PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Thursday 24 November 2022

REVISED EDITION

Contents

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The President, **Mr Farrell**, took the Chair at 10 a.m., acknowledged the Traditional People and read Prayers.

QUESTIONS ON NOTICE

Bass Highway - Junction Upgrade at Leith

[10.04 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - I have an answer to question No. 10 on the Notice Paper for the member for Mersey.

10. BASS HIGHWAY - JUNCTION UPGRADE AT LEITH

Mr GAFFNEY asked the Leader of the Government in the Legislative Council, Mrs Hiscutt:

With regard to the junction upgrade options due to be implemented on the Bass Highway at Leith:

(1) In the closing sentence of a media release dated 13 January 2022, in reference to the upgrade options to be implemented on the Bass Highway at Leith, the Minister for Infrastructure and Transport stated:

> Feedback will be sought on the final designs of the intersection upgrades this quarter.

(a) What has been included in the final design for the upgrade as the result of the requested feedback process; and

(b) to facilitate public awareness of the actual safety measures being provided and/or implemented:

(i) is a detailed plan of the design to be constructed available for the public to view; and

(ii) if so, where can the detailed plan be viewed?

(2) of the suggestions forwarded in the requested feedback process and not included in the final design of the junction upgrade, on what grounds/reasons have they been rejected for inclusion;

(3) with regard to the construction and evaluation phases of the upgrade:

(a) as tenders closed on 21 September 2022, has this tender been awarded;

(b) if so, who was the successful tenderer;

(c) when is it planned that work will commence;

(d) what is the planned completion date for the work;

(e) what is the intended process to review the effectiveness of the completed upgrade; and

(f) what will be the process to evaluate and implement any recommendations that may arise from a review?

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I will read in the answer for the member for Mersey:

(1) (a) Feedback received from the early 2022 consultation included multiple suggestions as to what would provide an acceptable outcome, including the previously suggested speed reduction and roundabouts. The department has advised that the adopted solution is the most suitable, excluding an overpass, for the given constraints.

(b)(i) The concept designs have been available on the Transport Tasmania website for some time. These designs have not materially changed during the detailed design phase. The detailed designs are intended for construction purposes as they contain significant and complex information which makes them unsuitable for general public display purposes.

(2) The department has advised that the adopted solution is the most suitable, excluding an overpass, for the given constraints. Suggestions for a local speed reduction of the Bass Highway or a roundabout have been previously addressed.

(3) (a) The contract has been awarded to Hazell Bros.

(c) It is expected that works will commence within 4-6 weeks.

(d) Completion of works is expected by mid-2023.

(e) The department will monitor all reported crashes to the two junctions and based on that information, a determination will be made as to the effectiveness of the adopted solutions.

(f) Any recommendations made as a result of the monitoring of traffic crashes at the junction may be developed into a project to be delivered by the department. As with all State Roads projects, a public consultation period will occur to ensure public input.

ELECTORAL DISCLOSURE AND FUNDING BILL 2022 (No. 25)

ELECTORAL MATTERS (MISCELLANEOUS AMENDMENTS) BILL 2022 (No. 26)

First Reading

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

WORKERS REHABILITATION AND COMPENSATION AMENDMENT BILL 2022 (No. 48)

Third Reading

[10.09 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, in moving the third reading I offer the following information to update the member to Rumney in regard to Tasmania Fire Service's breathing apparatus. I have received further clarification in relation to discussions we had yesterday relating to the Tasmania Fire Service breathing apparatus. This should be placed on the record.

There has been mould found externally on some of the breathing apparatus sets. The substance found on the inside of the breathing apparatus masks has been sent for testing, with initial feedback that it is not mould. Further testing is being undertaken. The information I have provided in relation to the other actions taken by the Tasmania Fire Service is unchanged.

Mr President, I move -

That the bill be read the third time.

Bill read the third time.

ENVIRONMENTAL MANAGEMENT AND POLLUTION CONTROL AMENDMENT BILL 2022 (No. 46)

Consideration of Amendments made in the Committee of the Whole Council

[10.11 a.m.]

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

That the bill as amended in Committee be now taken into consideration.

Motion agreed to.

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

That the amendment to Clause 17 be read the first time.

Amendment read the first time.

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

That the amendment to Clause 17 be read a second time.

Amendment read the second time.

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

That the amendment to Clause 17 be agreed to.

Amendment agreed to.

Bill as amended agreed to.

Bill read the third time.

JUSTICE AND RELATED LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2022 (No.43)

Second Reading

[10.12 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, this bill contains minor amendments that update and clarify a number of different acts in the Justice portfolio. The bill also includes an amendment to the Animal Welfare Act 1993 (the Animal Welfare Act).

Some of the amendments have been requested by various officers or agencies, including the Director of Public Prosecutions, the Director of Monetary Penalties Enforcement Service and the Magistrates Court of Tasmania. There is also an amendment that responds to a judgment handed down in the Supreme Court of Tasmania.

Mr President, I will now address each of these proposed changes.

I will start with the amendment to the Animal Welfare Act 1993. Currently, sections 43 and subsection 43AA of the Animal Welfare Act 1993 provides the court with the power to disqualify a person from having custody of animals if convicted of an offence under that act. However, because the offence of bestiality is contained in the Criminal Code Act 1924 (the Criminal Code) not the Animal Welfare Act 1993, a judicial officer does not have the power to make such an order upon convicting a person of bestiality.

Accordingly, this amendment amends section 43 so that the power is enlivened upon conviction of an offence under the Animal Welfare Act, or conviction of bestiality under the Criminal Code. The ability to disqualify a person from having custody of animals is discretionary, and may be used instead of, or in addition to, other penalties or orders. This is an important amendment designed to protect animals from those who pose a risk of harming them.

I will now move to the amendments to the Criminal Code Act 1924. Mr President, in 2020 a judgment of the Supreme Court of Tasmania ruled that the crime of bestiality in

section 122 of the Criminal Code Act 1924, as presently drafted, only criminalises penile penetration by, or of, an animal. This was because the absence of a definition of the term 'bestiality' led to presumption that parliament intended the term to have its common law meaning, which does not extend to all sexual activity between a human and animal. This situation arose as an inadvertent consequence of previous amendments to the Criminal Code.

The bill firstly amends section 1 of the Criminal Code by providing a definition of bestiality. The definition is:

> sexual activity of any kind between a human being and an animal.

This definition is consistent with that contained in the Classification (Publications, Films and Computer Games) Enforcement Act 1995.

To avoid any doubt, the section which creates the offence, namely section 122 of the Criminal Code, is amended to clarify that acts engaged in for the purpose of genuine veterinary, agricultural and scientific research practices, provided those acts are reasonable for that purpose, do not fall within the scope of the offence. This wording is partly based on comparable exemptions contained in the Classification (Publications, Films and Computer Games) Enforcement Act 1995 and the Victorian Crimes Act 1958.

In conjunction with the amendment to the Animal Welfare Act, these amendments ensure that this crime reflects modern community standards and expectations in criminalising all sexual activity between a human and an animal.

I now move to the amendments of the Birth, Deaths and Marriages Registration Act 1999. Following amendment in 2019, section 24 of the Birth, Deaths and Marriages Registration Act 1999 (the Births, Deaths and Marriages Act) requires a magistrate to be satisfied of a child's will and preference before the magistrate can approve the proposed change of name for a child.

Both the Magistrates Court and the Registrar of the Births, Deaths and Marriages office have requested amendment to improve the operation of this provision, primarily to address the situation where a child is too young for a magistrate to be able to determine their will and preference. This appears to be an inadvertent limitation on what was previously the position for the court in relation to very young children. I am advised that a number of applications are received each year which involve children within that category.

While retaining the option to approve the name change if the magistrate is satisfied it is consistent with the will and preference of the child, the amendment introduces an alternative option. A magistrate may now also approve the change of name if satisfied that the child is unable to understand the meaning and implications of the proposed change of name, but is still satisfied that the change is in the best interests of the child. This is consistent with other sections of the Births, Deaths and Marriages Act, such as section 28B, which relates to applications to approve the registration of a gender.

A second amendment to the Births, Deaths and Marriages Act arises from a recommendation made by the Tasmania Law Reform Institute (TLRI) in the Legal Recognition of Sex and Gender Final Report No. 31 released in June 2020. The long title of the act currently reads:

> An Act to provide for uniform legislation in relation to the registration of births, deaths and marriages and to provide for the rights of persons who have undergone sexual reassignment surgery.

Following changes made to the act in 2019, it is not accurate to describe the act as relating to 'the rights of persons who have undergone sexual reassignment surgery'. The updated long title is based on the recommended wording of the TLRI. Following amendment, the long title will read:

> An Act to provide for the registration of births, deaths and marriages and to provide legal recognition of trans and gender-diverse Tasmanians and those with intersex variations of sex characteristics.

The long title of an act can be a factor in determining legislation intent in judicial proceedings, so the bill includes this TLRI-recommended amendment.

We acknowledge previous discussion in this place that significant work has been underway both in Tasmania and the Commonwealth on updating terminology in this area. We acknowledge the submissions which recommended the use of 'innate variations of sex characteristics'. The Tasmanian framework to give effect to the revised Commonwealth standard is being finalised. We understand that is the terminology most likely to be adopted by both jurisdictions.

As 'intersex' is a term used in several acts, including the Anti-Discrimination Act, the Attorney-General believes it is appropriate to make the TLRI-recommended change now, given the other amendments to the Births, Deaths and Marriages Act. With the framework to be finalised in the future, however, the department will develop a proposal in relation to consolidation of terminology across all relevant acts for final consultation.

I will move to the amendments to the Coroners Act 1995. The Coroners Act 1995 sets out the procedures for investigations and inquests by coroners, and in doing so, allocates various rights to a person termed the 'senior next of kin'. The Coroners Act specifies the senior next of kin is the first available person in a list contained in section 3A of the act, commencing with the deceased's current spouse.

The Coroners Act defines 'spouse' as including a person in a significant relationship under the Relationships Act 2003. The Relationships Act definition starts from a simple principle that a significant relationship is a relationship between two adult persons who have a relationship as a couple and who are not married or related by family. This captures the older term of de facto partners. Under this act there is a simple, affordable process to register a relationship.

However, the Relationships Act also provides for recognition of spouses who have not registered their relationships by reference to all the circumstances of the relationship. No particular item is essential, but it includes things you would expect as potentially relevant, such as the duration of the relationship, any common residence or property, any sexual relationship or mutual commitment to a shared life, and so on. The Relationships Act also provides the avenue for the Supreme Court to declare who is in a significant relationship. This is understandably a very rare necessity. The Attorney-General is only aware of two cited cases, both relating to deceased estate matters.

The bill's amendment responds to a case in 2015, where the deceased's spouse, as defined under the Relationships Act, was initially incorrectly not recognised as a spouse and thus as the respective senior next of kin. Although that was ultimately corrected by the Coroner, the initial decision was understandably very distressing for that surviving spouse. We have previously expressed the Government's sincere sympathy and deep regret that this occurred and we restate that regret right here and now.

The Tasmanian Government recognises that members of a community are often in a very vulnerable and distressed state when they come into contact with the coronial system, which is why we are committed to ensuring the process and avenues of complaint and review are well understood, so both the court and individuals can be confident the right decisions are made, using the information available.

The Coronial Division of the Magistrates Court started important work by producing comprehensive supporting material for those interacting with this court. In 2016, the 'Tasmanian Coronial Practice Handbook' and 'The Coroner's Court: A Guide for Families and Friends' were developed. These resources can now be found on the Coronial Division's website and are intended to assist members of the community who come into contact with the coronial system. The amendment to the Coroners Act continues this work by legislating a positive duty on the court for the senior next of kin, along with others who have a significant interest in the death, to be -

Mr Valentine - Sufficient interest.

Mrs HISCUTT - Thank you, Member for Hobart - who have a sufficient interest in the death, to be provided with prescribed categories of information about the operation of the Coroners Act. The Coroners Act has several key processes available to persons with a sufficient interest. Consideration of who has a sufficient interest is a routine and straightforward part of the court's everyday work. This term does not place a burden on the individual or the coroner, but ensures the focus of the duty to provide information is to those people who need it, such as family members and partners, and not simply any member of the public.

This amendment is modelled on a similar provision in the Victorian Coroners Act 2008. Regulations will be developed in consultation with stakeholders that specify the type of information that needs to be provided under this section. It is anticipated this will include information relating to the rights that exist in the Coroners Court, for example, regarding the viewing of a deceased person or objections to autopsies and the meaning of senior next of kin and what rights, including dispute resolution and appeal, flow from that.

While the law is now clear, this positive duty supports and reinforces the court's commitment to provide plain English information on coronial processes to families and others involved. We expect the information will ensure there is now an explicit understanding that the current law provides that spouse includes a person in a significant relationship under the Relationships Act, whether registered under the act or not. It could also provide information on what information the court needs to resolve, who is the spouse or next of kin, where there is any dispute between family members.

I will now turn to the amendments to the Dangerous Criminals and High Risk Offenders Act 2021. The Director of the Public Prosecutions (DPP), under the Dangerous Criminals and

High Risk Offenders Act 2001, is required to consider information about whether a prisoner poses an unacceptable risk of committing another serious offence, and accordingly whether an application for a high-risk offender order should be made to the Supreme Court. The DPP needs access to relevant information and documents to undertake this important consideration.

The current Dangerous Criminals and High Risk Offenders Act is intended to ensure appropriate information sharing between relevant bodies in the decision-making process and already includes provisions to that effect by reference to agencies. It was identified that these provisions did not capture information exchanged between the DPP and the Parole Board. Further, the provision of information about when a prisoner applies for parole and the reason for parole decisions is critical to the fully informed decision by the DPP.

While reasons for granting parole are made public, other information is ordinarily considered confidential information, restricted from disclosure under section 8 of the Corrections Act 1997. On recognising that some deliberative and other material is appropriate to remain confidential to the Parole Board, this amendment is specific to the information that is to be provided, which is: notice that a prisoner has made an application for parole; if a parole order is made, a copy of the order and the reasons for making it; and if parole is refused, or the making of an order is deferred, a copy of the relevant order and in the case of a refusal, the reasons for the decision.

This amendment is an important correction to the intended information provisions within the current Dangerous Criminals and High Risk Offenders Act, ensuring decision-making processes are properly and fully informed for the protection of the community.

I will now turn to the amendment to the Monetary Penalties Enforcement Act 2005. The bill amends section 27(2)(a) of the Monetary Penalties Enforcement Act 2005 by allowing certain applications in relation to the payment of fines to be made in a manner approved by the director. The act currently requires such applications to be made in the approved form, which has been interpreted to mean applications need to be made in writing. The amendment will provide flexibility for the director to permit applications to be made via other avenues, such as by telephone. This is a practical and more contemporary amendment that will increase efficiency within the Monetary Penalties Enforcement Service and, importantly, reduce the burden on persons by requiring applications in writing.

Mr President, I will now address amendments to the Sex Industry Offences Act 2005. In 2017, legislative amendment was made to the definition of 'sexual intercourse' in the Criminal Code. The definition was moved from section 1 to a newly created section 2B. Section 3(1) of the Sex Industry Offences Act 2005 (the Sex Industry Offences Act), still refers to the definition as being in section 1 of the Criminal Code. This amendment will simply correct section 3(1) of the Sex Industry Offences Act to ensure it refers to the correct section of the Criminal Code.

Mr President, I will move to the amendments to the Traffic Act 1925. The bill amends section 32 of the Traffic Act 1925 (the Traffic Act) to provide for a longer limitation period on the filing of complaints for the offences of negligent driving causing death, and negligent driving causing grievous bodily harm. The amendment was sought by the DPP on the basis that his office has found, in some cases, the current limitation period does not provide adequate time for proper investigation and review of such files.

Complaints for these offences are currently covered by the default period contained in the Justices Act 1959, which is six months from the date of the alleged offence. The amendment to the Traffic Act allows for a complaint for those offences to be filed within 12 months after the time when the alleged offence occurred.

Mr President, it goes without saying that, despite being dealt with in the Magistrates Court, these offences are serious in nature. They often give rise to complex legal and evidentiary issues, particularly where crash investigations must occur. This is a sensible amendment that ensures there is sufficient time for these matters to be appropriately investigated and considered by the relevant authorities.

Mr President, in conclusion, the bill ensures that our legislation removes doubt, remains contemporary and is fit for purpose. I commend the bill to the House.

[10.33 a.m.]

Ms FORREST (Murchison) - Mr President, nearly every year we get a Justice and Related Legislation Miscellaneous Amendments Bill, and it is usually to respond to matters raised through various processes like the DPP or the court processes, so this is not at all surprising. I will focus the majority of my comments, as one might expect, on amendments to the Births, Deaths and Marriages Registration Act and amendments to the Coroners Act. Before that, I have a couple of questions about other matters that are covered in this bill, because there are a number of sections that are amended in various parts of Justice legislation and it is important to make sure we look at all of these.

I am interested in the amendments to the Sex Industry Offences Act 2005. I remember that was one of the first pieces of legislation I dealt with when I arrived in this place. It is the most fascinating process I have ever seen in my life and, being new, I had no idea of what was going on. The Labor Government brought in legislation that was clearly going to get smacked down. It was withdrawn overnight, and a new bill drafted and reintroduced, with a completely different framework. It was the most amazing thing. I asked, 'Is this what normally happens around here?'

Ms Rattray - You had good advice, if you don't mind; at the time you were next to Jim Wilkinson.

Ms FORREST - I would have been. I was talking to a former president, Sue Smith, about this and she assured me that is not normally how things work around here; although we did basically see a complete rewrite of the Public Interest Disclosures Bill that the member for Mersey brought forward. It was an interesting time, and it was a very contentious issue. I believe there needs to be another review of that legislation. I do not believe it is necessarily contemporary, and I do not believe it fully meets the needs of people who are engaging, and are with, the sex industry. That is a side comment here, Mr President.

This is a fairly important correction to make, because you want to refer to the right definition. I am interested in how it was picked up. For a number of years I asked for feedback about the number of people who have been convicted of offences under this act, and over the years there have not been many at all. So, either things are tickety-boo in the industry, or it is perhaps not addressing the very real challenges that are faced by some people who work in that sector, or that industry. How was it picked up? Was it because the matter came before a court

that identified there was a bit of failure, or was it being directed to the wrong part of the relevant legislation?

I also have some comments on the amendments to the Traffic Act. I understand, as the Leader identified, that the Director of Public Prosecutions (DPP) asked for this extension of time to enable the filing of complaints around the offences of negligent driving causing death, or negligent driving causing grievous bodily harm. In all these things, there needs to be a balance. We need to ensure that the DPP has the time to fully investigate and collect all the relevant evidence. Also, the families of the person who has either died, or has been seriously harmed, need closure on some of these things and it can be difficult to be waiting to get an outcome - even though the outcome may not necessarily be what the family were hoping for.

It is a balance trying to meet the needs of the person if they have been seriously harmed, in terms of what may come in the form of compensation or support that comes back to them. One would hope that most of these people who are seriously harmed would be supported through MAIB, in terms of their health costs and other costs.

It is important that these matters are dealt with as promptly as possible, acknowledging that six months is probably a relatively short time to collect all the relevant information. Sometimes, when these crashes happen, they happen where there are no other witnesses, so you rely on the information that the police can glean and the DPP can ascertain from the evidence that is available. These can happen on remote country roads and so on, where it is a two-car crash, or a pedestrian is hit, and those sorts of things. There may be very few people - there may be only two people involved, the driver and the person who was injured or hurt or died and, clearly, they cannot speak for themselves. So, you do need a mechanism to ensure the police and the DPP can pull the case together.

Mr President, I will now focus now on the amendments to the Births, Deaths and Marriages Registration Act. The amendments we brought in during 2019 were the result of a lot of hard work over the summer break, to ensure that we landed in a position where people can have a birth certificate that truly reflects who they are, particularly for younger people who present for employment. They may be 15 or 16 years old and until this change, they might get to an interview and then have to prove their identity. They are presenting as someone by a different name and gender than their birth certificate would reveal. That immediately outs that person and creates all sorts of potential harm.

I remember only very recently being taken to task by someone over these 'dreadful laws' - dreadful laws in this person's opinion. I explained that situation to them, and they said, 'Oh, I had never thought about that.' I also talked about it to a friend of mine and I delivered her babies. She gave birth to two sons. The older son, who is 17, realised that they identified as female and made a transition to be identified as female. Thankfully they had a name that did not change, it was a non-gendered name so the only thing that needed to change was the gender on their birth certificate.

I told her - the mum - that this was now a possibility for her to assist her child, and so she provided her child with the birth certificate with the correct details on their 18th birthday.

I still feel quite emotional about that, because it made such a difference to this young person's life. They were struggling, because of the stigma, the pressure, having a piece of documentation that does not truly affect who they were.

There are some stories like that and when I tell people about it, they say, 'Oh, okay, I suppose it makes sense, yes'. I say, it does not actually affect you, does it?

Mr Valentine - And that is it.

Ms FORREST - And that is it. However, it means a hell of a lot to the person who it does affect.

I am pleased that that legislation was progressed and dealt with and supported by this place and also that the TLRI, when they reviewed it, found it to be sound. There is a recommendation that this gives rise to from the TLRI, to change the title. That was one of the things we looked at in that process, but at the time we did it on the information that we had.

I am happy to support the intent and principle of this amendment from the TLRI. As the Leader in her second reading contribution alluded to, times move on and terminology changes. The more we understand about some of our conditions and some of the lived experience of individuals we need to make sure that we are contemporary.

I will read some of the briefing paper that was prepared by Equality Tasmania on this matter which takes a very great interest in this area. In terms of the amendment to this section of the bill, they stated:

> We support the Government's intention in amending the long title of this Act. However, we recommend an amendment to the proposed name: 'and those with intersex variation of sex characteristics' should be changed to 'those with innate variations of sex characteristics'.
>
> This phrasing is recommended by the peak body Intersex Human Rights Australia and the United Nations Office of the High Commissioner for Human Rights. The reason for using this phrasing is because the term 'intersex' is a term which not all people with variations of sex characteristics identify and is therefore not fully inclusive. It is like the difference between being gay and sexual orientation. The first is an identity term for a particular population who identify as gay; the latter an attribute that can apply to an entire population. In this case, intersex is the identity, and innate variations of sex characteristics the attribute.

It is important to make that distinction as to what we are talking about. People can be gay, they can be intersex, but that is their identity, rather than their attribute. They go on to say:

> We strongly believe the Tasmanian Government should adopt the preferred terms used by the intersex community and recommend that the bill's wording be amended accordingly.
>
> We understand this may create an inconsistency with the Anti-Discrimination Act -

As it was alluded to by the Leader. I did a search on this and the only other act that 'intersex' appears in is the Court Security Act, and it refers you back to the Anti-Discrimination Act. So, there are not that many that actually need to be dealt with. It is not a massive body of work, unless I am missing something and that could well be the case.

