Wednesday 21 November 2018

The President, **Mr Wilkinson**, took the chair at 2.30 p.m. and read Prayers

TABLED PAPER
Government Administration Committee A - Special Report

Ms FORREST (Murchison) - Mr President, in accordance with the Legislative Council Sessional Order number 14, I present a special report of Government Administration Committee A in relation to an inquiry initiated by the committee on its own motion.

Report received.

[2.41 p.m.]

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

MENTAL HEALTH AMENDMENT BILL 2018 (No. 43)

First Reading

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

LEAVE OF ABSENCE
Member for Elwick

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

> That the member for Elwick, Mr Willie, be granted leave of absence from the service of the Council for the remainder of this week's sittings.

Motion agreed to.

QUESTIONS

Aurora Energy - Smart Meter Installation

[2.43 p.m.]

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

My questions relate to the Tasmanian energy sector, Aurora Energy. Will the Leader please advise -

(1) What is the position regarding the current meter reading operation of Aurora? Is it contracted; if so, are the contract conditions being met?

(2) If contracted, who is the contractor and where is their business office?

(3) Regarding the installation of the new smart meters, who was installing them and where are the meters being monitored?

ANSWER

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

(1) In Tasmania, electricity meter reading is performed by TasNetworks and is not contracted out. TasNetworks has a team of meter readers in each of the three main regions across Tasmania.

(2) Same as above.

(3) As a result of the national Power of Choice reforms, Aurora Energy became responsible for the management and installation of advanced meters, called smart meters, for its residential and small business customers from 1 December 2017.

Under the new national market arrangements, the new role of a 'metering coordinator' - MC - was created to take responsibility for the safe and accurate operation of metering. Each retailer is required to appoint an MC to provide metering services for small customers. Following an extensive report for tender process, Aurora Energy selected Queensland government-owned metering service provider Metering Dynamics as its preferred supplier for the MC role. No Tasmanian business took part in the tendering process. However, Metering Dynamics has been operating in Tasmania for almost 10 years. Significantly as part of its tender response, it committed to engage Tasmanian contractors and field crews.

Advanced meters are electronic meters capable of two-way communication via the communications network. They must be capable of certain minimum specifications such as remote scheduled meter readings and the ability to perform remote disconnections and reconnections. Advanced meters record usage data in thirty-minute intervals. Where mobile phone coverage allows, this information is sent securely on a daily basis to Aurora Energy. If this coverage is not available, an Aurora Energy service provider will visit the customer property to download the meter data every three months.

Tamar Estuary Management Taskforce

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

[2.45 p.m.]

Mr President, I take it that the Government can answer these questions on the Tamar Estuary Management Taskforce - TEMT.

(1) The TEMT fact sheet *River Health Action Plan* refers to the appropriate ongoing governance arrangements for the estuary and the actions that are necessary to improve amenity values associated with sedimentation. Have the Government's arrangements been put in place?

(2) If yes, what are they and who are the Government's team?

(3) If no, when will this happen?

(4) TEMT also talks about an education campaign. As we have previously experienced educational programs, how will this be achieved?

(5) What is its purpose?

(6) How will the decision-making for program implementation be set up?

(7) How will public accountability be achieved?

ANSWER

Mr President, I thank the member for Windermere for his questions. The answers are -

(1) to (3)

As part of the scope set out under the Launceston City Deal, the Tamar Estuary Management Taskforce was required to consider appropriate ongoing governance arrangements for the estuary. TEMT commissioned a consultancy to set out the key objectives and functions of any group that would take responsibility for the estuary, and the consultancy also considered a range of governance models that would be applied. These models range from statutory organisations, companies limited by a guarantee, and more collaborative models similar to TEMT. TEMT members held concerns about whether the establishment of a statutory structure would require significant ongoing operational funds and whether the shift to a new entity would retain the same collaborative support and resourcing as had been achieved under the TEMT process.

The Treasurer approved the new governance arrangements in September this year. TEMT will continue to be chaired by the CEO of Infrastructure Tasmania and will continue to draw membership from the Launceston City, Meander Valley, West Tamar, Northern Midlands and George Town councils, along with representatives from the Department of Primary Industries, Parks, Water and Environment, NRM North and the Tamar Estuary and Esk Rivers - TEER - Program. TasWater and Hydro Tasmania have also been invited to join the TEMT under the Government's new arrangements. Secretarial support will continue to be provided by Infrastructure Tasmania.

(4) Providing ongoing coordinated communications to the community around the actions of members and stakeholders as they impact estuary health is an important component of TEMT's work. In particular, it will be valuable to communicate progress on health outcomes, the works being undertaken and the benefits being realised. Much can also be done to further the community's understanding of what is possible in respect to sedimentation issues backed by the significant scientific knowledge TEMT is able to draw upon. Many opportunities are available for communications ranging from open days and field days with landowners, information via websites, editorial pieces and general releases by media outlets.

(5) The answer is the same as I have just read.

(6) The group is to have an ongoing role in setting the vision for the health of the estuary and providing strategic direction at a broad level to guide the efforts of member organisations. This would be in the form of issuing annual directions and strategy statements. A key benefit TEMT has brought to the estuary task is its authoritative, evidence-based and collaborative approach. TEMT has been a valuable aggregator of capital planning knowledge and has assisted in the prioritisation of capital across members through the development of the River Health Action Plan. The group will continue this role for any future capital works proposed by organisations as they relate to estuary health. The present capital program and funding arrangements have been announced within the Launceston City Deal framework. Public accountability will be possible through the reporting and acquittal process. In addition, TEMT has a reporting requirement to the Treasurer and will continue to provide advice and respond to requests as required.

