Wednesday 18 September 2019

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

TABLED PAPER

Government Administration Committee A - Special Report

Ms Forrest presented a special report of Government Administration Committee A in relation to an inquiry initiated by the Committee's own motion.

Report received.

PERSONAL EXPLANATION

Member for McIntyre - Housing Land Supply (Huntingfield) Order 2019 - Disallowance

[11.03 a.m.]

Ms RATTRAY (McIntyre)(by leave) - Mr President, I thank the House for the opportunity to clarify a reference made in the House yesterday during the Housing Land Supply Order disallowance debate.

The reference I made to 'we' was about the House. There are pressures within these types of issues where the House becomes a focus and criticism comes from all sides. That was the point I was attempting to make. Thank you.

SUSPENSION OF SITTING

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

That the sitting be suspended until the ringing of the division bells.

This is to complete our briefings.

Sitting suspended from 11.04 a.m. to 11.55 a.m.

LAND ACQUISITION AMENDMENT BILL 2018 (No. 59)

CORRECTIONS AMENDMENT (PRISONER REMISSION) BILL 2018 (No. 15)

Third Reading

Bills read the third time.

CIVIL LIABILITY AMENDMENT BILL 2019 (No. 30)

Second Reading

[11.56 a.m.]

Ms HOWLETT (Prosser - Deputy Leader of the Government in the Legislative Council - 2R) - Mr President, I move -

> That the bill be now read the second time.

The Civil Liability Act 2002 was enacted following recommendations of a national expert panel appointed to review the law of negligence. This panel released its final report, referred to as the Ipp report, in September 2002.

One of the major reasons a review of the law of negligence was undertaken was the fact that public liability insurance had become unavailable or unaffordable, in particular for not-for-profit organisations, following the collapse of HIH Insurance in 2001. It was thought that reform of the common law to restrict liability and encourage greater 'personal responsibility' would lead to lower insurance premiums for recreational providers. The focus was on protecting the providers or organisers of recreational services who are generally responsible for taking out public liability insurance.

The Ipp report recommended that recreational activities and recreational services be treated as a special category for the purposes of personal injury law. The report clearly stated that this special category was based on the fact that people who participate in such activities often do so voluntarily and wholly or predominantly for self-regarding reasons. The report says -

> people who participate in recreational activities in the course of their employment do not do so voluntarily in the relevant sense … Therefore, any rule limiting liability in respect of recreational services should not apply to them.

The Tasmanian Civil Liability Act 2002 was passed with the intention of following this recommendation in the Ipp report. The second reading speech on the bill that inserted Division 5, Part 6 into the Tasmanian act implies that the division was intended to apply only to sport as a recreation, not to sport as a profession. The clause notes state that -

> 'Dangerous recreational activity' is 'confined to those activities which are engaged in for sport, enjoyment, relaxation or leisure'.

A 2017 decision of the New South Wales Court of Appeal has the potential to impact on the original intent of the Tasmanian legislation. The 2017 decision of the NSW Court of Appeal on *Goode v Angland* found, among other findings, that the jockey, Goode, was knowingly participating in a dangerous recreational activity (horse riding) where falling from a horse is an obvious risk, and was therefore prevented by the statutory provisions of the Civil Liability Act 2002 (NSW) from making a claim for damages for the injury.

The arguments in the appeal centred on sections 5J to 5L of the NSW Civil Liability Act 2002, in particular the definition of 'recreational activity' as including 'any sport'. The NSW Court of Appeal ruled that the NSW act did not make any distinction between dangerous sports undertaken

for leisure or as a profession, with the effect that the relevant sections were a 'liability-defeating rule' in respect of Goode's claim.

The Ipp report recommended a definition of 'recreational activity' as 'an activity undertaken for the purposes of recreation, enjoyment or leisure'. 'Any sport' was not included in the recommended definition.

While many of the recommendations of the Ipp report were implemented nationally, only New South Wales, Tasmania, Western Australia and Queensland adopted a provision excluding liability for harm suffered from an obvious risk of a dangerous recreational activity. The Queensland definition of 'dangerous recreational activity' mirrors the definition recommended by the Ipp report and does not include a reference to 'any sport' and will therefore be unlikely to be affected by the NSWCA decision, which turned on the inclusion of that phrase. The Western Australian and Tasmanian provisions mirror the NSW provision in that both include 'any sport' in the definition of recreational activity and therefore will be subject to the NSW decision.

Sections 18 to 20 of the Tasmanian Civil Liability Act 2002 almost entirely mirror sections 5J to 5L of the NSW act. Therefore, a Tasmanian court, if facing a similar case in the future, would be obliged to follow this NSW decision.

The breadth of the exclusion of liability resulting from the NSW Court of Appeal decision was not in contemplation at the time the Tasmanian provisions were introduced. The interpretation of the Tasmanian provisions in the earlier Tasmanian case of *Dodge v Snell* reflects the understanding of the effect of the provisions at the time of introduction to this House.

In that matter Justice Wood noted -

> It is evident from the Final Report that the rationale for treating recreational activities and recreational services as a special category justifying reform does not apply to people who participate in recreational activities in the course of their employment …This rationale for the legislation is also evident from the Second Reading Speech.

Her Honour found that the word 'recreational' colours the word 'sport' and that the exclusion from liability did not apply to professional jockeys. The decision in *Dodge v Snell* was specifically not followed by the NSW Court of Appeal and, as I have said, the NSW decision will prevail in future Tasmanian cases. As a result, claims for injury arising from negligence in any sport, including professional fixtures, will be statute-barred.

The NSW Court of Appeal decision clearly broadens the exemption from liability beyond that recommended in the Ipp report and beyond that contemplated when Division 5, Part 6 was introduced into the Civil Liability Act 2002. In her judgment in *Dodge v Snell*, Justice Wood expressed the opinion that such an interpretation would have far-reaching consequences. It was Her Honour's view that the extension of the exemption to professional sportspeople arguably means employees engaged in a sport as an occupation, such as conducting a kayaking tour or teaching others a sport, may also be precluded from seeking damages for negligence. Her Honour went on to say that there was no indication that parliament intended such a sweeping change to the common law entitlements of many Australians.

The NSW Court of Appeal indicated that its ruling was in large part due to the definition included for 'recreational activity', specifically the inclusion of the term 'any sport'. This varied from the wording recommended by the Ipp report and, therefore, the court found that the scope of the definition varied from that recommended in the Ipp report.

This bill returns the definition of recreational activity to that recommended by the Ipp report so as to ensure professional sportspeople, such as jockeys, are not barred from pursuing a civil claim for breach of duty.

Therefore, this bill seeks to amend the Civil Liability Act 2002 so as to ensure the act fulfils the original intention of the Tasmanian Parliament.

Mr President, I commend the bill to the House.

[12.06 p.m.]

Ms FORREST (Murchison) - Mr President, I will support the bill. Sometimes even the content in the second reading speech is not enough to clarify the intent when it is testing the courts. It is important we do our best to have it right in legislation to ensure the intention is reflected in the legislation.

As the second reading speech the Deputy Leader delivered made pretty clear, in 2017 a decision of the NSW Court of Appeal potentially could impact on our legislation, even reflecting on the original intent of the legislation. We know a number of sports engaged in professionally are very dangerous.

AFL football is one. We saw a young woman die playing AFL football last year, an absolutely tragic outcome. We saw cricketer Phillip Hughes die as a result of an injury. In many cases, we see pretty horrific injuries on the footy field most weeks. Clearly people engaged in football as their profession should not be excluded and should be able to make their claims.

It is interesting to contemplate - maybe the Deputy Leader can address this. I do not imagine, for example, that someone who was getting a small payment for playing community footy but was otherwise unemployed, and this was a source of income for them, would be covered because that is not a professional occasion as such.

Mr Valentine - It is not a professional wage.

Ms FORREST - Yes, so I am seeking some clarification. I would not have thought it would have done, but sometimes our recreational activities are not necessarily considered sport, but can still be quite dangerous. People may refer to them as sport like kayaking professionally. Olympic athletes participate in a range of sports.

It is important this is corrected so the original intent is maintained. As the second reading speech said, in Justice Woods' view the extension exemption to professional sportspeople arguably means employees engaged in sport as an occupation, including such as conducting a kayaking tour. They are leading the tour. I assume most people who conduct tours participate, but maybe they watch from the bank - I do not know - if they are engaging in that activity through leading a tour group. That is what this is talking about. Teaching others a sport may also be included in seeking damages for negligence. Her Honour went on to say there is no indication parliament intended such sweeping change to the common law entitlements of many Australians.

I would like further clarification around the application on that basis. It is important to ensure the original intent is evident in legislation. Public liability insurance has been a very difficult journey since the collapse of HIH, with many of our little sporting clubs and other organisations struggling to get insurance for a period. It became very expensive and quite prohibitive for some of them. If we do not address this matter, it will be tested in some way and someone may find that the benefit of protection they thought was there is not there.

I support the legislation and would appreciate the Deputy Leader responding to those couple of questions.

[12.11 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I could not let an opportunity like this slip through without talking about thoroughbred horseracing.

This bill is about better protection for jockeys and other professional sportspeople who may be injured as a result of the action of a fellow professional competitor while employed to participate in a dangerous sport. I am going to talk about thoroughbred horseracing.

The Tasmanian thoroughbred racing industry injects more than $92.9 million into the state's economy. It supports jobs, with more than 3700 individuals in Tasmania involved as participants, employees or volunteers. This is a significant sector, and this legislation highlights the mix of sport, recreation and an industry. Its popularity is strong and it has an historical connection in Tasmania. In particular, thoroughbred racing goes back to our very earliest days after white settlement.

Today, four thoroughbred racing clubs remain operating, at Elwick, Mowbray, Spreyton and at Longford. They hold 72 race meetings per year involving approximately 558 races and attracting 56 785 attendees.

Mr Gaffney - What about the islands? Do they have one at Currie? Do they have horseracing on the islands? I think they do. The member for Murchison might know.

Mrs HISCUTT - Do they have horseracing at Currie?

Ms Forrest - Yes. The King Island Cup; it is a very big event.

Mr Gaffney - It is a very small cup, though.

Mrs HISCUTT - This gives me the opportunity to talk about the historical connections between horseracing and the Hiscutt family, and the many prior relatives who dabbled many, many years ago in horseracing. The family has an Irish background and, as with most farming families, we all live within a bull's roar of each other and our homes all have names. For example, I live at Spring Hill, which is aptly named because of the springs that bubble up around the house where I live. Uncle Hugh's place is called Rehene, and Uncle Dessi's place is called Ben Lea. So, Raheny was a famous race horse that dated back in 1912 or 1913. He evidently had won many races in Tasmania and Victoria. He was born on the spot where Uncle Hugh's house is built. Raheny did not do very well under the stewardship of Ben McKenna, the Irish connection. He was the brother of Uncle Hugh's grandmother, but Raheny supposedly did very well when training was taken over by a more esteemed trainer.

Hugh still has a photo of Raheny hanging on the walls in his house. He was a good hurdler as well as a galloper.

Thanks to Helen from the library, I have two very old news clippings talking about Raheny. One of them comes from the *Williamstown Advertiser*, which is in Victoria, Saturday, 20 July 1918. I will not read it all, but it goes on to say:

> Raheny, this wonderful pony, put up a great performance last Saturday by running third in the G.N. Steeplechase. It will be remembered that the Lilliputian of the big wood ran fourth last year. His owner informed me that the gallant little son of Brilliant has competed in something like 180 events since he was a 2-year old. The son of Brilliant is now 14 years old and during his jumping career has never once fallen.

And this one other little thing from *The Examiner* in Launceston, dated Saturday, 3 June 1944. It says -

> Gallant Raheny recalled …

Evidently there had been the passing away of a jockey.

> The death of Mr William Williams, East Devonport, recalls the days of the gallant chestnut Raheny who carried his colours for 13 seasons and started in 196 races, believed to have been a record for Australia.

Also connected to the farm was Bold Ben, and I am not sure where my husband's name came from, but it might be from some of these. Bold Ben was a stallion imported from England by Ted Learoyd in the 1940s. He evidently was a top line stallion and sired many good offspring. Mr Learoyd was mentioned in an article in *The Examiner* on 9 January 1950 -

> Named Uncle Ben in memory of the late Mr Ben McKenna, a noted Ulverston trainer on the suggestion of his grandson, Mr Joe McKenna.

All these McKennas are related from Ireland -

Mr PRESIDENT - To the Civil Liability Amendment Bill?

Mrs HISCUTT -

> Mr Joe McKenna, now in New Guinea. Mr R E Learoyd's two-year-old chestnut colt brilliantly won the Freeland Stakes by 31 lengths from Cool Spell with Bay Eagle, only other runner, four lengths farther back. Uncle Ben was the 11th winner sired by the imported English stallion Bold Ben, whom Mr Learoyd brought to Australia five years ago.

The property where Uncle Dessi lives is now called Ben Lea. Lea means an open area of grass or arable land and is also the first syllable of Mr Learoyd's name, hence the property Ben Lea. This is where Mr Learoyd lived during those days. In the past there were race meetings at Sulphur Creek, and I believe Mr James Leary, another Irish relative, was on the committee that helped set up the Burnie Pacing Club back in the day.

That is enough evidence of the historical connection and the history lesson, so I will get back to the bill.

We know this bill is based around professional indemnity in the racing industry. The collapse of HIH Insurance was significant to many industries, including the horseracing industry, and it is significant that the ripples of that collapse are still felt nearly 18 years later. Many may remember accountants, lawyers and medical practitioners were unable to get professional indemnity insurance and there was a great concern within the community.

HIH was the only provider of certain niche insurance products in the Australian market. Certain insurance classes - most notably in professional indemnity - were impacted with public liability insurance issues. The collapse of HIH, increasing compensation payments for bodily injury and increasing litigious attitudes all came together at that time. It was apparent that claims, costs and, in particular, the cost of personal injury claims had massively escalated. A combination of factors caused massive changes to the system.

The extensive program of law reform in the very limited time after this period was described as unprecedented in the history of Australian insurance law. One of the reforms that emerged was meant to encourage greater personal responsibility, with a focus on protecting providers of recreation services and activities, who were required to take on public insurance.

However, recreational activities clearly should not be applied to professional sportspeople, thus the importance of this reform. It is important to note Tasmania and New South Wales have the same definition of 'recreational activity', which is an activity undertaken for the purposes of recreation and enjoyment or leisure; 'any sport' is not included in the definition - in other words, sports that involve professional participants.

A public liability claim in 2017, *Goode v Angland*, a Court of Appeal action, held that a professional horse race was a recreational activity and that falling from a horse was an obvious risk within the meaning of the Civil Liability Act 2002. The reforms today are important because our provision is the same as ruled by the New South Wales court and a Tasmanian judge would follow that same decision. Thus, we are returning the Tasmanian act to what was originally intended by parliament.