For those who perhaps do not fully understand what intersex is, intersex can appear in many forms. Some people will have physical anomalies with their genitalia; some of them are external, some of them are internal. Babies are born as intersex where their gender may not be easy to determine at birth. There is another matter to be brought to the parliament hopefully at a later time relating to non-life-saving surgery being performed on some of these babies. It can create enormous harm further down the track when we should not be playing God. We do not know how that child will grow up and identify. Some of the changes are internal so you are not sure what gender the child may be.

It is not just physical. It is not just related to the external or internal genitalia. It also relates to the hormonal development and other changes that can occur that may make a person intersex. It is not a one or another thing. It can be a combination of all of those things so it is quite a complex area and we need to show great respect and consideration for people who are intersex. There may be many people you know in your community who are intersex and you do not even know because most of them will identify as either male or female in their outward appearance to the world. Some will be non-binary. It is none of our business, the challenges they may have as an individual. They do need to be respected and they do need to be provided with the support and information they need.

It is important we get the terminology right and we are contemporary in this area. I know the member for Rumney has proposed an amendment to deal with this. I acknowledge the Anti-Discrimination Act also refers to this and the Court Security Act and I hear the Leader's comments on behalf of the Attorney-General that they will look at addressing a broader change. However, it is a bit like degendering legislation generally, or agendering legislation without using 'he' or 'she' and terms that are gendered that we start where we can and then the rest can follow. We will listen to that debate at a later time. I wanted to raise that as a significant matter.

The other one is the Coroners Act and there is extensive description there by the Leader of the two cases that occurred where there was misidentification by the Coroners Court of a senior next of kin. I will read from Equality Tasmania's comments on this. We know that Equality Tasmania and Rodney Croome, on behalf of Equality Tasmania, has done an enormous amount of work on this. He has supported the two families impacted by this.

I wish to make the point at the outset, this is not necessarily just about same-sex couples. It is about a heterosexual or same-sex couple who are not married. When Rodney Croome briefed us saying that his advice to couples, basically same-sex attracted couples who he provides advice and information to, is that they get married. They should not have to get married to ensure that their relationship is registered but I know that to be the fact, that is the advice, even for heterosexual couples to ensure their rights are protected. We should not have to do this. The law is pretty clear but I understand why he does that.

I will read from the Equality Tasmania submission on this to us:

> The bill also includes amendments to the Coroners Act which attempt to deal with the problem of the Coroner failing to recognise same-sex partners as senior next of kin. However, the amendments do not go far enough to ensure the trauma caused by past failures are not repeated and to ensure the LGBTIQ+ community trust the Coroner's Office.

These actions have led to a lack of trust and confidence, which is sad because the Coroners Court do an amazing job, a difficult and important job. When you are engaging with a Coroners Court it is usually because a death has been unexpected and often tragic, as is the case with these young people who were killed. It is a time of high stress so we do need people to have confidence in it.

By way of background, in 2011 the Coroner failed to recognise a bereaved same-sex partner as senior next of kin, despite the relationship deeming that he was. The bereaved partner made a complaint of discrimination that was resolved through mediation with the Coroner's Office agreeing to an enforceable order that included a number of reforms. These were:

(1) The Coroner's Office will review current practices and policies surrounding disputes about who is the proper senior next of kin in the Coronial Division of the Tasmanian Magistrates Court.

Remember, this is in 2011.

> The Coroner's Office will have a letter prepared which will set out to each party engaged in such a dispute before a decision is made, as to who is the senior next of kin.

(2) The letter will provide information on the Coroner's decision-making process.

(3) A letter will invite the parties to provide the Coroner with all information evidence the parties think is relevant to the Coroner's decision.

I know the Coroner's Office, and I am sure the Attorney-General at the time apologised on behalf of the court to that family. It was an extraordinarily difficult time for them. That was in 2011 those commitments were made.

In 2015 the Coroner again failed - he accepted it was an error - but in 2015 the Coroner again failed to recognise the bereaved same-sex partner, Ben Jago, as a senior next of kin. In this case Ben was refused permission to see his partner's body, and was initially refused permission to attend his funeral. This was because the family did not accept the relationship between Ben and his partner. Ben also filed a complaint of discrimination. During mediation the Coroner's Office admitted they had not implemented any of the previously agreed reforms and did not intend to. That was what the dispute said.

Before the Anti-Discrimination Tribunal, the Coroner claimed immunity from the Anti-Discrimination Act. This was appealed to the Supreme Court, which upheld the Coroner's immunity. The Coroner is immune from the Anti-Discrimination Act, which meant that Ben Jago could take his case no further through that process. This means there is nothing to stop the Coroner's Office from again failing to recognise the rights of a bereaved same-sex

partner under the Relationships Act. It also means the Coroner can discriminate on any grounds, including race, sex, disability or sexual orientation without repercussions.

In the current situation the Coroner's Office has repeatedly discriminated against same-sex partners, appears unconcerned and unrepentant about it, and is able to do this again in the future without change. LGBTAIQA+ Tasmanians have lost confidence in the Coroner's Office and are already taking steps to protect themselves against it by entering into deeds of relationship or marrying. They need to hear a strong message from the parliament this will not happen to them.

I know this sounds like an absolute attack on the Coroners Court. This comes from people who are deeply aggrieved and deeply hurt by the process. They have lost a loved one, they are excluded from even being able to see their partner's body. Those of you who have had the death of a loved one will know how important that can be. Not everyone wants to do that, but most people want to attend the funeral. Whilst this amendment in any way would not take away from the problems that are going to exist when a family do not accept a relationship, that can also be in a heterosexual relationship.

Mr Valentine - Absolutely.

Ms FORREST - It is not just necessarily same-sex, this is in any. However, it is clear that the senior next of kin is appropriately identified. I accept this comes from the lived experience of someone. Whilst it sounds pretty damning of the Coroner and the Coroners Court and we accept it was a mistake, I read it because it is how members of this community are feeling. We should not diminish that. It goes on:

> **Amendments to the Coroners Act**
>
> We support the Government's intention to ensure that the unjust treatment Ben Jago experienced does not happen again. [The Government's] amendment seeks to achieve this aim by clarifying that when the Coroner investigates a death they will provide information to the senior next of kin and any other person who has an interest in the investigation. The Bill sets out that 'any general, or specific information that is specified in the regulations' will be provided to both the senior next of kin and other persons with an interest in the investigation. Information that we believe should be included in the regulations includes the purpose of the coronial investigation, how to apply for senior next of kin and the rights of the senior next of kin.

Clarity was also needed regarding the right of appeal.

I know that the Leader, in her second reading contribution outlined the matters that would be dealt with by way of regulation. That is a matter for the Subordinate Legislation Committee to make sure these are fully given effect to in the regulations. We do not see the regulations until after this is dealt with. That will be an important thing to go back to for the Subordinate Legislation Committee to have a look at.

The submission goes on:

> **Clarity regarding the right of appeal**

> However, this is not enough to ensure past injustices are not repeated. We strongly recommend that the *Coroners Act* is further amended to explicitly make clear that a party aggrieved by the senior next of kin decision may appeal to the Supreme Court. Currently, the Act clearly sets out that persons who have a sufficient interest in the findings of the coronial investigation can appeal to the Supreme Court seeking:
>
> - the reopening of an investigation; and
> - an inquest to be held; and
> - an autopsy to be performed; and
> - an autopsy not to be performed; and
> - the body of a deceased person not be exhumed; and
> - there be an inquest in relation to a fire or explosion; and
> - there be an order that all or any of the findings of an inquest are void, and
> - the return of an 'article, substance or thing' in the legal custody of the Coroner.

They are the matters that, currently, can be appealed. We know that Coroners Court is exempt from the provisions of the Anti-Discrimination Act. You feel like you need somewhere for people to go who may feel aggrieved.

It goes on:

> While we acknowledge that parties are able to appeal senior next of kin status to the Supreme Court, the Act is silent on this issue and parties would only be aware of their right to appeal under the Judicial Review Act if they had engaged a lawyer. Given the emotional state of a bereaved partner during the coronial investigation, and the rights of appeal already set out in the Act for other decisions of the Coroner, it is imperative that parties are made aware by the Coroners Act of their right to appeal. We therefore recommend that section 3A of the Act is amended to clarify that an aggrieved person may appeal the senior next of kin decision to the Supreme Court.
>
> **Clarity regarding the rights of partners in registered and unregistered relationships.**
>
> As you are aware, the Coroner's excuse for not recognising Ben Jago as senior next of kin was that he was not in a registered significant relationship.

This flies in the face of the reality of the act. I understand from the briefing it does state that in the act, but that was what the Coroner said. It was not a registered relationship, so he was not deemed the senior next of kin.

As the submission goes on:

> However, the Coroner was wrong. Partners in unregistered significant relationships have the same spousal rights as those in registered relationships in regard to next of kin. To ensure that discriminatory conduct is minimised in future, we recommend that the definition of 'spouse;' in the Act is amended

to emphasise that significant relationships the Relationships Act and those not registered. The suggested amendment to the definition of 'spouse' is underlined:

> *spouse* includes the other party to a significant relationship whether or not the relationship is registered, within the meaning of the *Relationships Act 2023*.

In my mind, this does not change the definition. It clarifies that even though the Coroners Act points to that, it has already been misinterpreted, at least once, possibly twice - I am unsure of the reason at the time of the 2011 case.

This is a point of clarity that it does not matter whether the relationship is registered or not, if they meet the criteria, which is outlined in the Relationships Act. There is quite a long list of provisions that describe what a significant relationship would require.

To me, it is not changing the definition. What it is doing is clarifying a point that has been incorrectly and erroneously interpreted in the past.

Respecting the principle of anti-discrimination

> As you know, the Coroners Office successfully thwarted Ben Jago's attempt to hold it to account under the Anti-Discrimination. It is now effectively free of oversight under that Act. Equality Tasmania has heard from many LBGTQIA+ partners who have a heightened sense of anxiety about whether their relationship will be recognised and respected by the Coroner. To remedy this situation we recommend that section 3A of the Act expressly provide that senior next of kin will be assessed:
>
> 'regardless of sex, sexual orientation, gender, gender identity or innate variations of sex characteristics'.

The submission goes on then to talk about a range of rebuttals to the Government's comments on proposed amendments, which I might leave for a later stage. The member for Rumney seeks to move those, which I assume she continues to do.

It is important we do not just accept this, as there were two mistakes and I am sure they will get it right now. I did ask the Leader to provide copies of some of these documents, which I have not yet received. In the briefing, we asked for documents with regard to the information that is provided to grieving people in the Coroners Court. You are going to tell me it is probably on their website. I want to see the information that was given to people who were attending the Coroners Court, regardless of their relationship status.

Everyone is loved by somebody and has a relationship with somebody, except for the very rare and very sad circumstances where they are truly alone. Can the Leader provide that in terms of what the information is? To be sure that it is clear, that it is user friendly, that it is accessible. Not everyone is fully literate and people are very distressed at this time.

Not every death goes to the Coroner's Office, it is the ones which are suspicious or referred for a particular reason and they are unanticipated deaths. Death that occur in hospital

that should not have happened. People who are killed in car crashes or other accidents, workplace accidents and things like that. They are usually younger people, often younger people. It is entirely stressful and terribly difficult time for families. It is important we get it right and appreciate the pressure the coroners are under in doing their work. We should do all we can to ensure that work is done in a way that does not create any further trauma or harm to the people who sadly need to engage with the Coroners Court.

I will leave my comments there. I know other members will have other things to comment on. However, we cannot just write this off and say 'Oh well, the court has now committed, they now have this information in'. Our job in this place is to make legislation clear, to make it workable, as much as we can. To remove any doubt that could be there and to ensure that people get, in many of these other aspects, timely access to justice. That they are treated fairly and respectfully in their engagements with our justice system, whatever part of that it is.

I support the bill, but there needs to be some further amendment.

[11.03 a.m.]

Ms LOVELL (Rumney) - Mr President, I am speaking in support of the bill, but as members would be aware I have a number of amendments I intend to move that have been circulated.

I will touch on those briefly now but obviously, we will have a further debate on those when the time comes. First of all, I wanted to welcome this bill and the changes it introduces. We have all heard of some pretty significant and distressing sets of circumstances that have led to this change. I appreciate this is something that the Attorney-General was very passionate about and keen to address. I wanted to acknowledge that and thank the Attorney-General for the work that has been done on this bill.

I have some amendments I will speak to briefly so members are aware of my intentions. The member for Murchison spoke about the amendments in the bill to the Births, Deaths and Marriages Act amending the long title to reflect the changes that this parliament made to legislation in 2019 to protect the rights of transgender people in Tasmania. Those changes were nation-leading and have become world-leading. They are changes we should be proud of. I am pleased to see these further subsequent changes to the long title of the bill to reflect those. It is worth noting despite significant opposition to those changes at the time, the sky has not fallen in. Indeed, I would argue that the world has been significantly improved for the people those changes impacted, without anyone else being impacted in any negative way, shape, or form. Those are changes we, as a parliament, should be very proud of enacting.

The Leader has also touched on this and I know there have been briefings on this, but I have an amendment to change the wording in the long title to make that more contemporary and reflective of the preferred terminology by people who do live with innate variations of sex characteristics. In this place we often say that words matter. Whilst I know there is a body of work being undertaken on consistency and language, I do not see that as a reason for us not to proceed with this change. I hope members will consider that when we come to the amendment in the Committee stage.

The other significant part of the bill which members have already spoken about at length, is the amendments to the Coroners Act. We know those amendments have been brought in in

order to address the two instances we know of, where those incorrect decisions have been made by the Coroners Court on the determination of senior next of kin. The name, Ben Jago, is very familiar to all of us and it should be, because that is a pretty distressing and quite horrific instance in our state's history.

It is something we should acknowledge, because without acknowledging those things we cannot make the necessary changes to ensure that does not happen again. I have also circulated amendments on this part of the bill, which I will speak to in more detail in the Committee stage of the bill. I move those amendments in good faith, recognising that we are all, including the Government and the Attorney-General, trying to address the same issue that has occurred in the past with those decisions on the determination of the senior next of kin.

As members will no doubt recall and as we have heard in briefings recently, Ben Jago lost his partner of five years, Nathan Lunson, in 2019. It was due to an error in the Coroner's Office at the time that led to Ben not being recognised as the senior next of kin. We have heard about the impact that had on Ben and how distressing that was. Despite a five-year relationship and building a life together, Ben was not recognised as the senior next of kin of his deceased partner, which was heartbreaking enough on its own. However, then for a further error to be made by the Coroner at the time, which was to suggest that Ben enter into a deed of relationship, under the Relationships Act - which we know should not have been necessary - but that was the advice given. I suppose given in good faith in an attempt to address the situation and ensure that Ben would be recognised at the senior next of kin.

Obviously, you cannot enter into a deed of relationship with a deceased person. For Ben to have received that advice and then followed through in an attempt to address the situation he was in, to be told you cannot enter into a deed of relationship with a deceased person, only further added to the absolute distress he was experiencing at that time. I understand that was an error at the time, but we know it is not the first time that error was made, where there was an error on the determination of the senior next of kin. While we might like to believe this was a one-off, it is not and there is nothing to say it could not happen again in the future.

I echo the comments of the member for Murchison that this is not a reflection on the Coroner currently, or the Coroner's Office, but what these amendments attempt to do is not change the law, not create a new law, but remove any doubt in our current law to ensure we are doing everything we can. That what happened to Ben will not happen again in the future.

I will read some of an article written by Tracey Spicer in the *Sydney Morning Herald* back in 2015, appreciating that this was written at a time prior to marriage equality being made law in this country and you would hope that change in law would go some way to avoiding these types of errors in the future. I wanted to read this into the debate today so that people can understand, from Ben's perspective, how difficult this has been. Tracey Spicer wrote:

> Picture this. The love of your life ends their own life, after struggling with mental illness.
>
> You've spent five years creating a future together: building a neat house in a new suburb; nurturing doted-upon dogs; sharing bank accounts and tax returns, laughter and tears.
>
> Next year, you were going to New Zealand to get married.

> Suddenly, the police arrive. At first, they are compassionate. Then, something changes. Instead of 'partner' you are 'housemate'. A plea to see your beloved's body is denied. They say you are NOT next of kin.
>
> That is what happened to 29-year-old Ben Jago after his partner, 24-year-old Nathan Lunson, killed himself in the kitchen of their Hobart home.
>
> …
>
> 'I wish I didn't have to tell my story, because it's difficult for me, but I would like to stop this from happening to anybody else,' he says. … 'I haven't really been able to grieve,' he says. 'To be treated like I meant nothing to him, left me feeling like part of my soul had been crushed to dust.'
>
> There's a misconception that same-sex couples and married heterosexuals have equal legal rights. It's an urban myth.

I am not going into detail about Ben's case unnecessarily, or to be gratuitous. It is important that we acknowledge the depth of hurt around these issues and these situations that have taken place in our state. It is important that we acknowledge that, and do what we can to ensure it cannot happen again.

I note this is something that is not limited to same-sex couples. We know and we have heard of circumstances where this has happened to couples of the opposite sex, and it is important to note. This amendment will go towards addressing that as well. This decision by the Coroner in 2015 came as an awful shock to Ben, and he was given that incorrect advice by the Coroner's Office about registering his relationship under the Relationships Act.

We also know and have heard from groups that the Coroner has been granted immunity from the Anti-Discrimination Act. Our Anti-Discrimination Act in Tasmania is nation-leading. It is something we should be proud of, and we should do everything we can to protect that whenever it is at risk. While there may be some circumstances where it is necessary for the Coroner to have some immunity from the provisions of that act, this would not be one of those circumstances. The fact that it has been acknowledged that this situation was an error on the part of the Coroner, illustrates that this is not one of those circumstances. The Coroner was granted immunity from the Anti-Discrimination Act by the Anti-Discrimination Tribunal, and that decision was upheld by the Supreme Court on appeal.

My amendments attempt to remove any doubt and provide reassurance to all members of the community that, while the Anti-Discrimination Act might not apply in this instance, where it would be inappropriate for the Coroner to discriminate we ensure that it is explicit that it should not happen. I have circulated those amendments and I will speak to those further in the Committee stage. What this bill attempts to do, as the Leader outlined in the second reading speech, is to remove that doubt about those provisions under the Coroners Act that led to those tragic circumstances that we have spoken about. My amendments take that further to remove any doubt, and I hope members will consider that favourably at the time.

I support the bill. A number of amendments made by this bill are important and significant to a number of acts of the parliament, and I look forward to the further passage of the bill.

[11.14 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - in reply) - Mr President, I am stunned that there are not more contributions on this. I have some answers that I will put on the table.

The member for Murchison asked, regarding the sex industry, how did this come to light? It is largely an administrative amendment with no practical impact. It is the correction of a previous oversight. When the definition of sexual intercourse moved provision, this was identified when reviewing cross-references between the acts and did not arise from the court process or any operational issues.

Regarding the intersex terminology, in addition to the remarks in the second reading speech, I look forward to addressing this further in the Committee stage. Referring to the Coronial Division, we accept that Equality Tasmania is concerned about the two cases in 2011 and 2015. We want to emphasise that the concerns that the court is, or may be, discriminatory is unfair. That was mentioned by some members. I express my support and appreciation on behalf of the Attorney-General and the Government more broadly for the dedicated staff and magistrates working in the Coronial Division and the Magistrates Court more generally, under the excellent leadership of the Chief Coroner and the Chief Magistrate. I will also touch on administrative improvements to the Coronial Division since 2015.

In the case of Mr Jago, he was not recognised as the senior next of kin by the Coroner until later in the proceedings, as recorded in the published Coroner's report. That delay was very regrettable, and distressing for Mr Jago. However, that is not to say any person involved at the time in 2015 acted in an intentionally discriminatory way. The Attorney-General, as the first law officer, made a contribution in the other place which emphasised that no findings that discrimination had factually occurred were made by either the tribunal or the Supreme Court.

In relation to Mr Jago's concerns, the Supreme Court did state that those concerns - and I quote:

> If accepted, suggest inadequacy in the processes and procedures of the coronial division to recognise and accommodate same-sex relationships. If accepted in full and viewed in the most favourable light from the appellant's perspective, they do not suggest bad faith.

That does not mean that something did not go wrong. It did. However, like the Attorney-General, on behalf of the Government, I emphasise the importance of confidence in the courts as the appropriate forum for findings of fact in matters such as these. It is simply incorrect to say that the court is free to discriminate. I acknowledge there was room for improvement in the policies and procedures of the court. The Attorney-General met with Mr Jago and Mr Croome prior to the development of this bill to discuss a number of changes made by the Coroners Court in recent times.

The Attorney-General was able to assure Mr Jago that significant improvements have been made at the Coroners Court since his experience in 2015. Under these improved processes, the court and staff are fully aware of, and sensitive to, the appropriate determination of senior next of kin and respectful of LGBTIQA+ Tasmanians and their rights. Members of this community are often affected by deaths and coronial proceedings, and we are pleased no concerns like Mr Jago's have occurred since 2015.

The administrative changes were informed by a comprehensive review to ensure that information on Coronial Division processes and legislation is comprehensive, accessible and available. Communication processes between coroners, their associates and family or next of kin have been improved. The Tasmanian Coronial Practice Handbook, and a guide dated 2016, contain detailed information on the senior next of kin, including the process to raise concerns about determinations with the Coroner, or apply to the Supreme Court for unresolved disputes. These documents are available on the court's website, which also has web pages on key information and a guide for families. I have that here and I will table that in a moment. The Tasmanian Coronial handbook explicitly states that:

> The coroner's court is committed to providing equal access to justice to all members of society. We are committed to providing a service free from discrimination, which respects all people equally regardless of age, sex, sexuality, gender identity, ethnicity, religious belief or any other social or personal attribute. If there is something we can do to help you participate equally in the coronial process, please let us know.

Mr President, following the Attorney General's meeting with Mr Jago, she directed the Department of Justice to undertake legislative development to ensure an active duty on the court to ensure key information was provided to interested people. This avoids any future misunderstandings about coronial processes, including the status of spouses of same-sex partners.

The regulations will ensure a clear message to family member, and the court, about what family members and others need to know. The Coronial Division deals with families and relationships of every kind, every day, and the unfortunate experience of Mr Jago relates to 2015. The Coronial Division, its staff and magistrates of course have the full support of the Government for the dedicated and professional service that they continue to provide under tight time frames, given the importance of returning deceased persons to their loved ones for funeral.

