 1

Attachment 1.

Stage 1 (commenced July 2015)

Havenview Primary School
Montello Primary School
Ridgley Primary School
Romaine Park Primary School
Somerset Primary School
Table Cape Primary School
Devonport Primary School
East Devonport Primary School
Latrobe Primary School
Miandetta Primary School
Spreyton Primary School
Burnie High School
Parklands High School
Smithton High School
Wynyard High School
East Tamar Primary School
Invermay Primary School
Mowbray Heights Primary School
Ravenswood Heights
Waverley Primary School
Brooks High School
Prospect High School
Scottsdale High School
Riverside High School
Quench High School
Bagdad Primary School
Brighton Primary School
JRLF – East Derwent Primary School
JRLF – Gagebrook Primary School
JRLF – Herdsman Cove Primary School
Bellerive Primary School
Clarendon Vale Primary School
Dodges Ferry Primary School
Dunalley Primary School
Risdon Vale Primary School
Rokeby Primary School
New Norfolk High School
Rokeby High School
Rose Bay High School
JRLF – Secondary School
Montrose Bay High School

Stage 2 (commenced July 2016)

Devonport High School
Latrobe High School
Reece High School
Ulverstone High School
Beaconsfield Primary School
Exeter Primary School
Perth Primary School

Employment of School Nurses

tabled and incorporated
into Hansard

L. His cutt

Leader

25 August 2021

clerk
deputy clerk

South Georgetown Primary School
St Leonards Primary School
Deloraine High School
Exeter High School
Kings Meadows High School
Port Dalrymple School
Austins Ferry Primary School
Bowen Road Primary School
Fairview Primary School
Glenorchy Primary School
Goodwood Primary School
Clarence High School
Cosgrove High School
Huonville High School

Stage 3 (commenced January 2017)

East Ulverstone Primary School
Hillicrest Primary School
Nixon Street Primary School
West Ulverstone Primary School
Ulverstone Primary School
Deloraine Primary School
Hagley Farm Primary School
Longford Primary School
Westbury Primary School
Youngtown Primary School
Cynet Primary School
Franklin Primary School
Glen Huon Primary School
Huonville Primary School
Kingston Primary School
Kingston High School
Taroona High School
New Town
Ogilvie High School

Stage 4 (commenced October/ January 2017/ 2018)

Mountain Heights School
Roseberry district high school
Zeehan primary school
Strahan primary School
Penguin district school
Yolla district School
King Island district high school (Block visits)
Sheffield School
Bothwell district High School
Campania district School
Oatlands district High School
Ouse district School (on call)
Glenora district School
Dover district School
Woodbridge district High School
Bruny district School (block visits)

Sorell district school
Triabunna district School
Tasman district School
Cressy district High School
Campbell town district High School
St Helens district high school
St Marys district School
Winnaleah district high School
Flinders district high school
Lilydale district School
Port Dalrymple district high School

Stage 5 (commenced 2018)

Southern Support School
Northern Support School
North West Support School

Stage 6 (commenced 2020)

Hellyer College
Don College
Newstead College
Launceston College
Rosny College
Elizabeth College
Claremont College
Hobart College

NB. Some nurses, particularly in the primary sector, work across multiple schools.

Appendix 2

QUESTION WITHOUT NOTICE

Legislative Council

*Tabled + in Hansard
2/8/21*

ASKED BY: Hon Josh Willie MLC

ANSWERED BY: Hon Leonie Hiscutt MLC, Leader of the
Government in the Legislative Council

QUESTION:

My question is to the Honourable Leader

1. Can the government provide the retention data for Year 11 and Year 12 for each Tasmanian Extension School for 2020 and 2021 to date?
2. Can the government provide the retention data for Year 11 and Year 12 for each Tasmanian College for 2020 and 2021 to date?
3. Can the government provide the attainment data for each Tasmanian Extension School for 2020?
4. Can the government provide the attainment data for each Tasmanian College for 2020?