I reckon that would be a good bet for those affected people.

[12.19 p.m.]

Mr VALENTINE (Hobart) - Mr President, I might start with some family connections - no, I will not.

I think this bill is straightforward and I have one question. While it is obviously making the opportunity for people with professional sport connections or situations to be able to claim, I want to make sure this in no way impacts, for instance, on people participating in a recreational sport. The definition in the bill is to make it quite clear what that is in terms of insurance premiums and those sorts of things. When we deal with these sorts of things, there are always unintended consequences, and I want to make sure that by changing or inserting this definition, there is nothing that in any way impacts people who participate in recreational activities or cruels their chances of being able to claim under insurance policies and the like. The answer is probably 'No, it will not', but I want to get that on the record.

[12.21 p.m.]

Mr ARMSTRONG (Huon) - Mr President, my contribution will be very short, too.

As noted in the second reading speech, this bill tidies up the intent of the 2002 legislation following a case in New South Wales in 2017 involving jockeys in the racing industry.

While a lot of the debate has been around the protection of jockeys, the amendment extends to better protecting other professional sportspeople who could also be injured in other competitions.

This bill is important to those people, giving them the right to a civil liability claim. I believe the amendment received tripartisan support in the other place, so there is no reason I will not also support it.

[12.22 p.m.]

Ms HOWLETT - Mr President, I thank members for their contributions. I thank the members for Murchison, Montgomery, Hobart and Huon, and I will answer a few of your questions.

Member for Murchison, I totally understand what you are saying. I have a brother-in-law who plays soccer. He gets paid a minimal amount to play each week and to train, but he is employed. In answer to your question about someone competing in a sporting activity who is paid a small amount but is otherwise unemployed, this will depend on the facts of the specific situation and relevant considerations may improve the amount of prize money. A wide range of recreational activities may offer prize money, and this may be offered as an incentive to participate et cetera. However, few events and activities involve prize money that could likely form a key component of someone's income.

Ms Forrest - Unless you are playing tennis, but then it is professional anyway.

Ms HOWLETT - Yes, or golf. Getting back to horseracing, that is actually a clear example of a type of sport where adequate prize money is offered to warrant people becoming jockeys as full-time careers; they do apprenticeships et cetera.

Jockeys are organised and represented by an organisation, and their training, professional development through apprenticeships and so on are very organised. Whether someone was or was not undertaking the recreational activity for the purpose of employment, relaxation or leisure may have to be considered by the court.

The member for Murchison asked: what about someone whose job is to lead, guide or support people undertaking a recreational activity, for example, as she mentioned, a kayak tour group? The guide is not engaging in the kayak tour for enjoyment, relaxation or leisure. The person is undertaking the activity in the course of their employment. The participants on the tour, however, are likely to be undertaking the tour for recreational purposes.

Member for Hobart, in relation to public liability, this amendment affects public liability insurance premiums of recreational service providers. This amendment will not change the legal liability of recreational service providers. Therefore, public liability insurance premiums should not be affected.

Mr Valentine - Thank you. That is what I want to hear.

Ms HOWLETT - I thank all members for supporting the amendments to this bill. Thank you.

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

RECOGNITION OF VISITORS

Madam CHAIR - Honourable members, I welcome the young women in the back of our Chamber who are here for the Stepping Up event. I know there are many of you. You are only a section of the young women who are here but it is great to see you in our parliament. We look forward to engaging with you around lunchtime and hope that we see some of you perhaps considering leadership roles in elected positions in the future. We hope you enjoy your time here and welcome.

CRIMINAL CODE AMENDMENT (BULLYING) BILL 2019 (No. 5)

Second Reading

[12.29 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Mr President, I move -

That the bill be now read the second time.

This bill delivers on the Government's commitment to amend the Criminal Code to make serious cyberbullying a criminal offence.

While the growth of the internet and online access has many wide-ranging benefits, technology can also generate difficulties and issues within the community, such as the problem of cyberbullying. As technology becomes increasingly intertwined with almost every aspect of our lives, so too can the reach of those who may seek to do others harm. Our online lives now make bullying even more commonplace. Social media and other platforms mean bullies can now have access to their victims 24 hours a day, seven days a week.

Bullying can cause significant harm and have lasting effects on individuals and their families. As recent tragedies in Australia have shown, serious bullying can result in tragic personal consequences for victims, such as long-term mental health impacts, self-harm and psychological damage. A criminal justice response is justified where the consequences of serious bullying behaviour are severe.

This bill seeks to strengthen the criminal law by amending the existing stalking provisions in the Criminal Code to cover a range of serious bullying behaviours, whether they are pursued in person or online.

Clause 4 of the bill proposes a number of amendments to section 192 of the Criminal Code to address serious bullying behaviours.

The bill provides that the fault element relating to the state of mind of the accused in section 192(1) includes the intention to cause the victim extreme humiliation or to self-harm. The bill

specifies that the requisite intention for the crime of 'stalking and bullying' includes the intention to cause a person to self-harm, which could include aspects of both physical or mental harm.

These amendments make clear that an intention to cause a victim to engage in self-harm or experience extreme humiliation satisfies the fault element in the expanded offence against section 192.

The bill also expands the fault element in section 192(3) so that where physical or mental harm, including self-harm, or extreme humiliation is actually caused, a person is taken to have the intention required if that person knows or ought to have known that engaging in the relevant serious conduct would or would be likely to cause the other person physical or mental harm, including self-harm, or extreme humiliation.

The current offence of stalking in the Criminal Code lists a range of actions capable of constituting a 'course of conduct'. Accordingly, the conduct must occur on more than one occasion or be persistent or sustained. The bill inserts new paragraphs (ea) and (eb) in section 192(1) to provide that the actions of 'making threats to the other person or a third person' and 'directing abusive or offensive acts towards the other person or a third person' can form part of a course of bullying conduct.

The bill also proposes to broaden the conduct in paragraph (j) in section 192(1) to include acting in another way that could reasonably be expected to cause the other person physical or mental harm, including self-harm, or extreme humiliation. This makes clear that the proposed amendment is to extend to actions that cause a victim of serious bullying to engage in self-harm or experience extreme humiliation.

Bullying behaviour may be engaged in to cause mental harm to another person. Circumstances may arise where the suffering caused by sustained bullying is so severe that it causes the victim to engage in suicidal thoughts. For the purposes of the expansion of the crime of stalking to address serious bullying, this bill provides that a reference in section 192 to mental harm includes a reference to suicidal thoughts.

This bill provides a new subsection in section 192 specifying that the offence of 'stalking and bullying' will only be proceeded with if the Director of Public Prosecutions consents. The proposed requirement that the consent of the Director of Public Prosecutions is necessary to charge a person with the crime of 'stalking and bullying' is an important safeguard to protect an accused person's rights and that only the most serious examples of bullying will be criminally prosecuted. The requirement that the Director of Public Prosecutions provide consent ensures consistency in charging decisions and that charges are not erroneously laid.

Special consideration is already given to the prosecution of persons under the age of 18 years. Guidelines issued by the Director of Public Prosecutions provide that prosecutions against young people should be used sparingly, and consideration should be given to alternative options such as cautions.

In addition, children under the age of 10 will not be criminally liable due to existing provisions in section 18 of the Criminal Code, and a child under the age of 14 would not be criminally liable unless he or she has the sufficient capacity to know that their act is one he or she ought not to do. This will be one of the relevant factors for the Director of Public Prosecutions to consider when deciding whether or not to prosecute.

For the avoidance of doubt regarding the commencement of these changes to section 192 of the Criminal Code, this bill includes transitional provisions which specify that the amendments to section 192 apply only to offences alleged to have been committed on or after the commencement of this bill.

This bill also proposes an amendment to the Justices Act 1959. Currently the Justices Act 1959 provides that the indictable crime of stalking may be dealt with summarily in the Magistrates Court if the defendant elects to do so.

The proposed expanded offence of 'stalking and bullying' in the Criminal Code is a serious indictable crime that should only be tried on indictment in the Supreme Court. In view of the seriousness of the alleged crime, the impact on the victim from such repeated conduct over a period of time, the dynamics of control in this type of criminal behaviour, and for general deterrence, denunciation and just punishment, this bill proposes that section 192 be removed from the list of crimes triable summarily.

This bill also makes consequential amendments to the Family Violence Act 2004 and the Community Protection (Offender Reporting) Act 2005 to align the references to section 192 in these acts with the Criminal Code.

Targeted consultation was undertaken on a draft version of this bill, and I thank those who made comments in response to the draft to address the serious issue of bullying, including cyberbullying.

Bullying can have devastating impacts on people, their families and the wider community. This bill provides another option to respond to and address serious bullying behaviours that can have harmful and long-lasting impacts on victims and their families.

The Government is determined to do all it can to stop bullying, and this bill will improve legal responses to serious cases of bullying, including cyberbullying, to better protect victims and to hold perpetrators to account.

To be absolutely serious and resolute about addressing this issue, authorities must have the range of tools they need to respond to all levels of bullying. The reforms the Government proposes complement the host of measures we are already undertaking, as well as work being undertaken at a national level, to reduce this scourge on our society.

Mr President, I commend the bill to the House.

[12.38 p.m.]

Mr VALENTINE (Hobart) - Mr President, I fully support the bill before us. I think those of us who have families and young children or grandchildren understand how bullying can affect the life of an individual. It is important that children can attend school without overtly being impacted by bullying. It is an issue in our society and I guess more so with social media and the like. It has become so much easier for bullying to occur as a result of what can be said online and almost undercover. It is important our law is amended to take those sorts of circumstances into account.

I fully support this bill. It is a good bill. I think the safeguards are there, through the Director of Public of Prosecutions, to ensure that only the significant cases are dealt with. This will send a serious message to our community that bullying is something that should not be tolerated.

I hope many people in the community will gain a lot of comfort from this bill.

[12.40 p.m.]

Ms RATTRAY (McIntyre) - Mr President, I support the bill. Nobody wants to be on the end of any bullying. It must be interesting for our visitors to the Chamber today to hear that the parliament is looking to provide tools that will ensure bullying, including cyberbullying, will not be tolerated.

I have a question for the Leader about a news item in *The Examiner* for Thursday, 11 July 2019 about the passing of this legislation in the other place. The article was from the Sexual Assault Support Service, which had some concerns that this would address only more constant or regular issues of bullying and not one-off issues that also can have a significant impact on people's lives. It does not matter whether you are a young or an older person. Everyone deals with those sorts of matters in different ways so we need to make sure we have a suite of arrangements in place to deal with that.

I am interested in some response from the Leader about that. A serious one-off offence could, perhaps with other matters going on in their world, be the tipping point for putting somebody under enormous strain.

I would appreciate a response to that issue raised by the Sexual Assault Support Service when the bill passed in the other place. It is worth having something on the public record with regard to its concerns. One issue can be significant to some people and it does not necessarily have to be an ongoing bullying issue that would come under this.

I support the intent of the bill.

[12.43 p.m.]

Mr ARMSTRONG - Mr President, I welcome this bill and its intention to keep young people and, for that matter, all of us safe in our online interactions. A lot has changed in technology since the various pieces of legislation were originally drafted.

In the other place, concerns were raised that the bill criminalised young people, but that has been addressed. As the Deputy Leader said in her second reading speech, it must have the consent of the DPP and there are also other legislative safeguards around that.

There was also some concern that the definition of bullying was not prescriptive, but I agree with the Government - if it is overly prescriptive, there is a chance that some conduct will escape the intent of this bill.

I acknowledge the great work being done by organisations such as the Alannah and Madeline Foundation for putting in place initiatives that change behaviours, raise awareness and better empower children to deal with bullying.

I support the bill.

[12.44 p.m.]

Mr WILLIE (Elwick) - Mr President, we are talking about bullying, which can take many different forms. I have had a fair bit of experience with young people and bullying in my past career as a teacher. It is one of the most prevalent things you have to deal with as a teacher. There are a

number of good policies and programs happening in schools, but it is ad hoc and we could do more in schools.

The Tasmania Law Reform Institute was talking about a mandated policy and procedure for every school, which is not a bad idea, but obviously there are resources that would accompany that. It is insidious and I feel sorry for kids growing up these days. When I grew up, which was not that long ago, there were no smartphones.

Ms Forrest - You are older than I thought.

Mr WILLIE - There are, unfortunately, kids who take home what happens in the playground with them and it goes on at night-time. Even some of the most endearing kids can be guilty of bullying at home. At times, I was shocked in my previous career where parents would come with things that have happened online and you could not believe some of the things said. It is appalling.

There is a lot of work to be done, not only in schools, but also in the broader society's understanding of bullying. We know it happens in organisations, it happens with parents and there is no escaping.

I certainly respect the intent of the bill and it is a good step forward. I read through the submissions a while ago and, from memory, two points were raised. I do not have my notes with me today. One of the concerns from YNOT was about criminalising young people early. I am comfortable there is a good threshold here with the DPP having to approve consent. Of course, we do not want to criminalise young people. The Youth Justice Act makes it very clear all measures should be taken before a young person is put on that pathway because we know that once they are in the system, it is very hard to turn around. I am comfortable with the threshold with the DPP.

The other one was regarding the definition, which was raised by a number of stakeholders. It might have been TasCOSS and some of the others - I am doing this from memory. They were concerned bullying was not clearly defined in the bill. Again, I am comfortable with the explanation from the Attorney-General in the other place that bullying takes many forms and there are many thresholds and putting in a definition may restrict some of the possibilities of a prosecution. We are also, with this bill, intending to capture the most serious bullying. I think stalking and harassment are being added?

Ms Forrest - Self-harm, extreme humiliation.

Mr WILLIE - We try to capture the most serious elements of bullying. I am comfortable with all those. I express my support, knowing full well how prevalent bullying is in all forms of society. We need to do more but this is a good step.

[12.49 p.m.]

Mr DEAN (Windermere) - Mr President, I will certainly support this bill and I think this will be a unanimous position in this Chamber. The bill has been some time coming to us. A bill on bullying was talked about a few years ago and probably has caused a lot of frustration to a number of people. I have had a lot of contact over a long period of time in relation to bullying. When is it going to become a legislated offence in its own right? Are we really serious about it? They are the issues brought to me over this long period of time.

Including bullying as a criminal act in the Criminal Code in itself sends a very strong message. It could have been included under the Police Offences Act. It could have been included in some other areas where it could have been seen as a summary offence - an offence, not a crime - and, to me, that would have lessened the seriousness of this crime. It is clearly a crime, in my view, particularly when you look at some of the consequences that come from bullying. I will identify a few of those issues shortly.