Mr President, we are pleased that this bill plays an important part in reinforcing the positive changes that have occurred since 2015 in support of unmarried couples - whether they are same-sex or otherwise, in either registered or unregistered relationships. We can discuss the definition in Committee but, in short, it is unnecessary.

Mr President, the information that the member for Murchison asked for is available on the website. I have asked the department to print out everything that was there, but there are a number of fact sheets and, as the Attorney-General has said, she will work with the Coroner's Office to assist with ensuring that this information is accessible - that is, the right fact sheet for the right situation.

Ms Forrest - Through you, Mr President, this is not just about the right fact sheet for the right situation. It is if people can read and understand it. That is the accessibility issue I am talking about.

Mrs HISCUTT - Mr President, I seek leave to table a document.

Leave granted.

Bill read the second time.

JUSTICE AND RELATED LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2022 (No. 43)

In Committee

Clauses 1, 2 and 3 agreed to.

Clauses 4 and 5 agreed to.

Clause 6 -
Long title amended

[11.25 a.m.]

Ms LOVELL - Madam Chair, I move the following amendment in my name:

Page 6, clause 6

Leave out 'intersex'.

Insert instead 'innate'.

I know that we have all heard from Equality Tasmania in a briefing, or those who were at the briefing. I am not sure if anyone was not at the briefing but they have also communicated with all of us. The member for Murchison referred to that correspondence in her second reading contribution. I am moving this amendment in order to -

Mrs HISCUTT - Excuse me, for clarity Madam Chair, mine starts on new clause A, to follow clause 8 -

Madam CHAIR - You must have an old version.

Mrs HISCUTT - Thank you, sorry about that.

Ms LOVELL - No, that is okay. This amendment is simply about contemporising the language that we are using. It is a little more than just being contemporary and using the right language, though, and as we have heard from Equality Tasmania, the term 'intersex' is an identity that not all people living with variations of sex characteristics identify with.

It is important when we are talking about discrimination, which this is related to, that the provisions we have about discrimination are limited to attributes, not to identities and that is consistent with our Anti-Discrimination Act. I know that there will be some inconsistency with those other acts if this amendment is supported. It has been referred to the Anti-Discrimination Act and the Court Security Act. I have had a look at that. The Anti-Discrimination Act has three mentions of the word 'intersex' that would require amendment. One of those being the definition and two other instances, so not a significant amount of work. The Court Security Act has three mentions of the word 'intersex', one being the definition and two of those being in further provisions of the act.

Having had some conversations with Rodney Croome and reading that myself, those references actually refer more to an identity. Those references in the Court Security Act relate

to the gender of the person conducting a strip search when someone is intersex. So, that is actually about an identity. It is not about an attribute necessarily. It is about a person who identifies as intersex being able to have the right to choose the gender of the person who conducts those searches.

There would be some further consultation required but it is entirely likely that there would not necessarily need to be an amendment to the Court Security Act. So, for the sake of, potentially, a subsequent amendment to the Anti-Discrimination Act to address those three instances, I do not believe that that is a significant amount of work to say that we should not proceed with this amendment. I appreciate that nationally there is a body of work happening regarding consistency of language, but I do not believe that that is reason for us not to act on this now.

Equality Tasmania said in their submission that it supports the Government's intention in amending the long title of the act:

> However, we recommend an amendment to the proposed name: 'and those with intersex variation of sex characteristics' should be changed to 'those with innate variations of sex characteristics'.
>
> This phrasing is recommended by the peak body Intersex Human Rights Australia and the United Nations Office of the High Commissioner for Human Rights. The reason for using this phrasing is because the term 'intersex' is a term which not all people with variations of sex characteristics identify and is therefore not fully inclusive. It is like the difference between being gay and sexual orientation. The first is an identity term for a particular population who identify as gay; the latter an attribute that can apply to an entire population. In this case, intersex is the identity, and innate variations of sex characteristics the attribute.
>
> We strongly believe the Tasmanian Government should adopt the preferred terms used by the intersex community and recommend that the bill's wording be amended accordingly.

While I appreciate the intent of the Government's amendment to the long title of the bill, where that has come from and why it is necessary, we should take the opportunity to ensure that what we are doing here is reflective of attributes rather than identity and also truly inclusive in being the preferred term of people living with innate variations of sex characteristics. I urge members to support the amendment.

Mrs HISCUTT - I can say from the outset that we do not support the amendment for many reasons and I will work through them. The department is working on a draft framework for data categories and collection, sex, gender, variation of sex characteristics and sexual orientation and related information. The framework has been prepared by the Department of Justice in close consultation with the LGBTIQA+ community through the department's community reference group and was recently endorsed in principle by the whole-of-government LGBTIQA+ Reference Group.

The State Service's Secretary Board will soon be considering it for public release and implementation at a whole-of-State-Service level. The framework standardises the collection

and dissemination of data relating to sex, gender, variations of sex characteristics and sexual orientation but it does not provide guidance on how to apply or use those definitions within policy documents and legislation.

The amendment in the bill is in the form recommended by the Tasmania Law Reform Institute, although the Government supports the making of appropriate amendments to improve reference to variations of sex characteristics. In light of the need to finalise the framework and further consider the matter noted above, the Government does not support legislative amendments of definitions of intersex in legislation at this time - so it is being looked into. As 'intersex' is a term used in several acts, including the Anti-Discrimination Act 1998, it is appropriate to make the Tasmania Law Reform Institute recommended changes now and with the release of the framework in the near future, the department will develop a proposal in relation to consolidation of terminology across all relevant acts for final consultation.

The Attorney-General will provide more information about this when she is able to. I note this can also address intersex in amendments to the Youth Justice Act which commences on 1 December this year. This can ensure consistency across acts that currently refer to intersex following consultation with stakeholders relevant to those acts to ensure that the objectives are properly met without creating any interpretative confusion. The Attorney-General has anticipated this consultation and consolidated amendments would proceed in the first half of next year. I am asking members if you could not support the member for Rumney's amendment today because the Government is doing a lot of work in this area and we are waiting on the reports and finality of those consultations.

Madam CHAIR - If members have questions they should get up rather than force the member to use all her calls.

Ms LOVELL - Thank you Madam Chair. In response to the Leader's comments, as I said in moving the amendment, I understand that there is work underway. My response to that is if there is work underway, we have evidence in front of us today as to why this change is important and the arguments that have been put by Equality Tasmania are important and they are valid.

I understand there is work underway. If this amendment is not supported and that work identifies that an amendment is required in the future, then an amendment is required in the future. If we support this amendment today, the worst-case scenario is that the work identifies that an amendment may be required in the future. I do not see that that is reason not to proceed, because the end result, the result we get in the short term, is that we have listened to Equality Tasmania, particularly in relation to the arguments they put forward relating to identity and attribute. That is not a point of view; that is not an opinion. That is fact.

If we proceed with that in the short term, we have listened to that, we have supported Equality Tasmania and the people who they represent. The worst-case scenario is that at some stage in the future, once this big piece of work is conducted - and who knows how long that is going to take? Does the Leader have any idea of a time line? That would be much appreciated.

Madam CHAIR - First half of next year, she said.

Ms LOVELL - Okay, sorry, I missed that. First half of next year.

A big piece of work that needs to be done. The worst-case scenario is that at some stage next year, or whenever in the future, we might need to amend this again.

I do not think that is enough reason to not proceed now, on the face of the arguments that have been put forward. I ask members to support the amendment. I appreciate that work is happening, and I look forward to that work taking place, because it is important, but I do not see that as reason enough not to proceed with the amendment today.

Mrs HISCUTT - As I have said, and I will not repeat it all, we have in the bill in front of us in a form recommended by the TLRI - and my advisers are getting some more information, so I will seek that advice.

I have said that the terminology in the bill is based on the TLRI's advice, but the TLRI based its submission on the understanding of advice from the Intersex Human Rights association of Australia. We accept terminology is evolving, hence the review. I urge members not to support the amendment. Give the Government time to do the work that it is committed to doing.

Ms WEBB - To speak briefly on this fairly straightforwardly. For the record, I support the amendment because I regard what the member for Rumney outlined in her last contribution as being the case. It is very hard to imagine with a full review coming in the first half of next year, a few months away - if we put this through as it is with the word 'intersex' in it, it will need to get changed down the track. It is very unlikely it is going to stay there given the more up-to-date, contemporary approach to terminology that will come out through that review.

If we put the terminology imposed in the amendment, which we have been advised is the more up-to-date contemporary understanding of that terminology, there is a good chance it is going to align with what comes out of that review. If it does not, we will have to come back and amend it, as we would have anyway, if 'intersex' was in there, because it is likely to have to be taken out.

I do not see that there is any harm caused by this. Either way, this is all going to be looked at comprehensively in the new year. This is what the community who are relevant to this terminology have indicated as their understanding of the best terminology to use, and I support that.

Ms FORREST - I support the amendment as well. It is interesting, when we actually look at the amendment that is in the bill that this amendment seeks to address, it is the last part. It is talking about the long title. We are substituting in the long title 'the registration of births, deaths and marriages and to provide legal recognition for trans and gender diverse Tasmanians, and those with intersex variations of sex characteristics'.

We are talking about intersex identity variations of an attribute. It is a bit strangely worded when you are mixing the attribute with the identity. In many respects if we do not put 'innate' in, you almost need to take 'intersex' out. You do not put an identity in there; you put the attribute. Either way, it will need to be changed. I accept this is what the TLRI recommended. With due respect to their work, it has probably confused the issue by having identity alongside the attribute as if they are one and the same, when they are not.

I make that point. Initially, we had some discussions about taking out intersex and leaving it with variations on sex characteristics, which essentially covers it because that is what the attribute is. I note that the TLRI have done their work; but things do move on. We should be listening to the community most impacted by any legislative change in this area, and that is the groups which have been identified. We have heard directly from Equality Tasmania. They do represent people who identify as intersex and have the attributes of variations of sex characteristics as a result of that.

This amendment does not alter the intent of the long title at all. It potentially clarifies it; it does not alter it. There is no harm, even given the work that the Attorney-General is doing, as advised by the Leader. I appreciate that work. It is broader than just this - and it should be. Doing this now, and correcting what appears to be a tautology there, clarifies it. If it needs further amendment after the full review that is being done, then that is fine, we will do it again. We will all say 'Yes, well, we did amend this but it needs further amendment', or maybe it does not. Time will tell, and we will see.

We may have to wait six months; but that is all right. In the meantime, we have listened to the community most affected or impacted by this, and we have responded - as we should always seek to do. It does not mean you have to do everything that everyone with a particular interest in legislation wants; but we do need to listen, and respond appropriately. It does respond to an identified need. It does not alter the intent. It is not in conflict with the work that the Attorney-General will be doing. It does clarify an area where there is some question about whether we should put an identity right alongside an attribute and draw them together, when they are separate matters to be dealt with.

I noted that the Leader said there are several pieces of legislation that refer to intersex. I want her to name the other ones beyond the Anti-Discrimination Act and Court Security Act. 'Two' is not 'several'. I did get the Parliamentary Research Service to do a search to be sure. I go back to the point that the member for Rumney made, that the majority of the attribute aspect of that is in relation to an attribute. The identity matter refers you back to the Anti-Discrimination Act. If you fix the Anti-Discrimination Act, you fix that problem. It may not even need amendment, but it absolutely should be reviewed in this process. If there are other acts or bills I have missed, I am very happy to hear them. I am happy to be corrected on that, but I did ask the Parliamentary Research Service to do a search for me and that is what they came back with. I am making that point. I still intend to support this amendment for the reasons I have outlined.

Mrs HISCUTT - The Government prefers consistency in the law rather than fragmenting the expressions used. Tasmanian law as a whole is consistent with the emerging framework in Tasmania and Commonwealth, such as data and statistics gathering. I did mention earlier it depends on your definition of 'several'. There are more than two, which is a couple. I have already mentioned the Youth Justice Act which will commence on 1 December this year, bearing in mind that the Youth Justice Act commences on 1 December and this may not happen until March next year. There is also the Anti-Discrimination Act and the Court Security Act as well; so, that is three.

Madam CHAIR - Quite a contention.

Mr GAFFNEY - Madam Chair, I have looked at this and I thought it makes sense and I support the amendment. If you go back to the definition, it says those with intersex variation,

innate means 'existing in, belonging to, or determined by factors present in the individual from birth'.

That clarifies it for me. I do not consider there is any need not to accept this amendment, and I hope it passes. It makes common sense. It has to get passed later on, and it will be, and it is no big deal. I will be supporting the amendment.

Mr VALENTINE - I want some clarification from the Leader. You mentioned a national intersex organisation. I was not quite sure exactly what that name was, if you could repeat that for me?

We are told by Equality Tasmania, in their submission, that:

> This phrasing is recommended by the peak body Intersex Human Rights Australia and the United Nations Office of the High Commissioner for Human Rights.

Yes, we do like consistency in the law. Most would agree with that; but the fact is, at some point in time, things need to start changing. You might say, yes, we are doing a review and we will change it all at once. I take the point of the member for Rumney, who is moving this amendment, that if will need change then it can change from what we are about to put in, as much as what has already been proposed. It is being changed now, to what the Government wants. I applaud the Government for bringing this change forward. The Government is doing the right thing in changing the name of the bill, but this extra change that is being requested by amendment is not going to have any major impact on how the law is applied. We have been requested to have a change by Equality Tasmania, a very respected organisation, and they are in that space. It is important that we do this. If it needs changing later, then so be it.

Mrs HISCUTT - The TLRI noted the views of the Intersex Human Rights Australia Ltd (IHRA) organisation, in formulating its recommendations. It is accepted that the IHRA may have updated its views since then, which is part of the reason for looking at those three acts and doing a review. As to who they are, the Intersex Human Rights Australia Ltd, formerly Organisation Intersex International Australia (OII Australia) 'is a national body by and for people with intersex variations'. I am reading from their website. They go on to say:

> We promote the human rights, self-determination and bodily autonomy of intersex people in Australia. We build community, evidence, capacity and education and information resources. Our goals are to help create a society where our bodies are not stigmatised, and where our rights as people are recognised.

I will not go through it all. If anybody wants to look it up, their website is ihra.org.au and you can read for yourself who they are.

[11.50 a.m.]

Ms LOVELL - Madam Chair, I thank members who have contributed for your comments and I concur with the comments of everyone who has spoken.

I will touch on the member for Murchison's comments on the use of 'intersex' and 'innate' and whether either was necessary. Originally, I was looking to remove the word 'intersex',

because the member for Murchison is right: 'intersex' is now what we know as the identity. 'Intersex' is how we used to refer to variations of sex characteristics. That was the word that used to be used to refer to the attribute. We know now that it is not preferred by people living with variations of sex characteristics, for lots of reasons. We know that things have moved on since then, which is why we have adopted that term 'variations of sex characteristics'. The member for Murchison is right - it is a bit of a tautology. I do not mean to be flippant, and please do not get me wrong here; but is a bit like when we say 'ATM machine' - 'automatic teller machine machine'. Intersex variations of sex characteristics is like saying in old language, 'intersex intersex'. Either way, that word 'intersex' is not required because we now use that term to describe an identity, not an attribute. Thank you to the member for Murchison for bringing that up.

I have had a look at the Youth Justice Act and the amendment bill that was passed. This is what will be in the Youth Justice Act, being the third act that will contain the word 'intersex' after 1 December. The word 'intersex' appears once in the Youth Justice Act, and it appears in relation to the requirements of clause 25D of the amendment bill, 'Requirements as to gender of search officer conducting search, &c.'. It is about the required gender, similar to the Court Security Act:

(1)(b) if the youth is transsexual, transgender or intersex -

It is used as an identity, which is appropriate in that bill and what will become that act. Similar to the Court Security Act, that is not something that would require further amendment, provided - and until - that terminology is no longer the preferred terminology or the identity; which is not what we are talking about here. We are talking about the attribute.

Members, I urge you to support the amendment because I have not heard a convincing argument from the Leader as to why we should not support this amendment. We have heard that the Government would prefer consistency rather than fragmenting. I argue that where we have the opportunity to update language to be inclusive and to use language that is preferred by the people upon whom the language impacts, we should take that opportunity. We have heard that it is based on advice from the Tasmania Law Reform Institute, which was based on the view of Intersex Human Rights Australia. We now know from Equality Tasmania that Intersex Human Rights Australia's view has changed, and that their preferred term is 'innate variations of sex characteristics'.

I am not convinced that this amendment would be in any way harmful. As we have said, worst-case scenario is that it might require a further amendment. If we do not proceed with the amendment, it is even more likely that we will require further amendment to this in the future. Thank you to members who have spoken on the amendment and I ask members to support the amendment.

Mrs HISCUTT - Madam Chair, the Attorney-General has committed to a review on these bills in the first part of next year and I urge members to wait for the outcomes of that. I urge members to vote against this amendment.

Madam CHAIR - The question is that the amendment be agreed to.

The Committee divided -

AYES 10	NOES 4
Ms Armitage	Mr Duigan
Mr Edmunds	Mrs Hiscutt
Ms Forrest	Ms Howlett
Mr Gaffney	Ms Palmer (Teller)
Mr Harriss	
Ms Lovell	
Ms Rattray	
Mr Valentine	
Ms Webb (Teller)	
Mr Willie	

Amendment agreed to.

Clauses 7 and 8 agreed.

Clauses 9, 10 and 11 agreed.

Clauses 12 and 13 agreed.

Clauses 14 and 15 agreed.

Clauses 16 and 17 agreed.

Clauses 18, 19 and 20 agreed.

New clause A [Section 3 amended (Interpretation]

[11.59 a.m.]

Ms LOVELL - Madam Chair, I move the following amendment be read the second time:

Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

(a) by omitting the definition of "spouse" and substituting the following definition:

> **"spouse"** includes the other party to a significant relationship, within the meaning of section 4 of the Relationships Act 2003, whether or not the significant relationship of the other party is registered under Part 2 of that Act;

Members, we have heard quite detailed and lengthy explanations about why this amendment is required and indeed desired. I will keep my contribution fairly brief. This

amendment changes the definition of spouse in the principal act. I want to refer to that. We are speaking about the Coroners Act. Currently in section 3 of the Coroners Act, the current provision in the act reads, 'spouse includes the other party to a significant relationship, within the meaning of the Relationships Act 2003'. The amendment is as has been read and as you have a copy there in front of you.

What this amendment does is remove any doubt that may exist now or in the future into the provisions of the Relationships Act in reality. It does not change the law, it does not create any new law. It removes any shred of doubt that might exist at any stage in the future. I will be clear here because I know the Leader has spoken a couple of times about the confidence of the Government in the Coroner, the Coroner's Office and the magistrates that practise in the Coroners Court. I, too am very clear this is not in any way a reflection on the Coroners Court or the Coroner currently. This is not about having any doubt in the work the Coroner does. I acknowledge the Coroner, the magistrates and all the staff in the Coroners Court. I know they are dealing with incredibly distressing circumstances, they do wonderful work with people who are dealing with something that in most cases is probably the worst or one of the worst things they have had to deal with in their lives. This is not in any way a reflection - I want to be clear about that - on the Coroners Court or any of the work taking place there currently.

The reality is, there have been two examples we know of, there are two examples that have been reported and contested, where people have spoken up where the law has been applied incorrectly by the Coroner at the time. I appreciate that was done in error, but it was done nonetheless. It has happened more than once. You might argue it has only happened, in 2011 and 2015, which is not a lot, but it is enough that we should take every step we can to ensure it does not happen in the future. Particularly, when the step we are taking is not having a negative impact on anything. It is not infringing on anyone else's rights. It is not changing the law. It is not creating a new law without any consultation. It is clarifying how this applies.

I will also point out this is not limited to same-sex couples, this will apply to any couple, any person, who is in a significant relationship as defined under the Relationships Act, whether that relationship is registered under the Relationships Act or not. I know the Government thinks this is unnecessary. Perhaps, you can argue it is unnecessary, people might think it is unnecessary. I think it is necessary, otherwise I would not be moving it. I ask members to consider the difference between unnecessary and harmful. While people might not think it is necessary, it is not causing any harm to anyone. What it will do, is remove any doubt for people who might have to look at this at a time where they are probably not in the best frame of mind to be interpreting legislation. We need to make it as clear as we can to everyone involved how this is meant to apply.

This amendment is consistent with everyone's intent, the Coroner's intent, the Government's intent, it is consistent across the board with everyone's intent on how the law should apply. It is making it absolutely clear. I urge members to support the amendment.

Mrs HISCUTT - The Government does not support this amendment. Fundamentally, this amendment goes to the question of who is classified as a spouse and therefore, may be recognised as the first person in the senior next of kin hierarchy under the Coroners Act.

The Coroners Act provides very simply and clearly that spouse includes the other party to a significant relationship within the meaning of the Relationships Act 2003. The Relationships Act then provides in section 4 that two adults are in a significant relationship

where they have a relationship as a couple and they are not married to each other or related by family. The section goes on to make extremely clear that both registered and unregistered relationships can be significant relationships. There is no uncertainty in the law about this.

Difficulty can arise in determining whether an unregistered relationship exists and that is just the practical reality. We know relationships can be complicated, so it is not always going to be straightforward to determine whether one exists.

We, as a society, acknowledge the diversity of relationships in modern society, and there is no set formula or criteria. People in relationships may choose not to live together. There may not be a sexual component to a relationship. It is the job of decision-makers and third parties in general, sometimes, to look at all the circumstances of a relationship and determine whether a significant relationship exists.

The Relationships Act provides some guidance for a person making that determination. Section 4(3) provides that all of the circumstances of a case are relevant and details a list of factors that may be relevant, including factors such as the duration of the relationship, the nature of any common residence and the degree of mutual commitment to a shared life.

However, none of the factors specified in the act are necessary for the existence of a significant relationship, and a court determining whether a relationship exists is entitled to attract such weight to any matter as may seem appropriate to the court in the circumstances of the case.

It is evident that sometimes a decision-maker, whether a Coroner or otherwise, will need to make a factual determination as to the existence of a significant relationship. The Supreme Court has previously noted that:

> Minds may differ as to the relevant importance of the various relevant indicators.

What will aid the process is ensuring the decision-maker has all the information they need, to make the correct decision. Recognising that these difficulties can arise, it is important to note that there is a process to have a relationship registered, which does provide certainty.

Proof of registration of a relationship is proof of relationship. The process is designed to be straightforward. Registering a relationship involves some paperwork and a fee of 121 units, being about $205.

That is not to say everyone needs to immediately have their relationship registered, but it is to say that doing so will avoid a third party needing to examine your relationship to determine whether it amounts to a significant relationship.