ANSWER:

*tabled and
incorporated into
Hansard
L. Hiscutt
Leader
25 August 2021*

*cliff
deputy clerk*

CA

1. Direct retention rates* (Year 11 to Year 12) for all Extension Schools in 2020

School Name	Direct retention rate (%)
Bayview Secondary College	87.1%
Campania District School	14.3%
Campbell Town District High School	50.0%
Clarence High School	NR
Deloraine High School	60.0%
Devonport High School	NR
Dover District School	NR
Huonville High School	63.6%
JRLF - Senior School	79.4%
King Island District High School	NR
Kingston High School	NR
Latrobe High School	NR
Launceston Big Picture School	84.6%
Lilydale District School	NR
Mountain Heights School	100.0%
New Norfolk High School	69.2%
New Town High School	100.0%
North West Support School	NR
Northern Support School	100.0%
Oatlands District High School	NR
Ogilvie High School	NR
Parklands High School	NR
Penguin District School	NR
Port Dalrymple School	72.7%
Prospect High School	NR
Rose Bay High School	81.8%
Rosebery District High School	NR
Scottsdale High School	72.7%
Sheffield School	100.0%
Smithton High School	60.6%
Sorell School	81.8%
Southern Support School	100.0%
St Helens District High School	77.8%
St Marys District School	50.0%
Tasman District School	80.0%
Tasmanian eSchool	82.9%
Triabunna District School	80.0%
Ulverstone Secondary College	83.0%
Wynyard High School	NR
Yolla District School	NR

2. Direct retention rates* (Year 11 to Year 12) for all Colleges in 2020

School Name	Direct retention rate (%)
Claremont College	74.8%
Don College	77.0%
Elizabeth College	82.2%
Hellyer College	85.5%
Hobart College	91.8%
Launceston College	82.6%
Newstead College	74.6%
Rosny College	91.7%

*Notes for direct retention tables:

- The direct retention rate here is defined as the percentage of students counted at a school in Year 11 at Census 1 in 2020 who are still enrolled at a government school at Census 1, 2021. (Data for Census 2, 2021, are not yet available.)
- Retention rates are not reported (NR) for small cohorts ($N < 5$), as providing complete information could lead to the identification of individual students.
- Where a student is enrolled at two schools at Census 1, 2020, they are associated with the school at which they are undertaking the majority of their enrolment.
- Several Extension Schools extended in 2021, and therefore do not appear in the table of retention rates. These schools are Ashley School, Bothwell District High School, Brooks High School, Cosgrove High School, Exeter High School, Montrose Bay High School, Queechy High School, Riverside High School and Woodbridge School.
- Students are not reported as retained if they move either interstate, to a non-government school or to a VET training provider. They are also not included if they are participating in another Approved Learning Program such as an apprenticeship or have an approved exemption under the Education Act.
- Retention rates at Extension Schools tend to fluctuate over time due to the smaller nature of the cohorts.

3. Year 12 TCE attainment rates[†] for all Extension Schools in 2020

School Name	TCE rate (%)
Bayview Secondary College	45.5%
Campbell Town District High School	33.3%
Clarence High School	20.0%
Deloraine High School	50.0%
Devonport High School	0.0%
Dover District School	50.0%
Huonville High School	38.5%
JRLF - Senior School	23.5%
Launceston Big Picture School	81.3%
Lilydale District School	62.5%
Mountain Heights School	80.0%
New Norfolk High School	38.9%
North West Support School	0.0%
Oatlands District High School	100.0%
Ogilvie High School	0.0%
Port Dalrymple School	41.7%
Prospect High School	100.0%
Reece High School	100.0%
Rose Bay High School	100.0%
Rosebery District High School	0.0%
Scottsdale High School	33.3%
Sheffield School	100.0%
Smithton High School	57.9%
Sorell School	31.6%
St Helens District High School	50.0%
St Marys District School	66.7%
Tasman District School	100.0%
Tasmanian eSchool	33.3%
Triabunna District School	0.0%
Ulverstone Secondary College	68.6%
Wynyard High School	0.0%
Yolla District School	50.0%