SUSPENSION OF SITTING

[2.51 p.m.]

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 for the continuation of the briefing on the building legislation.

Sitting suspended from 2.51 p.m. to 3.42 p.m.

FAMILY VIOLENCE REFORMS BILL 2018 (No. 39)

CORRECTIONS AMENDMENT BILL 2018 (No. 33)

AUSTRALIAN CRIME COMMISSION LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2018 (No. 31)

Third Reading

Bills read the third time.

JUSTICE AND RELATED LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2018 (No. 35)

Second Reading

[3.47 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.

Mr President, from time to time legislation requires amendment to ensure it remains up to date and to correct minor errors that may become apparent after legislation has been operational for some time. A number of such minor amendments have been identified in legislation administered by the Department of Justice.

This bill makes minor amendments to 18 acts. The amendments result from requests by various stakeholders to clarify or improve the operation of particular acts.

I will now briefly outline the reason behind each of these changes.

Sections 42AH and 42AI of the Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017 require an offender who is subject to a home detention order or an authorised person to apply to the court to vary or cancel a home detention order. A copy of the application and notification of the time and place of the hearing of the application is to be served at least seven days before the hearing.

The Magistrates Court has requested that sections 42AH and 42AI of the act be amended to allow the court to hear the application in a shorter period and without service. This bill makes the requested change.

Section 36A of the of the Sentencing Act 1997 provides that offenders discharging community service orders are workers for the purposes of the Workers Rehabilitation and Compensation Act 1988 and the Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011. This means that offenders discharging community service orders are entitled to workers compensation in the event of injury or death.

Section 27M(1)(c) of the Sentencing Act 1997 provides that where an offender contravenes a drug treatment order the court may make an order requiring the offender to perform up to 20 hours of community work under the supervision of the offender's case manager.

Offenders discharging drug treatment orders are not regarded as workers. This bill amends section 27M to recognise offenders discharging drug treatment orders as workers for the purposes of the Workers Rehabilitation and Compensation Act 1988 and the Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011. This will provide consistency between people undertaking community service orders and people undertaking community work as part of a drug treatment order.

Section 82 of the Sentencing Act 1997 provides that a court that finds an offender guilty of an offence may, before passing sentence, order a pre-sentence report and adjourn the proceedings to enable the report to be prepared. The Chief Justice has requested that section 82 of the act be amended to empower magistrates to order pre-sentence reports when a defendant pleads guilty to an indictable offence before a magistrate and is committed to the Supreme Court for sentence. This bill amends section 82 to provide that power.

This bill amends section 8B(3)(e) of the Acts Interpretation Act 1931 to include clause notes in the definition of 'extrinsic material'. Clause notes are a useful reference to explain the purpose of each clause in a bill.

Section 30(1) of the Acts Interpretation Act 1931 currently provides that where any act authorises or requires any notice or document to be given, sent, served or delivered by post, such

delivery is deemed to be effected by properly addressing, prepaying and posting the document in the mail. On 18 November 2016, Magistrate Brown in the case of *Austin* held that section 30(1) cannot be satisfied where postage is paid after the document has been given, sent, served or delivered by post. At present, government departments and agencies pay for postage via a monthly business account with Australia Post.

This bill amends section 30 to cover persons who have a contract with Australia Post to pay for items posted on a monthly or other basis.

Section 77(2) of the Classification (Publications, Films and Computer Games) Enforcement Act 1995 provides that the court may, if it considers material which is the subject of a charge for an offence under Part 8 to be child exploitation material or a bestiality product, order that the material be forfeited to the Crown. Section 77(7) of the act provides that when any material or thing is forfeited to the Crown, the material or thing becomes the Crown's property and may be disposed of or destroyed in such manner as the Attorney-General may direct.

Section 77(2) does not take into account the forfeiture of electronic mediums, such as computers, mobile phones or electronic devices that carry child exploitation material or a bestiality product where the person is not convicted of an offence. Further, there is no provision for the court to make an order for the electronic medium to be destroyed. While data can be deleted from an electronic medium, there is still the possibility that data can be retrieved.

The Department of Police, Fire and Emergency Management has requested an amendment to section 77 to allow the court to make orders to forfeit electronic mediums to the Crown and destroy electronic mediums where the person is not convicted of an offence to which the child exploitation material or bestiality product relates, and this bill makes that amendment.

The bill also amends section 130F of the Criminal Code Act 1924, which deals with the forfeiture of child exploitation material, to create consistency between these acts.

Section 69 of the Coroners Act 1995 requires the Chief Magistrate's annual report on the Coronial Division to be provided to the Attorney-General. Section 17C of the Magistrates Court Act 1987 requires the Chief Magistrate's annual report on the Magistrates Court to be provided to the Minister for Justice. Traditionally the two annual reports are prepared as a single document as the same person usually holds both roles.

This bill amends section 69 of the Coroners Act 1995 to provide that the Chief Magistrate's annual report be provided to the Minister for Justice to avoid unnecessary duplication and the loss of an overarching understanding of the court.

Section 27 of the Corrections Act 1997 gives a correctional officer or police officer power to take someone 'into custody' once a judicial officer pronounces a sentence of imprisonment, revokes bail or remands a person in custody. Security officers in the Magistrates Court currently do not have the power to take someone into custody. Security officers only have the power to escort, detain and guard the person while the person is on court premises. The Magistrates Court has requested that a provision be inserted into the Court Security Act 2017 to give a security officer the same powers as a correctional officer or police officer under section 27 of the Corrections Act 1997. This bill makes the requested amendment.