Having gone through all that in some detail, returning to the amendment in question, it has been suggested that it would provide some clarity if the Coroners Act were amended to express or refer to unregistered relationships.

However, as I have outlined, there is no doubt in the law as it currently stands, that a significant relationship includes unregistered relationships. Inserting this extra wording into the Coroners Act does not make it any easier for a decision-maker to assess whether an unregistered significant relationship existed. That process still has to be undertaken.

Amending the Coroners Act would not make any legal difference to that, and members, that is the important part. It will not make any difference by inserting this, because it is already there.

On the other hand, the amendment could have unintended adverse consequences. The first point I would make is that when you go to the definition of 'spouse' in the Coroners Act, the only thing it does is direct the reader to the Relationships Act. There can be no confusion because it does not say anything. Introducing further unnecessary redundant wording undermines the simplicity of the provision as it currently stands.

The second risk of danger of this amendment is that it could risk undermining the definition of the Relationships Act itself. Various other legislation simply refers to 'significant relationship' under the Relationships Act. It does not contain this extra specification.

It raises the question of why the Coroners Act contains these extra words. Is it because the Relationships Act definition somehow does not include unregistered relationships?

In conclusion, the bill aims to improve the operation of the Coroners Act, not by adding redundant words, but by ensuring the people interacting with the system are provided with information about the act; about what it means to be the senior next of kin; about the meaning of the spouse and significant relationship; and about how people can provide the Coroner with information about their relationship with the deceased when the need arises. Basically, members, it is already there. There is no need to add any extra words to that.

I urge members not to vote for this amendment. It is totally unnecessary. It just adds words. It is already there. Please do not support this amendment.

Ms WEBB - I must say, I am really thinking about this one. I have not decided how I am voting on it yet, because as a principle I would agree that we would want legislation and the language in it to be clean and straightforward and not have redundant extra bits, or repetitious bits. It is interesting because we just talked about a tautology, when we discussed the last amendment. Effectively this is a legal tautology, because it is saying in reference to the Relationships Act and then it mentions something from the Relationships Act, so it is saying the same thing twice.

On the one hand, I agree, it is not legally necessary. I noticed in the notes we received in the briefings, comments made in those notes from the department, that the amendment would unduly complicate the Coroners Act definition without any practical benefit. I disagree with that comment that we were provided with. The amendment has the potential to make the Coroners Act definition more complicated than it needs to be. It does not have any legal necessity to be there. What we are being asked to contemplate by the advocates who are bringing this to us - and by the member for Rumney who is moving it - is that it may have a practical benefit. That is the reason for us to contemplate this amendment and contemplate supporting it.

We have seen that while it might have been legally clear in the legislation to date, what a spouse is defined as under the Coroners Act, in reference to the Relationships Act, there have been at least two instances where that has not necessarily been accurately applied, and that has had some devastating consequences. The circumstance that was talked about in the second reading speeches by the member for Rumney, the circumstances relating to Ben Jago, where

he in fact was advised to register a relationship under that act with the person who was deceased. This shows that there was confusion in those providing that information and that advice about the definitions in the Relationships Act and how that articulated through to the Coroners Act.

It might not be legally necessary. It potentially has a practical benefit because of the removal of doubt aspect of it, which the member for Rumney referred to. The other practical benefit that I see that it might have, in putting it in, is the reassurance it provides and the message it sends, particularly to vulnerable communities like the LGBTIQA+ communities because of what has now been a series of circumstances in which people from those communities have faced devastating situations in dealing with the Coroner's Office and the Coroners Act and how they are dealt with under the Coroners Act to date.

I find this a tricky one. On the face of it, it would be my preference that we did not put this in, but I understand the reason we have been asked to consider putting it in and I absolutely have sympathy for the benefit that it might actually hold. What you would normally do is, if you have identified that it is clear in the legislation but there have been clearly identified instances in which it has not been applied properly and that has had consequences, you would look then to say, well, how do we make sure the application is done correctly? You do that through policies and procedures, through education and training and those sorts of checks and balances in terms of the application of the law.

My understanding is that to some extent that pathway has been taken by the Coroner's Office, that they have been looking at the information provided, intensive training internally, the way information is conveyed to people in the circumstances and the clarity of information available on the website. That is where you would normally look to and it sounds like that has been progressed. Then I come back to, do we need to make this change? Does the potential benefit of it outweigh its lack of technical necessity? I am still wavering. It may be that other members' contributions can help me land on it one way or another. There is a lot to think about here.

I will put this part on the record. I prefer to be consistent and principles-based as an approach, when I am contemplating legislation and amendments to it. Consistency of the application of principles is important. Having personal empathy and compassion for terrible circumstances that have occurred, is present and is acknowledged, but it does not necessarily mean that that has to translate through to a legal change in an amendment or something within legislation. I am finding it tricky here. I will leave that as my first contribution. I may have more once I have heard from others.

Mrs HISCUTT - The justification given for this amendment is that there are two examples of law being applied incorrectly. This change clarifies the application of the definition. However, this amendment has no guarantee or likelihood of an error in future being avoided, such as deciding a couple are not in an unregistered relationship. The bill already makes an actual practical solution to any perceived lack of clarity. That is, the bill requires courts to give key information to interested persons. I tabled that debate earlier.

This is a significant legal change that highlights to the court and families the processes for determining a spouse. In comparison, this amendment does not change the law, other than confusing what 'the spouse' means in other acts. Two historical errors in determining spouse in 2011 and 2015 amongst the many determinations of who is a spouse by our courts every

year is not a good premise for law reform. The court has already responded to the historical error with improved process and public material. The bill supports this and no amendment is needed.

Madam Chair, if I am in the right spot here, I wish to make a comment as the member for Montgomery, not as the Leader. Is that okay?

Madam CHAIR - As long as the Leader makes it clear, I do not want her to suffer the wrath of a -

Mrs HISCUTT - No I am speaking as the member for Montgomery in a past life.

Ms Rattray - And there are no notes.

Mrs HISCUTT - There are no notes, I am sorry. I used to be a marriage celebrant in my younger days. I always said to the couples, you know it is legal, it is law. When you get married, previous wills are null and void. You need to make a new will, you need to make it clear. Now, I have come across other examples where the Coroner, in a death - these people report back to you - in deaths of spouses, these same things have occurred in the past. They are not regular, amongst these other people who are not part of the LGBTIQA+ community. So it does happen to other people. They have to then go through the processes according to law to provide the information they need to be recognised as the spouse. It does not happen often, but the law is correct as it is and adding this is not going to change anything other than to confuse stuff. That is what I need to say on the part of the member for Montgomery and my past experiences. I will now remove that hat and move back to the mover.

Madam CHAIR - Thank you Leader and member for Montgomery.

[12.20 p.m.]

Mr VALENTINE - Like the member for Rumney, I do not wish to be seen to be casting doubt on the judgment of a coroner, particularly in this place. It is important we note that. I simply think about the wishes of the deceased which no one has mentioned at this point, who demonstrably had a life partner who was unable to grieve for them, because of what might be a lack of clarity leading to previous decisions. When I think about it in those terms we think of consistency of the law, but we have seen consistently how something has been applied and the outcome of that. Quite honestly, it could be a tautology as the member for Nelson points out, but because of the outcomes it is clear we do need to do a belt and braces on this and that means to have this amendment go through is the right thing to do.

I can only imagine the grief of an individual who was unable to say goodbye to their partner on their passing. That would be dreadful. I feel for those who have been through that. To think the partner who has passed could not be assured their partner was able to grieve for them. I know they are gone but in a way it is a belt and braces and it is all about people's wishes being followed. It does not help the member for Nelson much.

Ms Rattray - Let me help.

Mr VALENTINE - Those are my thoughts.

Ms RATTRAY - Both the arguments put forward from the member who has proposed the amendment and the Leader, have merit. I have been listening to contributions and feel like they both have merit. I am trying to work my way through this and I have used the notes provided at our briefing which I felt were helpful. When it says 'the amendment would unduly complicate the Coroners Act definition without a practical benefit', and then it goes on to say 'the extra words in the proposed amendment suggest there must be some legal purpose for them' and 'the risks of undermining the interpretation of 'spouse' in other acts which do not feature the words in the proposed amendment'. It is clear and that is where you were coming from member for Nelson and you probably should stay there with that.

This is a question to the Leader and perhaps also to the member, is it not more about the communication we are giving to people as well? The law is at times quite complicated, but it is the practical communication. Is that not something we can work on with all departments? The Coroners Court is just one example of them. They need a sheet of information, in the practical sense that says 'this is what a spouse is and the definition of it is'. This is part of the Relationships Act.

With all due respect, I do not see the need for the amendment. It is the application of what is already there that has been the problem. I do not see that this is going to actually resolve that. It is the application. There needs to be clarity and clear and concise instructions around that.

I thank the member for Rumney for the work that she has done on this. I hope that helps in some way. I will not be supporting the amendment.

Mrs HISCUTT - Madam Chair, I will briefly explain why the bill, as is, is the better approach. The bill's amendment would have assisted Mr Jago by empowering him with information about what the senior next of kin is and how it is determined. What rights the senior next of kin status attracts and what rights it does not. The bill is a positive step to protect both the Coronial Division and members of the public from such unintended consequences in the future. More generally, to provide understanding of interested persons of the Coronial Division's operations.

Under the bill, it would not be said that either a coroner or persons with a sufficient interest were unaware of key aspects of the operation of the act, such as the senior next of kin It also addresses concerns raised by representatives of the LGBTIQA + community that the act or regulations should have a mechanism to promote this understanding. The bill recognises the current definition is clear but provides the appropriate safeguards to avoid issues in the future. As the member for McIntyre mentioned, earlier I tabled fact sheets which are on the Coroner's website to enable this understanding. The Attorney-General is going to work closely with that office to make sure that that works properly.

Ms WEBB - I will have a second go and let the member for Rumney save her speaks for a little longer. It is interesting because I have jumped on the Coroner's Office information for families webpage, to find out if there is enough information provided there for it to be clear for somebody who is accessing it. When I go to the drop-down tab, which has the heading 'Who is the senior next of kin?' which is going to be of relevance to this, it gives a little list of things:

The senior next of kin will be the first available person on this list:

(1) The current spouse (which includes the other party to a 'significant relationship' according to the definition in the *Relationships Act 2003*)

That is all it says. That means as a member of the public, as a grieving family member, you then have to look up the Relationships Act and figure out for yourself. Now, if we are going to put it 'belt and braces,' as the member for Hobart describes it, if we are going to provide people with the most accessible information that they might need, why on earth does that not have more information available for people? Even similar to the amendment being proposed here. Why would that not say something like, 'noting, in the Relationships Act, significant relationships can be either registered or non-registered relationships.'

Ms RATTRAY - Through you, Madam Chair, that is exactly what I said. It is about the message and the information.

Ms WEBB - That is true. That pushes me even more to say - if that is not being done effectively enough in the policy and procedure side of things, how things are done underneath legislation in terms of information provision to people and clarity and accessibility of that information - then, it pushes us even more to think we have to put it in the legislation to push it from there downstream, I suppose. It is tricky for me. I suggest to the Government, if this amendment does not get up, we seriously need to work with the Coroner's Office to look at the information provided to actually think, can we actually do more to make this as clear as possible for people -

Mrs HISCUTT - The Attorney-General said she would do that.

Ms WEBB - I am emphasising it on the record, Leader, because (a), lots of Tasmanians are going to struggle to access complex digital information. There is no way that has enough clear, straightforward detail for people. They would literally have to look up legislation. I do not know how many people on the street would have any idea how to look up legislation and figure out then, through reading that legislation, what form of relationship they have according to that legislation and then figure out it is okay if I am not a registered relationship, I fit into this other category, because here is this big, long list in the legislation about characteristics for that category. That is unreasonable. Unless you can point me to a very clear intention to significantly improve that sort of information provision, it does look like we need to consider putting it in the legislation, which as I explained, would not be initially something I would think should be legally necessary.

Mrs HISCUTT - Madam Chair, the bill will not mean the website material is relied on but new summary, plain English information provided. What will be the information that is specified in the regulations? This will be formulated in consultation with the Magistrates Court and other stakeholders, including the LGBTIQA+ community. This amendment is modelled on a similar provision in the Victorian Coroners Act 2008, section 21, by way of example. The prescribed information in the Victorian regulations includes such things as the objectives of the act, the meaning of a reportable and a reviewable death and the purpose of a coronial investigation.

The prescribed information for Tasmania will expand on this, with information on the senior next of kin process in particular. The Attorney-General has also given assurances that the regulations will cover things such as the avenues for possible appeal, or review, under the act and detailed information about the definition of spouse and significant relationship. Work

on the regulations will start as soon as the bill is finalised in consultation with stakeholders, including the court, Equality Tasmania and others. The aim will be to commence them as soon as possible, with all the information needed to ensure the objective that people fully understand the Coroners Act processes.

To put it clearly on the record, Madam Chair, the Attorney-General has committed to work with the Coroner's Office to make this information more understandable. There is no need to double up. It is already there.

Ms LOVELL - If I may speak now, I still have another speak to go. I have been taking notes and I have quite a few things to work through. I hope that members will bear with me, because I am going to work through this in the order of how these remarks have been made throughout this debate.

The Leader, in responding to the new clause, has argued the Relationships Act is clear and there is no uncertainty and we should keep it as simple as possible. My response to that is that if there is no uncertainty, why have errors been made? We know there are at least two high-profile public instances where those errors have been made. I would hazard a guess there may have been more, where people have not gone public with it, or have not known how to contest it, or have not known what their rights are, and even indeed, that an error may have been made.

The Leader spoke about the Relationships Act and the provisions on determining significant relationships and spoke at length about the complexity of relationships.

I agree with all that. This amendment does not impact on any of that. Relationships are complex. We know that. There are extensive provisions in the Relationships Act on how to determine a significant relationship. This amendment has nothing to do with any of that, and it would not impact on any of that. It is not new law, and it is not changing the law. It is just removing doubt and making it as clear as we can.

The Leader also spoke about proof of registration of a relationship being a way of providing proof of a significant relationship. Nobody is arguing that is not the case. The issue is, that should not be required.

Our Relationships Act outlines a significant relationship the way it does so that proof of relationship and registering a relationship is not required, because people should not have to go through that to prove they are in a significant relationship.

Yes, that would provide proof and in Mr Jago's case would have avoided that error being made. The argument is that should not be necessary, because we know that first of all, it should not be necessary, and people should not have to jump through those hoops. This is something that would impact more significantly on same-sex relationships.

People should not have to jump through those hoops, but also as the case for Mr Jago, sometimes it is too late. It is too late to do that. Yes, of course registering a relationship would provide proof of that relationship, but that is not always possible and should not be necessary.

The Leader spoke about the possibility this amendment, this new clause, would create unintended adverse consequences. The only one I have really heard from the Leader, is the possibility it might undermine the simplicity of the Relationships Act.

I ask the Leader if there are other unintended adverse consequences that could be a result of this amendment, because that does not seem to be argument enough to not support this new clause.

The Leader also spoke about why we would have a different definition or different provisions in the Coroners Act, and not other acts that refer back to the Relationships Act. I remind members we have heard the Coroners Act has immunity from the Anti-Discrimination Act.

While this amendment would apply to all couples - not just same-sex couples - where it becomes critical is for same-sex couples because of that immunity from the Anti-Discrimination Act. That is why it is important to be in the Coroners Act and not in those other acts that refer to the Relationships Act.

The member for Nelson, on her first contribution, spoke about the principle of keeping legislation simple and clean. That her first preference would be to not put this new clause into the bill.

I am not going to argue with that. It would be everyone's preference to not put this new clause into the bill if we could genuinely say that we felt this was not required. Great. That would be everyone's first preference, but unfortunately, I do not feel comfortable that is the case.

The member for Nelson spoke later about the challenge for members of the community to be put in a position where they might have to interpret legislation, particularly at a time where they are dealing with significant grief and are probably not in the best frame of mind to be doing that.

That is what this amendment is all about - avoiding that error happening in the first place, as much as we possibly can. We can probably never, ever rule out error, 100 percent, but let us do what we can to make it as avoidable as possible so people are not put in that position.

The member for Hobart spoke about feeling empathy for those people who would suffer significant grief at not being able to say goodbye to their loved one. I absolutely agree and concur on that, but I also say it is not just about those instances where people might be denied the opportunity to say goodbye to their significant person they love.

There could be instances where somebody is not recognised as a senior next of kin. The person that is recognised as a senior next of kin might be entirely supportive of that relationship. They might welcome that person into everything. They might treat them in a way they might be allowed to make decisions and able to act as if they were recognised as a senior next of kin, but they have still had their relationship diminished by that decision.

At a time when someone is suffering the grief of losing the person they love most in the world. To have anyone say in any way, your relationship was less important than it was to you, would be horrific and we should be doing what we can to avoid that happening. The member

for McIntyre referenced the notes provided to us by the Government in briefing about the fact that this new clause would unduly complicate the legislation without any practical benefit and raised the issue that it is about communication and information that it is provided to people. Absolutely, and we should definitely be doing everything we can and I understand the Attorney-General is working on that with the Coroner's Office to make sure that the information is clear. I do not argue with that all.

I argue that this new clause will provide that reassurance and that clarity for the times when those systems let people down, because they do. We would love to say they do not and they never do and they never will, but they do and they have and the member for Montgomery spoke about instances that she has heard of. I have said before, we have heard of these two high-profile cases. The member for Montgomery spoke of instances that she is aware of where it has happened to couples who are in a relationship with somebody, not in a same-sex relationship, in a heterosexual relationship. I argue that is why we need this amendment.

This amendment is not limited to same-sex couples. This amendment would cover every couple under the Relationships Act, whether the relationship is registered or not. Perhaps those instances that the member for Montgomery is aware of that are not as high profile and as public illustrate that this maybe does occur more often than we know. I would remind members that this amendment is not limited to same-sex couples.

I will come back to some further comments from the Leader. The Leader said that this bill, as it is, would have empowered Mr Jago and addressed that devastating situation that he was put in and that the bill addresses concerns that have been raised by the LGBTQIA+ community. I would say, why then is Equality Tasmania still asking for this additional amendment if this has addressed the issues that have been raised? The Government is saying it has. We are hearing from Equality Tasmania, who I would argue is recognised as the most respected and probably most well-known representative body for the LGBTQIA+ community in Tasmania, saying this bill is not enough. It does not go far enough and it would not have fixed the problem and can we please have this additional amendment to remove any doubt. That is what this is doing.

This bill may have gone some way to empowering Mr Jago. This amendment, this new clause, would go further. I remind members that this amendment, this new clause is not changing the law, it is not introducing a new law. It might not be as clean and as simple as people might prefer but we can all agree on that. The question is whether we think it is needed and whether the simplicity or cleanliness of a bill outweighs the necessity for this amendment. I ask members to support the new clause.

Recognition of Visitors

[12.43 p.m.]

Madam CHAIR - Before I call the Leader, I welcome to the Chamber Rodney Croome who is a long-serving member of Equality Tasmania and formerly other bodies that represent the LGBTQIA+ community, to whom this matter is particularly important. I welcome Rodney to the Chamber.

I also welcome students from St Patrick's College and Scotch Oakburn College who are part of the parliamentary debating shield winners, so well done you. This is part of the debate of a bill that is amending a whole range of justice legislation. At the moment, we are focusing

on amendments to the Coroners Act about the recognition by the Coroner of a senior next of kin, the person who has passed away who would be the most important person in that relationship. It is making sure it is clear to the Coroner when someone has died that it is rightly identified. We are debating an amendment from the member for Rumney. The Government is arguing against it. The member for Rumney is arguing for it. Members in the Chamber can have three speaks each. The Leader can speak as often as she likes. There are no rules for her and her limit, but that is how this part of the Committee stage of the bill works. Welcome. You have different rules around your debate. There are three speakers as opposed to three speaks for you. Welcome and I hope you enjoy your time in parliament.

Members - Hear, hear.

Mrs HISCUTT - Firstly, I will clarify the member for Montgomery's example, which was clarified after a gathering of information process, which proved the processes already in place work, as that person who I will not mention, was then given the senior next of kin status. The laws that are in place worked for this particular circumstance. I want to clarify that for the member for Montgomery.

Now, as Leader, the amendment would unduly complicate the Coroners Act definition without any practical benefit. The extra words in the proposed amendment suggest that there must be some legal purpose for them. This risks undermining the interpretation of spouse in other acts which do not feature the words in the proposed amendment; that is, the amendment may have exactly the opposite intended effect for persons reading and applying definitions of 'spouse' in other acts. Legally the question is why is the Coroner's definition different? Does it imply in other acts that registration is actually required, or unregistered relationships are given less weight?

The bill responds directly and explicitly to the issues that arose. The amendment does not help further. Members are urged to oppose it. As I have already said, it adds nothing to the bill, to the act, other than what our bill puts forward. I urge members not to complicate the issues and vote against this amendment.

Ms ARMITAGE - This is not getting any clearer.

Ms Rattray - Did I not help? I thought I helped.

Ms ARMITAGE - No, not really. Well, I somewhat agree with the member for McIntyre that both sides have merit. Every time someone stands up with another opinion it also makes sense. To quote from Equality Tasmania, as they point out, the clarity regarding the rights of partners in registered and unregistered relationships:

> As you are aware, the Coroner’s excuse for not recognising Ben Jago as senior next of kin was that he was not in a registered significant relationship. However, the Coroner was wrong. Partners in unregistered significant relationships have the same spousal rights as those in registered relationships in regard to next of kin. To ensure that discriminatory conduct is minimised in future, we recommend that the definition of ‘spouse; in the Act is amended to emphasise that significant relationships the Relationships Act and those not registered. The suggested amendment to the definition of ‘spouse’ is underlined:

> *spouse* includes the other party to a significant relationship whether or not the relationship is registered, within the meaning of the *Relationships Act 2003;*

Now, I accept the sheet that we received at briefings from the Department of Justice, where it states:

> the amendment would unduly complicate the Coroners Act definition without any practical benefit. The extra words in the proposed amendment suggest there must be some legal purpose for them. This risks undermining the interpretation of 'spouse' in other which do not feature the words in the proposed amendment.

I would like it if the Leader could explain - I know you have said that it unduly complicates, but you have not really explained how it unduly complicates. The question comes down to, does it actually do harm, or does it give reassurance to those involved? I know you mentioned that some people might look at one act and they might look at another act. I do not know how many people would actually go delving through acts to look at the definition of spouse, in all honesty.

The question comes down to, when someone passes, obviously the first person they look for is the spouse. The situation that the member for Rumney has brought up is something that we do not want to happen again. It does need to be clear. At the moment, I am leaning towards the member for Rumney unless the Leader can clarify more how it unduly complicates. I know that it is putting extra words in that do not need to be there. However, is it really causing any harm, or is it purely giving reassurance to those who need it?