The crime will sit in among the most serious crimes in any of our statutes. We know what the Criminal Code deals with. It deals with murders, stabbings, shootings - all of the most serious crimes that you could think of sit within the Criminal Code.

I keep saying that with all of the changes we make in legislation, it means a lot but there needs to be a great deal of publicity around it. Again, I ask the question here: Following its passage through this place, how is this going to be marketed and publicised? Where will it end? It should be taken into all the schools, for instance, for all of those groups and those age groups that we know are very strong in this area and are causing many issues, as the member for Elwick referred to. He experienced a great deal of it in his previous profession, as I did as well.

Mr Willie - The other thing now, being the shadow minister for Education, is that many inquiries to my office are about bullying disputes with students and parents not being able to resolve those matters, and that is quite prevalent too. It does escalate.

Mr DEAN - When I talk to my son, who is a teacher as well, he often mentions the fact that bullying is a big issue in schools. As he said, many people do not really understand the extent of it. It is quite a huge issue, which is sad.

This is a matter I have continually referred to under the family violence acts, that family violence should be included as a crime as well. It is the equal of bullying, in my view, if not a step ahead of and above bullying, when you look at the background of it. It ought to be a crime.

The second reading refers to protections for perpetrators under 18. I think this was raised by both Labor and the Greens in the other place; I think they referred to it as being inadequate in this area, with some evidence along that line.

The under-18 age group is probably the largest group involved in bullying. I do not know what the statistics are, but I suspect, while it is only a relatively small range from 14 to 18 years of age in particular, if you take that age group, it would be interesting to know what the statistics are on known and reported bullying and where that fits with the rest of the age groups. I would say it would feature very highly.

It is this age group in which a number of suicides have occurred in direct relationship to bullying. It is in that age group. Of the victims suiciding in this state - I think they were all in this state - two were 13 years old and one was 14 years. A tragedy of mammoth proportions.

The DPP guidelines say charges against this group should be used sparingly. I say cautions should be used sparingly. I take a different approach. I accept what the Director of Public Prosecutions has said, but it is the DPP's responsibility, as the member for Elwick referred to, as to where charges will be preferred. I am confident the DPP will look at this very closely. He would be aware of the young age, the tender age, of those who have suicided in this state over a period of time, and in the other states, Victoria and South Australia. I will refer to one or two of those shortly

where this has happened, all very tender-aged people. That is my view - that the DPP needs to be fairly careful and he will be, with his experience. I accept he will make those right decisions.

Bullying is a serious problem in schools and that is mentioned. A 2019 Australian Bureau of Statistics report identified 80 per cent of students said it was; 20 per cent said it was an extremely/very serious problem. Bullying occurs in many forms, Mr President, and we are aware of that. Fifty per cent is verbal - that is in the statistics I am referring to - 20 per cent is physical; 13 per cent via social media; 11 per cent via text message; and 6 per cent is 'other', meaning social exclusion, gossiping, emotional, mental et cetera. They will fit into that category. That is where it fits on those ABS statistics.

What is serious bullying? Prolonged minor bullying is probably the worst and most aggravated type of bullying. This is what happens with young people; it is over a long time and it is through electronic devices in the main. We talk about cyberbullying and the fact that online bullying gives the perpetrator 24-hour, seven-days-a-week access to a victim.

My wife often talks about this because we have grandchildren in this age group. We have grandchildren carrying mobile phones and she has often said to them, 'If you get messages that are bullying-type messages you do not want, do not open it, do not look at it; disregard it. Try to forget it. You do not have to read them.'

Actually I say to them that most people who are trying to bully somebody else, and bully them in this way, want a response and want a reaction. That is why they do it. It is like many people - with some of the things they do, if they do not get a reaction, that does not satisfy them, it does not suit them. In time they will forget about it and move on. If you respond, if you let them know you are taking notice and let them know it is affecting you, some of them will just continue to do it. They are winning, and that is -

Ms Armitage - It is a bit like the cyberbullying every parliamentarian gets when you vote in a different way that someone does not like. I am sure everyone in this House has experienced it.

Mr DEAN - Absolutely have, and that is a good point to make. As my staff and the staff probably of all members -

Ms Armitage - All members here cop it.

Mr DEAN - They say to me, 'Do not respond. Why would you answer it? Why would you be a party to it? Forget it.' In my view, that is good advice.

Every now and again, in the heat of the moment, I have responded. A time or two I regretted that when I stood back and gave it a lot more thought. That is good advice, I think, from staff.

I remember, and I will mention her name here, Sue in particular was very strong on that point: do not retaliate, do not let them know they are upsetting you, forget it. That was her strong and good advice.

Ms Armitage - I remember Sue myself.

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

QUESTIONS

Tasmania Police - Gender Equality

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

[2.31 p.m.]

Regarding gender equality in Tasmania Police -

(1) How many women in number and percentage terms are employed at each level and rank in Tasmania Police?

(2) What flexible workplace measures are in place to enable women's participation in Tasmania Police?

(3) How many sworn police officers work part-time listed by rank, position and gender?

(4) What, if any, barriers exist to accessing flexible work practices such as part-time hours and job-sharing for police officers in all levels within Tasmania Police?

ANSWER

Mr President, I thank the member for Murchison for her questions. I will answer question (2) and (4) and then seek leave to table the tables in here.

(2) Tasmania Police implemented the current version of the Reduced Hours Management Guidelines in 2016; these guidelines address flexible workplace practices for all sworn members. The guidelines have two main eligibility criteria being -

- Reduced hours employment following a period of parental leave. This is intended to allow all members returning to work post a period of parental leave or leave without pay the opportunity to apply for reduced employment until their youngest child reaches school age, which is generally accepted as five years old. There is no requirement for ongoing applications to participate in reduced hours employment until a cumulative period of five years has passed.

- Reduced hours employment to facilitate a work-life balance. This is intended to provide an opportunity for all members to apply for reduced hours employment to facilitate a balance between work, family and life commitments. These applications are based on merit and assessed in conjunction with the department's exigencies of service relating to the particular work area/division. Such agreements are to be issued for a maximum of two years prior to a member reapplying.

(4) In surveys conducted in 2016 and 2018, 58 per cent of Tasmanian police officers felt there is a positive culture in their organisation in relation to employees who use flexible work practices, and 67 per cent of Tasmanian police officers felt their organisation supports employees who have caring responsibilities, respectively.

Within Tasmania Police, it is not unusual for two part-time applicants to apply for a position advertised at a full-time rate with the intention of job-sharing. Given the above eligibility criteria, it is not often that a reduced hours application would be declined, making flexible arrangements readily accessible to staff.

Mr President, I seek leave to table the answers to questions (1) and (3).

Leave granted.

(1)

Row Labels	Female	Female %	Male	Grand Total
Commissioner		0	1	1
Deputy Commissioner		0.00	1	1
Assistant Commissioner		0.00	2	2
Commander	2	18.18	9	11
Inspector	8	16.33	41	49
Sergeant	40	17.47	189	229
Constable	385	37.86	632	1017
Trainee	14	56.00	11	25
Grand Total	**449**	**33.66**	**885**	**1334**

Note - There is one female officer who holds the rank of Assistant Commissioner who is currently seconded to the State Service working within DPFEM.

(3)

	Full Time		Full Time Total	Part Time		Part Time Total	Grand Tot
Row Labels	Female	Male		Female	Male		
Deputy Commissioner		1	1				1
Assistant Commissioner		2	2				2
Commander	2	9	11				11
Inspector	8	41	49				49
Sergeant	39	188	227	1	1	2	229
Constable	293	621	914	92	11	103	1017
Trainee	14	11	25				25
Grand Total	**356**	**873**	**1229**	**93**	**12**	**105**	**1334**

Bass Island Line - Purchase of the *John Duigan*

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

[2.35 p.m.]

With regard to TasPorts' Bass Island Line, I ask the Leader to provide a copy of -

(1) The expression of interest seeking a commercial operator for this service.

(2) The TasPorts report into the suitability of the *John Duigan* prior to her purchase.

(3) Details of the work required for the refurbishment and additional work needed to make the ship more fit for purpose, including details of the cost of this work.

ANSWER

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

(1) The expression of interest process that sought commercial operators' interest in Bass Island Line was a commercial-in-confidence process under the governance of a probity advisor. It is not appropriate to share commercially sensitive information relating to a service that operates in a competitive market.

(2) The procurement process that resulted in the purchase of the *John Duigan* was a commercial process and is inappropriate for public release.

(3) Operational improvements to the *John Duigan* and the associated costs borne by TasPorts are not appropriate for public release given Bass Island Line operates in a competitive market with other privately owned operators.

Following the recent market sounding exercise that confirmed TasPorts is best placed to deliver this critical service in the longer term, TasPorts is committed to examining the commercial viability of developing a pathway to the next iteration of vessel.

Greyhound Adoption Program - Facility

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

[2.36 p.m.]

Given that the proposed purpose-built Greyhound Adoption Program facility at Pontville is no longer proceeding -

(1) What progress has been made with Tasracing in regard to where this facility is going to be established?

(2) When can the greyhound industry expect to have access to this long-awaited and much-needed facility?

ANSWER

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

(1) Currently, the Greyhound Adoption Program - GAP - is funded by Tasracing and is run out of a private facility. Funding is provided to Brightside Animal Sanctuary by the Government to increase capacity of the program until a new facility is opened.

Tasracing originally identified a site at Pontville for the new GAP facility. Tasracing decided to undertake an expression of interest process for an existing kennel facility due to the following factors -

- The procurement of the lease and the rezoning of the Pontville site had already taken 18 months and it was estimated it would take a further 18 months to build following

finalisation of the plans and the submission of a development application to council and its subsequent approval.

- Considering the time spent to date and the desire to expand the successful GAP program currently in operation, the opportunity to immediately to commence operations afforded by the purchase of an existing kennel facility that would suit Tasracing's needs was prudent to investigate.

A Tasracing-run expression of interest process for a suitable facility was open between 12 June and 12 July, and an initial valuation of the EOI responses was carried out by an assessment panel in August.

Tasracing is anticipating finalising the location in coming weeks, subject to final negotiations.

Tasracing expects the new facility will be operating shortly after the completion of any agreed sale.

Tasracing is committed to the operation of the GAP, having spent $382 000 on the program in the 2018-19 financial year. An additional further $30 000 has been provided by the Government this financial year to the Brightside Animal Sanctuary to increase the capacity of the program.

(2) Tasracing is anticipating finalising the location in coming weeks subject to final negotiations.

Tasracing expects the new facility will begin operating shortly after the completion of any agreed sale.

Bass Island Line - Shipment of Stock

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

[2.39 p.m.]

Mr President, I was disappointed with the last answer. I would have thought there would have been some more follow-up for that. This question is also in regard to TasPorts' Bass Island Line.

(1) Over the last 12 months, how many cattle have been transported on Bass Island Line, by month, to -

(a) mainland Tasmania;
(b) Victoria?

(2) Over the last 12 months, how many sheep have been transported, by month, to -

(a) mainland Tasmania;
(b) Victoria?

(3) Does TasPorts/Bass Island Line intend to purchase its own livestock trailers for the transport of livestock on the *John Duigan*?

(a) If so, when will they be purchased?
(b) How many will be purchased?

ANSWER

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

(1) With regard this question, I have a table that I will table because it has a number of months and years.

(2) The above answer applies to this question.

(3) No, Bass Island Line does not intend to purchase its own livestock trailers. The livestock carrier is responsible for the provision of the trailers and ensuring they are appropriately maintained.

Mr President, I seek leave to table the answers to this question and incorporate them into *Hansard*.

Leave granted.

Document incorporated as follows -

(1) The following table outlines cattle transportation numbers for the 2018-19 financial year.

Animal	Load Port	Discharge Port	2018 Jul	2018 Aug	2018 Sep	2018 Oct	2018 Nov	2018 Dec	2019 Jan	2019 Feb	2019 Mar	2019 Apr	2019 May	2019 Jun	Grand Total
Cattle	Devonport	King Island			13	10	6	1				33			63
Cattle	King Island	Devonport	263	714	564	1,222	1,523	1,029	1,271	1,294	986	976	966	274	11,082
Cattle Total			263	714	577	1,232	1,529	1,030	1,271	1,294	986	1,009	966	274	11,145

(2) The following table outlines sheep transportation numbers for the 2018-19 financial year.

Animal	Load Port	Discharge Port	2018 Jul	2018 Aug	2018 Sep	2018 Oct	2018 Nov	2018 Dec	2019 Jan	2019 Feb	2019 Mar	2019 Apr	2019 May	2019 Jun	Grand Total
Sheep	Devonport	King Island					5	17							22
Sheep	King Island	Devonport		100						472					572
Sheep Total				100			5	17		472					594

Resumed from above.

[2.41 p.m.]

Mr DEAN (Windermere) - Mr President, I had finished talking about people being cyberbullied - not looking at their phone or taking too much notice of it - and the people who do this sort of thing wanting a response or reaction from the person they are bullying or who they are trying to affect negatively.

The question is often asked: what is bullying? If you tell somebody today they are not doing good enough, if you are challenging their work ethics - and this comes up a lot - it is seen as bullying by some. I am wondering how far we have gone with this.

In this Chamber last year, I was accused of bullying. Some members may recall who my accuser was, and I raised that issue. Before the lunchbreak, we were talking about members being bullied by members of the public who are not happy with our actions. That is happening the whole time.

The member of Launceston raised that with me as we were leaving this Chamber. It happens, and it particularly happens with social bills, where we cop a good serve.

I copped a serve recently from a good number of people because of action I took in relation to a matter. Once again, I simply did not take too much notice of them. My staff got rid of a lot and you leave it at that, but it is bullying. The way it is done is bullying, as are the statements made.

It is all very well to tell somebody they have done something wrong or you do not like what they have done, but there is a right way to do it, and that is what it comes down to. As a police officer, I went through my fair share of bullying over time and I have become somewhat immune.

I was seen as a fairly hard-nosed copper. I had a reputation as a detective of going in hard. It got to a stage where I was not able to go to a number of premises in my area because of my position and reputation. At licensed premises - even going out and dining with my family - I would be threatened and have gestures made at me. You become well known because of your professional position; I reached a stage where it did not affect me at all, but it affected my wife and it certainly affected my boys.

Bullying is something that has gone on for a long time.

We talk about bullying in schools. I am a good example of this. I went to the Hobart Technical High School, as it was then known; it is now New Town High. I was a ring-in; I was from a little country place - Levendale. Probably nobody had ever heard of the place.

Mr Valentine - I know it.

Ms Rattray - I know exactly where Levendale is, Mr President, as you do in your former role as the electorate adviser for the honourable Dick Adams MP.