4. Year 12 TCE attainment rates[†] for all Colleges in 2020

School Name	TCE rate (%)
Claremont College	61.9%
Don College	67.8%
Elizabeth College	75.3%
Hellyer College	85.8%
Hobart College	84.6%
Launceston College	77.2%
Newstead College	74.6%
Rosny College	77.0%

[†]Notes for attainment data:

- Data are as reported by TASC in the Attainment Profile for each Extension School and College. TASC does not suppress data for small cohorts.
- Year 12 and 13 students are included if they are an Australian citizen, aged 15-19, and have achieved at least one credit point in 2020.
- These data do not reflect the nature of shared enrolments, where a student's course is delivered across two or more schools; instead, the student's result is fully attributed to one school for the purposes of TCE reporting. For example, where a student is undertaking only VET subjects at a school – which is more likely at an Extension School which are linked to Trade Training Centres – they will be attributed to the other school or College at which they are enrolled. Students at Extension Schools are more likely to be in a shared enrolment.
- Some Extension Schools will not have an attainment rate for 2020 if they had not yet commenced delivery to Year 12 students, or if they were delivering Year 12 to shared students who were then attributed to another school.

APPROVED/NOT APPROVED

Hon Sarah Courtney MP
Minister for Education

Date:

Appendix 3

QUESTION WITHOUT NOTICE

Legislative Council

*Hiscutt
Table Answer
incorporate*

ASKED BY: Hon Josh Willie MLC

ANSWERED BY: Hon Leonie Hiscutt MLC, Leader of the
Government in the Legislative Council

QUESTION:

*tabled and incorporated
into Hansard
L. Hiscutt
Leader
25 August 2021*

My question is to the Honourable Leader

1. Can the State Government provide the number of language teachers employed by the Department of Education in FTE and headcount?
2. Can the State Government provide the number of languages taught in Tasmanian Government schools and a list of the languages taught in Tasmanian Government schools?
3. Can the State Government provide the number of primary and secondary schools currently teaching languages and a list of schools teaching languages?
4. Can the State Government provide the recommended guidelines regarding the provision and timing of the teaching of languages?
5. Can the State Government provide the number of language graduates employed by the Department of Education in the last five years?
6. Can the State Government provide a list of the language teaching qualifications its employees hold?
7. How many language curriculum officers are employed by the Department of Education in K-8? How many are employed in 9-12?

*alcher
deputy clerk.*

CA

8. Can the State Government provide the Department of Education policy on languages?

ANSWER:

1. Schools make employment decisions about the hiring of teachers with specialist qualifications to meet their school needs. This information is not collected centrally by the Department of Education, and so the number of language teachers employed by FTE and headcount is not able to be provided.
2. There are seven different languages taught in Tasmanian Government schools. These include Auslan, Chinese, French, German, Indonesian, Italian, Japanese taught in Kinder to Year 10. For Years 11 and 12 Chinese, French, German, Italian and Japanese are taught.
3. There are currently 80 primary schools and 20 secondary schools offering a language program. This information is based on the number of schools who received a language grant in 2021 to support the delivery of a language program (The list of primary and secondary schools allocated language grants is included at the end of this document.)

There may be other high schools teaching a language that did not apply for a language grant.

There are seven senior secondary schools offering TASC language courses.

4. The Department of Education provides guidance on curriculum provision from Prep to Year 10.

The 2021 DoE Curriculum Provision document states that schools are required to:

- ensure that all students in Prep to Year 10 are taught English, Mathematics, Science, History (within the Humanities and Social Sciences program in Years P-6) and Health and Physical Education
- ensure that students in Years P-8 are taught the Arts and Technologies
- use the Australian Curriculum learning areas to inform electives/options offered in Years 9-10 e.g., Geography, Economics and Business, Technologies and Languages
- offer, where possible, a languages program from Prep to Year 10, prioritising Years 5-8

Program delivery for all learning areas in Tasmanian Government Schools is a school-based decision to best meet local needs.