Mrs HISCUTT - I hesitate to repeat myself.

Madam CHAIR - You are able to repeat yourself as Leader, we just pull up other people on it somewhat.

Mrs HISCUTT - The amendment may have exactly the opposite intended effect for persons reading and applying definitions of spouse in other acts. Legally, the question is why is the Coroner's definition different? Does it imply in other acts that registration is actually required, or unregistered relationships are given less weight? So it adds those extra questions.

Repeating myself, this amendment gives no guarantee or likelihood of an error ever occurring again in the future. The act was clear and the amendments we have put in with this bill in front of us gives more clarity to that, or any perceived lack of clarity. Any amendment going in is not going to futureproof the bill against mistakes being made again, because the bill is already clear and this is going to complicate that.

I urge members not to complicate this bill, there is no need. It is clear what has happened has been a misinterpretation and there is no need for it, it will just complicate it. I urge members to vote against the amendment.

Ms LOVELL - Madam Chair, this is my last speak. I only have a couple points to make. I was thinking, I am not going to get up and repeat myself. We heard from the Leader the same argument and I said, I do not want to get up and counter. Then the member for Launceston

said, every time someone speaks she changes her mind. So I thought maybe I should get up and say it again. I know the Leader still gets the last word, but I wanted to point to a couple of points the member for Launceston raised in questions she asked. In particular, when the member for Launceston asked, does it do harm or does it provide reassurance? That is what this comes down to for me and why I have moved the amendment.

As I have said a number of times, avoiding being repetitive, we are not creating new law, we are not changing the law, but what we are doing is providing clarity for people at those times when they need it. The Leader has argued it is already clear. The question from me is, can it be clearer? I think it can be, and that is why I am moving the new clause. Also, we have heard from the Leader a number of times one of the main objections seems to be that having a different definition could cause confusion or questions over other legislation.

Perhaps that might be the case, but I am actually struggling to think of a time when that might happen. I do not know many times when someone would be looking at the Coroners Act and another act that defines a relationship, other than the Relationships Act, and come across those different definitions. The definitions in other acts are sufficient for the circumstances in which they are being considered, but I cannot think of a time where someone would be reading three pieces of legislation and coming across different definitions of relationship and thinking why does this one say that and that one say that, particularly when they all refer back to the Relationships Act.

Ms Armitage - It is not changing the definition?

Ms LOVELL - It is not changing the definition, it is adding some clarity which is consistent with the Relationships Act. Yes, it will create some inconsistency, but I cannot think of a time when that would be a particular issue, certainly not commonly. If the Leader has some examples, I am happy to hear them, but I am not convinced that would create quite the issue the Leader is making it out to be.

Bearing in mind this is my last speak, what we have heard is a number of the same arguments over and over again. I trust members have had time to weigh up those arguments and make an assessment based on those and will make their decision when we put the vote in a moment. I would ask members to support the new clause.

Madam CHAIR - For the young people's benefit at the back of the room, when the Leader is seeking advice, the Leader represents the Government in this House. She is not the responsible minister for this legislation. The responsible minister is the Attorney-General and she is in the other House. So, the Leader, on behalf of the Government, relies on the advice from the departmental officers and those who can provide advice because they have worked on this legislation. The Leader is bringing the legislation through, but she is not the person who has drafted it or is responsible for it. That is why it takes a bit of time in this stage, so the Leader says the right things - from the Government's perspective, anyway.

Mrs HISCUTT - The public coronial findings, in the case of Mr Jago's partner, make it clear that the circumstances of his death were very tragic. The department understands the Coroner's Office did seek further information from Mr Jago but it was not forthcoming. At a later date, the Coroner did determine Mr Jago was the spouse when further information was provided. As tragic as the case is, the legislation as it was, was right; but this bill in front of us today helps clarify that.

This further amendment is going to add confusion. The bill does go to the issues of ensuring people understand their rights and are aware, for example, of what they can do in a dispute. The bill goes directly to the issues at hand. So, as tragic as that case was - and I can understand that period for Mr Jago would have been absolutely traumatic - but the Coroner did ask for information which was not forthcoming, which was later provided and the Coroner was able to then make a determination. So, members, basically speaking, what the Government has presented to you today is sufficient and provides clarity. I urge members not to support this amendment because it will create confusion.

Madam CHAIR - The question is that the amendment to the first proposed amendment be agreed to.

The Committee divided -

AYES 6	**NOES 6**
Ms Armitage	Mr Duigan
Mr Edmunds (Teller)	Ms Forrest
Mr Gaffney	Mr Harriss
Ms Lovell	Mrs Hiscutt
Ms Webb	Ms Howlett (Teller)
Mr Willie	Ms Palmer

PAIRS: Mr Valentine, Ms Rattray

Madam CHAIR - The results of the division are ayes, six and noes, six and as the majority have been unable to be convinced, the question passes in the negative.

Amendment negatived.

Sitting suspended from 1.01 p.m. to 2.30 p.m.

QUESTIONS

Royal Hobart Hospital - Deployment of Registered Nurses

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

[2.30 p.m.]

With regard to the Royal Hobart Hospital:

(1) what is the number of registered nurses who were redeployed from the Royal Hobart Hospital during the COVID-19 pandemic to start quarantine facilities and medi-hotels, disaggregated by grade;

(2) what is the number of registered nurses who assumed roles at higher levels in quarantine facilities and medi-hotels, disaggregated by grade and permanency;

(3) what is the number of registered nurses transferred back to the Royal Hobart Hospital now operating in roles at higher levels than when they were previously employed at the Royal Hobart Hospital?

ANSWER

I thank the member for her question.

(1) A total of 27 registered nurses have been seconded from the Royal Hobart Hospital via a recruitment process to work in quarantine hotels and/or community case management facilities during the COVID-19 pandemic. The breakdown by grade is:

Grade 3 registered nurses	10
Grade 5 registered nurses	7
Grade 6 registered nurses	7
Grade 7 registered nurses	3
TOTAL	27

On top of the above figures, a small number of nurses were deployed to assist at the commencement of the quarantine hotel program. These registered nurse positions were returned to their substantive position or appointed on fixed-term contracts through a recruitment process. The breakdown by grade is:

Grade 5 registered nurses	2
Grade 6 registered nurses	4
TOTAL	6

(2) A total of 21 registered nurses have been appointed to fixed-term roles at a higher level than their substantive position in quarantine hotels and/or community case management facilities, through a recruitment process. That is:

Grade 5 registered nurses	11
Grade 6 registered nurses	7
Grade 7 registered nurses	3
TOTAL	21

A total of nine registered nurses have been permanently appointed to these positions, through a recruitment process. That is:

Grade 5 registered nurses	4
Grade 6 registered nurses	4
Grade 7 registered nurses	1
TOTAL	9

(3) A total of six registered nurses have now obtained permanent roles within the Royal Hobart Hospital at a higher level than their substantive position prior to commencing in a hotel quarantine or community case management facility.

Wynyard - Vacant Property

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

[2.33 p.m.]

With regard to a property at 3 Pergola Crescent in Wynyard, which I understand is a property available for public housing and has been vacant for some time. Further, in light of the severe shortage of public and social housing in Wynyard:

(1) how long has this property been vacant?

(2) why has this property not been re-tenanted?

(3) as the property appears to be left unattended with unmown lawns until yesterday when the lawns were mowed - after I sent the question through - does this create a risk to the property and a public indication that the house is empty and susceptible to use by others without support and appropriate lease arrangements in place to protect the property?

My spies are on the ground.

ANSWER

Thank you, Mr President and I thank the member for her question. If that is the case, you must feel very proud that you have such influence.

Ms Forrest - I do.

Mrs HISCUTT -

(1) The property at 3 Pergola Crescent Wynyard, was voluntarily vacated on 5 July 2022 and has not been tenanted since.

(2) Upon the termination of the tenancy, the property was assessed in accordance with standard asset management protocols and determined that given the age of the property, condition, limited suitability for a range of clients and more importantly, its favourable redevelopment potential, the property has been scheduled for demolition.

(3) The planning process required to undertake the demolition has commenced with Housing Tasmania's consultant, pitt&sherry. While planning approval is being sought, the property has been added to a routine maintenance schedule for landscaping and will be monitored to ensure the property is not subject to vandalism and unauthorised entry.

Ms Forrest - Good to see the lawns were mowed anyway.

Police Surveillance in Risdon Prison

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

[2.35 p.m.]

In light of the findings of Justice Brett in the Jeff Thompson matter and illegal surveillance by Tasmania Police in Risdon Prison, the evidence of Detective Sergeant Shane Sinnitt at the Sue Neill-Fraser leave to appeal application on 22 August 2018, under cross-examination by Daryl Coates SC, identifies three instances of listening device evidence of conversations between Neill-Fraser and visitors at the prison. In relation to this listening device surveillance, can the Government:

(1) assure the public that this matter will be thoroughly scrutinised and reported on in the O'Farrell Review, including: -

(a) whether each and every of these conversations referred to was the subject of a valid warrant;

(b) whether the warrant or warrants suffered from the same serious defect on its/their face as in the Jeff Thompson matter;

(c) whether the warrant or warrants provide false assurances to the issuing magistrate as seen in paragraphs (18) and (19) of the Constable Jago affidavit as reported by Justice Brett in the Thompson matter at paragraph (23);

(d) the terms and conditions of such warrants, including whether they recorded continuously for up to 90 days;

(e) whether any of the conversations referred in the Sinnitt evidence was caught as a result of continuous recording of a listening device not covered by the relevant warrant or warrants;

(f) whether any of the conversations recorded involved conversations between Ms Neill-Fraser and lawyers;

(g) whether any of the conversations were subject to legal professional privilege; and

(h) whether any other privileged conversations at the visitor's room at the women's prison were recorded as a result of this warrant or warrants?

(2) assure the public that Tasmania Police acted lawfully and in accordance with all requirements of the Police Powers (Surveillance Devices) Act 2006 in relation to the Sue Neill-Fraser matter? For instance, were section 29 reports provided to the issuing magistrate?

ANSWER

I thank the member for her question.

(1) In response to question (1), inclusive of (a) to (h), Mr O'Farrell SC will conduct a comprehensive review in accordance with the terms of reference for the Review of the Use of Surveillance Devices in Prisons. An updated version of the terms of reference was tabled in parliament on 10 November 2022. The minister shares your commitment to transparency and accountability and agrees that Tasmanians must continue to have trust and confidence in their police and he looks forward to tabling Mr O'Farrell's review in parliament in 2023.

(2) The minister will not pre-empt the findings of the review to be undertaken by Mr O'Farrell SC in relation to this matter. It is noted that the review will be in accordance with the terms of reference for the review which was tabled in parliament on 10 November 2022. We trust that Mr O'Farrell SC will conduct a comprehensive review of the matter and the minister will table the findings in parliament.

Volunteer Marine Rescue - Funding Commitment

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

[2.38 p.m.]

(1) Can the Leader please advise of the status of the $50 000 evergreen funding commitment in 2005-06 to Volunteer Marine Rescue (VMR), which is distributed by Surf Life Saving Tasmania;

(2) can the Leader please advise has there been a meeting since the establishment of the Rescue Services Executive Committee (RSEC) on 1 February 2022;

(3) if not, when is it expected a meeting will take place;

(4) when the RSEC committee was established was it expected that there would be no further meetings in 2022? I am interested in that arrangement.

ANSWER

(1) Surf Life Saving Tasmania provides $70 000, being $10 000 for each Volunteer Marine Rescue unit each year. Surf Life Saving Tasmania also provides an annual training budget of $12 500 in total for the VMR units, allocates $1250 per VMR unit for IT or online systems and subsides 60 percent of the VMR insurance costs. There is no evergreen funding commitment of $50 000 per year to Volunteer Marine Rescue distributed by Surf Life Saving Tasmania.

(2) The rescue services executive committee met in July, and most recently on 10 November 2022. Paul Hawkins, Tamar VMR and SLST board member chaired the RSEC and Andrew Fogarty, Kingborough VMR attended.

(3) The rescue services executive committee met in July and most recently on 10 November 2022.

(4) The rescue services executive committee met in July and most recently on 10 November 2022. The rescue service executive committee terms of reference, which include the frequency of meetings, are currently being reviewed.

TWWHA - Draft Proclamations - Consultation

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

[2.41 p.m.]

With the recent motion passing through the House to reserve land within the boundary of the Tasmanian Wilderness World Heritage Area which has now been given land reserve status, when is it intended that consultation will commence with all sections of the community, including local people and organisations such as the Mountain Huts Preservation Society who have a special connection to this landscape, prior to any of the proposals that have been put forward in regard to the ongoing future of this land?

ANSWER

I thank the member for her question.

The Tasmanian Government notes that parliament has now passed the draft proclamations for the reservation of Crown-managed Future Potential Production Forest Land in the Tasmanian Wilderness World Heritage Area under the Nature Conservation Act 2022.

Once the land is formerly proclaimed by the Governor and gazetted it will then be added to the formal reserve network in Tasmania.

Importantly, this will ensure that the Government can report this matter as complete to the State Party, being the Australian Government, meeting another international obligation to the World Heritage Committee.

We acknowledge the proposals put forward by Tasmanian Aboriginal organisations, including the proposal for a kooparoona niara Aboriginal National Park and the broader concept of an Aboriginal reserve class.

Submissions from the public, in relation to the reservation of the Future Potential Production Forest Land in the Tasmanian Wilderness World Heritage Area under the Nature Conservation Act 2002, were encouraged as part of the public consultation process that was undertaken between February to April 2021.

With regard to the proposals received as part of this process, the Government is committed to ensuring that all voices, including the broader Tasmanian community, have the opportunity to be heard as these concepts and proposals are further explored.

Ms Rattray - I do not think it gave me a consultation time frame, but anyway, we will work on that in the new year, Mr President.

TasNetworks - Process for Connecting Power

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

[2.43 p.m.]

Can the Leader please advise what is the TasNetworks process and average wait time for customers, particularly residential customers, to connect power to their properties?

ANSWER

I thank the member for her question.

TasNetworks has advised the process for customer connection is initiated when the customer's electrical contractor submits an electrical works request (EWR) to TasNetworks.

This request indicates the electrical contractor has completed private work and the installation can be safely connected. TasNetworks process the EWR within 24 hours. The EWR is then sent to the customer's electricity retailer to match with account details. This time frame is governed by the retailer, but the application is normally returned to TasNetworks within five business days.

TasNetworks have 10 business days to complete the connection after the matched application is returned. Some connection times have recently exceeded the 10 days due to storm activity. I know one particular occasion in Sheffield where that has happened.

Ms Rattray - I know of one that was five weeks. They had to get a generator.

Mrs HISCUTT - This is particularly on the north-west coast, as the priority is to restore power in a safe and timely manner. Currently TasNetworks connections' completion time frame of 10 days is running at approximately 98 per cent.

Women's Strategy Update

Ms FORREST question to MINISTER for WOMEN, Ms PALMER

[2.45 p.m.]

Noting that tomorrow is the Tasmanian Walk for the Elimination of Violence Against Women, an important event to recognise the seriousness of the ongoing situation we face, I would like the Minister for Women to update us on the Women's Strategy.

ANSWER

I thank the member for her question. The Tasmanian Government is committed to ensuring that all women and girls in our state feel safe and have the opportunity to fully participate in our economic, social, political and community life.

The new Tasmanian Women's Strategy 2022-27 is now being finalised, following quite significant public consultation. The strategy will provide a new framework for the Government

and broader Tasmanian community to achieve gender equality. It commits to the delivery of an annual Gender Budget Statement; a gender impact assessment process to guide the development of Government policy, programs and services; and an evaluation framework to measure outcomes for women and girls across areas of economic security, leadership and participation, safety, health and wellbeing.

We have been working very hard on this strategy. Its release is imminent. We have taken our time to ensure that it truly reflects the wants and needs of this Government and a future focus for the Tasmania we want for women and girls.

Women's Strategy - Release Date

Ms FORREST QUESTION to MINISTER for WOMEN, Ms PALMER

[2.47 p.m.]

It is nearly the end of 2022, and I am not sure that the strategy is going to be released before the end of 2022. Will we need to change the name to Women's Strategy 2023-27? I would have thought it would have been out earlier than this.

ANSWER

I thank the member. The events of the last few years have been unprecedented, not just in Tasmania but certainly globally. We have taken extra time to consult quite widely with a number of key stakeholders and the community to ensure that the strategy does reflect contemporary practices and expectations. It is more important than ever that the vision is stronger and more resilient for Tasmanians. I can assure you the department is currently finalising that strategy. Can I say that the first version of the strategy that came to me had a strong COVID-19 focus? I feel that now we are moving into a time where we are learning to live with COVID-19. Whilst some emphasis has been placed on that, I felt that the strategy needed to be more forward-focused. I have taken my time, and have asked the department to also take its time, to make sure that we have a strategy that is moving into the future. My anticipation and my understanding is that it will be delivered this year.

Ms Forrest - However, we still might need to call it the 2023-27 strategy.

Ms PALMER - I will note your comment.

QUESTIONS ON NOTICE

Renewable Energy Sources and Government Policy

[2.49 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I will start with question 9 on the Notice Paper, for the member for Mersey. His question was about electric -

Mr Gaffney - How about you table that, if you like?

Mrs HISCUTT - Are you sure?

Mr Gaffney - Yes, because it is for a couple of people I know, so that is fine.

9. RENEWABLE ENERGY SOURCES AND GOVERNMENT POLICY

Mr GAFFNEY asked the Leader of the Government in the Legislative Council, Mrs Hiscutt:

With regard to the increasing popularity of electric vehicles, solar energy installations and battery storage systems in domestic and commercial properties:

(1) (a) what is the Government's policy in responding to the growing need from householders and business owners for objective and impartial advice on integrating these systems; and

(b) what support mechanisms and services are in place to encourage the transition to electric vehicles and the electrification of transport systems?

(2) Noting that bi-directional charging from battery storage is involved in trials around Australia, and that vehicle-to-home (V2H) and vehicle-to-grid (V2G) is a proposed storage solution in a renewable electricity network:

(a) what are Tasmanian Government Business Enterprises (GBEs) doing to investigate, prepare and encourage this technology; and

(b) is the Government in a position to direct a GBE to explore this technology?

(3) Noting that solar energy combined with bi-directional charging can be considered the best practice model for electrification, encouraging solar energy installation with battery storage systems must be seen as an imperative first step:

(a) what are the barriers in Tasmania to this model;

(b) would the Government agree that there are more obstacles in Tasmania to domestic solar (through building permit restrictions) than anywhere else in Australia; and

(c) if so, what is the scope within the Tasmanian Planning Scheme to address these obstacles?

(4) Given that Tasmania is generating all its electricity needs from renewable energy sources, and that it is a net carbon absorber with negative emissions for the last seven years, what is the Government's future policy to ensure an equitable and timely transition to renewable energy powered transportation?

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I seek leave to table the answer and have it incorporated into *Hansard.*

Leave granted.

See Appendix 1 on page 82 for incorporated answer.

STATEMENT BY LEADER

Adjournment Debate - Circular Head - Ambulance Services

[2.50 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council)- The other answer I had was for the member for Murchison, and I will read it through. I hurried to get an answer as best I could and I thank the department for doing that.

In relation to the matter that the member for Murchison raised last night and the night before, on adjournment, I assure the member - and the community - that the Tasmanian Government is committing to expanding and adding resources to stations and areas to continue providing the right care, at the right place, at the right time. Smithton Ambulance Station currently employs two paramedic branch station officers who work as a single officer on rotation, involving day shifts and being on call overnight to provide care to the Circular Head community. I am advised there is currently a part-time position vacant at the Smithton Ambulance Station, and this is being actively recruited to.

I assure the member that when unplanned leave occurs every effort is made to fill the vacancy. Staff from the Wynyard and Burnie Ambulance Stations also respond to incidents in the Circular Head area as required. Paramedics at Smithton are supported by volunteer ambulance officers, who are actively paged to attend cases if required. I am also advised that demand at the Smithton Ambulance Station is comparable to other single-branch stations across the state.

During the last election the Government committed to a review of ambulance service demand which will assess the future needs of communities in Tasmania, including the Smithton region. The Government looks forward to seeing the final review, which will give us the information we need to help guide future investments across the state. All I can say, Mr President, is that the member for Murchison's comments have been heard by the department.

Ms Forrest - Through you, Mr President, it is interesting that we still could not get an ambulance.

ANSWER TO QUESTION

Clarification of Answer - River Derwent and Estuary Management

[2.52 p.m.]

Ms PALMER (Rosevears - Minister for Primary Industries and Water) - Mr President, for avoidance of doubt, to clarify a statement that I made yesterday, in regard to a follow-up question from the member for Nelson. This related to the time frame for transition of flow-through hatcheries. The time lines for transition for flow-through systems for all

freshwater salmonoid fish farms over a certain size will involve consultation with industry. This is a specific action under the draft work plan and will form part of the plan's implementation. We welcome input on any matter that is raised in the draft plan.

JUSTICE AND RELATED LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2022 (No.43)

In Committee

Resumed from page 44.

New clause A [Section 3A amended] -
Meaning of *senior next of kin*

[2.55 p.m.]

Ms LOVELL - I move the following amendment in my name -

B. Section 3A amended (Meaning of *senior next of kin*)

Section 3A of the Principal Act is amended as follows:

(a) by renumbering the section as subsection (1);

(b) by inserting the following subsection after subsection (1):

(2) A person making a decision under this Act as to whether a person is the senior next of kin of a deceased person must not discriminate against a person on the grounds of that person's sex, sexual orientation, gender, gender identity or innate variations of sex characteristics.

Members, I am moving this amendment. This is relating to removal of doubt and this new clause is to address the issue and concern that arises from the fact the Coroner has been granted immunity from legal proceedings under the Anti-Discrimination Act. I am assuming the Government will argue this is unnecessary because we trust the Coroner will not discriminate against a person on the grounds of that person's sexual orientation, gender, gender identity, or innate variations of sex characteristics in making an assessment about a determination around who the senior next of kin is. That is obviously relating back to the Relationships Act, but it comes back to the fact this is about providing that level of comfort and reassurance to people who may be concerned about this, looking at instances where that appears to have happened in the past.

It is not changing the law or creating any new law, it is providing that reassurance and certainty to people. Obviously, in an ideal world nobody would be discriminating against anyone for any of those attributes, but we know that is not the case. We know that it has happened in the past, we know that it is likely to happen in the future, whether or not that happens in the Coroners Court, I cannot make a judgement on who the Coroner might be in the future or what decisions they might make. This is not a reflection on the Coroner currently or on any of the magistrates or staff in the Coroners Court currently, but this is about providing

that protection for people in same-sex couples in particular, and members of the LGBTIQA+ community, to ensure they are not concerned or subject to discrimination on the basis of those attributes, as they would be protected from under any other act where the Anti-Discrimination Act would apply.