Mr DEAN - If anybody is reading the murder trial currently in relation to the tattooist, you will have read a little bit about Levendale because that is where the body was located - at Levendale, of all places.

I was a ring-in at the Hobart Technical High School. I went to school to do well and I was reasonably successful at that. I was seen as a nerd. I was bullied terribly. I was bullied to the extent where, at the end of the process, I did not want to go to school. I can remember very clearly that I would cry for hours on end about going to school, from Levendale to New Town High. My brother would attest to that. He was two classes above me.

I would never let on why and what was happening at school. I went through this at the funeral of my brother, who passed away 18 months ago: how I put up with it until one day this young fellow - I can still remember his name and I can still picture him very well - had me bailed up against a quadrangle wall at New Town High. He was lashing into me. I was not one to defend myself that much because I did not want to get into trouble with the school. My brother happened to walk around the corner. My brother was up here, and he was down here, and I was about that same level as well. He took to this young fellow and he gave him a hiding.

Mrs Hiscutt - It takes a bigger bully sometimes.

Mr DEAN - He gave him a hiding. That is how he sorted that bullying out for me. After that, that kid never touched me again. I settled down somewhat after that as well. That is the sort of bullying that happens. It used to be at school where most bullying was sorted out that way. How often did you hear the chant, in my time, 'fight, fight, fight', and the whole school would run to where the fight was on? It was a common thing. That is where people sorted out their differences. I have been there and done that.

I want to refer to section 192A of the Criminal Code, which applies where a crime is committed against a person outside, or partly outside, of the state and closely linked to this state. If you started bullying within the state and the victim moves away, or the opposite thing, the perpetrator moves away, that does, and can, constitute a crime of bullying in this state, as I understand it. That is the way I interpret that section. That is good because that would happen. I think that is pretty well covered in the legislation.

A statement often made now is that children of the day are far more fragile than they were in previous years. Things are changing in that regard. I think they are right. In my time, as I have just explained, we would not have accepted bullying and would have physically sorted the matter out, there and then. That was a common way we would deal with it. It was normally successful in many respects. Today, kids are different. You see that physical thing does not occur as much as it probably did back in my time either, which is probably good. So, kids are changing.

We have to take that into account. The word, 'bullying' was not even mentioned back then. I had never heard of the word and it was not mentioned. It was never a consideration.

I recall in my time as a commander of police when this was starting to become a bigger issue, that it became difficult for senior people to challenge people within the organisation on their work ethic, poor productivity, being lethargic, being late and so on. It became difficult for senior people to get on top of those issues without being accused of bullying. I suspect that is still the case in the workplace - that some people would find it difficult to do that, and manage and handle it moving forward.

I want to refer to a couple of points. Some members may have picked this document up; it is taken from a Channel 9 website, *Honey*. I will quote a couple of comments from it -

> With one in five Australian children now victims of online abuse, it's clear the problem is escalating - and the consequences can be deadly.

So they are saying that one in five children are currently being subjected to some form of bullying. On average, eight young Australians are taking their lives each week, a 10-year high. Is that right? It is taken from this document. An average of eight young Australians - I find that staggering, but I am not saying it is not right. It is a figure that obviously identifies - if it is anywhere near right - that this is a mammoth problem, and one we have to get on top of, to fix and sort out.

If you go through that document it identifies recent suicides across Australia. We have the situation of Libby Bell, a young lady from Adelaide, South Australia. Libby died by suicide in 2017 after cyberbullying and physical abuse. She was aged 13.

Another one, Mr President, relates to Emily Stick from the Gold Coast in Queensland. I remember some of these cases and I think other members here would as well. Emily Stick died by suicide in 2018 at age 13 after physical and online bullying.

The next one is Amy 'Dolly' Everett, from Katherine in the Northern Territory. Dolly Everett died by suicide in 2018 at age 14 after prolonged cyberbullying.

Another one was Allem Halkic, Melbourne, Victoria. Allem Halkic died by suicide in 2009 at age 17 after relentless cyberbullying.

They are just some of those young people who have suffered tremendously. Again, that identifies with the age issue I raised at the beginning of my speech, which is that the DPP is saying we need to be careful with people under the age of 18 years - that we should in most cases, wherever possible, provide cautions rather than charging those people with the crime of bullying.

When I asked that question - hopefully the Leader will be able to provide the answer - many people in that age group are doing a great deal of bullying and many in that age group are the ones being bullied and there are good examples of it I have just given. We need to be very careful with that.

Mr President, in conclusion I want to read into *Hansard* a letter provided -

Mrs Hiscutt - Before you start reading the letter, could you just clarify what it is you asked?

Mr DEAN - I was referring to the DPP's position where in his guidelines he refers to those under 18 years of age being cautioned if at all possible rather than being charged. He refers to the cautioning, and that is exactly what I said on that.

The second reading speech refers to protection for those under 18 years of age. The DPP uses the word 'sparingly', saying charges against this group should be used sparingly. That is the word used, so, in other words, cautions should be applied rather than proceedings in a court. That is what it is about.

I want to read in a letter I received from Rueben Cunningham, who the member for Launceston would know. He is involved with Angels Hope, an organisation caring for and looking at trying to provide support and relief to those being bullied.

Rueben writes this letter along the lines his daughter was subjected to some terrible bullying as a young person. I am not quite sure her age. I think she was 14 to 15 years of age or 15 to 16 years of age where it almost caused her to take some very drastic steps to avoid the bullying she was being subjected to.

This family has set up, or is involved with, the Angels Hope program, and this is the letter Rueben wrote to me in relation to my contact with him when I sent him a copy of this bill when it was brought forward -

> Dear Honourable Ivan Dean,
>
> Angels Hope is contacting you regarding the issues Bullying and Cyber Bullying in the hopes that the Legislation will be changed and encourage your fellow members to vote for the recommendations that have been put forward in the criminal act, so it can be a suitable deterrent to these problems that are currently damaging our children and fellow adults in Tasmania.
>
> Suicide rate has reached a 10 year high and despite all the programmes and services being offered from the various governments around the country and the general public, there is no indication that the currently shocking numbers of self inflicted deaths each year are decreasing.
>
> Whilst research and collaborative documentation is scattered and disjointed as to the exact causes of the currently excessive number of self inflicted deaths, information provided to Angels Hope, through research we are having done and from anecdotal information obtained, shows that in approximately 40% of self inflicted deaths each year that Bullying in its varying forms is the primary cause or a significant contributing factor.
>
> It is the belief of Angels Hope that a significant impact could be made on Tasmanian suicide rates if Bullying, in particular Cyber Bullying and Bullying - the deliberative instigation by one or more individuals to cause or encourage another individual or group of individuals to commit suicide - were specifically recognised under the Criminal Act and treated as separate criminal elements.
>
> Angels Hope believe with deterrents the rate of self harm, which has risen by 653% since 2014 - national childrens commissions report ...

That is where they came from -

> … available on the website would drop if all stakeholders played their part in a solution. This is one part of the solution.
>
> Reasons why we are so passionate because the statistics are real and as a father of a daughter who went through this hell and have seen and heard of numerous cases, we must make changes where we can.

It is signed -

Kindest, Reuben Cunningham, Angels Hope.

I admire this family, Mr President. I admire them for the work they have done in this area. I have attended a number of functions where they have been trying to raise funds to make their position more open and approachable to the public and people who want assistance and support. They have done a great deal of work on this. I commend Reuben's daughter for the way she was able to handle this - to come out of it and do what she is now doing to help others who might be going through what she had to go through for a number of years.

Having said that, I certainly support the bill. I would like to see the educational side of it being promoted to get the details and facts out there. When it is, I am confident this bill will go through here and be given royal assent. We need to promote it. We need to let everybody know bullying is not going to be accepted and that if they participate in this activity, at whatever age, they will be held to account and will not get away with it.

That is the strong message we have to send out. I strongly support the legislation.

[3.02 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I am pleased to see this bill amending the Criminal Code Act to make serious cyberbullying a criminal offence. As we all know, bullying is never okay.

Bullying can affect anyone, from any age or any walk of life. Cyberbullying is especially overwhelming and embarrassing for people because bullying by electronic means has the propensity to spread far more, with the ability to quickly reach a very large audience.

Obviously, it can take time for posts to be taken down from social media sites. This must cause a huge amount of stress for those who are cyberbullied, knowing a post is live and waiting for it to be removed. With most people having mobile phones and internet, it can be relentless and ongoing - during and after school or work, being much more commonplace and continuing day after day.

We all know bullying and cyberbullying can affect people's everyday lives and can be the cause of low self-esteem and depression. It can also lead to drug or alcohol addiction, often as a way to escape the present. It is very sad.

We have all heard of people who have tragically attempted or committed suicide or self-harm. It is essential we do all we can to protect children and adults from all forms of bullying, including cyberbullying.

As mentioned by the member for Windermere - and we spoke earlier - I believe everyone in this House has probably been cyberbullied at some time during their parliamentary career. We have all had derogatory comments and posts against us from time to time when we vote in a way not acceptable to some.

On one occasion, I recall one of my staff receiving nasty posts on her Facebook because of the way I voted. While it is difficult for us, we understand it because we are members of parliament, but it is totally unfair for our staff. Nobody likes bullying. I do not know about other members,

but I often take a screenshot, particularly on Facebook, if someone says something particularly nasty. It is worthwhile simply remembering because it does go on.

I recall after my election, some particularly nasty comments were made and the President at the time told me the thing to do is to ignore them. We can ignore them but it must be hard for younger people. At the time, Jim Wilkinson said, 'Ignore them, as difficult as that may be, because the minute you give them attention, you fan the flames and they know you have read it and then they come back again and again.'

I appreciate that for many in the community it is not easy to ignore things that are personal about you. As the member for Windermere mentioned, it hurts your family. Your family read nasty comments about you and they get upset and hurt and it goes on and on.

I appreciate the bill coming forward. It is extremely worthwhile that we certainly make it front and centre. As the member for Windermere said, it would be good if we do some advertising to let people know, particularly people who might be bullying, that it is not acceptable.

Some people probably do not appreciate that what they are actually doing is a bullying behaviour. I am sure when people write comments to us, on our Facebook or in the media or other areas, that they are not aware sometimes that they are of a bullying nature. Possibly they just think that they are putting their point of view forward.

It is important that people, whoever they are, do not bully, that we stand up for people who are bullied and support them and that we do all we can.

I do support the bill.

[3.06 p.m.]

Ms FORREST (Murchison) - Mr President, as other members have mentioned, this bill implements the Government's commitment to amend the Criminal Code to make serious cyberbullying a criminal offence.

There will be some who have and will say it does not go far enough. Some will say it goes too far, so somewhere in the middle is the balance. This is a difficult area to legislate in. Bullying, particularly cyberbullying, is so insidious. It happens almost behind the scenes and you only actually see the results of it at times.

In the days when I was at school, bullying in the playground was much more physical or verbal where abuse was called out loud so everyone got to hear it, not only the intended victim. Now, no-one else might see it, and parents are often very unaware of the nature of some of the comments that some of their children may experience.

It is important to make the point here, this is not only about children; this is about adults and the behaviour of adults. Some of the worst behaviour we see is with adults.

We all have our own opinions on things and we are in a position where we are more or less paid to have opinions here. We exercise that right, as we have to, and as the member for Launceston referred to, sometimes our opinion does not sit well with a sector of the community. It may not be particularly the people who have elected us; it could be someone from quite outside that area.

It does not stop them from feeling they have a right to criticise. I am quite happy with being criticised for decisions. I have said to some of the people I represent directly, the people of Murchison, that if they disagree with a decision I make, I am very happy to meet with them personally and talk to them about how I made the decision, why I made it and what information I had that assisted me in that process. Often, I have information that they do not have access to.

I have not been subject to some of the appalling social media that we have seen directed at our Speaker in this parliament. Some of that has been absolutely disgraceful. You do not have to agree with her; you do not have to support her. You can make your point without using the language and the repeated attacks on her as an individual. That is not acceptable in any frame.

The member for Launceston said we expect this. No, we do not and we should not. We should not accept this; we should not tolerate it or say, 'oh well, it is one of those things you do in the job'. No, because we are condoning it by doing that.

We need to stand up and say 'this is not okay'. When you see it happening to a colleague, say so. Say 'that is out of line, that is not okay'. We have all had derogatory comments put on our Facebook page. As the former president used to say, ignore it, but do not respond. I do not think you can ever ignore it because once you are aware of it, it has impacted you in one way or another.

Mrs Hiscutt - And you cannot unsee it.

Ms FORREST - That is right, you cannot unsee it. I do not engage with them unless there is a point of clarification or a legitimate question they have asked in amongst all the other guff. The interesting thing is that what I have found - and I know this is not everyone's experience - but I have found that the people who support me come out pretty quickly on my social media and back me up. That is what we need to see people doing. That is what I am saying we should do for our colleagues and anyone else in a leadership position who is being trolled, or being cyberbullied, to say 'it is not okay'.

I would ask why do we have to be tough and pretend this does not have an impact when it does? We have to show a bit leadership in this and not say, 'oh, that is just part of the job'. It should not be part of anybody's job to put up with revolting cyberbullying in any circumstances, in any workplace, in any school, in any setting.

Mr Valentine - They would not say it to your face.

Ms FORREST - Some of them might, I do not know. They have not done that. In some places they might. At least then you can have a conversation with them. At least then you can engage. With cyberbullying there is no direct engagement.

Mr Valentine - It is there forever.

Ms FORREST - It is there forever. Facebook, or whatever, can take it down if it is really offensive, but it is still being seen. It is still there. If someone has taken a screenshot, well it is there forever. It is still there forever anyway, as we know.

As leaders in this state, we need to show a great deal of leadership, to take a stand on that whenever we have the opportunity. If we say, 'oh well, it is okay in this job', then what is that message we are sending? It is not okay in this job. It is not okay in any job. It does not mean I am

saying people should not have a right to voice their opinion; they can. It is how you do it and the language you use.

I do not know if anyone watched the first Adam Goodes film, *The Final Quarter*? That was an example of harassment and some of the comments made by commentators like Andrew Bolt, Sam Newman, Miranda Devine and Eddie McGuire - and I name them because they were appalling and disgraceful. I feel the treatment Adam Goodes, an Australian of the Year, put up with is unacceptable. That was not cyberbullying. That was outright in your face on mainstream media bullying. We cannot accept it. We have to call it out, and have to say it is not okay.

I know other members have mentioned this. I am sure we have all had people in our office at different times, particularly parents of young people who are experiencing bullying and asking, what can we do? Pleading with us for something that can give some weight to it.

Then there is the other side of the coin that we do not want to criminalise young people unnecessarily. Finding that balance is not easy and it is difficult. This bill does try to strike that balance - serious cyberbullying. It is difficult to define that and nail it down because it is quite nebulous and it is difficult.