Time allocations for the teaching of all learning areas in the Australian Curriculum in Tasmanian Government schools is a school-based decision to best meet local needs.

5. The Tasmanian Government employs teachers with a range of specialisations and qualifications. Data on teacher qualifications is not currently collected centrally by the Department of Education, so specific numbers of language graduates employed by the Department of Education is not able to be provided.
6. Teachers and school staff employed by the Tasmanian Government hold a range of qualifications. Data on teacher qualifications is not currently collected centrally by the Department of Education, so a list of language teaching qualifications is not able to be provided.

7. There is currently one Language Curriculum Leader employed for Years 9 to 12.
8. The Department provides guidance on curriculum provision from Prep to Year 10. See Answer to Question 4.

APPROVED/NOT APPROVED



Hon Sarah Courtney MP
Minister for Education

Date: 25/8/21

List of schools who received a Language Grant in 2021

Primary Language Grant	Secondary Language Grant
Albuera Street Primary School	Bayview Secondary College
Andrews Creek Primary School	Burnie High School
Austins Ferry Primary School	Campania District School
Beaconsfield Primary School	Elizabeth College
Bellerive Primary School	Kings Meadows High School
Bichenno Primary School	Kingston High School
Blackmans Bay Primary School	Montrose Bay High School
Boat Harbour Primary School	New Town High School
Bowen Road Primary School	Oatlands District High School
Brighton Primary School	Ogilvie High School
Bruny Island District School	Penguin District School
Cambridge Primary School	Rose Bay High School
Campania District School	Scottsdale High School
Campbell Street Primary School	St Helens
Cressy District High School	Taroona High School
Cygnet Primary School	Tasmanian eSchool
Deloraine Primary School	Ulverstone Secondary College
East Launceston Primary School	Woodbridge School
East Ulverstone Primary School	Wynyard High
Edith Creek Primary School	Yolla District School
Exeter Primary School	
Forest Primary School	
Forth Primary School	
Geeveston Primary School	
Glen Huon Primary School	
Goulburn Street Primary School	
Hagley Farm Primary School	
Hillcrest Primary School	
Howrah Primary School	
Illawarra Primary School	
Lansdowne Crescent Primary School	
Lenah Valley Primary School	
Lindisfarne North Primary School	
Lindisfarne Primary School	
Margate Primary School	
Miandetta Primary School	
Montagu Bay Primary School	
Moonah Primary School	
Mount Nelson Primary School	
Mount Stuart Primary School	
Natone Primary School	
New Town Primary School	

Primary Language Grant	Secondary Language Grant
Nixon Street Primary School	
Norwood Primary School	
Oatlands District High School	
Orford Primary School	
Penguin District School	
Perth Primary School	
Port Sorell Primary School	
Princes Street Primary School	
Punchbowl Primary School	
Richmond Primary School	
Ridgley Primary School	
Riverside Primary School	
Rosebery District High School	
Rosetta Primary School	
Sandy Bay Infant School	
Snug Primary School	
Somerset Primary School	
South Arm Primary School	
South Hobart Primary School	
Sprent Primary School	
Spreyton Primary School	
St Helens District High School	
St Leonards Primary School	
Strahan Primary School	
Swansea Primary School	
Taroona Primary School	
Tasman District School	
Tasmanian eSchool	
Waimea Heights Primary School	
Waverley Primary School	
West Launceston Primary School	
West Ulverstone Primary School	
Westbury Primary School	
Westerway Primary School	
Wilmot Primary School	
Woodbridge School	
Yolla District School	
Zeehan Primary School	