I appreciate this is a little unconventional and that members might be feeling a little uncomfortable with this amendment. I am happy to hear other member's views and ask members to consider supporting this amendment.

Mrs HISCUTT - Madam Chair, the Government does not support this amendment. The Government has expressed sincere regret and apologised for the experience that Benjamin Jago had with the coronial system. Regardless of what went wrong, Mr Jago was not recognised as the senior next of kin until later in the proceedings. That delay was very regrettable, however, there was no finding the delay in determining Mr Jago as senior next of kin in 2015 arose from any discrimination on the part of the court or bad faith. There was no finding to say that.

This amendment is consistent with the proposal of some stakeholders there should be an explicit provision that coroners must act without regard to various factors, such as sexual orientation or gender. However, it is simply not necessary or appropriate to specify that a coroner must make the senior next of kin decision, regardless of factors such as sexual orientation. The requirement to act in a non-discriminatory way is explicit for any statutory decision-maker under any act. It will be unfair to the dedicated professional coroners to suggest that legislative guidance is necessary to ensure they apply the next of kin selection criteria without regard to those factors. Especially, in the absence of a finding by a court or tribunal there was any discrimination on the part of the court in the Jago case. The Coronial Division deals with families and relationships of every kind, every day. The unfortunate experience of Mr Jago relates to 2015. There was no bad faith action then and there have been no other cases of concern reported since then.

It has been suggested there are similar provisions in other pieces of legislation, such as the Local Government Act and the Mental Health Act. However, these provisions being referred to are not similar. For example, section 63 of the Local Government Act provides, amongst other things, that the general manager of a council is to develop policies and the like to ensure employees of the council are treated without discrimination. It is not comparable to what is being proposed in this amendment. It has also been said there is a comparable provision in the Children, Young Persons and Their Families Act. Assuming it is supposed to be a reference to section 10D (2), that provision simply states all children are entitled to have their rights respected and ensured without discrimination. It is quite different in nature to what is being proposed. The mental health provisions will note, a person is not to be considered ill due to sexuality. It is a very different provision for a non-judicial setting.

It is also important to bear in mind an immunity applies to a coroner and people acting under an authority given by the act, but not in the case of acts done in bad faith. This provides a level of protection in the unlikely event a decision was made in bad faith. In summary, since the issues that arose in 2015, there is now much improved information available for family members and the bill reinforces that process. This amendment is not necessary and undermines confidence in the court's integrity. It is only in respect of this one aspect of the Coroners Act. Coroners and judicial officers make decisions across hundreds of acts. Singling this provision out is legally unsound.

Ms WEBB - Madam Chair., I will put my position on the record before we vote. I am not sure if others are going to. While for the last amendment I was quite wavering and ended up going one particular way, because I do not believe with the last amendment we dealt with we were adding anything new or different - it was expanding something, unnecessarily perhaps, but something that was already there. I am less comfortable with this amendment. It is adding something new into the area that is there. I do not believe it should be necessary to do that.

I am also uncomfortable with the implication there has been discrimination and that needs to be addressed by putting something explicit into the legislation to address particular instances. What has come through those processes is that it was not found there was discrimination at the basis of that. Rightly or wrongly, that is what has come out of the processes that looked at this. I am disturbed to learn in the course of looking at this bill and having these matters brought to us that the Coroner is not covered by our Anti-Discrimination Act. That feels problematic to me in the sense that people have nowhere to go for recourse if they feel they have been discriminated against in decisions made under this act. I find that problematic and needs looking at and should be addressed.

I do not think this specific amendment addresses that in a comprehensive way. It is a bit of a way towards addressing it but I am not convinced it is the best way to address that. It is a tricky one.

I recognise that the information we have been provided with by the department is that the requirement to act in a non-discriminatory way is implicit for statutory decision-makers under any act, and I believe that is true. If there is no recourse for somebody under this Coroners Act, if they feel they have been discriminated against then, as I said, that needs to be addressed in an overarching way because that does not seem to have fairness to it, in my mind.

I would need to hear arguments for this amendment that address some of the matters that have been raised by the Government in their arguments against it to be more convinced to contemplate it further. I understand where this is coming from and we would all hate to think that anyone would be discriminated against, particularly in such a sensitive area of decision-making. However, to pick this out, this particular decision being made under this particular act and add this in as an explicit requirement, it is only adding in discrimination against particular sorts of characteristics. We know that our Anti-Discrimination Act covers a lot more characteristics beyond that so there would be the question of, why put these particular characteristics in?

Perhaps it would be reassuring to understand how an office like the Coroner's Office and for those who work within and under the Coroners Act, how matters of potentially unconscious or implicit bias are addressed through training and education, through ongoing professional development. We know there is an active way that discrimination is sought to be prevented and avoided in the first instance rather than having to insert something specific like this about one decision point under the act and one set of characteristics and discrimination relating to those.

That is probably enough to share at this point to explain where I am sitting on my view. I am finding it difficult to contemplate supporting this amendment but I am open to hearing more, particularly more in response to the arguments put forward by the Government.

Mr VALENTINE - We heard that the Coroner is not subject to or covered by the Anti-Discrimination Act unless it is a bad faith action. I think I am correct in saying that. It was not found to be discriminatory because the Coroner is immune. Yes, it is only one area to cover off discrimination and for some that might be seen to be trying to carve out or include an area so there is no discrimination associated with it in that office. I am unaware of any other discriminatory actions of officers of similar type or standing within the State Service structure.

I hear what the member for Nelson is saying and it is difficult but we have examples of where discrimination has occurred, even though it cannot be stated as discrimination because the office is immune to it.

Ms Webb - It is a big assertion to make.

Mr VALENTINE - We do not have the other side of the story.

Ms Webb - We are not investigating that.

Mr VALENTINE - I appreciate we are not investigating it. However, on the evidence of two occasions of what would normally be seen as discriminatory, it is not discriminatory because the office is immune is there for all to see. I will listen to other members. It is an awkward one, I grant you that. It is an awkward one. I would ask the Leader, the question. A reason was given as to why the office does not come under the Anti-Discrimination Act, or why they are immune to it. If you could repeat that, it might assist as well.

Mrs HISCUTT - The first line here was to reassure the member for Nelson, but now I will add the member for Hobart as well. It is not accurate to say that the Coroner can ignore the Anti-Discrimination Act or any other -

Ms Webb - I did not at any point say that.

Mrs HISCUTT - I wanted to reassure you.

Ms Webb - To be clear on the record, I never made an assertion that the Coroner could ignore the act.

Madam CHAIR - Let the Leader respond.

Mrs HISCUTT - I totally agree. I am trying to reassure you that there are ways and I will go through it. Section 67 of the Coroners Act provides an immunity for coroners and those acting under the authority of the act, such as the Coroner's associates, from legal proceedings in relation to anything done under the act unless it was done in bad faith. The statutory immunity is consistent with the immunity for judicial officers that exists as common law. These immunities do not exist for the private advantage of judicial officers but for the protection of judicial independence and the public interest. Many jurisdictions across the world recognise the need for immunities for people acting in those positions.

The Supreme Court of the United States says the following of the need for such immunities, and I will quote this:

> The nature of the adjudicative function requires a judge frequently to disappoint some of the most intense and ungovernable desires that people have. If judges were personally liable for erroneous decisions, the resulting avalanches of suits would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits.

This does not mean that judges are unaccountable. The High Court of Australia has said the following, and I quote:

> Judges are required, subject to closely confined expectations, to work in public to give reasons for their decisions. Their decisions routinely are subject to appellant review, which also is conducted openly. The ultimate sanction for judicial misconduct is removal from office upon an address of parliament. However, the public interest in maintaining the independence of the judiciary requires security, not only against the possibility of interference and influence by government, but also against retaliation by persons or interests disappointed or displeased by judicial decisions.

The immunity does not apply to anything done in bad faith. Bad faith is considered to be a subjective indictment of the state of mind of the decision-maker, involving a wilful or reckless misuse of power. This is an important safeguard. In the Ben Jago case, the immunity applied because there were no allegations of bad faith raised before the tribunal. Similarly, before the Supreme Court, counsel for Mr Jago did not point to any factual allegations which, if accepted, would have supported the findings of bad faith.

Coming back to a point the member for Hobart said. The delay was very regrettable and distressing for Mr Jago. However, that is not to say any person involved at the time in 2015 acted in any discriminatory way. The Supreme Court did state in relation to Mr Jago's concerns, that those concerns, and I quote:

> … if accepted, suggested inadequacy in the process and procedures of the coronial division to recognise and accommodate same-sex relationships. If accepted in full and viewed in the most favorable light from the appellant's perspective they do not suggest bad faith.

The Magistrates Court has an induction model that states:

> Discrimination is not tolerated and the court is a diverse workplace, including all the main minority groups.

We have heard the Coronial Practice Handbook explicitly states its commitment to a non-discriminatory service to the community. The department established a central learning development consultant role in the last 12 months and the department is undertaking work to further support the department's areas, including courts, with diversity training. This will support the department's diversity and inclusion strategy from 2023-26 and it will be launched at the end of this year. That is the professional development that is available.

Ms LOVELL - Thank you members for those contributions. I will start by being clear about something and I apologise for not being clearer about this in moving this new clause

because the debate has been somewhat sidetracked onto the particulars of Ben Jago's experience. That is not what this amendment is about.

To be really clear, I am not suggesting that there was discrimination against Ben Jago that would be addressed by this amendment. This is bigger than that. This is really nothing at all to do - and without wanting to diminish his experience at all - this new clause is not to do with what happened in the case of Ben Jago and his partner. This new clause has come from the decision, or what was revealed through that process relating to the immunity from the Anti-Discrimination Act. While it is linked with what happened with Ben Jago and the publicity about that led to the desire for this amendment, I am not suggesting that this is what happened in the case of Ben Jago, or that this amendment would have fixed that situation. I want to be clear about that and I apologise for not being clearer about that to start with.

This amendment has come and was suggested by the submission from the Community Legal Centres. I will read from that submission that was authored by Ben Bartl, as policy officer. Quoting from that submission, Mr Bartl said:

> As a result of the Jago v Anti-Discrimination Tribunal decision, on the finding that a Coroner is immune from legal proceedings, some LGBTQI+ people, or couples, may have a heightened sense of anxiety about how their relationship will be judged. To allay any concerns, we also recommend that section 3A of the act expressly provides that senior next of kin will be assessed regardless of sex, sexual orientation, gender, gender identity or innate variations of sex characteristics.

So, the Community Legal Centres has suggested an amendment along these lines and that was the basis for that. The Leader has suggested that it would be unfair to the Coroners Court to have a new clause along these lines in the bill. I can understand where the Leader is coming from with that, but I would have thought if this is the expectation anyway that there will be no discrimination as an act of bad faith as a result of these characteristics, it is not unfair because that is the expectation and we are making that explicitly clear in the bill and in the legislation that that is what is expected.

The Leader also spoke about comparisons to other acts. I will note that I have not made those comparisons in moving the new clause. In responding to the Leader raising those I would suggest - not having made those comparisons myself, and not suggesting that they are the same as this - I would suggest that they are similar in that they also provide for something that might be reasonably assumed to be the expectation. That is the link that has been made with those other acts. You would assume under the other acts that have been referred to that it would be reasonably expected that people would not be discriminated against on that basis. Similarly, it is the expectation that this is what happens anyway. It is having it there clearly in the law, as we have, in some of those other acts.

The member for Hobart raised the question of discrimination in previous examples and posed a question, can we assert that previous occasions were discriminatory? I would argue we cannot, but that is irrelevant because that is not what we are doing here. We are not suggesting there was discrimination or bad faith at that time, just that those proceedings led to a minority group of people feeling they were subject, or more vulnerable to, that discrimination taking place in the future. That is what this new clause is intended to address.

In summary, this new clause is not doing anything other than being explicit about what the expectation is, regardless. It is providing that level of comfort and reassurance to people who feel, as a result of those decisions in the Anti-Discrimination Tribunal and the Supreme Court, that they may be vulnerable to discrimination at a time in the future. I urge members to support the new clause.

Mrs HISCUTT - I remind you that the requirement to act in a non-discriminatory way is implicit for any statutory decision-maker under any act. This includes decisions as to who is a spouse that occurs across many other acts. It is considered inappropriate and unnecessary to explicitly require that the coroners apply the next of kin selection criteria without discrimination. The amendment would single out this decision of a coroner as being worthy of a specific obligation and not to discriminate, indicating a lack of confidence in the coroners as judicial officers.

This also has the undesirable implication that coroners are not subject to the same duty in other decisions, and that the statutory decision-maker, under other acts, are also not subject to the same duty. This amendment is not appropriate and I urge members not to put it into this bill.

Ms WEBB - I have not been convinced to support this amendment and I will not be. However, I thoroughly understand how unsettling it must be for families and individuals in the LGBTIQ+ community out there given past history. I know we have been assured when discussing another amendment, that the information and all the public-facing matters to do with the Coroner's Office are going to be reviewed in conjunction with stakeholders, including members of that community.

I have to put on the record that if we do not come out of that process with, for example, the web pages, the Coroner's Office information for families page, and the Magistrates Court's guide for family and friends page with an explicit thing in the main list saying: 'for diverse families' or something like that with all of this clearly reassured in it, then we will have failed in that process. There is a clear opportunity to not just embed it in little ways under the other headings, but to say, 'Are you a diverse family? Here is how this works for you'.

If we do not come out of it with that, then we will have failed because if we are not putting the reassurance in the legislation - and I do not believe it belongs there, but the reassurance does belong in everything else. It belongs in the sub-legislation that is communicated to the community through the website, through material provided and if it is not completely explicit, then we have actually let down those communities and those individuals and families again. We have no excuse for doing that. I put that on the record, noting that I will not be supporting the amendment.

Mr VALENTINE - I do not know if the member for Rumney has another speak? The member mentioned other acts where such descriptions are, and can be elaborated on, where it already exists in other acts, that you mentioned?

Ms Lovell - It was the Leader who raised that, I was responding to that.

Mr VALENTINE - You just responded to that. I must have missed a bit of it, I actually was not here for the other part of it.

Ms FORREST - That was mentioned by the Leader in a response earlier, in her first response.

Mr VALENTINE - Can you repeat that for me, please? I am sorry to ask that, but I need to get that clear as to which other acts have these statements in them.

Mrs HISCUTT - For fear of repetition, the Local Government Act and the Mental Health Act. I have already mentioned section 63 of the Local Government Act and how that applies and will not repeat that. It is the Children, Young Persons and Their Families Act and the Mental Health Act is what I have here at the moment. It is a very different provision for a non-judicial setting.

The Committee divided -

AYES 4	**NOES 10**
Mr Edmunds	Ms Armitage
Ms Lovell	Mr Duigan
Mr Valentine	Ms Forrest
Mr Willie (Teller)	Mr Gaffney
	Mr Harriss
	Mrs Hiscutt
	Ms Howlett
	Ms Palmer
	Ms Rattray (Teller)
	Ms Webb

Amendment negatived.

New Clause A [Section 3B inserted] -

[3.30 p.m.]

Ms LOVELL - Madam Chair, I move the following new clause A -

After section 3A of the Principal Act, the following section is inserted in Part 1:

3B Determination of spouse of deceased person

(1) A person may appeal to the Supreme Court against a decision made by a person under this Act as to who is the senior next of kin of a deceased person for the purposes of this Act.

(2) If an appeal is made under subsection (1) in relation to a decision made by a person, the Supreme Court may -

(a) if the Supreme Court considers that the decision was made in accordance with this Act, affirm the decision; or

(b) if the Supreme Court considers that the decision was not made in accordance with this Act -

(i) quash the decision; or

(ii) refer the matter back to the person to make the decision again in accordance with the directions of the Court.

(3) If an appeal is made under subsection (1) against the decision made by a person under this Act as to who is the senior next of kin of a deceased person for the purposes of this Act -

(a) the decision is of no effect until the appeal has been determined, and if the Court has determined the appeal under subsection 2(b), is of no effect after the Court's decision is made; and

(b) a decision may not be made under this Act as to who is the senior next of kin of the deceased person for the purposes of this Act until the Court's decision is made.

Madam Chair, I move that new Clause A be read a second time.

Members, this amendment seeks to insert into the Coroners Act the ability for somebody to appeal a decision that is made to award the status of senior next of kin, when somebody is aggrieved by that decision.

This is not inserting any new right to appeal and this comes from submission from Ben Bartl from the Community Legal Centres, Tasmania. He says:

> However, we strongly recommend that the Coroners Act 1995, Tasmania, the act is further amended to explicitly make clear that a party agreed by the senior next of kin decision may appeal to the Supreme Court.
>
> Currently, the act clearly sets out that persons who have a sufficient interest in the findings of a coronial investigation can appeal to the Supreme Court.

And the submission then goes on to set out examples of where that might occur. For example, somebody seeking an investigation be reopened, or seeking an inquest to be held, or an autopsy be performed or not performed, etc. Those types of circumstances.

However, he goes on to say:

> Whilst it is acknowledged that parties are able to appeal senior next of kin status to the Supreme Court, the act is silent and parties would only be aware of their right to appeal under the Judicial Review Act 2000 (Tas) if they had engaged a lawyer.

Or presumably gone and found that act and read it themselves, which would be highly unlikely. Mr Bartl goes on to say:

> Given the heightened emotional state of persons grieving the loss of a loved one whilst the coronial investigation takes place and the rights of appeal already set out in the act for other decisions of the coroner, it is imperative that parties are made aware through the act of their right to appeal. We therefore recommend that section 3A of the act is amended to clarify that an aggrieved person may appeal the senior next of kin decision to the Supreme Court.

I note we have acknowledged and certainly, the Government and the Attorney-General have acknowledged that people can make mistakes. There have been instances in the past and I am sure there will be instances in the future, where magistrates and coroners might get things wrong. Everybody can make mistakes. We are all fallible. We are all subject to that. High Court judges can make mistakes. That is why we have appeal rights. These appeal rights do exist, currently, under a separate legislation.

The provision I am proposing be inserted into this act, will ensure that somebody can appeal a decision made by the Coronial Division on awarding senior next of kin status. Not only that, but they are aware of that more easily than they might otherwise be.

It comes back to member for McIntyre and member for Nelson having spoken a lot on the information we provide to people and how we communicate that. This is what this attempts to do, communicate that more clearly.

I will also note this is not specifically aimed at people who are a spouse. This is to do with the hierarchy of senior next of kin. It could be anyone in that hierarchy. For example, if a sibling is awarded senior next of kin status and a sibling being fifth down the hierarchy, but there was a surviving parent or a surviving child of that deceased person, which is a position that is higher on the hierarchy, that person would have their appeal rights enlivened through this change as well. It is not just spouses, it is anyone who can be identified as a senior next of kin. Members, it is not about creating a new right to appeal; it is about ensuring that people can be aware as easily as possible of their right to appeal when those other rights to appeal have been noted in the act. This is adding another one of those, in terms of making that information available to people as easily as possible.

Mrs HISCUTT - The Government does not support the amendment. I acknowledge that this was proposed by some stakeholders. However, the starting point in responding to this, is to say that coroners can already consider a decision about who is the senior next of kin - such as, where a dispute comes to light or more information is provided. This is exactly what occurred in the Jago matter, albeit after the delay in that matter. Since then, many improvements have been made.

I refer to the Tasmanian Coronial Practice Handbook, which is publicly available on the court's website. Pages 74 and 75 of that document under the heading 'Application to be declared senior next of kin', details what actions a person should undertake in the event there is a dispute as to the identity of the senior next of kin. It notes that parties will be invited to provide information to aid the Coroner's decision and that appeals under an administrative avenue may be possible.

That brings me to the next point. Page 76 of the handbook also details the rights of review available for matters for which there is no specific right of appeal under the Coroners

Act. In particular, it notes that prerogative relief may available in certain circumstances. This means that the Supreme Court can direct that a correct decision be made. Further, if a person remains in dispute with the Coronial Division, over whether the person is a spouse for the purposes of the Relationships Act of 2003, the act already provides an avenue for a person to apply to the Supreme Court for a decision. The Relationships Act provides that:

> While a declaration remains in force, the persons named in the declaration are presumed conclusively for all purposes to have had a personal relationship as at the date, or between the dates, specified in the declaration.

A personal relationship is defined under the act as being either a significant relationship or a caring relationship. Such a declaration would bind the Coroners Court In respect of who is the spouse. In those circumstances, it is not considered necessary to add a further right of appeal to the Coroners Act. The information provided to persons under this amendment and the consequent regulations, will make clear that concerns can be raised with the Coroner for reconsideration, and there are other avenues for repeal or review that may be available.

I emphasise that most disputes about the senior next of kin are able to be resolved within the Coroners Court, once all of the relevant information has been provided. This is the preferred way of resolving such disputes, given any appeals or reviews taking place outside the Coronial Division are likely to delay the important, time-sensitive tasks that the court needs to undertake following a person's death and may, in turn, delay the return of the deceased to the family for the funeral.

Members, it sounds clear that we do not need this amendment and we certainly do not want to cause delays for bereaved people. I encourage members not to support this amendment.

Ms WEBB - Madam Deputy Chair, I rise to have my view on this amendment on the record. I understand where this comes from. It is part of that same intention, which is a good one, that information about what is available on these decision-making processes needs to be as up-front and available as possible, so people can be reassured and have access to those avenues should they need them. I am not of a view that this amendment is necessary in the legislation because it does not add to what is already available there.

However, I have so far never had anything to do with the Coroner's Office. As I interact with the information that is presented to the public through the website, I am quite appalled at how difficult it is to navigate through and find information. I thought, how would I find out if I wanted to dispute next of kin decisions and appeal that in some way? It is not readily available. Even in the notes that we received from the department, to say that while information as to appeal and review rights is already contained in the Tasmanian Coronial Practice Handbook available from the Magistrates Court website - see page 74 to 76 - that is buried. No family member who might, in a moment of grief and distress, be wanting to appeal a decision, is going to access this website and think to look in the Tasmanian Coronial Practice Handbook and find their way to page 74 to get that information.

The Coroner's Office 'Information for Families' page has a drop- down heading, 'Who is the senior next of kin', but there is nothing there about the decision-making process, nor is there information about how to appeal or review that decision.

The Guide for Family and Friends has a heading 'The coroner's court and me' - one of many headings. You have to scroll through pages of notes and text before you get to information about 'what if I think I should be senior next of kin but I am not'. In that, it tells you that you can appeal but it is buried deep, in masses of text, under headings that do not readily navigate you to it.