Section 301 of the Criminal Code Act 1924 requires a person executing a warrant to either have possession of the warrant or produce the warrant as soon as practicable after the arrest. In many cases, this is impractical if the warrant is being held at a station at the other end of the state. There is no time to post or courier the warrant. While subsection (5) attempts to address this issue using facsimile technology, advances in technology have rendered facsimile machines archaic. In most instances, multifunction devices that scan and email documents replace facsimiles.

The Department of Police, Fire and Emergency Management has requested that section 301 of the Criminal Code Act 1924 be amended to update the processes of transmitting warrants with modern technology. This bill makes the requested amendment.

Section 408 of the Criminal Code Act 1924 provides that on receiving a notice of appeal or of application for leave to appeal, the Registrar may cause an appeal book to be prepared for the use of the court. The Chief Justice of the Supreme Court has requested that section 408 of the code be repealed. The current practices of the court no longer align with the procedures outlined in section 408 and this bill repeals that section.

Sections 418 and 418A of the Criminal Code Act 1924 deal respectively with the powers of a single judge and an associate judge to exercise certain powers of the Court of Criminal Appeal. The Chief Justice of the Supreme Court has requested that sections 418 and 418A be amended to empower a single judge or an associate judge to make orders under section 409(1)(a) and (b) of the code.

Sections 409(1)(a) and (b) of the Criminal Code Act 1924 give the Court of Criminal Appeal the power to require the production of documents and order the attendance of witnesses to appear before it. At present, a single judge and an associate judge do not have the power to make orders under sections 409(1)(a) and (b). Empowering a single judge or an associate judge to make orders will increase efficiency and reduce costs. This bill makes the requested change.

Section 4A of the Police Offences Act 1935 provides that if a police officer believes on reasonable grounds that a person in a public place is intoxicated and is likely to cause injury to himself, herself or another person, or damage any property; or is incapable of protecting himself or herself from physical harm, the police officer may take the person into custody.

The Department of Police, Fire and Emergency Management has requested that a similar provision to section 4A of the Police Offences Act 1935 be inserted into the Criminal Law (Detention and Interrogation) Act 1995 to care for intoxicated persons who have been arrested for an offence.

This bill amends section 4 of the Criminal Law (Detention and Interrogation) Act 1995 to care for intoxicated persons who have been arrested for an offence and makes consequential amendments to sections 5 and 23 of the Bail Act 1994.

This bill also amends section 6 of the Criminal Law (Detention and Interrogation) Act 1995 to permit multiple incommunicado requests and extensions to prevent evidence being lost or co-offenders still at large escaping justice.

The Criminal Procedure (Attendance of Witnesses) Act 1996 broadly governs the powers of the Supreme Court to secure the attendance of witnesses in criminal proceedings. It allows witness notices to be issued by the Registrar of the Supreme Court, but only on the application of either the

prosecutor or the accused. Witness notices require a person to attend and give evidence at a criminal proceeding.

The Chief Justice of the Supreme Court has requested that sections 5(1) and 10(1) of the Criminal Procedure (Attendance of Witnesses) Act 1996 be amended to permit the Registrar of the Supreme Court to issue a preliminary notice or a final notice at the request of any party to a criminal proceeding other than an appeal or application to the Court of Criminal Appeal.

Apart from trials and pleas of guilty, there are various types of criminal proceedings in which it will be in the interests of justice for a party to be able to compel the attendance of a witness or the production of documents. For example, the court deals with applications for the discharge of orders made under the Criminal Justice (Mental Impairment) Act 1999 and applications to discharge dangerous criminal declarations. This bill makes the requested change.

The Court of Criminal Appeal has separate powers under the Criminal Code Act 1924 to require the production of documents and order the attendance of witnesses for proceedings before the Court of Criminal Appeal. This bill amends the definition of 'criminal proceeding' in section 3 of the Criminal Procedure (Attendance of Witnesses) Act 1996 to make clear that the definition of criminal proceeding does not include an appeal or application to the Court of Criminal Appeal.

This bill further amends the definition of 'criminal proceeding' in section 3 of the act to add an application to a single judge or an associate judge pursuant to a provision of the Criminal Code Act 1924 and remove the reference to section 380 of the Criminal Code Act 1924. Section 380 was repealed in 1999.

Section 13 of the Criminal Procedure (Attendance of Witnesses) Act 1996 provides for the arrest of an intended witness when it appears to a judge that there are reasonable grounds for believing that an intended witness will leave Tasmania in order to avoid giving evidence in a criminal proceeding or has failed or is about to fail to comply with the terms of a recognisance.

This bill amends section 13 of the act to broaden the powers of judges to make orders for the arrest of witnesses who fail to attend court. The amendment gives judges the power to make an order for the arrest of a witness, the bringing of the witness before the court to give evidence, and the detention of the witness for that purpose when, for any reason, the issue of such a warrant is considered necessary.

This bill amends section 160 of the Evidence Act 2001 to clarify that a postal article sent by prepaid post addressed to a person at a specified address in Australia or in an external territory was received at that address on the seventh working day after having been posted.

This bill amends section 3 of the Forensic Procedures Act 2000 to include the offence of evading police, per section 11A of the Police Powers (Vehicle Interception) Act 2000, as a serious offence.

The Department of Police, Fire and Emergency Management requested this amendment to allow for the collection of approved forensic material from vehicles used in evading police officers and the subsequent comparison of the material against DNA profiles contained within the DNA database system in accordance with section 54 of the Forensic Procedures Act 2000.

This bill amends section 90 of the Guardianship and Administration Act 1995 to include a specific power for the registrar to waive fees.