I do intend to support the bill.

I want to read from the letter from YNOT because I think it is important the voice of YNOT is heard in this, even though some of us may not agree with some of the points raised. It is important that we actually understand the views behind some as to why we should not be going down this path in terms of the criminalisation of young people. I will not read all of it but I will read some sections of it. This was received on 31 January this year, and it was to the director of the Department of Justice, commenting on the bill. They talk about how they appreciate the opportunity to make a submission and they applaud the Tasmanian Government's commitment to eliminating bullying within our communities and acknowledge the serious and adverse effects bullying can have on the health and wellbeing of young people.

> However, YNOT holds grave concerns for the potential impact this Bill will have on the lives of young Tasmanians.
>
> YNOT is opposed to the amendments set out in this Bill. The reasons for which are identified below.

They then talk about YNOT being the youth representative peak body, which I am sure most of us would be aware of, representing people aged between 12 and 25. They are not-for-profit and work collaboratively with Tasmanian young people, the youth sectors and all levels of government to ensure the voices of our stakeholders are heard. I am not sure to what extent they consulted with young people in preparing this, but we cannot ignore these aspects of concern.

Under their comment, it says -

> YNOT is concerned that bullying and cyber bullying have not been defined in this Bill. We support the view that cyber bullying is an extension of traditional bullying. However there are unique characteristics that distinguish cyber bullying from traditional face to face bullying. This includes but is not limited to the new numerous online platforms that can be used, the explicit or hidden nature

> of cyber bullying, the ability for cyber bully material to reach a wide audience quickly, and evolving technology.
>
> YNOT acknowledges the complexity in defining bullying and cyber bullying. However, ambiguity with regard to definitions has the potential to cause confusion amongst young people as to what constitutes bullying and cyber bullying, particularly in, as it relates to criminal responsibility.
>
> There is no agreed universal definition of cyber bullying in Australia. The need to clearly define cyber bullying is recognised at a federal and state level, particularly with regard to law reform and public policy.
>
> YNOT supports the Law Council of Australia's view that a common understanding of behaviour which constitutes cyber bullying is essential in assessing possible law reform options in this area.
>
> The need for an agreed universal definition of cyber bullying that recognises the complexity of the issue was also recommended by the Senate Legal and Constitutional Affairs References Committee in 2018.
>
> It is essential that young people understand the boundaries as to what behaviour is considered unacceptable and unlawful with regard to cyber bullying. If clear boundaries are not established there is the risk that more people will be exposed to the criminal justice system. A criminal offence requires specific and certain definitions to establish boundaries of criminal responsibility.

That is the thrust of that point.

This matter was raised in the briefings and addressed in other reports by the Tasmania Law Reform Institute. We were told in briefings and through the Tasmania Law Reform Institute that it is difficult to define as such. There is some description of what it is like in the bill rather than a straight-out definition, and the TLRI report did not recommend a definition because it is difficult to define in a legislative way. They have chosen to put some framework around what it actually is.

I understand that, because what really negatively impacts one person, young or older - it does not matter - may not have the same effect on somebody else, so it is really the impact on the person and you cannot define that either. Having looked at that and at how the legislation before us seeks to deal with this, it is probably the best process. Otherwise, we could end up being very prescriptive if something not quite defined happens and does not fit, even though it is causing an individual enormous harm.

The other point is cyberbullying is a social issue. YNOT believes legislative reform that takes a punitive approach to bullying is not the most effective method of intervention for young people. The best way to deal with bullying behaviour is to prevent it. They go on to talk about the development of the adolescent brain, which is all-important to consider.

Again, the approach taken here is that criminalisation of bullying behaviour is only for the very serious and really high-end instances of bullying. Using other mechanisms like cautions and, I hope, education programs predominantly would be the most effective prevention measure. We should be aiming to prevent it and come back to my original comments that if we accept and

condone it because it is part of our job, then we are part of the problem. If we do not start saying, 'No, this is not okay', then we are saying, 'Well, it is okay for us so there are probably others it may be okay for', and we know that is not the case.

We know there are members of parliament in other jurisdictions - and may be in this one too - who have had mental health challenges and we do not know what lay behind those. It may well have been bullying from constituents; it may have been bullying from their colleagues or others in the parliament - who knows? We need to stand up and lead by example, and not engage in that sort of activity ourselves.

The words used in the briefing and in the bill before us are about the need for the behaviour to be repeated. There was a comment made in the briefing on the Alannah and Madeline Foundation's definition where a person feels helpless to respond. Most of us in this place feel quite able to respond, and that is great, but many people do not, and they are the ones who need someone to stand up on their behalf.

It is more about patterns of behaviour rather than individual incidents. The other aspect of this in the criminalising of young people as opposed to prevention and education is the DPP guidelines that have been developed around this. At the briefing, which was a few weeks ago now, we were provided with a draft copy, which I will not read out as it was still a draft, but it is close to finalisation. The DPP has quite extensive guidelines dealing with the prosecution and also has a section about youth offenders. The DPP has been developing a specific set of guidelines around charging people with stalking and bullying. This may not be the final version, but it is the general direction. As we know from the bill, the DPP's consent to charge with stalking and bullying - as distinct from pursuing individual charges or preventative court orders - is only given in circumstances where the course of conduct is extremely serious and has occurred over an extensive period, or where lesser charges, such as restraint orders and other mechanisms, might not have been effective in dealing with the behaviour.

Ultimately it comes down to the question of the DPP's judgment on this matter, but the DPP has been around a long time and is quite able to make that assessment. I think the member for McIntyre made the point that it does not always have to be repeated to be harmful; it can be one particularly vicious attack and severe humiliation. None of us likes to be made a fool of; we can all do that ourselves quite well sometimes. When someone else seeks to humiliate you, if they are really out there to do a good job on you, they will generally know your vulnerabilities.

We are seeing revenge porn and that sort of stuff going on with young people now. I was listening to an interview of a young person on the radio, or it might have been someone referring to an interview or a discussion had with a young person. The upshot of it was that for many in this current age of internet connectivity, social media and this digital age we now live in, part of dating and what we used to call courting once upon a time now often involves sending a naked photo of yourself. This conversation was - and I am repeating what was said on the radio - that first base was sending a naked photo of yourself; second base was meeting the person; and third base was kissing them. How does it happen that there is a mentality out there that this is the order things happen in? I thought, this is really odd. The point being made around this was that once that photo is shared, even if you voluntarily shared it - you have given it to the boyfriend or girlfriend - once you have let it go, you have no further control over it. If the person knows your vulnerabilities are the way you feel about your body, which a lot of young people do and many older people also do, what would be a better way to humiliate extremely, or seek to humiliate, someone than to share that with your mates? Male or female, it does not matter.

These are things we need to deal with and it comes back to education. We need to try to help young people particularly, who seem to be engaging in this sort of activity - much more, certainly, than people of my generation. Even though they know deep down that this photo is there - it is going to be there forever, we keep telling them - the actual implications of that are significant.

You cannot legislate against that. It is a bit like saying you cannot legislate against stupidity but we need to really try to keep people informed about the harm.

Ms Siejka - There is a bit more to it, too. Some research shows some young people actually choose to do that knowing the risk but because it actually protects them from things like STIs, so that is a consideration as well. It is actually not skin contact so there is a whole bunch of other things that -

Ms FORREST - There is a whole heap of things underlying that, but my point is that once that photo is out there, it can be used -

Ms Siejka - Some of them are weighing that up.

Ms FORREST - We cannot really understand their decision-making because the world they are living is not the world we lived in at the same age.

Mr Willie - If it is then onforwarded, that is sharing child exploitation material so young people can get themselves into a whole lot of trouble doing that.

Ms FORREST - Absolutely, I agree, a criminal offence could result from that. I am thinking about the person who is being extremely humiliated by the fact they are now - all the blokes at the footy club have seen that, or all the women at the whatever have seen that.

Mr Gaffney - I think the member for Windermere took a different slant because that is what you meant about the DPP using that material sparingly for an under 18. Sometimes they do not do that, they do not realise the consequence of what they do.

Ms FORREST - Yes, that is a judgment call.

Mr Gaffney - Yes. The person who forwards it on sometimes does not realise that. They are learning the rights and wrongs, so I think the DPP has it right. Sparingly.

Ms FORREST - That is the intention, to use it sparingly. Also, according to the draft guidelines, what would be taken into consideration was the number and type of instances that had been directed at the complainant. You would hope after one episode they would be counselled and told what the implications could be. If they continued to do it - and it says the top period of time in which instances occurred - if they continued to reoffend then you would think, they are just not getting this. That discretion is there for a reason: to try to educate, I would hope, and to be used as an educative process rather than to criminalise them.

Mr Gaffney - If you think about how many times you might tell your child not to do something, you tell them more than once or twice or three times.

Ms FORREST - Yes. I am not saying this is easy. That is why it is difficult. That is why you cannot really nail down a definition either.

One of the other considerations is likely to be the planning and motivation for the conduct. Was it one of those one-off, spur of the moment, stupid things, and, once the thing has gone, it is a bit late, or was it really a planned and orchestrated event? Have the individual charges or other court measures failed to stop the conduct? These other measures might have been taken but they are just not getting through. That is what we have just mentioned now.

Also, consideration of the effect the conduct had on the complainant, which is important, and are there other measures that can be put in place that may be more effective? You may have a remediation-type approach with either the Anti-Discrimination Commissioner or some other body that can counsel in a mediation-type of framework.

The draft guidelines suggest that youths who engage in stalking and bullying will only be charged in exceptional cases where the conduct is extremely serious and where there has been considerable adverse consequence to the complainant and there is no other appropriate manner to deal with it. I think that is the appropriate approach to take, which the member for Mersey was alluding to by interjection.

I acknowledge the concerns and matters raised by YNOT in those couple of areas but the Government has sought to strike a bit of a balance here. It does seek to use a more restorative and educative approach first rather than going in too hard on a person.

Sometimes these bullies are victims themselves. We often see that. They have been the subject of significant bullying over their lives and, in some respects, that is the only way they know how to deal with it. It does not make it right either but it means we need to deal with those people in a way that can assist them. We need to deal with the trauma they may have experienced being the victim of bullying, which may be one of the underlying factors for the perpetration of bullying.

We do need to make sure we have adequate services to support victims and that is always a difficult task. Are we sure we have enough services? We need services to support perpetrators. It is no good saying they are just bad people and they should not have done it; we have to ensure we have services to support and assist perpetrators, who may well be victims themselves, as well as the victims. It is very difficult if your child is the victim, to think, why should they be looking after the bully, if you like, the person who is the perpetrator of this behaviour upon another?

There was a couple of other things I wanted to address. The growth of the internet and online access certainly has made this issue much more real and much more difficult to manage. With a lot of things on iPads and iPhones and other smart devices, for young people parents can put certain locks on them and prevent engagement with a number of sites but most of this cyberbullying behaviour happens through very innocuous sites. These include messages - just straight-out text messages - Facebook messages, other messenger systems and Facebook itself - particularly Facebook messaging which is only seen between the recipient and the person who sent it.

It makes it much more difficult to block these sorts of things. You can block a person or not take their calls and things like that, but it is difficult. Young people, and even us, are all pretty addicted to these devices. Look at you now, all of you, most of you -

Mr Valentine - It is called doing work while we listen.

Ms FORREST - Even up the back they are addicted to them.

Mr Valentine - We will keep an eye on you next time.

Ms FORREST - I am as addicted as the rest of them but people expect us in this day and age to respond promptly. They expect us to respond to an email within a very short space of time and a text message within seconds and anything else pretty promptly. The young people and people like us do not want to miss out on something we need to know about. You are not likely to turn your phone off unless you have to for some other purpose.

Mr Willie - Through you, Mr President, that is one of the hardest things for young people. If they turn their device off, they feel like they are isolating themselves and feel disconnected so it is very difficult for them to work through that.

Ms FORREST - It is. That is what I mean - they are so accessible in terms of bullying that if people want to get at them through those devices, they know they are going to be checking them, even if they have to turn them off in class. Schools have different policies on this, but if you have to put your phone in the basket at the front of the class for the whole session, what is the first thing people do when they pick them up out of the basket at recess? Check their messages.

In that case you could be bombarded with several all at once -

Mr Valentine - That is why it pays not to answer them straightaway.

Ms FORREST - That is right. There is no easy answer to this.

These actions are done frequently, very quickly in repetition, at all hours of the day or night. When I was a kid at school, if someone wanted to ring you up and bully you, you had to do it on the landline and that was not answered in the middle of the night.

Mr Valentine - They risked getting your mother.

Ms FORREST - That is right, exactly, and often they did. They usually knew what time to ring when mum was up in the cowshed, for example, and could not be in two places at once.

It is much easier to connect, which is a great thing for our society, but it has that added challenge of people connecting in a way potentially harmful to the recipient.

These could have tragic consequences for victims, the long-term mental health impacts, self-harm and psychological damage.

Talking to my son, who is a doctor and has worked in the emergency departments of some of the biggest hospitals in the country, he will tell you some of the self-harm he sees is beyond belief. They do not always get the chance in the emergency department to check what the underlying factor is, but someone has to be in a pretty bad space to be self-harming to the extent some of these people do. They are not only young people; they are getting on into early adulthood and into later adulthood.

Sometimes, the pain of physically hurting yourself is less than the pain you feel inside - it must be a very difficult place to be when the only way you can relieve your pain is to cause serious physical injury to yourself.

This is a serious matter and the mental health impacts can last a lifetime. The second reading speech talks about this. While the bill may not be perfect in the views of some, it certainly fills a gap.

It is really important the Government engages in a proactive education program on this for two reasons. First, so people know it is now a criminal offence to cyberbully in this way, but, second, to keep the focus on this issue as being a grave matter and one for which we will take serious action if people do not desist.

I repeat: we have a responsibility here in this place to lead by example and not to accept it when it happens. It can be hard to stand up for yourself, but other people can, and we should because we are letting everyone down if we do not.

I will support the bill and commend the Government for acting on its word to do something concrete about this.

[3.38 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I have some comprehensive answers here. The first one is to the member for McIntyre: can this offence apply to one incident?

Stalking and bullying, as proposed in these amendments to section 192 of the Criminal Code requires a person to pursue a course of conduct. There is established clarity in the application of section 192 and the legislative intention associated with the course of conduct.

A course of conduct for this proposed charge comprises a perpetrator engaging in any one or more of the types of conduct described and identified in section 192(1), with the intention of causing the victim physical or mental harm, including self-harm or extreme humiliation or to be apprehensive or fearful.