I will make the same point I made last time; I cannot support the amendment because I do not think it is necessary in the legislation and it does not necessarily belong as explicitly as that in the legislation. However, there is clearly an issue here about access to information and the way it is presented to people in a way that they can readily use it, at the time that is relevant for them to use it - which we know is often going to be somewhat in extremis.

This is the same point. If we do not come out of this review process about the communication materials with something far more navigable for your regular person in the street to find out 'if I want to dispute who is senior next of kin, what do I do' and be able to get to that with two clicks, then we will have failed. It is a shame, really. We have known there is a failure of communication here for years, because of those examples we have had and that we have been referring to in relation to this bill - examples from 2011 and 2015 - and here we are, in 2022. Apparently, a review is going to happen and deliver some outcomes next year in 2023. That is far too long to have fixed something that was clearly broken, in terms of information, support and accessible guidance through this process.

If we do not see this effectively resolved as a result of this process, we will certainly have failed, as a state, for people who are in this situation; and these are often going to be particularly vulnerable people. Unfortunately, I cannot support the amendment. I absolutely support its intent and hope to see it realised through those other channels.

Mrs HISCUTT - There are two commitments related to this issue and I will put them on the record again:

(1) The Attorney-General's plan to have the department work with the court on the website; and

(2) To use the bill's requirements to provide simple, key information to family members after a death, without requiring them to seek this information.

These are two pledges that the Attorney-General has made. I hear what you are saying.

Ms Webb - I will be asking at Estimates next year, believe me.

Mrs HISCUTT - They are the commitments the Attorney-General has made.

Ms FORREST - Madam Deputy Chair, I can see why this might be deemed to be an important inclusion. When we are dealing with the Coroners Court, as I have said, we are dealing with it when time is critical, when decisions made on these things can have lifelong impacts on those who are grieving, when incorrect decisions are made or when there is a contested senior next of kin. We are not just talking about same-sex couples here; we are talking about a whole range of other families that could have a contested senior next of kin. Sadly, death often brings out the worst in families. In our legislation, in our processes and in

our court system - which is an extraordinarily confronting place for the average Tasmanian to front up to - we need to have a compassionate and caring approach that is easy to navigate.

For most people, even thinking about turning up to any sort of court is pretty daunting. Some have many times, and have lots of experience - but the majority of Tasmanians do not. Even for those members of the judiciary - lawyers and others who attend courts in their everyday work - going to a Coroners Court as a grieving relative would be an entirely different experience. It is like a nurse or a doctor going into a hospital as a patient and having the confidence to hand over to get the right care to some other people who may not be as skilled or as experienced as you.

We need to keep this at the forefront when we are thinking about how best to frame our legislation and our processes to ensure that people have the best experience they can in what are very difficult circumstances. It is an emotionally-charged time. People often do not make entirely rational decisions. I will reiterate some of the points that the member for Nelson made because I also wrote these down.

My first question after the Leader spoke was, does this information appear on the website? Is it available to the people - not the judicial officers - who would need to know this information? We were told that you could go to the court handbook. The court handbook is not somewhere I would go, as a grieving relative, to find the information. I would not have managed to get through to pages 74, 75 and 76. I would have given up long before that.

I know that the Attorney-General is committed to making this information more accessible and available to family members. However, if this amendment was to be supported, it would put into effect the amendment to make it clear that these are the rights people have. In terms of dealing with this in a timely manner - well, court processes can move pretty slowly, I am not sure in practice how effective it will be in the time frame. By far the majority of decisions made by magistrates, coroners, those other judicial officers are right, subject to the view of the other party. The Leader previously read out some comments from the US - I am not sure exactly which body it came from - that it is a fraught place to be, in many respects; you are never going to make everyone happy.

It is important in this circumstance, where the incorrect identification of a senior next of kin could have massive repercussions when families do not get on. Sadly, when families do not get on just a little bit, they will get on even worse with the death of a loved one. That is the sad reality. People do not think clearly, they think and behave irrationally and are very emotional. I absolutely understand that.

I understand from the Leader that most of these matters are resolved in the Coroners Court, as they should be. Often it is about getting more information, going back and clarifying those sorts of things. To me, having this clearly in the bill and then having a follow-up process that clearly outlines what the opportunities for appeal are for the individuals who may, on the odd occasion hopefully, need to seek that, is not necessarily a bad thing.

I take it differently from the member for Nelson's view. Her argument made me feel inclined to support it. I will listen to the rest of the debate. I hear the commitments from the Attorney-General and those commitments are great and it should happen regardless of whether this amendment is supported or not. If the amendment is supported then what the Attorney-General will be doing is giving effect to the amendment by making sure that the

information is available to people in an accessible form, when they need it, which is at short notice, not buried in a handbook that would not even be considered for their consumption. That is for the judicial officers to know what they should, or should not be doing. It is not for the person who is grieving for a loved one and has been mis-identified as not being the senior next of kin.

I am leaning towards supporting the member for Rumney's amendment. I know there are provisions in other acts that point to this, but I do not see why this would be such a detriment to put it into this act, so it is all in one place. The appeal rights are clear and then the work done by the Attorney-General and her office, to ensure that there is contemporary, accessible information to people in this situation is there, on the website, or handed out to people, particularly if they felt that a wrong decision had been made, rather than be buried in a handbook.

Mr VALENTINE - The only observation I make is, why do we have law? We have law for the orderly conduct of society. Law is not the object. It is society that is the object and it is designed to make sure that society and the people within it conduct themselves in an orderly and reasonable manner. That is off the top of my head, but that is the way I see it.

We see that a particular issue has been occurring over a period of time. Yes, we can make promises to create better educational products so that these things do not occur. If we put it in here we can take it out. The educational products are there for all to see and operating effectively. It is a bit simplistic maybe, but that is the way I am running on this at the moment. Why do we create law? You do not create law for the law's sake. We create law to help society function effectively and fairly. We have seen occasions in the past, through possibly no fault of anyone, misinterpretation, or otherwise, and we do not want people to have more grief added to their particular circumstance simply because they cannot be recognised as the senior next of kin. Whatever it takes to make sure that does not happen, it is a fair and reasonable thing to do.

Mrs HISCUTT - Given there are existing processes related to disputes about senior next of kin the amendment is totally unnecessary. Resolving disputes of this nature within the Coronial Division, where possible, is preferable in order to avoid delaying the time-sensitive tasks that need to be undertaken in the early stages of a coronial investigation. The bill supports this process though creating a positive duty on the court to provide the prescribed information, including highlighting the current ability to ask the Coroner for reconsideration of determination of spouse as soon as the dispute arises. Should a dispute remain about the correct senior next of kin that cannot be resolved in that jurisdiction, there are other legal avenues to resolve that situation that may be available. The objective of the bill's amendment is to provide information to interested persons and includes information about these appeal and review options, including providing further information about the process for a coroner to review a decision. This is free and faster compared to appeals.

To recap the two points, with thanks to members' contributions, the Attorney-General has given assurances that the regulations will cover things such as the avenues for possible appeal or review under the act, as detailed information about the definition of spouse or significant relationship. Work on the regulations will start as soon as the bill is finalised in consultation with stakeholders, including the court, Equality Tasmania and others. The aim will be to commence them as soon as possible with all the information needed to ensure the objective of people fully understanding the Coroners Act processes.

To make it clear, one of the Attorney-General's two intentions is to provide simple, key information to family members after a death without requiring them to seek out this information. This ensures the bereaved person does not have to go looking for it, and the Attorney-General is going to work with the Coroner's Office so that information is sent to a person in their time of need, as opposed to them seeking it out on the website. That is already a commitment by the Attorney-General.

Ms RATTRAY - I have taken the opportunity to listen to both very strong and reasonable arguments about supporting or otherwise this amendment. I am inclined to support this new clause A this time around. I do so because the reasons that we were given is that the amendment is unnecessary. We have heard the commitments from the Attorney-General, and I appreciate that they will happen sometime in the future, but I also do not see that this is any disadvantage.

Mr. Valentine - It is not damaging.

Ms RATTRAY - No, it is not damaging and there is no disadvantage of having this. It does not complicate anything in my view, unlike the previous amendment that was put forward that I did not support where it was clearly articulated to us that it would unduly complicate the bill. For those reasons, I am considering supporting new clause A in this instance. When I listened to the member for Nelson talk about how difficult it was to get through the website and get to the information that you need in a time that can be highly emotional, then if it is clearly articulated in legislation, all the work that the Attorney-General has committed to will happen as a matter of course because it will need to be complied with in the legislation.

At this point in time, I am leaning towards supporting the amendment.

Mrs HISCUTT - Looking at the proposed amendment, under (3)(a), other appeal processes currently give discretion to the court as to timing. Under this amendment, one concern is that once lodged the decision has no effect until the appeal is heard. This does concern us that the lack of discretion on the Supreme Court may unreasonably delay the processes. That is another reason why members should not support this amendment. It does concern us there are things in here that are unintended.

Ms Rattray - Can you repeat that please?

Mrs HISCUTT - (3)(a) says 'the decision is of no effect until the appeal has been determined and'. On the amendment from the member for Rumney, (3)(a) says: 'the decision is of no effect until the appeal has been determined'. As I have said, other appeal processes currently give discretion to the court as to the timing. Under this amendment one concern is that once lodged the decision has no effect until the appeal is heard. That does concern us because there can be a lack of discretion on timing on the Supreme Court and it may unreasonably delay the process that can be held in the Coroners Court and be dealt with there and then.

Ms LOVELL - I will come to the points raised in relation to the new clause in a moment, but I wanted to clear something up for members in case anyone else had picked this up. I wanted to make the point clearly this is not just about the determination of spouse in response to the Leader's comments on the appeal provisions under the Relationships Act to address a decision on the determination of spouse. I have noted the headnote -

Ms Rattray - That is what it says.

Ms LOVELL - Yes. We have noted the headnote does say 'determination of spouse of deceased person'. I have sought advice from the Clerks and the advice is that under section 6 of the Acts Interpretation Act, the headnote has no meaning in the act. The Acts Interpretation Act subsection (3) says: 'every schedule and appendix' - sorry, section 6(2):

> (2) The headings of the parts, divisions, and subdivisions, into which any Act is divided shall be deemed to be part of the Act.

However, section 6 (4) says:

> (4) Except as provided in subsections (2) and (3) -
>
> (a) a heading to a provision of an Act; or
>
> (b) a marginal note, footnote or endnote in an Act (other than a footnote appended to a prescribed form) -
>
> shall not be taken to be part of the Act.

The advice from the Clerks is the headnote will have no meaning in the operation of the act as the content of the new clause. If members go to the content of the new clause you will see that it speaks very clearly about the determination of senior next of kin, not just spouse. I apologise for that. I did pick that up in the midst of this debate. Thank you to the Clerks for that advice and apologies for the confusion that might have caused.

Madam CHAIR - I remind members the debate is confined to the content of the clause, not the title. The title has no meaning.

Ms LOVELL - Going to comments of the Leader, there have not been many references to Ben Jago in relation to this amendment. I appreciate that because what I wanted to do was encourage members not to reference Mr Jago, unless it is necessary. This new clause is not in relation to a specific set of circumstances. I am reluctant for his name to keep being brought up because I feel that is unfair to him. I would encourage members not to do that unless it is absolutely necessary.

As I have kept saying throughout this debate on a number of these amendments, the publicly known cases are the cases we know about. How many other cases have there been where senior next of kin have been determined by the Coroner and unfairly potentially, or there has been a dispute on that? The people involved have not known about their right to appeal. This is a right to appeal that currently exists. It exists under other acts, it exists under the Judicial Review Act, and there are provisions under the Relationships Act to appeal a decision around a determination of spouse.

Putting that aside, because we are actually talking about senior next of kin here, these rights to appeal already exist. They exist in the Judicial Review Act. The Leader has spoken a number of times about the preferred option is to resolve it within the Coroners Division - it is free, it is quicker and of course it is. This would not replace that process. Of course, we would prefer for people to be able to resolve these disputes in the quickest, most acceptable

way to them, and in most cases that would be in the Coroners Court, but it might not always be the case. This new clause would not replace the process that already exists. That process would already be there and ideally, in most cases those disputes would be resolved quickly. What this does is make it very clear to people these appeal rights in the Supreme Court that already exist do exist. We know we need to make this information as clear and as available to people as we possibly can.

I have said on a number of occasions, how many cases are there we do not know about and how many cases might there have been resolved through this type of appeal, if people knew that was an option available to them? Members, I believe I have addressed the issues raised, and reiterate the fact this is not inserting a right to appeal that does not already exist under other legislation, it is about making it absolutely clear. It does not impinge on processes in place currently, it is about making it absolutely clear to people these rights do exist. Unless they are in a state of mind where they want to appeal, they have engaged a lawyer and they have started that process, it is highly unlikely people would even realise this was an option to them.

I ask members to consider whether inserting this new clause will have any detrimental effect, or will it just provide that additional information and reassurance to people for when they may need it.

Ms RATTRAY - I believe the member proposing the new clause A has a speak left.

Madam CHAIR - She has one more.

Ms RATTRAY - Good, I was pretty sure I checked with my colleague who was of the same view. I am interested in your consideration, member, about the information that has been provided in relation to (3)(a), when it says, 'the decision is of no effect until the appeal has been determined'.

That was something I had not considered in my previous contribution to this. I am interested in your view about that, given what the Leader has provided and holding up something, if you like. It certainly is swaying me here. I am interested in your view on that and the Leader might perhaps even have some further information, but that was quite compelling.

Ms WEBB - I will follow on from the member for McIntyre's comments because I want more clarity about that too. I understand the member for Rumney explaining to us this does not add anything new. It puts something into the act that is already in effect in that sense that there are already ways to appeal through to the courts, if necessary, on these decisions made.

On that front, picking up from previous comments from the member for McIntyre and the member for Murchison, I do not think putting this in here adds any further imperative onto the Attorney-General to pursue the committed course of action of putting the materials together for communication. The imperative is already there because those appeal rights are there. They need to be better communicated and articulated to the public and that has been very clearly discussed today. Putting this amendment in does not do that, be an additional imperative to that.

I take the point from the member for Rumney that the key thing about adding this in here is about visibility and highlighting it for people to whom it might be relevant. That is what

I am taking from the member for Rumney's arguments for the amendment, as a key intended outcome. I would go back to what I said earlier, in a similar way, that I do not think grieving families will delve into the Tasmanian Coronial Practice Handbook and go to page 75 to look for their right to appeal. Also, I do not think they would revert to the Coroners Act either.

The first and foremost place is going to be going to the website, or ringing up and asking for information to be provided. This process of providing publicly accessible, easy to navigate information is key to achieve that intended outcome. I am not convinced that the additional visibility of this appeal avenue that is available, by putting it in here through an amendment, is required, or is the best way to give effect to that intended outcome. Hopefully the pathway we are on - the Attorney-General is on - with revamping public information is the most effective pathway if it is done well and effectively.

Following up on the member for McIntyre's comments, when the Leader did get up and speak about (3)(a) of this amendment, I want more information about that too, because it feels like that has provided a different perspective on what the member for Rumney has said. This amendment does not do anything different to what is available now, but from the concerns raised by the Leader in relation to (3)(a), it sounds like this amendment does do something different to what is available now.

I need a bit more clarity on what is laid out in this amendment. Is this indeed the process that is available now, through those appeal channels that are there? Acknowledging that ideally things get resolved within that coronial court context and does not have to go to a higher court, if it does go to the High Court, under what is available now, to the Supreme Court of Tasmania, do the provisions of this amendment, is this what applies now, particularly (3)(a), or are you saying that is different to what applies now? I want some more clarity on that so that we know once and for all, are we doing anything different to what is already in existence, or are we not?

Mrs HISCUTT - To reiterate my previous point, the Government is concerned by disputes between family members under the proposed amendment. For example, two siblings may be in dispute on more frivolous grounds. Existing review mechanisms do not constrain the Supreme Court to put the coronial processes on hold unless that is appropriate. However, the amendment gives the Supreme Court no discretion. If one of those siblings lodges an appeal, the coronial process, including any autopsy and investigation, must always be held up until the appeal is determined regardless of the merits of the appeal. That is the strong advice that I have been given.

Ms Webb - So it is different, the level of discretion?

Mrs HISCUTT - This section here gives the Supreme Court a no-ending date.

Ms Webb - Or no discretion?

Mrs HISCUTT - No discretion.

Madam DEPUTY CHAIR - Is the Leader seeking advice? No? I will call the member for Murchison then.

Ms FORREST - Madam Deputy Chair, I will question that a little bit further. What the Leader has suggested is that under subclause (3) of this amendment, it says that if an appeal is

made under subsection (1), and the appeal under subsection (1) is that a person may appeal to the Supreme Court against the decision made by a person under this act as to who is senior next of kin of the deceased person for the purposes of this act, that is the question. Who is the senior next of kin? If an appeal is made under that, as to who is the next of kin, a decision in regard of the Supreme Court's decision, as I understand it here, is of no effect until the appeal has been determined. That is the question. The question is not about whether we continue with the coronial inquest. It is not about whether we continue with an autopsy or not, or whatever else may need to occur. It is about if we still cannot determine who the next of kin is, I do not understand how that stops everything else from occurring.

It says that until a decision is made about who is the senior next of kin, according to the Supreme Court's determination. If it gets to that point, which is likely to be a very small number, the decision of who is the next of kin is of no effect. The Coroners Court has already made a determination here. They have decided that person x is the senior next of kin, and person y is saying 'No, it is me'. They have tried to settle it out in the coronial court, no, there was still a disagreement. Person y has gone to the Supreme Court to have that question determined. The decision as to person y being potentially the senior next of kin does not take any effect until the court has made a decision about that. Until that point, person x is still the senior next of kin, surely, unless I am misreading this and not understanding, which is quite possible.

Ms Rattray - Some in this place would doubt that.

Ms FORREST - This is not my field of expertise. In (3)(b):

> A decision may not be made under this Act as to who is the senior next of kin of the deceased person for the purposes of this Act until the Court's decision is made.

That is the only question that the Supreme Court is determining. I do not see why things have to stop because this is a question that will be determined as to who is the next of kin. Notionally, if it is about releasing a body to the senior next of kin perhaps, then that may take some time. That should not necessarily interfere with the other work that goes on in determining the cause of death, foul play that might have occurred in the course of that person's death.

I would be interested to hear, from the member for Rumney when she responds to this as well. I would have thought that this was a sensible and logical provision to put in, so that at least it could allow the coronial work to keep going while the Supreme Court determined that matter. You can still determine the cause of death, you can still determine whether there has been foul play. You can still determine other matters in relation to the situation that sits behind the death of that person, by whatever means it was, whether medical misadventure, road traffic accident or crash, fall from a great height. Whatever it was, that can still be determined.

The question being considered here, and I would expect that is why it is being framed this way, that the identified next of kin by the Coroners Court remains until the Supreme Court makes its determination. That is how I read it. If I am wrong, I would be happy to be corrected.

Ms WEBB - I know the Leader will be taking some more advice on this, to give a more fulsome answer and I have just used my -

Madam CHAIR - Third call.

Ms WEBB - Third call, yes, to clarify my understanding of that and it might help then cover a little bit of ground, if the Leader can confirm or otherwise.

Quite clearly outlined in the information available - off the website actually - is that there are four rights. The senior next of kin is the only one who has those rights. Other interested people share rights with the senior next of kin, except for four things.

Those four things are: to object to an autopsy; to object to an exhumation; to be notified of the Coroner's decision not to hold an inquest; or to request the Coroner not to hold an inquest into a workplace death.

Those are four things only the person who has been designated as the senior next of kin can do. I would have thought this idea of things being held up is pretty relevant, particularly to first two of those. The objection to an autopsy or to an exhumation.

I presume, in the event where a senior next of kin has not been designated yet and there is a dispute occurring, potentially to the Supreme Court about who that is, if that puts everything on hold, I presume that puts an autopsy or a potential exhumation on hold, because the person who is the only one who has the right to object to those things, has not yet been identified.

I can see the potential and this can be clarified or confirmed. I can see the potential for things to be held up, at an early stage, if those are on hold.

I understand it might be a straightforward determination by the Supreme Court, because the decision has been made by the Coroner this person is senior next of kin and another person has objected, determination is made, off we go.

I understand also the example provided by Leader, if there are some vexatious, terrible interpersonal things going on, say amongst siblings, about who gets to be senior next of kin, and they just keep appealing each other and then every time there is an appeal, things potentially go on hold.

I do think differently about it to the member for Murchison. Clearly those four rights that are exclusively belonging to the senior next of kin, particularly the right to object to an autopsy and object to an exhumation, are where you could see things getting problematically held up.

That is my understanding of it. I understand the concern being raised by the Leader and why it is an important distinction between what exists now, where there is some discretion for the Supreme Court to not hold things up under the current arrangements, but they are constrained here to hold things up.

Mrs HISCUTT - The member for Nelson took the words out of my mouth. We are here looking at the Coroners Act, sections 38 and 39, talking about objections to autopsy and exhumation.

The key coronial processes require a senior next of kin to be in place, for example, where section 38 allows the senior next of kin to object to an autopsy. However, if an appeal is lodged, the decision, being who is the senior next of kin, is of no effect.

Therefore, once the appeal is lodged, there is no senior next of kin for these processes to be undertaken, so it can be held up for a long time in the Magistrates Court.

Ms RATTRAY - My question is how is it different from the current court process? That is what I need to understand. What makes this different or is it even different?

Mr Valentine - Mine too. You are asking for both of us.

Ms RATTRAY - I am asking for both, maybe more.

Mrs HISCUTT - The prerogative relief process is not constrained by statute. It is a common law process leaving discretion for the decision to stand during an appeal where appropriate, whereas the amendment proposed by the member for Rumney, as I have mentioned, at (3)(a) does not allow that.

Ms Rattray - So that is the difference.

Mrs HISCUTT - That is the difference.

Mr VALENTINE - What happens if this amendment is not in place is that somebody who is the senior next of kin ends up not having the right to dictate what happens to the body of their loved one because there is a dispute. Under common law there is a dispute. The Coroner can go ahead and do whatever they want. It may well be very significant in terms of something like a person who has a religious conviction a body shall not be touched and they fight tooth and nail to make sure the body is not interfered with. I imagine there would be circumstances like that and the Coroner can go ahead and allow it to happen.