In 2000, section 29 of the Industrial Relations Act 1984 was amended with the intention of enabling applications in relation to long service leave to be brought by a party directly to the Industrial Commission. Prior to the amendment, a dispute in respect to long service was to be referred to the Secretary who was required to investigate the circumstances of the dispute and submit the report to the President of the Industrial Commission. At present, section 13 of the Long Service Leave Act 1976 still requires a dispute to be referred to the Secretary.

This bill amends section 13 of the Long Service Leave Act 1976 to place discretion on a referrer to be able to choose whether to refer a dispute to the Secretary in the first instance or to proceed directly to the Industrial Commission.

This bill amends Form 1 in Schedule 1 of the Oaths Act 2001 to add a 'contact phone number' field to the form for the purpose of being able to contact the person making the declaration when and if needed.

This bill makes minor amendments to the Registration to Work with Vulnerable People Act 2013 to update terminology in the act.

This bill amends section 10A of the Trustee Companies Act 1953 to remove duplicated terms.

The Water Management Act 1999 defines a 'water entity' as including a 'body registered under the Cooperatives Act 1999' and makes reference to such bodies in the act. In 2015, the Cooperatives Act 1999 was repealed and replaced with the Co-operatives National Law (Tasmania) Act 2015.

This bill amends section 3 of the Water Management Act 1999 to clarify that a body registered under the Co-operatives National Law (Tasmania) Act 2015 is a 'water entity' for the purposes of the Water Management Act 1999.

This bill repeals the Long Service Leave (Casual Wharf Employees) Act 1982. The act is no longer required as the Association of Employers of Waterside Labour is no longer in operation in Tasmania.

I commend the bill to the House.

[4.07 p.m.]

Ms FORREST (Murchison) - Mr President, I thank the Leader for her contribution and for the opportunity to have briefings on this bill today. Earlier, I discussed some of the areas we have questions about with some of the Attorney-General's advisors. I appreciate that opportunity. We get a bill like this every year; Mr President, I am sure you will remember - it has been every year as long as you have been here. It is a tidy-up of the statute books, which is important. You do not want things that are no longer used and are not necessary sitting in the statute books.

This bill reflects advice from key stakeholders using the legislation we are dealing with, who are finding gaps, omissions or unintended consequences, which we all accept occur from time to time and as things change. With the digital age, you have to update different aspects of legislation to deal with those challenges or changes that are occurring and to make the legislation contemporary. A joke made at the briefing today was about fax machines. I would be surprised if

one of our younger members of the briefing team knew what one was because they are so outdated. Interestingly, Mr President, doctors still use faxes all the time, which I find really odd. That is a whole new debate about electronic records for your personal health record. I stopped using my fax system ages ago. Work paid for me to have it, but I did not want to use it. I do not want anyone to send me a fax when they can send me an email. Things change and we need to update this.

A couple of areas are of particular interest to me in this bill in relation to amendments to the Classification (Publications, Films and Computer Games) Enforcement Act that allow the forfeiture of electronic media such as computers, mobile phones and electronic devices that carry child exploitation material or bestiality products when a person is not convicted of an offence. This legislation makes changes to enable that. I do not think any of us want this sort of material in the general circulation, particularly where children could potentially access it. Storage of data is now a business in itself. We have storage in the cloud and who knows what the next thing is? There is storage on the dark web.

Being able to access and destroy this is really difficult. Anyone could take my mobile phone; you could delete everything on it, I could buy another phone and download to restore all photos and information, because it is all stored in the cloud. Not everyone does that, but many do - and people using this sort of material would be very adept at that.

The staff who briefed us said this is a much bigger problem than the state - clearly it is - and it has to be addressed through other means. It makes us think about how we can address these issues to ensure the intent is right, but how do we really make it work?

I agreed with the member for Launceston about the challenges with mail being considered received once it is sent and paid for. We are extending the time to seven days because Australia Post is not the organisation it used to be. I often complain at my Wynyard office that it takes three days for mail to get from Hobart to Wynyard, but it seems to take only one day from Wynyard to Hobart presumably because it is all downhill. We do not get many letters these days - that is not a problem - but it means your electronic devices are inundated.

Mr Valentine - The *Mercury* gets there overnight.

Ms FORREST - Exactly. They should send it with the *Mercury*. There is a real issue with stolen mail or addressed correctly mail that is delivered wrongly. The member for Launceston spoke to me about a personal experience of that. Personally, if someone wants to post or send something to us and they want a street address, well, the street address does not have a letterbox or any other means of leaving mail safely, unless you leave it outside - and it is very windy at times, so it can end up anywhere, most likely in the creek.

Mr Valentine - It happened to me up at the shack - they put it under the doormat.

Ms FORREST - That is right. Well, we do not have a doormat either - the doormat could blow away. There are still challenges with this and it is down to the court to determine whether it is a legitimate argument in that case. In spite of efforts, we will always find things perhaps do not work as well as they could or should at times. That is why the member for Mersey made the point during the briefing that we need the discretion of the courts to actually make a determination about some of these things.

Overall I expect we will see one of these bills each year dealing with these sorts of changes that are identified by courts themselves, magistrates or by others interacting with the justice system where they identify shortcomings making it difficult or unnecessary, barriers or red tape or steps, that could be removed to actually streamline procedures. I do not have any personal problems with any of the bill, but wanted to make those few comments.

[4.14 p.m.]

Mr VALENTINE (Hobart) - Mr President, as has already been stated, this is obviously a bill fixing up sins from the past or, rather, things from the past that need to be corrected to bring them up to speed. It touches on so many different aspects of operations.

I have a question relating one part of the second reading speech about the following -

> Sections 409(1)(a) and (b) of the Criminal Code Act 1924 give the Court of Criminal Appeal the power to require the production of documents and order the attendance of witnesses to appear before it.

and -

> At present a single judge and an associate judge do not have the power to make orders under sections 409(1)(a) and (b).