> In order for conduct which is engaged in to be a 'course of conduct', the relevant conduct must be conduct which is sustained or the conduct occurs on more than one occasion. Where the conduct occurs on more than one occasion, it does not matter whether the actions that make up the conduct on one of those occasions are the same as, or different from, the actions that make up the conduct on another of those occasions.

Ms Rattray - That is as clear as mud.

Mrs HISCUTT - I will read it again.

> It says that in order for conduct which is engaged in to be a 'course of conduct', the relevant conduct must be conduct [or actions] which is sustained or the conduct occurs on more than one occasion. Where the conduct occurs on more than one occasion, it does not matter whether the actions that make up the conduct on one of those occasions are the same as, or different from, the actions that make up the conduct on another of those occasions.

I am guessing that means you may be cyberbullied on Facebook one day and perhaps the next day you might be bullied in the schoolyard. Even though it is a different form of conduct, it is still classified as bullying.

Ms Rattray - The issue raised in the newspaper article was of a single event that led to somebody feeling they have been harassed.

Mrs HISCUTT - I think it needs to be a course of conduct.

Ms Rattray - Yes, but I am asking why that one incident that completely unsettled somebody was not considered.

Mrs HISCUTT - I am not the DPP so I cannot answer that.

Mr Gaffney - It was explained in one of the briefings we had earlier, that if somebody had been pushed to the edge by a number of events, if the one person comes online and says something to you that is of a bullying nature, that person cannot be held responsible for all the events that might have led to that, even though it could have been the tipping point. It has to be a series of the same person's -

Mrs HISCUTT - A course of conduct.

Mr Gaffney - Otherwise that person is taking the brunt for what has happened beforehand.

Mrs HISCUTT - Are we right there, are we? Yes. There is more to add to this -

> It is acknowledged that there are circumstances where single acts done in a brief moment may satisfy all of the elements for the crime under section 192 but for the requirement that the conduct be persistent.
>
> Examples of cyberbullying that are 'one off' or isolated acts may be better addressed through use of the Commonwealth offence of 'using a carriage service to menace, harass or cause offence' (section 474.17 Commonwealth Criminal Code).

The offence of stalking and bullying will only be considered for charging where there is a sustained serious criminal conduct. It is also noted that the Tasmania Law Reform Institute did not recommend changes to 'course of conduct' and the criminal justice recommendations address repetitive behaviour, which is a consistent aspect of the general definition of 'bullying' which informed the institute's report. You might have to study that.

The member for Windermere and the member for Murchison talked about education and publicising this act. The Attorney-General's office and the minister for Education's office have already held discussions about how these reforms could be covered by educational material suitable for use in schools. Should this bill pass, the departments of Justice and Education will work with each other on the development of such material to ensure it accurately reflects the content of this bill and is able to be understood by young people.

The member for Windermere also asked another question, to which I have quite a lengthy answer, about children and the justice system. It is intended only the most serious examples of bullying and cyberbullying will be prosecuted and that they will only occur when it is in the public interest to do so. As members have seen, the prosecution guidelines in relation to the charging of the offence of stalking are to be updated by the DPP to reflect the proposed crime of stalking and bullying. However, it is notable that at present, regarding youthful offenders generally, the current guidelines issued by the DPP state at page 9 of the guidelines -

> Youthful offenders
>
> Special considerations apply to the prosecution of persons under the age of 18 years. Prosecution action against youthful offenders should be used sparingly and in making a decision whether to prosecute particular consideration should be given to available alternatives to prosecution, such as a caution or reprimand, as well as to the sentencing alternatives available to the relevant Youth Justice Court if the matter were to be prosecuted.

Indeed, the DPP is on record as stating that under such reform - other than in extreme cases - prosecuting anyone under the age of 18 would not be appropriate at the first instance. It would be more appropriate for the behaviour to be dealt with by the school or by way of caution That is from page 4 of the TLRI's Final Report No. 22 - *Bullying*.

Youths who engage in stalking and bullying will only be charged in exceptional cases where the conduct is extremely serious; where there has been a considerable adverse consequence to the complainant; and where there is no other appropriate manner to deal with it. In circumstances where the conduct has taken place at the youth's school, the director will consider any disciplinary action that may have been taken by the school or the Department of Education in respect of the alleged conduct.

Tasmania Police should consider the diversionary procedures set out in Part 2 of the Youth Justice Act 1997. That has come from the DPP draft prosecution guidelines for the proposed offence of stalking and bullying. I hope that covers members' questions.

Bullying is certainly not an acceptable behaviour and I look forward to moving this bill.

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

FRUIT AND NUT INDUSTRY (RESEARCH, DEVELOPMENT AND EXTENSION TRUST FUND) REPEAL BILL 2019 (No. 6)

Second Reading

[3.50 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Mr President, I move -

> That the bill be now read the second time.

The purpose of this bill is to repeal the Fruit and Nut (Research, Development and Extension Trust Fund) Act 2012.

This act was created to continue to distribute residual funds from the Tasmanian Fruit Crop Insurance Scheme to the state's fruit and nut growers.

The residual funds from the scheme have been fully dispersed to industry thereby fulfilling the object of the act. It is a formality to repeal the act and wind up the trust fund.

The Tasmanian Fruit Crop Insurance Scheme was established in 1982 to provide apple and pear growers with crop insurance, funded through a compulsory industry levy.

In 1999, following a review of the National Competition Policy, the insurance scheme was dismantled.

All remaining funds from the insurance scheme were deposited in a statutory trust account, to be used on projects of benefit to the apple and pear industry.

A board of management, comprising four industry representatives and one from government, was created to oversee distribution of the funds.

In 2012, the current act commenced, allowing the funds to be available to not only apple and pear growers but the broader fruit and nut industry, reflecting how the sector had evolved and expanded.

The purpose of the trust fund was to benefit Tasmania's fruit and nut industry by funding activities in research, development, extension, marketing and promotion.

The trust fund has been used to finance research scholarships, contributions to Horticulture Australia projects, as well as support the activities of a business development manager for Fruit Growers Tasmania.

The government was regularly updated on expenditure from the trust fund.

In September 2017, the board of management paid out the balance of the trust fund to Fruit Growers Tasmania to develop market opportunities for the Tasmanian fruit and nut industry.

The board of management also agreed to cease operations.

As the trust fund has been fully expended, it is a formality to wind up operations and repeal the act.

This leads to the detail of the bill. It includes standard provisions to wind up the trust fund and board of management. As the trust fund has been fully distributed and there are no other assets or liabilities, transitional provisions are not required and this is a simple process.

The Crown will assume responsibility for any unresolved or future proceedings - legal or other - brought against or initiated by the board of management.

Fruit Growers Tasmania, the state's peak industry body for fruit and nut growers, fully supports the bill and has been consulted on the draft legislation.

The Government is continuing to collaborate with Fruit Growers Tasmania to provide support to the state's fruit and nut industry.

The sector is a key contributor to the Tasmanian economy - it had a farmgate value of close to $154 million in 2016-17 - and we are working on many collaborative initiatives.

The 2017-18 state Budget committed $1.2 million for a new Strategic Industry Partnerships Program to support regional communities and businesses by investing in peak industry bodies to drive growth and innovation across the Tasmanian agrifood sector.

As part of the Strategic Industry Partnerships Program, the Government is providing Fruit Growers Tasmania with $120 000 over three years to deliver a fruit industry development program that provides on-ground extension support for growers. This includes assisting in grower export preparation and communication around biosecurity and quarantine protocols.

In addition, as part of our Taking Agriculture to the Next Level policy, the Government is providing the state's fruit and vegetable industry with $550 000 over four years for horticulture market and trade development.

Mr President, I commend the bill to the House.

[3.54 p.m.]

Ms RATTRAY (McIntyre) - Mr President, just a brief offering on the Fruit and Nut Industry (Research, Development and Extension Trust Fund) Repeal Bill. The Leader has outlined why this is necessary. I rise to place on the record my support for, particularly, the fruit industry in Tasmania. It is growing in leaps and bounds, and there is a state budget commitment of $1.2 million for a new Strategic Industry Partnerships Program that will support businesses and, especially, the peak body for fruit growing in this state. This is really important, given there are no more funds left in the old trust fund. It really is important we continue to promote and support the industry.

I do not know what the value of the nut industry is to Tasmania. There is a large walnut orchard on the east coast that used to belong to the member for Apsley and now belongs to the member for Prosser, and there would be other orchards.

Mr Valentine - Not the farm; the farm does not belong to the member.

Ms Forrest - It exists in the electorate of -

Ms RATTRAY - No, the farm does not. It would be lovely, but the Webster group owned -

Ms Forrest - They still own it.

Ms RATTRAY - I believe they do. I have lost touch because it has been 18 months now. The walnut industry has never been huge in Tasmania. It was something new and significant for the east coast. How much value is in the nut industry? It is well known how much the fruit industry generates for the Tasmanian economy, but I am not entirely sure how much is generated by the nut industry.

Ms Howlett - I will find out for you.

Ms RATTRAY - There we are, the member is right on to it. There are hazelnuts in the south of the state, so probably quite a lot of ventures. Some may be small, medium and growing, and I expect growing every year.

Is the government support the Leader outlined still within Fruit Growers Tasmania, and are the nut industry growers involved also? It is important. They have obviously had a long-term

relationship, and I would like to see the funds provided by government, on behalf of the people of Tasmania, continue into the future.

I understand the reason and the need for this because if there is no money left, there is not much point having the fund or the board of management, so I support the bill.

[3.58 p.m.]

Mr VALENTINE (Hobart) - Mr President, I support the bill. Obviously quite sensible. Nothing to deal with. May as well have it out of the way.

The second reading speech says -

> The Crown will assume responsibility for any unresolved or future proceedings - legal or other - brought against or initiated by the board of management.

My simple question is: is the Crown aware of anything on foot at the moment in relation to this particular body or mechanism being wound up? I support the bill.

[3.59 p.m.]

Mr ARMSTRONG (Huon) - Mr President, as the member for McIntyre says, this is more or less a formality to repeal the act and wind up the trust fund. The history is in the second reading speech and suffice it to say the compulsory grower levy - that was the source of funding - was dismantled in 1999 and the funds exhausted by expenditure on research and market development.

Can I say it is pleasing to see the Government continue to invest in these areas in different ways? I certainly hope it continues to support these industries which are so vital to Tasmania and particularly my electorate of Huon.

I can remember once that Tasmania was called the Apple Isle. You would travel to the Huon Valley, Derwent Valley or up the Tamar Valley in spring time, and all you would see was apple blossom everywhere. Now, if you travel down into my electorate, you will see cherry and strawberry blossoms.

Ms Rattray - And a few nuts?

Mr ARMSTRONG - There are a few nuts down there.

Mr Valentine - We are talking about trees?

Mr ARMSTRONG - Yes, of course we are talking about trees, member for Hobart.

You would drive into the Huon Valley and it would be covered with apple blossom everywhere. I can remember as a kid, after school you would go to make apple cases or apple cartons and label boxes. It was a fabulous industry.

Now we can call it the cherry, berry and salmon state instead of the Apple Isle.

Mr Valentine - A fair few apples are still exported. There are just higher densities where they are grown.

Mr ARMSTRONG - It is interstate markets now, mainly.

Mr Valentine - It is not international sales.

Mr ARMSTRONG - Cherries go overseas to Japan, but virtually all the apples are sold interstate.

Back in 1999, who would have thought we would have a berry production with a farmgate value of $80 million-plus or that we would be exporting $30 million-worth of cherries? A small cherry farm in my patch is 150 tonnes - that is the norm. There are half a dozen of those that grow 150 tonnes of cherries. Tourists come for their Sunday drive and they will call into some of the shops or the roadside stalls and buy a kilo of cherries and pay $3 or $4 for seconds, which are really good cherries still. There is nothing wrong with them. They are amazed.

Ms Forrest - They are hardly seconds, are they?

Mr ARMSTRONG - No, they are not. They are better than you buy in some of the supermarkets.

I digress a bit. When I was in my other role as mayor of the Huon Valley, I had to go to Canberra for some function we had for local government and my wife came with me. When it had finished I decided we would go for a drive. It was late November, and a little out of Cooma I saw this roadside stall and they had cherries so I stopped. I thought, get some cherries, because our cherries do not come in until late December or early January.

I pulled up on the side of the road and the farmer had these little cherries. I looked at him and said, 'Are you selling your seconds, mate?' He said, 'No, I am not. Where do you come from?' I said, 'Tasmania.' He looked at me and said, 'You've got water.' That is all he said. He was not very happy when I thought he was selling his cherry seconds.

Mr Gaffney - Did you buy them?

Mr ARMSTRONG - Yes, I did and I gave them to the lady at the motel. There is no comparison. You talk to people when they come over here and the size of our cherries mean it is like eating a plum. They are so much better. That was his reason - that we have water.

Ms Rattray - I recently had to buy some blueberries because my son-in-law and daughter who have a small blueberry farm, Berry Blue, in the far north-east, had run out. We did not even have any frozen blueberries. There is no comparison with the blueberries that come into Tasmania in the off-season compared to what we have in our season.

Mr ARMSTRONG - There is not.

I commend the work of our fruit growers, farmers and all those who add value to the agricultural production in this state. As I opened with, the repeal of this act is a formality and I will support it.

[4.04 p.m.]

Ms FORREST (Murchison) - Mr President, I support the bill. It is necessary, in many respects, and appropriate. The trust has served its purpose and it should be wound up in these circumstances. This is all part of keeping the statute books fairly tidy.

It is important to use the opportunities we have to talk about some of our agricultural industries. The member for Huon touched on this in his contribution about, 'I remember when I was growing up' - he went down the Huon Valley and it was apples, wall to wall, you could not see anything but apple trees. It is very different now. Even up around Spreyton and places like that, there were apple trees everywhere.

Mr Armstrong - There are still a few there.

Ms FORREST - There are still some but not the same amount as there was back then. Things, change, markets change. It is market-driven, obviously. What fascinates me is the expansion we are seeing in some areas. I commend governments past and present on their commitment to rolling out the irrigation infrastructure because that has really helped to assist the growth in the whole agricultural sector.

When you look to the north of us and you see massive, big almond orchards going in, walnuts, berries and things like; they are struggling for water. We are blessed in this state to have some 1 per cent of the landmass and 12 per cent of the water. That is the way it goes, isn't it? Some extraordinary percentage, so we do have reliable water supply and we should be very grateful for that. Irrigation enables that to be distributed more broadly around the state.

The member for Huon alluded to the fact that we have seen an enormous expansion in the cherry sector. I remember cherries were almost an exotic fruit when I was a child. You hardly ever saw them. Now when you go down through the Midlands, around Somercotes and places like that, there are acres and acres, or hectares if you like, being planted out in new cherry trees. Tasmanian conditions are perfect for that, and that is why they are investing.