You might say there are other laws that are above what somebody's wishes might be so they have to determine whether someone was murdered or not, maybe. With this in place, yes, it might be that things are held up, but it is not going to take forever to resolve and somebody's wishes will be able to be adhered to. How long is it likely to take to resolve is what my mind then turns to? It is a question I have. How long will it be held up for? Are we talking years? Are we talking weeks, days? Is there any indication of that? Maybe the Leader is able to give me some indication as to how extensive the hold-up is likely or could be?

Ms FORREST - When I go to the Coroners Act, sections 36 and 37 -

Madam DEPUTY CHAIR - Is it not page 72 to 74?

Ms FORREST - This is in regard to autopsies, and then 38, sorry, objection to autopsy and then exhumation. The objection to autopsy, section 38 says:

> (1) Where the senior next of kin of the deceased person requests a coroner not to direct that an autopsy be performed but the coroner decides that an autopsy is necessary, the coroner must immediately give notice in writing of the decision to the senior next of kin.

So, that is when we know who the senior next of kin is, okay. When the request has been made, under that subsection, autopsy must not be performed until 48 hours after the senior next of kin of the deceased person has been given notice of the Coroner's decision, under that subsection, unless the Coroner believes the autopsy needs to be performed immediately.

The Coroner still has the capacity to do that. This is where you have an identified senior next of kin, which you do have whilst it is being contested in the court. As I understand it under this amendment, what is being contested is the senior next of kin, but you have one so it does not have any effect. What this amendment does is that if the decision has no effect, so the senior next of kin stands - it could still cause problems. I am not suggesting it is not going to cause problems. You have a complicated situation here already that has not been able to be resolved in the Coroners Court. So, off we are battling it out in the Supreme Court. So, you still have a senior next of kin, because someone has already been recognised as the senior next of kin, otherwise you are not in the Supreme Court of Tasmania.

Mr Valentine - No, that is the decision.

Ms Webb - The decision is the senior next of kin decision.

Mr Valentine - It is the decision about the senior next of kin by the Coroner. That is the decision. It is not the Supreme Court's decision.

Ms FORREST - Yes, that is what I am saying. So, that has no effect -

Ms Webb - Yes, but there is no senior next of kin -

Ms FORREST - The Coroner's decision has no effect.

Mr Valentine - So, there is no senior next of kin at this point. Hence my question, how long?

Ms FORREST - So, the Coroner can apply to the Supreme Court to do an autopsy anyway. An autopsy and an exhumation are two things that can be put on hold for a period. There are times when it needs to be done urgently, but most of the time that is not the case. It does not stop toxicology being done. It does not stop a whole heap of other procedures and investigations being done. Things like your toxicology do need to be done soon, getting DNA and things like that -

Mr Valentine - Blood samples.

Ms FORREST - can, not necessarily, wait but what you are wanting often with an exhumation is DNA. That is what you are after as well as other matters. I feel for these people who have to do this work.

If the Leader can take me to the Judicial Review Act that describes the process here of the review. What part in the Judicial Review Act is it that we are comparing with? We are not comparing the appeal rights in the Coroners Act because they are not there. This is the point the member for Rumney is trying to insert, some clarity relating to appeal rights. We were told earlier that the appeal rights sit in other legislation, and that is in the Judicial Review Act so if the Leader can take me to the provision in the Judicial Review Act that describes a comparable

example here. Is that where it is? I only have one call left. This is my final call, sorry. I need to be able to be directed to that. I am not the lawyer. I am not used to dealing in this space. I need a bit of guidance. I want to be sure we are comparing apples with apples, that is all.

Mrs HISCUTT - Prerogative relief is common law. It is not under the Judicial Review Act.

Ms FORREST - We were told earlier, I am sure we were told earlier that the appeal rights sit within other law -

Ms Lovell - That is the advice of the Community Legal Centres.

Ms FORREST - So that is not right?

Ms Lovell - That is the advice that I have from them.

Ms FORREST - Is it incorrect then, Leader, that the appeal rights that we are trying to replicate here are not in the Judicial Review Act? They are another process that is not legislated. I find that odd that there is not a legislated opportunity for an appeal here on a matter that is on a determination by a court, in this case the Coroners Court. Because if that is the case, then we do need some sort of appeal in the Coroners Act here to make it clear that people can go to the court. If it is urgent, if the Coroner feels they need to get on with the autopsy posthaste, then they can appeal to the Supreme Court while the question still is there being determined about the senior next of kin, hoping the Supreme Court will focus their attention on that one and determine that one fairly promptly so that we can have some resolution here.

Mr Valentine - That is why I asked about the time.

Ms FORREST - I appreciate that, it is a fair question. I am trying to make sure we are comparing apples with apples. We have been told that this is not the same as the process under which the appeal rights currently exist. We are told there is a current appeal right, and I am trying to find where those current appeal rights are so I can look at them and say well, yes, this is different, that could be problematic, or no, it is not different, it is the same. We are told it is different.

Ms Webb - I can point the member to the Magistrates Court, A Guide for Family and Friends. There, under the bit that says, 'What if I think I should be senior next of kin -?

Ms FORREST - I can hardly understand you with a mask on, I am sorry, it is muffled.

Ms Webb - The Magistrates Court, A Guide for Family and Friends, under the heading, 'What if I think I should be senior next of kin but I am not?' It does direct people, that if you do not agree with the Coroner's decision you should get legal advice as you may want to apply to the Supreme Court to have the decision reviewed.

Ms FORREST - So under what power is that?

Ms Webb - It does not say it here in this information for families.

Ms FORREST - That is what I am saying, I am trying to clarify where it is. If it is different, I need to know how and why it is different.

Ms Webb - The judicial review.

Ms FORREST - I have asked for some guidance from the Leader as to where it is in the Judicial Review Act.

Madam DEPUTY CHAIR - I expect that the Leader's advisers are taking advice.

Ms FORREST - Do I stand on my feet while she points me in the direction?

Madam DEPUTY CHAIR - Somebody needs to be on their feet, if you want to hold that position. You had better remain standing.

Ms FORREST - I am here to help, not from the Government. It seems that we have reached a bit of a difficult situation here, where there is not a clarity of answers, there is not a clear sense forward. I have held my position, so to speak, to try to understand -

Madam DEPUTY CHAIR - On my advice.

Ms FORREST - Yes, because it is important that people who feel aggrieved through this process have a clear pathway to resolution. As I have already said, it is a difficult time for families, when a loved one dies. It is even more difficult when this matter ends up in the Coroners Court because it is complicated, it is contested, because there is something funny that has gone on - or not. It is not the death of a loved one after a battle with cancer or something like that. It is a difficult circumstance, so it is important that we get it right. It is important we ensure people are clear about their appeal rights; and at this stage we are finding it difficult to give that clarity.

At this point, Madam Deputy Chair, I am going to resume my seat and the Leader may have something to say. I know the member for Rumney also does. I appreciate the time. It is important that we are clear about this and we are not making decisions without the full amount of information we need to ensure we get things right. I will resume my seat in the absence of a clear direction from the Leader in terms of the Judicial Review Act.

Ms LOVELL - Madam Deputy Chair, thank you to members for your contributions. I wanted to jump up before the Leader because I have something to add that will wrap this up now. I have spoken to the Leader, and have sought some advice on what I need to do. I will be seeking leave to withdraw the amendment, because we are getting into territory which is quite complex and people are confused and it is not a great time of year or time of day to be trying to resolve that.

I am seeking leave to withdraw the amendment, with the understanding that the Leader will then report progress. Then we can have some time to deal with this over the summer break, and come back in the new year to resolve this, one way or another. I seek leave to withdraw new clause A.

Mrs HISCUTT - On the question of leave being granted, the Government is happy for that to happen. We have delved into some fairly complex legal arguments here, and I know it

is hard to get the legal argument across in this sort of forum. This will allow my advisers time to get a fully prepared brief that I can deliver when we come back to this next time. We are still of the firm opinion that when the amendment is re-presented next year we will be opposing it, on the grounds that we hope to make it clearer and more understandable for members next year. Therefore, we will not be opposing the withdrawal of the amendment.

Leave granted; amendment withdrawn.

Progress reported; Committee to sit again.

JUSTICE MISCELLANEOUS (ROYAL COMMISSION AMENDMENTS) BILL 2022 (No. 55)

First Reading

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

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

> That the second reading of the bill be made an order of the day for Tuesday next.

Motion agreed to.

ADJOURNMENT

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

> That at its rising the Council does adjourn until 9:30 a.m. Friday 3 March 2023.

Motion agreed to.

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

> That the Council do now adjourn.

Member for Murchison - Tribute

[4.51 p.m.]

Ms RATTRAY (McIntyre) - Mr President, and I will move very slowly to the lectern and anticipate the re-entry to the Chamber by the member for Murchison.

Mr PRESIDENT - Oh, there we go, just like clockwork.

Ms RATTRAY - Mr President, I make the House aware that in the new year the honourable member for Murchison will be tendering her resignation as a member of the Subordinate Legislation Committee. The Governor will be receiving a letter with an official resignation which will take effect from March 2023. The member for Murchison has been a member of that committee for 16-and-a-half years, but it was her last meeting today and I thought it was appropriate that we place on the public record that significant commitment to the Subordinate Legislation Committee.

Her leadership, expertise and knowledge have been very much appreciated and valued. She has been first class when it has come to knowing the way that the act functions and all those processes. We have had a real churn of members over those 16-and-a-half years, and I know they have all benefited in some way from the input by the member for Murchison. I really want to acknowledge that, and to thank her for her service. So, congratulations on that service and I look forward to your contributions in a lot of other committees that you will now have more time for.

Members - Hear, hear.

Ms Forrest - Thank you, member for McIntyre, I appreciate those kind comments.

Christmas Greetings

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, it is the last sitting day of parliament, it is that time of the year. 2022 has come, and it has nearly gone. Now this end of the year seems to have taken a long time for me, but I am sure that members here have seen it come around quickly. The year itself seems to have been longer and harder than other years, especially the last couple of months for me, anyway.

Mr President, I am not going to look backwards, I am going to look forward. I am going to focus on family this Christmas. After all, these are the most important people in our lives, including my new six-month-old granddaughter. She will be coming home to visit from Sydney this year. I suppose she will bring her parents with her. I am very much looking forward to meeting her for the second time. The first time I saw her, she was just a wee babe. Family is most important to us.

Mr President, I take the opportunity to say thanks to all the Legislative Council staff, and to Hansard. I miss Hansard being up there. You see the little red light that says 'On Air' but there is no one home, and I miss having that person there.

Ms Rattray - Home somewhere else.

Mrs HISCUTT - Yes, home somewhere else. The OPC staff who are always brilliant to have on hand, the library staff, the IT crowd - as I call them - the utility officers, the bistro and the dining room staff who support us. As members of parliament, we are very reliant on all staff to help us get our jobs done efficiently. The last few weeks have been particularly hard on staff, not to mention members. I thank them all for the huge effort that they have done. I hope to be home on time tonight, member for Rumney. Merry Christmas to all those staff and I thank them.

Mr President, I thank you for your counsel, your friendship and your advice over the years. I come and sit in your office at the beginning of the week and we go through the process, and I appreciate your counsel at those times. We have also received good and trusty advice from our Clerk, David, and Vickers - as we like to call her - and now Tim. Lovely to see you all, smiling there. The collective minds are very thoughtful, always observe procedure and are never wrong.

To the Hansard ladies and gentlemen, the tolerant, patient and persistent nature that they have. It is a pleasure to work with them over the years. As I said, it is a shame that we cannot see them, but we know that they are there doing their work.

To our attendants, Mandy and Robyn - Mandy has just delivered me a glass of water, thank you so much. Thank you both for attending to everyone's needs in the Chamber. You have done a wonderful job looking after us. On behalf of all the members here, I will take the liberty of thanking you.

The support I have received from my office is, and has been, second to none. I have the full confidence of my team. This year, Will has been very persistent in trying to get answers to many of the member's questions. He has had to bring in the big guns a couple of times; he has come into my office and said 'Leader, I need your help,' and in we go. Jonathan, well, as members know, he is a different kettle of fish. He and Vader make a very good pair. I enjoy having them both around. Jonathan has provided me with excellent, solid, sound advice without fear or favour. When we discuss issues, there is no beating around the bush. We thrash out all aspects of a particular situation. He is always there at the end of the phone for me; sometimes we have to get Vader off the phone to discuss business, but we do. He will answer the phone early in the mornings, on the weekends, and I thank Jonathan and appreciate his help and support.

As an aside, I have an aunt whose husband was named Trevor. Trevor was an excellent support to her. She would say, 'it's time to dig the veggie garden' and he would say, 'I've done that, love'. She would say 'Oh, you are a treasure,' instead of Trevor. I have a treasure, in the name of Mandy. She is a treasure. Every year it is the same thing. I cannot find words to tell you how much I appreciate this woman and how lost I would be without her. We have decided, Mandy, that you are the rock in our office. You are. You are the glue that keeps our feet on the ground. You never waver in your advice. It worries me sometimes when I say, 'Mandy, we should do this,' and Mandy will say 'or maybe we should do that' - and I think to myself, 'oh Leonie, think about this'. I always adhere to your excellent advice and I thank you for being there every day of the week. When I ring Mandy or Jonathan, I do not expect them to answer. I leave a message. If I email, I expect it to sit until Monday, but they do constantly answer and reply, and I appreciate that. You do not have to do so, but thank you for doing it. The work that you do is outstanding, the many hours that you do and you put in here during sitting hours is unbelievable. I appreciate it all.

Well done, thank you and Merry Christmas.

To Mr President and honourable Members, I now say to you all, it has been a pleasure to work with you. Even with the member for Elwick.

Mr Willie - Somehow, I thought you were going to say that.

Mrs HISCUTT - We all say that.

Mr PRESIDENT - Aye.

Mrs HISCUTT - Even though there are political differences in our House, we do not let that get in the way of the good friendship amongst us all. I appreciate the member for Elwick taking all those jokes in the manner that it is meant. I look forward to the contributions in the New Year from our latest and newest member of the team, the member for Pembroke. I think he is going to be a problem to me. My office door is always open to you if you need to, and to all members of this important House in parliament, my door is always open.

Working with the Leader of the Opposition, member for Rumney, can I say that it is good to be able to converse with you and to know where we stand on things. We never collude. If I say what do you think on this, she might say, 'Oh, you will hear about it on the Floor'. That is the way it should be. I do appreciate, from leader to leader, that it is good to be able to have that working relationship.

Honourable members, take care during this Christmas break. Look after yourselves and your families. I hope that Santa comes to visit your home. I am not sure whether he might leave a piece of coal for some members, but I reckon he will be there.

Mr Valentine - He will be in trouble if he does.

Mrs HISCUTT - On that note, Mr President, I might stop. Merry Christmas to you all. I hope you have a safe and happy New Year. We will be seeing nearly everybody again in February. If not, I look forward to the March start, when I can see your faces again.

Christmas Greetings

Mr PRESIDENT - Thank you, Leader. I, too, wish all members and their families the very best for the coming Christmas season and 2023 coming up. I do not know if it will give us the same exciting ride that 2022 has, with a couple of prorogations and the passing of a monarch. Parliamentary-wise, it was a difficult year. I thank the Leader. It is a difficult job, particularly in a Chamber with so many diverse views on how things should be run. It is a credit to the Leader and to the members of this Chamber the way that our debate goes. Even when we are at our most testy - and I think it is called 'pique Leg Co' in some circles - it manages to resolve itself. That is a credit to this Chamber and the people who make it up.

My thanks to the Clerk, David Pearce. We are extremely fortunate to have a person of his calibre with us, and ably assisted by the Deputy Clerk, Catherine Vickers and Tim Mills. We have a wonderful team of senior officials in our Chamber. Also, Leader, you mentioned Mandy and Robyn who look after us and keep us hydrated and give us a knowing glance every now and again when you need a knowing glance.

In the President's office, this year I would like to thank, and I should probably do it twice because there may have been an occasion recently maybe last time where I did forget to thank the wonderful Sandra Phillips, who is our administrative person who works between the Clerk and the President and looks after us all very well when we need anything done. Thank you very much, Sandy. I thank all our electorate officers. We all have those wonderful people. In

particular, I thank my electorate officer, Debbie, who keeps on keeping on, no matter what happens, and all our committee secretaries that we have here, Allison, Jenny, Julie and Simon. I know other members have mentioned how important they have been. There has been quite a bulk of committee work. I do not think we have had as much paperwork produced by committees for quite some time when you look at it all.

I thank the Parliamentary Computer Services and our broadcast staff who come in and always seem to capture our best sides. I notice everyone looks particularly beautiful when they stand up. Of course the Leader mentioned Hansard. I also thank them, our wonderful Parliamentary Library and Research Service who are just there. I know I send a little request off to Dr Stait and ask the most obscure question and usually get quite a sensible answer.

Also, thanks to our catering staff in the dining room, Mandie, Jacquie, John and Simon and all the casual staff who come through there. They look after us very well. Likewise, in the bistro, with Jo, Christine, Renee, Jade and Jess, always good for a coffee and a toastie. Our utility officers, Gaye, Shane, Angela and Will, who tidy up after us, I put my thanks on record to those people.

I wish all members the very best compliments of the season. I look forward to working with you again in 2023, no matter what it throws at us.

The Council adjourned at 5.01 p.m.

Appendix 1

Tabled & incorporated into Hansard L. Hiscutt 24.NOV.22 Q 9

QUESTION ON NOTICE

Question No. [number] of 2022
Legislative Council

ASKED BY: Hon. Mike Gaffney MLC

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

QUESTION:

(1) With regard to the increasing popularity of electric vehicles, solar energy installations and battery storage systems in domestic and commercial properties:

  (a) What is the Government's policy in responding to the growing need from householders and business owners for objective and impartial advice on integrating these systems; and

  (b) what support mechanisms and services are in place to encourage the transition to electric vehicles and the electrification of transport systems?

(2) Noting that Bi-directional charging from battery storage is involved in trials around Australia, and that vehicle to home (V2H) and vehicle to grid (V2G) is a proposed storage solution in a renewable electricity network:

  (a) What are Tasmanian Government Business Enterprises (GBE's) doing to investigate, prepare and encourage this technology; and

  (b) is the Government in a position to direct a GBE to explore this technology?

(3) Noting that Solar energy combined with Bi-directional charging can be considered the best practice model for electrification, encouraging solar energy installation with battery storage systems must be seen as an imperative first step:

  (a) What are the barriers in Tasmania to this model;

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(b) would the Government agree that there are more obstacles in Tasmania to domestic solar (through building permit restrictions) than anywhere else in Australia; and

(c) if so, what is the scope within the Tasmanian Planning Scheme to address these obstacles?

(4) Given that Tasmania is generating all its electricity needs from renewable energy sources, and that it is a net carbon absorber with negative emissions for the last seven years, what is the Government's future policy to ensure an equitable and timely transition to renewable energy powered transportation?

ANSWER:

(1)(a) There are a range of government and private sector resources that provide advice on the use and integration of energy technology in homes and small businesses.

For example, *Your Home* is a website maintained by the Australian Government Department of Climate Change, Energy, the Environment and Water, which provides guidance about designing, building, or renovating homes to ensure they are energy efficient, comfortable, affordable and adaptable for the future. The website also provides information about EVs and other transport-related aspects of home design.

Energy Consumers Australia, which serves as an independent national voice for residential and small business energy consumers, also operates a website that provides advice about new energy technology, including installing and using solar power, solar batteries, and buying and using EVs.

(1)(b) The Government has introduced a range of measures to support the transition to EVs, including through:

- two rounds of the EV ChargeSmart grant program to support the installation of fast and destination charging infrastructure across Tasmania, with the second round focussing on installing infrastructure in regional areas and tourism hotspots
- a two year waiver on duty payable on the purchase of new or second hand EVs, and a two year waiver on registration for new EVs purchased by hire car companies and tour companies
- a target to transition the government vehicle fleet to 100 per cent electric by 2030, which will result in a greater number of EVs becoming available to Tasmanians in the second-hand market.

(2)(a) TasNetworks has established the Fast Charger Support Scheme (FCSS), which supported the installation of Tasmania's first direct current (DC) EV fast charger in October 2018. Installations of EV charging infrastructure by TasNetworks have continued state-wide, supported by the FCSS, the

Tasmanian Government's ChargeSmart grant program and market-based installations.

TasNetworks is currently working in partnership with other Distribution Network Service Providers and technology partners on the EV Grid (Dynamic EV Charging) Trial to better understand EV charging behaviours and network impacts, and to demonstrate the role of technology in managing smart (controlled) charging.

TasNetworks, along with Hydro Tasmania and Aurora Energy, also participate in the Tasmanian Government's Electric Vehicle Working Group, which has been established to provide advice on the development of an integrated approach to the uptake of EVs in a way that maximises benefits to the State.

(2)(b) The Government is confident that these issues are being appropriately considered.

(3)(a) In Tasmania, the major barrier to this model is the initial substantial outlay in the form of installation costs. The Government is supporting the uptake of solar energy through the $50 million Energy Saver Loan Scheme that is available to residential and small business customers to invest in energy efficient products including solar energy. There are no significant regulatory barriers in Tasmania to bi-directional charging and battery storage systems.

(3)(b) No. Under Tasmania's building regulatory framework, no building approval is required for solar installations on a roof, if the panels cover an area of 38 square meters or less, are parallel to the roof plane and comply with a number of other requirements. These installations not requiring building approval are considered 'Low Risk Work'.

For solar installations that exceed the limitations of Low Risk Work, the owner is required to obtain building approval from a licensed building surveyor. This additional requirement, for installations greater than the types permitted for Low Risk Work, is to ensure that the installation of the solar panels on the building do not adversely affect the integrity of the building, and are to ensure the continued safety of the building occupants.

(3)(c) The Tasmanian Planning Scheme, which is now in effect in 15 of the 29 municipalities, provides exemptions from a planning permit for all roof top solar energy installations, and for ground mounted solar energy installations covering an area of up to 18 square meters (apart from properties that are heritage listed or within a heritage listed precinct). These exemptions are also contained in all of the remaining interim planning schemes. While there are no specific exemptions for battery storage systems, any external wall installations would be considered as a minor protrusion from the house, like all domestic heat pumps and hot water systems, and not require a planning permit unless heritage listed.

The standardised requirements in the Tasmanian Planning Scheme (the State Planning Provisions) are currently being reviewed in accordance with a requirement under the *Land Use Planning and Approvals Act 1993*. There is

scope for any planning-related obstacles, if identified, to be addressed as part of the review process.

(4) Following the passage of the *Climate Change (State Action) Amendment Bill 2021* through Parliament, the Government has committed to developing an emissions reduction and resilience plan for the transport sector within 12 months of the Bill receiving Royal Assent.

APPROVED/NOT APPROVED

Hon Guy Barnett MP
Minister for Energy and Renewables

Date: 24/11/22