Why did this exist in the first place? There must have been a reason. It could not be a separation of powers issue because it is dealing with judges. Is it possible to provide an explanation? We always have to think about how we deal with these amendments when they come forward, as to whether they are fair and reasonable. Why is this being changed? Is there a good reason?

I, too, thank the Leader for those briefings. It is always good to see these bills clearing things up and making things easier. I note the member for Murchison's comment on the cloud. I thought twice about that. No-one wants to see that material being handed around. If a person is innocent, taking their electronic device from them when they can simply buy another phone and download it is an interesting case for me, as to whether it is fair and reasonable to do that. By all means, get rid of the images. If they can download it off the web, the dark web or the cloud, wherever it might reside, they are experiencing a loss of that electronic item when they have not been proven guilty. I am not one iota trying to protect those who are dealing in this material. It is possible these days for others to send material to people, to share it, for it to be embedded somewhere and for someone not to know that they have it. I will give it some more thought as I listen to other people's observations.

[4.17 p.m.]

Mr DEAN (Windermere) - Mr President, I support the amendments. When we find magistrates, the Chief Justice, police and Service Tasmania and other important organisations asking for amendments, they need to be considered. They do not put amendments forward when they are not needed. This legislation will help them move forward with what they want to do. I thank members for the briefing this morning and the way in which the briefings were conducted. We were given good oversight of all these amendments, their impact and why they are necessary. That is a good position.

I had some concern with one change the police was requesting. That was in relation to the retention of electronic mediums when an offender has been found not guilty. I raise it here so it is on *Hansard*. When a person is found not guilty, they are not guilty. That is the reason they are

found not guilty. I do not know of any other legislation anywhere that impacts on an innocent person. That is what it is. You are dealing with an innocent person. They might be found not guilty for a number of reasons, but they are found not guilty. I am very surprised that the Law Society of Tasmania, the Australian Lawyers Alliance and other organisations did not pick that up and at least raise some questions, but they have not done that. Are we to suppose they overlooked it? I do not know.

Ms Rattray - A large number of people were briefed on it.

Mr DEAN - Yes. It would seem they may not have overlooked it. If they are content with it, who am I to say it should not be there and not support it? It is an issue for me. My knowledge of technology is certainly not the greatest, I admit and accept that. I would have thought that today, with most technology, you could clear it, but it seems that in some situations it is difficult to do or you cannot erase it.

Mr Valentine - Even if you can clear it, it is easily reloaded if the person is of a mind to do that.

Mr DEAN - Thank you for raising that. I only asked the question. If they are found guilty and their phone is confiscated because it had explicit material on it, would they not just buy another one and reload it on that? Would it not be just as easy to do that if they were that way inclined? I would have thought the police would be watching that fairly closely anyway.

Section 4A of the Police Offences Act is an interesting one. Where police arrest and charge someone who is inebriated or impacted by alcohol or drugs, clearly the police need to detain that person long enough for them to sober up. They need that capacity just as if they had taken a person found to be inebriated into custody for their own safety.

The police have also requested an amendment to allow for the collection of approved forensic material - DNA - from vehicles used in evading police officers. We have dealt with legislation on that in this place; I think it was lost in one case. Offences of evading police are continually increasing. I am not sure what they were in the last six months but I need to look at some of the records to see if they are still increasing. They have been on the increase for a long time.

You need to look at the press for a start and talk to police: there are people who are evading police left, right and centre. It is a game and, sadly, it has horrific results in many instances. That is the tragedy of evading police. This allows the police, as I understand it, to take DNA samples from vehicles that have been used in evading police and to test them. I strongly support that - anything that helps police catch people who commit what I see as a horrendous offence, evading police. I do not believe the penalties are strong enough even now. We need to go a lot further to ensure that these people suffer the consequences they should. This proposed change will allow police to catch up with more of those who evade police.

We deal with these matters here, but what sort of media coverage do these changes get? If you talk to people in the community about it, they will say, 'I didn't even know that'. People need to know about some of these changes being made that will make the law better and will improve the positions, conditions and safety of the public. We need to get that message out there. It is all very well to have it in an act of parliament, but we need to get the message out that this is what we are doing. I think the Government would want to do that in any event.

Mrs Hiscutt - A media release is usually put out after every bill passed by both Houses.

Mr DEAN - Yes. I think it would be great to identify what I see as salient amendments within this bill and to put that message out. I will support the bill.

[4.25 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I have a few answers to members' questions.

First, the member for Murchison's comments about misaddressed or missing mail. This provision is a presumption only, but the court can hear evidence that the mail was not delivered. It will come down to a court decision.

The members for Murchison, Hobart and Windemere asked about the amendment to the classification enforcement act for the destruction of phones and other mobile devices and the issue of whether destruction of the electronic medium helps control availability of the child sexual exploitation material. Inquiries have been made with Tasmania Police. I am advised that most offenders do not store material with the major cloud providers because it increases the likelihood they will be discovered. This means a person downloading child exploitation material might store material locally. Tasmania Police can do nothing if the material is stored on some dodgy site in another country. National and international lawmakers are currently grappling with that matter.

This amendment seeks to control child exploitation material on devices in the possession of Tasmania Police, for the purposes of prosecution, which the police do not want to restore to the person at the risk of having that material retrieved. The court will decide, in the light of arguments put to it by the prosecution and the owner, whether the material is likely to be retrieved if the electronic medium is restored to its owner and whether the extent and seriousness of the material on the medium warrants the destruction of the medium. The court will decide.

Mr Valentine - Does the court also decide whether compensation should be paid?