The other thing, and I know the member for Montgomery - the Leader - would be very well aware of this, the expansion of blueberries up in my home country, your electorate, going up Pine Road -

Mrs Hiscutt - It is huge.

Ms FORREST - It is huge. The new expansion in blueberries, and I assume raspberries are going to grow in there as well.

Mrs Hiscutt - Raspberries and blackberries.

Ms FORREST - Blackberries as well? If you look at that, you have a big blueberry farm just up from where the member lives; then on Pine Road, across the next valley if you like, there is a massive expansion going on. I remember my first job was picking strawberries on that property years ago, and that was all on the ground. They were not up on stands or anything so it was pretty backbreaking as a young kid, but you earned a few dollars here and there. It was hard physical work. It did not do me any harm at all.

We know there is good soil on the north-west coast, but it is incredible to see the growth with some of the fruits. Strawberries we have always had, but blueberries were almost an exotic fruit for me as a child.

Mr Armstrong - It would have been in the last 20 years?

Ms FORREST - Yes, not long, is it? I do not remember eating a blueberry as a child, not a fresh one.

Mr Gaffney - It was not a berry that was around.

Ms FORREST - No, it was not. It was almost like an exotic fruit to me.

Mr Armstrong - You never heard of them, did you?

Ms FORREST - No, that is right. They sort of seemed to be an American thing to me. So here we are - we have so many blueberries, it is amazing. They do grow well here. Whether climate change has had a bit of impact on that and made it more favourable, possibly, but we need to capitalise on the opportunities we have in this state.

I commend the Government for its commitment to agriculture. It is such an important part of our economy, certainly in my electorate, which is very agricultural, as are a number of other members' electorates.

The member for McIntyre asked an interesting question about the size and scale of the nut industry; there are a number of smaller nut growers, like walnut orchards and things like that.

Ms Rattray - And hazelnuts.

Ms FORREST - Hazelnuts is the one you took us to on your electorate tour.

Ms Rattray - Hazelbrae.

Ms FORREST - Hazelbrae, that is right. There are a number of these around. We would probably be surprised at how much nut growing is going on in Tasmania. The support provided to them - this is a question the Leader may be able to answer now - in terms of some of those quite small, niche orchards that are growing, perhaps, organic walnuts or other nuts, are they supported and assisted through this process? With your Taking Agriculture to the Next Level policy you talked about providing the state's fruit and vegetable industry with $550 000 over four years for the horticulture market and trade development. Is that accessible to any of these producers or is it more the ones aiming at export? These are more growing for the domestic market, if you like, because they are quite small. I would be interested if the Leader has a response to that.

I support the bill.

[4.10 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I was looking for some information for the member for Murchison. Hopefully we can have something before I have finished here.

With regard to the value of nuts as asked by the member for McIntyre - and this is an overall one; it finishes up with the nuts at the end - in 2011-12, farmgate value of fruit was $82 million, which grew to almost $197 million in 2017-18. This represents an overall increase of 87 per cent over five years, so you can see growth is happening here. Expansion in berry production in recent years has resulted in berries being the highest value fruit category in 2016-17, with a farmgate value of over $80 million. Rubus, which are raspberries and blackberries, are the highest value berries,

accounting for 59.5 per cent of farmgate value. Strawberries account for 61 per cent of production by volume. Cherries remain the highest value fruit export, at $39 million in 2017-18.

Nuts decreased in value, $8 million to $5 million in 2017-18; walnuts contributed about 90 per cent of gross value, with chestnuts and hazelnuts accounting for the remainder.

A question also was asked: are fruit and nut growers still involved? Yes, they are.

Member for Hobart, currently there are no issues on foot. You asked whether there were any continuing issues. There is nothing happening there.

Mr Valentine - Thank you, Leader.

Mrs HISCUTT - With regard to nuts, nut growers are less involved with Fruit Growers Tasmania than they were in 2012 as there is a national peak body for them now.

The specific information that the member is seeking is hard to get at this particular time. However, nut growers, like other agribusinesses, have access to industry funding, such as the $1.2 million Strategic Industry Partnerships Program. If the member wants to know anything more specific, you might give me a question without notice.

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

HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2019 (No. 31)

Second Reading

[4.16 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Mr President, I move -

That the bill be now read the second time.

Tasmania's historic environment is a vitally important feature of our island state. It helps to give our local communities their character, charm and distinctiveness; it contributes much to the visitor experience on offer; and it is an important part of our growing visitor economy.

On 1 March 2014, some of the most important amendments to the Historic Cultural Heritage Act 1995 since its inception 22 years ago came into effect. The changes aimed to better integrate Tasmania's historic heritage and planning legislation. Feedback received on the impact of the amendments has been very positive.

These changes have delivered greater clarity, consistency and certainty in the statutory management of places of historic cultural heritage significance by the Tasmanian Heritage Council, and created a single integrated discretionary permit application process.

The amendments in this bill align well with our commitment to reduce red tape and maximise certainty under the planning system for property owners, developers and other stakeholders who engage with the resource management and planning system. In our first four years in government,

the Heritage Council, Heritage Tasmania and our 29 planning authorities have worked hard to ensure the success of the integrated process, but further amendments are needed.

It has become apparent that a number of additional reforms are warranted to fine-tune the heritage act, to ensure it better integrates with the Land Use Planning and Approvals Act 1993 - LUPAA - and the Environmental Management and Pollution Control Act 1994 - EMPCA.

Mr President, it gives me much pleasure to bring this bill to the Council.

In the past four years, the Heritage Council and Heritage Tasmania have worked hard to generate good owner, community and heritage outcomes. This work will continue. They have facilitated the approval of over $670 million in works on heritage-listed places and sustained an impressive 99 per cent approval rating for works and exemption applications.

The main driver behind this bill is the need to ensure the act fully recognises and effectively responds to the planning system, the combined permit process, and the timing of the assessment of activities by the board of the Environment Protection Authority; and recognises that applications can change after they have been lodged. We have drafted a bill to address these issues and a number of other needs.

The amendments have been subject to ongoing consultation with experts in heritage management and land use planning, including the Heritage Council, Local Government Association of Tasmania and other agencies.

The bill will deliver seven key reforms. I would now like to provide the Council with an outline of each of these.

The first will introduce a provision that ensures if any act, such as the Environmental Management and Pollution Control Act 1994, affects the assessment period under the Land Use Planning and Approvals Act 1993, the period which the Heritage Council has to assess a proposal is similarly affected.

Currently, if an application for a planning permit is forwarded to the Environment Protection Authority, and the EPA Board determines an assessment is required for their purposes, the assessment period of LUPAA is altered to incorporate the time needed for the board to assess the proposal. However, if the same proposal involves a place in the Heritage Register, the period the Heritage Council has to assess the proposal is not affected.

As a consequence, the Heritage Council may need to make its decision well ahead of the EPA and the relevant local planning authority. This means the Heritage Council may not be able to consider public representations and it may generate uncertainty, as the decisions made may not be consistent or based on the same information.

The bill seeks to remedy this situation. It will ensure the Heritage Council can take into account the EMPCA process, any relevant representations and changes to an application when it makes its decision, and better aligns time frames and decisions across the planning system.

While the Heritage Council is to receive all relevant permit applications, there is no provision currently in place that allows for a minor or a substantial change to a proposal to be considered by the Heritage Council.

The bill will ensure that any additional information, revised plans or amended permits available to a local planning authority are forwarded to the Heritage Council so its views can be taken into account.

The bill will also ensure that additional information or revised plans received by the planning authority are forwarded to the Heritage Council after the Heritage Council has issued its decision. If this information reflects a substantial change in the proposal, the Heritage Council can revise its decision, as long as the planning authority has not made its decision.

This will ensure the information available to both statutory parties is the same and avoids conflicting plans being considered and unnecessary conditions being imposed.

The bill provides for a scenario where, if a planning authority fails to forward a development application to the Heritage Council within five days of the application date, the Heritage Council is given time to consider and, should it deem it necessary, comment on the development application prior to a final decision of the planning authority. This reinforces the Heritage Council's role in regulating the impact to the significance of a heritage place.

As members would be aware, a proponent may seek to amend a planning scheme and lodge a development application at the same time. Unfortunately, as it stands, the heritage act does not enable the Heritage Council to consider combined permit applications. This bill will ensure that the heritage act allows for the combined scheme amendment and permit application process and treats combined applications in a manner that is consistent with the assessment of discretionary permit applications.

These amendments will also introduce the capacity to appoint authorised officers, who are able to investigate compliance with, or enforcement of, works under this act. These provisions align with the provisions already in place and working effectively under LUPAA and the Local Government Act 1993.

At present, the heritage act does not include a provision that authorises a State Service officer to attend, access or view a site for a purpose connected with the heritage act, nor does it provide a statutory framework upon which to investigate compliance issues, if consent is not given.

The bill aligns with LUPAA and will enable an authorised officer to attend a site to investigate a compliance issue, where an owner does not consent to their visit. This power will only be able to be exercised if a magistrate has been satisfied that a contravention of, or failure to comply with, the heritage act has been, is being or is about to be committed.

Finally, the bill includes amendments requested by the Heritage Council to assist it to maintain a focus on contemporary practice and good governance. These enable the appointment of a deputy chairperson, flexibility in meeting formats, and broaden the disclosure of interest provisions.

At present, the act only makes provision to appoint a deputy chairperson on a once-off basis at a meeting where the chairperson is not present. This bill will enable a deputy to step in for the chairperson at other times. This recognises that the Heritage Council's chairperson may not be available to carry out Heritage Council business for a wide variety of reasons, and that the business of the Heritage Council continues both within and between its formal scheduled meetings.

Given that the Heritage Council is a 15-member body and its members come from across Tasmania, it is not always possible for them to meet in the one location, especially if they need to deal with urgent business. Amendments proposed in the bill will validate the use of telephone and videoconferencing, and provide a mechanism that enables the Heritage Council to consider urgent matters out of session.

The heritage act also currently only recognises conflicts of interest as being pecuniary, or financial, whereas contemporary practice and the Heritage Council's own policy recognises conflicts of interest arise for a wide variety of reasons, of a pecuniary, non-pecuniary, direct or indirect nature. The amendments will address this gap in the legislation.

This bill is important to ensure the sound, considered and integrated statutory management of the heritage places of greatest significance to Tasmania. While the amendments are relatively modest in scale, they are important and add to our reform of the planning system.

The Minister for the Environment, Parks and Heritage has no doubt that these reforms will help to generate greater clarity, consistency and certainty in the statutory management of Tasmania's historic cultural heritage, and facilitate the delivery of good owner, community and historic heritage outcomes.

Mr President, I commend this bill to the Council.

[4.27 p.m.]

Mr VALENTINE (Hobart) - Mr President, I certainly support this bill. When first reading it, I cast my eye over it and thought 'Is there any greater opportunity for people to be able to subvert the system, somehow to fly under the radar or away from the scrutiny of the Heritage Council in any way and our heritage to be affected as a result?'

From my reading of the bill and the information provided to us, that is not the case. It provides for aligning information and decision-making in a better way. It could be that a planning authority, such as a council, could be making decisions based on certain information and the Heritage Council is deciding based on less information, and that is not a good thing. They need to have exactly the same information available to them when they make their decisions.

We dealt with this in the briefings and you cannot make it perfect. Obviously, there has to be an overarching authority to deal with this and that is the planning authority. It is one gateway through the planning authority and the planning authority passes the information to the Heritage Council.

If the Heritage Council finds something is affecting the heritage fabric in some way and the planning authority has already made its decision, there is not a lot we can do. If the planning authority has not made its decision, there is the opportunity for the Heritage Council to be able to look at the extra information provided and maybe change its original decision, and that is good because it means our heritage fabric is even more protected. It has an opportunity for video or telephone conferencing, the opportunity for the deputy chair to be able to preside and, interestingly, for conflicts of interest. It is good to see the council is grasping the opportunity to put in best practice when it comes to governance.

It is not only about pecuniary interest, but also non-pecuniary interest, tangible or not tangible, and it is good to see that happening. It is not always the fact somebody has a dollar involved; it

may well be their associates or other aspects of conflicts of interest. I congratulate those who have put this together incorporating that concept. Alignment of information and decision-making is most important, and one of the big pluses of this particular legislation.

There are other smaller aspects, but having the attendance of Heritage Tasmania officers onsite - if they have approval to do so - to check things out is very important. It is far better than the way it used to be when you had to have Heritage Council approval as a separate permit and a planning authority permit. There was a confusing two-permit system, and this has improved the act and has certainly taken care of most of that.

These additions certainly add to the mix and improve the overall situation the Historic Cultural Heritage Act deals with. I support the bill.

[4.32 p.m.]

Mr GAFFNEY (Mersey) - Mr President, I do not have much more to add. It has probably been said by the member for Hobart. I also appreciate the briefing held this morning and congratulate the officers in charge. It is interesting for me having sat in local government in 1994 in a town with some significant certified and registered heritage buildings. Over that time, we have seen the progressive nature of those in charge of our history and heritage and it has been made much easier. As time progresses, we have seen a very contemporary and progressive Tasmanian Heritage Council and Heritage Tasmania, looking at working at how we can make this easier for people to make our heritage sustainable and become integral. For a long time, we thought our heritage was just Port Arthur or the Richmond Bridge and we are starting to realise there is a lot more to it.

I commend this and I am sure there is more work to be done. This is a feast of things that will come across our table. I congratulate the Government, but more importantly those involved in trying to streamline what can sometimes be very difficult in other states and legislative jurisdictions. They are starting to realise we can get a lot more done if we work together.

Even the recent briefings show there was collaboration and people working together trying for the best outcome. Well done to those in charge of this bill. I will definitely support it.

[4.34 p.m.]

Mr DEAN (Windermere) - Mr President, I support the bill and it is a good direction to take. The Tasmanian Heritage Council needs to be involved in anything to do with any changes or any direction relating to any heritage property in the state. They are the experts and the ones that need to be there.

If you look at heritage in this state, in some areas we are doing well and in other areas not so well. For instance, a couple of examples in Launceston. If you look at the Boland Street cottages, which are well known to everybody in the Launceston area, the buildings were of extreme historic value. Over a period of time, they were allowed to fall into disrepair and it finished up with a fire lit in the premises and they virtually fell down. They have now been removed, which was a shame, but that is what happened.

When you look at the CH Smith site building, there is a great example here of THC involvement, council involvement as well, the restoration work, how the new building has worked in with the heritage-listed components of that area as well. It is really a great development. Errol Stewart has done extremely well and the Heritage Council and the Launceston City Council also

have done very well. That is a great reason as to why the Tasmanian Heritage Council needs to be involved.