Mrs HISCUTT - No, the court does not decide that.

Mr Valentine - It is a loss to the person who is proven innocent.

Mrs HISCUTT - Tasmania Police advise that the vast majority of people charged with these types of offences plead guilty and it is estimated that an application for this type of forfeiture would most likely only be made a couple of times a year.

The member for Hobart asked about giving power to a single judge. This change was put forward because the Court of Criminal Appeal has three members and it has become apparent that there is no need for all three judges to sit to make orders relating to the production of documents. It is more efficient for a single judge or an associate judge to do that. That is all, other than the previous point that we cannot satisfy. I thank members for their input.

Bill read the second time.

In Committee

Clauses 1 to 14 agreed to.

Clause 15 -
Section 77 amended (Forfeiture of child exploitation material, &c.)

Mr VALENTINE - To clarify, this relates to child exploitation material and bestiality product only. I am wondering how you get a bestiality product on an electronic device.

Mrs Hiscutt - Before the member takes his seat, is that a rhetorical question?

Mr VALENTINE - No, it is a question. If that applies and it is electronic devices we are talking about, is it a little bit odd to say that it is child exploitation material and/or bestiality products? It is not a bestiality product.

Mrs HISCUTT - I have been advised that a film is a product, so the film itself is a bestiality product.

Mr DEAN - If we take people who use the equipment of another person - it could be family - and the police take possession of that, I take it that there would be no right of claim to that property by the other party. If the computer, phone, camera or whatever it might well be is owned by a person but is used by another person and they are charged and found not guilty, what is the position on that property? Does the other person have any right of claim?

Mrs HISCUTT - Any argument can be put to the court by any party who believes they might have a claim but it is the court that eventually decides.

Clause 15 agreed to.

Clauses 16 to 23 agreed to.

Clause 24 -
Section 6 amended (Right to communicate with friend, relative and legal practitioner)

Ms RATTRAY - Madam Chair, I appreciated the information we were provided with during the briefing today. This clause and what it actually will do were not clear to me. We were provided with some information at the request of the member for Windermere. It was about the right to communicate with a friend, relative and legal practitioner, and it was suggested that not being able to communicate with a legal practitioner would be an injustice. I thought it would be useful to put the response on *Hansard* for anyone to know in the future. It did not appear to be very clear in the second reading speech notes and it does not expand very much in the clause itself.

Mrs HISCUTT - Basically, it is for the court. The application is made to the court and the magistrate will be concerned to ensure that the defendant is advised about his or her legal rights. It is likely that the ban on communication will most likely be a friend or a relative. If there is concern about contact with a particular legal practitioner for any reason - for example, where the lawyer in question is also a relative of the accused - the court has inherent jurisdiction to order that the

defendant be represented by another legal practitioner on application for a further four-hour period on top of that already provided for in the provision. It is likely to be used extremely rarely.

Mr DEAN - I thank the member for raising this one. Where the police require that a person is not able to have that contact, they have to take their application back to the magistrate and the court. They would need to satisfy by way of evidence to the court why they need the extension of that right. Is that right?

That would be in a closed court process - how would that be presided over? Is it straight to the presiding officer, the magistrate? It could not be in an open court because that would allow the person to make a telephone call. How does the court operate?

In the briefing this morning we were told it could happen on two, three, four or more occasions if the evidence were there to support it and the presiding officer was of a view to extend it. I would appreciate being given some clarity around that.

Mrs HISCUTT - I am informed that it is probably a very unlikely scenario that it would go on and on, but it is up to the court to decide. The application is made to the court and the magistrate will be concerned to make sure that everything is correct, but it can be done every four hours and it is up to the court to decide whether to do another four hours.

Mr DEAN - My point is that when we say 'the court', what is 'the court'? Is it a magistrate sitting in the court proper? Or is it a police officer, as they can do with justices and so on, going to the magistrate in chambers seeking that application? I think it would be a closed court process, quite obviously.

Mrs HISCUTT - Are you looking for the logistics?

Mr DEAN - The logistics as to how it occurs. Police can rock up to a justice of the peace and ask them for certain processes. Can they do that with a magistrate? Is that the way it is done? I ask this because some of these applications would be made on a weekend, during public holiday periods or during the night.

Mr Valentine - Flinders Island doesn't have a magistrate.

Mr DEAN - They are not always going to be made when a court is open.

Mrs HISCUTT - I refer back to the Criminal Law (Detention and Interrogation) Act 1995. Section 7 refers to orders made by telephone, if required, having to be to a magistrate in chambers. You asked about the middle of the night. It is the same thing - you can call the magistrate and wake him up. They have a duty magistrate who would take that phone call.

Clause 24 agreed to.

Clauses 25 to 29 agreed to.

Clause 30 -
Section 13 amended (Issue of warrant for arrest of intended witness)

Mr DEAN - The point I raise was discussed during this morning's briefing in relation to the power of a court to issue a warrant to bring a witness before the court and to hold that witness until

such time as they give their evidence or produce the documents that are required, and so on. They can be remanded in custody if they refuse to enter into a recognisance to come back before the court. What onus is on the court to have the proceedings completed at the very earliest opportunity? A witness could be remanded or held in custody for a long period: Is there a requirement for that process to take place only during the sitting of the court on that trial? Would it relate to that situation rather than a warrant being issued, going on to another case, dealing with that and coming back to this case? I would find it difficult.

Mrs HISCUTT - Such a warrant is only likely to be sought at the time the witness is required to appear before the court to give evidence.

Clause 30 agreed to.

Clauses 31 to 41 agreed to.

Clause 42 -
Section 15 amended (Person required to be registered to engage in regulated activity)

Mr VALENTINE - Does this change in any way the people working with vulnerable people cards?

Mrs Hiscutt - Working with vulnerable people?

Mr VALENTINE - The question is: does changing from registered to regulated have any impact on which organisations employ those cards?

Mrs HISCUTT - The simple answer is no.

Clause 42 agreed to.

Clauses 43 to 53 agreed to and bill taken through the remainder of the Committee stage.

BUILDING LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2018 (No. 27)

Second Reading

[4.49 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 Building Legislation (Miscellaneous Amendments) Bill 2018 contains non-controversial and minor amendments that update and clarify the following six acts and regulations that form part of the Tasmanian Building Framework -

- Building Act 2016
- Occupational Licensing Act 2005

- Building Regulations 2016
- Occupational Licensing (Building Services Work) Regulations 2016
- Residential Building Work Contracts and Dispute Resolution Regulations 2016
- Urban Drainage (General) Regulations 2016.

The building framework was thoroughly reviewed between 2014 and 2016, resulting in the introduction of nation-leading reforms on 1 January 2017, which make it faster, fairer, simpler and cheaper to build in Tasmania.

The reforms have reduced unnecessary red tape and ensure the level of regulatory oversight for building work matches the risk to public health and safety.

Since the commencement of the reforms, the Director of Building Control has regularly consulted with stakeholders who deal with the legislative framework on a daily basis, including owners, licensees, practitioners, building surveyors, industry associations and local councils.

Accordingly, this amendment bill is the result of the Government continuing to engage with its stakeholders to streamline processes and to clarify any existing legislative requirements that are unclear.

These amendments also strengthen the current approval arrangements and avoid unintended delays.

I will now outline the reasons for the amendments to the Building Act 2016.

The bill amends the definition of 'owner' under section 4(1) of the act, to clarify that where an occupier or tenant of a building has contractually entered into an arrangement for building work, they are deemed to be the 'owner' in relation to any defective work that arises as a result.

This will prevent property owners being held responsible for incomplete or defective work undertaken by a tenant or occupier of a premises who is responsible for the work being carried out.

The bill amends the relevant provisions of the act to allow for designs that are substantially complete to still be approved following a change to the law, to prevent costly and unnecessary amendments of designs.

There have been occasions where an owner has paid an architect or engineer for plans that meet the current building regulations, only to have them rejected at the final approval stage simply because a requirement, standard or determination was updated or changed during that time.

Whether it is a change to the National Construction Code, regulation requirement or a determination made by the Director of Building Control, things which are updated as required, if substantial progress had been made on design prior to change coming into effect, the bill allows for building surveyors to assess the design as compliant.

A further change relates to the flooding and widespread damage to buildings in Hobart on 11 May this year. Following this event, a very sensible suggestion was made by industry that like-for-like repairs and replacement of damaged components should be excluded from the type of work that requires an owner to upgrade the building to current Building Code standards. Upgrading

the entire building in this scenario would be an unexpected impost on owners already hit with hefty repair costs.

The bill addresses this issue by amending section 53 of the act, allowing for repairs using similar components to return a building to its former condition in the event of flood, fire, wind or storm damage, without the need to upgrade the building in its entirety.

The Building Act 2016 introduced a requirement for the responsible builder or plumber to issue the owner with a standard of work certificate stating that all work is complete and compliant with the National Construction Code, which must be lodged with council prior to obtaining the certificate of completion.

However, in the event that the responsible person is not able to, or refuses to, issue a standard of work certificate, including if the responsible person for the work has died, disappeared or refuses to supply the certificate due to a dispute, owners are prevented from obtaining the certificate of completion, which is the important final step needed to legally finish the construction.

The changes will allow owners to apply to have the completed work inspected by the building surveyor in order to obtain the certificate of completion and finalise the construction process.

The bill also clarifies arrangements in the act regarding extensions of approvals granted to perform work.

Under the current arrangements, owners or builders requiring extra time to complete a project need to apply for an extension to the council or building surveyor, before their permit or certificate expires.

To provide greater flexibility and prevent unnecessary costs, the Director of Building Control now has the ability to make a determination as to when an expired permit can be extended, rather than requiring applicants to reapply and pay for a new building or plumbing permit for work already underway.

The amendment also ensures if an application for extension has been made, the permit will not expire before a renewal of the approval has been granted.

The bill rectifies an omission in the Building Act 2016, by adding clarity on the role of function control authorities that licence and regulate certain commercial premises, such as schools, hospitals, primary produce processing and liquor stores.

The amendments reinstate provisions relating to function control authorities under the previous legislation, regarding their functions and interactions with building surveyors, including the ability to comment on proposed building designs.

The bill also makes a number of minor administrative amendments, including the removal of the unnecessary references to 'prescribed fees' of which there are none under the Building Act (rather fees for services provided by councils are regulated under the Local Government Act 1993), and clarify the references to the supreme and magistrates courts in relation to court orders, to remove any ambiguity and improve the operation of the act.

There are a number of changes made to the Occupational Licensing Act 2005.

When the Occupational Licensing Act was amended in 2016 as part of the building reforms, the rights of owner-builders to construct their own home were preserved.

However, the only type of building that can be constructed under an owner-builder permit is a Class 1 building, which is a house.

Further feedback to the Director of Building Control by owner-builders has highlighted there is some uncertainty as to whether outbuildings associated with a dwelling could be included on the same owner-builder permit issued for that dwelling.

The bill provides for the Administrator of Occupational Licensing to make a detailed determination as to the specific types of buildings or building work that require an owner-builder permit, and the particular types of low-risk work that must be constructed by a licensed builder.