There are some areas where we need to do more. I raise it here and have raised it many times, and Heritage Tasmania are aware of this as well. The National Trust, for instance, is responsible for the 10 most iconic buildings in this state, with the exception of the Port Arthur complex. They are struggling to keep and maintain those 10 iconic Tasmanian National Trust listed buildings in reasonable condition. They are appealing and pleading to get the appropriate funding to do that. They know the position of the buildings and they know what they have to do, but they do not have that funding.

I have harped on about this at Estimates and I will probably do the same at the next Estimates process as well. We have to do more there. It is all very well to say they should be raising the money and they have the opportunity to do this, that and all those other things, but the clear fact is, they do not.

There is no other person more committed than Nicholas Heyward, the chairman of that board, in wanting to ensure the maintenance and proper care of our iconic buildings in this state. We know he is a strong supporter of this state. We need to do more.

Launceston has done very well with the maintenance of its heritage generally and it is said to be one of the better areas of this state for maintaining and looking after its heritage buildings and complexes. It has maintained streets of heritage-listed properties. That is where a lot of other places have been let down; they have gradually removed some here and there, all over the place. We have done well. The Launceston City Council set up a heritage committee, some time ago. I was involved with the setting up of that committee and the Tasmanian Heritage Council has a position on that committee, which is a bonus and a boon to that committee. They have worked hard on retaining and ensuring the Tasmanian Heritage Council has an involvement in anything that is occurring in that area involving our heritage buildings.

I appreciate the briefings this morning. Thank you for that. I appreciate the fact sheet that was provided to us this morning. It gave us a good understanding of where this bill is and the points made under it, why we need it and that is very clear in itself.

It is important that local government works in closely with the Heritage Council in any of their developments that might change a heritage building in some way or another. It is a good bill. I like the changes and I support it.

[4.39 p.m.]

Mr ARMSTRONG (Huon) - Mr President, I will also be supporting the legislation. As I understand, this bill will integrate historic, heritage and planning legislation whilst still ensuring the protection of our state's cultural heritage. It will reduce red tape and will create a single application decision-making process for works on places on the Heritage Register. The bill will enhance the governance arrangements of the Heritage Council. It will give the council the time it needs to consider development applications properly.

Quite often I hear that buying, owning and modernising heritage assets is complicated. Most important to me is that these reforms will help generate greater clarity, consistency and certainty in the regular management of Tasmania's historic cultural assets and facilitate the delivery of good owner, community and historic outcomes.

I will be supporting the legislation.

[4.42 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I thank honourable members for their contributions. I do not think I heard any questions. No, so thank you very much.

Bill read the second time.

HISTORIC CULTURAL HERITAGE AMENDMENT BILL 2019 (No. 31)

In Committee

Clauses 1 to 4 agreed to.

Clause 5 -
Section 32 amended (Interpretation of Part)

Ms RATTRAY - Madam Chair, in regard to 5(c) which deals with the combined permit. This morning we learnt the reason it was necessary to have a combined permit - so there was surety for the applicant. I thought it would be useful to ensure that was on the public record so the intention of a combined permit was very clear. I would appreciate it if the Leader could make that really clear for anyone who might want to go down a combined permit path.

We also learnt about the process and how the Heritage Council - its time started but another LUPAA, or the council's part of the process - did not stop and start. Just a clear indication for others reading this, and so that I am perfectly clear in my mind, of what that combined permit process entails.

Mrs HISCUTT - The question is: why is the combined permit process included? I will start with that one.

The combined permit process allows an applicant to request a planning authority amend a planning scheme and assess a permit application where the permit cannot be issued without the planning scheme being amended.

While these types of applications are not common, it is important that the heritage act has regard to these types of applications. As the heritage act currently does not recognise this process, the only way the heritage act can consider and give its consent to this type of development is to request a separate development application.

Increased development in the state has highlighted the benefits of ensuring the Heritage Council is party to combined permit processes to introduce further clarity and efficiencies and issue a single consistent decision. The amendments will ensure that the Heritage Council is able to make a decision on the development component of combined applications and use a process that aligns with the LUPA act 1993 without requiring a separate application.

I would like to note at the end there that the combined permit is part of LUPAA and this bill does not provide for combined permits though it recognises them.

Clause 5 agreed to.

Clauses 6 to 10 agreed to.

Clause 11 -
Sections 39A, 39B and 39C inserted

Mr DEAN - I have a couple of points on page 15.

Madam CHAIR - Before you start, member for Windermere, there are three subsections to this part. I am happy to call them separately if you have a question relating to each subsection.

Mr DEAN - I have two questions under this area; that is all I have.

Madam CHAIR - Ask them both and we will see how we go.

Mr DEAN - Thank you. My first question is on page 15 and I am looking at subclause (8) where it says -

> If subsection 6(a) applies or the Heritage Council fails to give the relevant planning authority a notification of any kind under subsection (6) within the time that subsection requires, then, subject to section 39C(5) -
>
> (a) the relevant planning authority may determine the application without further reference to the Heritage Council;

Is that likely to happen? The Heritage Council would have a good handle on all of this, it would want to be involved, and it would want its position to be well known. Obviously it is a default position to fall back on should that happen. Has it happened? Is it likely to happen? What is the position of the Tasmanian Heritage Council? That is point one.

The second one is on page 18 and I am looking at 39B. This is a requirement here, and I will read it -

> If, after a person has made a permit application, the relevant planning authority -

and that could be the City of Launceston Council, for instance -

> receives any further information from the applicant in relation to that application, the relevant planning authority must as soon as practicable after receiving the information (and in any event within 5 days) provide that further information to the Heritage Council.

My question is: if there is a failure to do that, what happens? Is there some penalty against the planning authority? If the Tasmanian Heritage Council were to find that out later, what would it do or could it do in those circumstances?

Mrs HISCUTT - I have the answer to the first part of your question, member for Windermere. This clause reflects the standard provisions available in respect to a development application. It is where it may happen, so this clause recognises this status. It recognises the powers of the planning

authority as the final decision-maker and allows for surety and finality of the planning authority's decision. It is not common but may happen, so will it just cover this.

I will seek more advice on the second part.

Member for Windermere, these are combined hearings and the Heritage Council is privy to those hearings before the planning commission. It should happen within five days, but if by some reason it is missed, the Heritage Council is still there at the hearings with the planning commission.

Mr DEAN - Why does it have to be the Tasmanian Planning Commission? You specifically refer to the Tasmanian Planning Commission here. I am trying to read this - if an application is made for some change to a heritage building, if a person has made a permit application, the relevant planning authority could be the City of Launceston Council, acting as a planning authority or any other council in this state acting in that capacity. Why would the Heritage Council have a position at that table at that time?

Mrs HISCUTT - Under normal circumstances, the Heritage Council needs to respect the planning commission, the planning authority. It is hoped this would happen, but they are in charge.

Mr VALENTINE - Would the scenario put forward by the member for Windermere be handled in the second reading speech? At the bottom of the second reading speech -

> The bill provides for a scenario where, if a planning authority fails to forward a development application to the Heritage Council within five days of the application date, the Heritage Council is given time to consider and, should it deem it necessary, comment on, the development application prior to a final decision of the planning authority.

This is simply extending the time the Heritage Council has, Leader?

Mrs HISCUTT - This covers more in the event we do not know, but is what would happen.

Clause 11 agreed to.

Clauses 12 to 14 agreed to.

Clause 15 -
Sections 90B, 90C, 90D and 90E inserted

Madam CHAIR - This clause has four sections in this part. Do you have a number of questions?

Mr DEAN - I only have one question.

My question is on page 23, 90B, and it relates to authorised officers. It says -

> The Heritage Council may appoint a State Service officer or State Service employee to be an authorised officer for the purpose of this Act and that officer or employee may hold that office in conjunction with State Service employment.

I take it that in doing that, there is likely to be a requirement for more authorised officers. Is that the reason for it? I take it that would be a person or people with heritage background or some background in this area. Is that going to be a requirement?

This is a fairly strong section that gives authority to these people to enter buildings with warrants, in some cases, to carry out inspections, to photograph, and do all those other things. To me, it would need to be an officer with the background necessary to understand the heritage issues. Will that be the case, or is there somebody in mind in this case? Is it in mind to appoint someone; is that the reason for this section?

Mrs HISCUTT - The Heritage Act as it stands does not provide the Heritage Council the ability to investigate an owner's compliance with the act without the owner's consent. While the Government is keen to respect owners' rights, it is also obliged to ensure owners comply with legislated obligations. Most owners do the right thing and it is acknowledged that proactive collaboration between an owner and the Heritage Council generates the best outcomes. However, owners may conduct works without consent. If this occurs, it is important that such concerns are able to be investigated.

These amendments introduce the capacity to appoint an authorised officer. They align with provisions currently used by planning authorities with the safeguard of requiring a magistrate to be convinced that access to a private property is justified before an authorised officer is appointed. Regulators need to have the ability to investigate compliance and enforcement issues. It is not expected provisions of this nature will be used often, but they are an important tool that will be available to be used if needed. The Heritage Council or Heritage Tasmania may nominate suitable people to be an authorised officer for the purposes of the act, but the final decision on who to appoint as an authorised officer rests with a magistrate.

Authorised officers are likely to be heritage advisers responsible for implementing the works approval process, the works manager or the director of Heritage Tasmania. Police officers are not automatically authorised officers but will be able to render assistance if needed.

Mr DEAN - Going a bit further into it then, if we look at 90C, the entry and search warrants provide the opportunity to enter a private building that is heritage-listed - that is as I understand it. Am I right on that? Is there a requirement here under 'Entry and search warrants' to give proper notice to these people and, if it is a family home, to enter it at reasonable hours? Has it been used? Is there a need for it? Has it cropped up where it has been necessary to get access? I guess that is the reason for it, but are there any examples of it?

Mrs HISCUTT - Obviously the first process here is to resolve the issues in most cases, without the need to see the magistrate. We have to first convince the magistrate this is the way to go. The magistrate has the ability to add any conditions to the warrant they see fit and may add between daylight hours or certain days of the week, or not on a Sunday. The magistrate has the ability to dictate that. We do not envisage it happening often, because we hope to use mediation to resolve any issues.

Mr DEAN - To go a little further. The warrant gives the right for an authorised officer to take possession of any property connected with the issues there. What would this be for? Are we looking at works being undertaken on these heritage properties? It would not relate to the use of it, because that would be a council issue. If it is to relate to changes being made to the building and so on, does this mean taking possession of carpenter's tools, to an excavator, if something is being pulled down?

Is that what it is about? I ask the question, has that happened where it has been highlighted there is a need for this?

Mrs HISCUTT - We have not had these provisions in the bill before so they are untested. It could be something like paperwork. It might be suspected a person is going to demolish a room or something like that, so there may be paperwork, plans or records.

We have the ability for stop work orders already. I will leave your mind open to that. It might be a bulldozer there that may knock the house down. It could be a whisper there are some heritage tiles, a mantlepiece, anything like that going to be demolished. We may have the ability to go in and say, remove those tiles to preserve them or act to preserve them.

Mr DEAN - Thank you.

Clause 15 agreed to.

Clauses 16 and 17 agreed to and bill taken through the remainder of the Committee stage.

ADJOURNMENT

[5.06 p.m.]

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

> That at its rising the Council will adjourn until 11 a.m. on Thursday 19 September 2019.

I remind members of the under 16 homeless task force briefing tomorrow at 9 o'clock. That request came through the President's Office and then we will go on with our roads and jetties briefing.

Housing Land Supply (Huntingfield) Order 2019 - Disallowance

[5.07 p.m.]

Mr DEAN (Windermere) - Mr President, I need to correct some issues I raised last night when the member for Nelson was closing the address, where I took, I think, three points of order. I need to make sure I get this right.

The first one was where the member for Nelson made the comment -

> The member for Windermere suggested it would be - I think his words were - stupid or crazy for the Government to put more than that on this site. Let us wait and see.

I took a point of order on that, saying -

> Point of order, Mr President. It is not what I said and the member might be careful in reflecting on a comment that she says that I made. It is not what I said and she ought to look at the *Hansard* to get the correct explanation.

Well, I have done that. I did use those words, stupid and crazy. What I said was -

> I accept that, as was said, it would be very foolish of a government to make that sort of statement and then all of a sudden plonk 650 buildings down in the area. It would be stupid. It would be crazy and I do not see the Government supporting or the department going near that.

I want to correct the record; I guess an apology is required, and I do that.

I now go to another point of order I took. I took a point of order when the member for Nelson said -

> One other small correction and we are welcome to check the *Hansard* on this, one because I am 100 per cent confident that the member for Windermere suggested there were members here opposing this development.

I also took a point of order on that statement. I said -

> Point of order, Mr President. I do not recall making a statement that people were opposing the development. As a point of personal explanation I did not say that but *Hansard* will prove that one way or the other.

I have checked *Hansard* very closely on this and, indeed, I was right. I did not make that statement at all. I certainly used 'development' in my speech a number of times, but there is no record in *Hansard* of me making that statement. I wanted to point that out because the member then went on to say -

> Certainly, I made particular note of that because it is a key aspect of this that I want to be and endeavour to be very clear about. I, in no way - and I am not going to speak for other members who may be captured in this too - oppose a development at Huntingfield. I, in no way, oppose development more broadly.

I just want to clear that point up too. There was another point of order which you ruled was probably argumentative so I do not need to make comment on that. That was in relation to comments made by the Mayor of Kingborough Council. You ruled in that case that it could be argumentative and that was overruled - I accept that, but I apologise for that first error. It was a long, drawn-out debate. I wanted to clear the record for that purpose.

Personal explanation

[5.10 p.m.]

Ms WEBB (Nelson) - Mr President, I have a point of personal explanation.

Mr PRESIDENT - I generally remind members that the adjournment is not for debate, but under standing order 113, members are allowed to make a point of personal explanation.

Ms WEBB - Mr President, I will be brief. I also checked *Hansard* and I want to clarify that the comment I based my comment on related to when I suggested the member for Windermere had suggested there were members here who were opposing this development. That was based on checking *Hansard*. The comment from the member for Windermere in his speech was -

> I think some of the members opposing this development keep referring to the 600-plus buildings ...

I quote that to clarify where I drew that comment from.

[5.12 p.m.]

Mr PRESIDENT - Honourable members, in clarification too, I reminded all members of standing order 99(8), which is in regard to promoting a quarrel. That was a general reminder to all members during our quite comprehensive debate yesterday.

This just brings to mind, with members' indulgence, something the Honourable Gilbert Eliott, the first Speaker of the Queensland Parliament, said in 1860 -

> … I would urge on honourable members mutual forbearance and self-control, and the necessity of not taking exception to words and expressions which might bear a very different interpretation to that which at the time they might be disposed to attach to them.

The Council adjourned at 5.13 p.m.