This will provide greater clarity as to what work owners can and cannot undertake.

By allowing the director to make a determination on this matter, much-needed clarity can be provided in a consistent manner with the rest of the act.

I can assure you there is no intent to allow owner-builders to construct commercial buildings, or change the number of owner-builder projects can undertake in a 10-year period.

The removal of the monetary value limit of $20 000 for low-risk work also removes the ambiguity around whether owners and competent persons are able to undertake minor like-for-like repairs for work that costs more than this amount.

A further change is the result of advice received from the Solicitor-General's Office regarding the operation of section 37B of the act. Further clarity is accordingly being added to provide the administrator with clearer guidance as to which circumstances are taken into account before a licence application may be refused.

This bill amends all similar licence application provisions in the Occupational Licensing Act, to provide for greater certainty and consistency in licensing decision-making.

In response to feedback received from industry, minor amendments have also been made to clarify the entity licensing provisions.

These amendments have been made to avoid unnecessary licensing duplications and costs for companies, partnerships or councils, where an individual carrying out the prescribed work already holds the necessary licence.

Due to queries made by the Housing Industry Association during the consultation on the draft bill, it was foreshadowed in the other place minor amendments to the clauses concerning the licensing of the entities were required. Advice was sought from the Solicitor-General in an effort to clarify the amendments and address HIA's concerns. Consequently, I will move the amendments during the Committee stage to provide greater clarity on the licensing arrangements for entities under the Occupational Licensing Act 2005 and remove any doubt regarding those arrangements.

The remainder of the changes in this bill are to correct minor errors, update references to legislation or to clarify definitions of the terms used.

These improvements to our nation-leading building reforms reflect this Government's ongoing commitment to meeting the needs of the building industry, local government and building owners.

I commend the bill to the House.

[5.00 p.m.]

Ms ARMITAGE (Launceston) - Mr President, first I thank the Leader for the substantial briefings we had today, and also Mr Dale Webster, who has answered most of the questions I had raised with some practitioners in Launceston. I hope the Leader and the President will bear with me while I ask some of these questions again so that I can have the answers on *Hansard*. I had thought of asking them separately, but I think it is good, particularly for the practitioners, to go to one area to find the answers to the issues they have raised.

I note there are practical administrative changes to most of the areas detailed within the bill. For example, it is amending section 53 of the act to allow like-for-like repairs of buildings damaged as a result of a natural disaster - flood, fire, wind or storm damage - without the need to upgrade the entire building. It makes for good common sense and will assist those who are going through these tragic and often challenging circumstances. There are also changes to the current requirement for the responsible builder or plumber to issue the owner with a standard of work certificate, which is then provided to the local council to issue a certificate of completion. If the responsible person refuses or is not able to issue the certificate, the changes will allow owners to apply to have the completed works inspected by a building surveyor to obtain the certificate of completion. This amendment makes sense.

I also note from the briefing today - and the Leader might like to respond to that when we get to it - that if the responsible person refuses to issue a statement of work certificate, it will be a reportable offence to the Director of Building Control for investigation. That was one of the concerns raised by a practitioner in Launceston.

With regard to the Occupational Licensing Act changes as part of the building reforms in 2016 and the rights of owner-builders to construct their own home being preserved, I understand the uncertainty for owner-builders as to whether outbuildings associated with a dwelling, like a shed for example, could be included in the same permit issued if that dwelling has been addressed with these changes. Perhaps that could be clarified.

The bill provides for the Administrator of Occupational Licensing to make a detailed determination as to the specific types of buildings or building work that require an owner-builder permit and the types of low-risk work that must be constructed by a licensed builder, thus providing greater clarity as to what works they can and cannot undertake.

However, there is a question whether it may be possible for the Director of Building Control to issue owner-builder licences for commercial building work. Mr Webster's answer to that question could perhaps be put on the record. Concern was raised by another practitioner that this section would allow the administrator to license an owner to be an owner-builder for a commercial project. The current act prevents owners from owner-builder projects on commercial building classes 2 to 9. They must appoint a licensed builder to oversee the works and ultimately take responsibility for it. Commercial projects have greater levels of risk to both occupants and the community. Owners are potentially in charge of building work that could include passive and active fire safety systems, paths of escape, performance solutions, and complex and challenging construction methods.

Past practices of the licensing administrator in granting licences to persons of questionable qualification and experience as licensed building practitioners has highlighted concerns and risks of licensing of owner-builders to undertake commercial work.

If it is not the intent, this clause should be codified to prevent any possibility of an error or omission allowing the issue of an owner-builder licence for commercial building work, BCA classes 2 to 9, including walk-up flats and multistorey residential. The question was answered in the briefings but it would be useful to have it on *Hansard* for the practitioners who asked those questions, for clarity.

I note that the bill makes changes to the building regulations, including requiring temporary occupancy permits for temporary swimming pools and the safety barriers that are already required by law to be around temporary swimming pools in backyards. In 2015, Tasmania had the highest number of drownings in Australia. This change adds to the level of community safety.

A couple of other questions were asked and answered in briefings. The second reading speech said -

> The building framework was thoroughly reviewed between 2014 and 2016, resulting in the introduction of nation-leading reforms on 1 January 2017, which make it faster, fairer, simpler and cheaper to build in Tasmania.

The comment came from a building surveyor in Launceston - and a response from the Leader would be good - and this is not my comment -

> This claim cannot be substantiated, the Act and determinations are more complex, increase paperwork, disjointed and repetitive regulation greater numbers of illegal works due to total confusion by owners and builders.

He added that there is -

> No scrutiny on bathroom construction waterproofing and mould growth due to poor building work.

It would be really good if I could have a response to those comments put on the record. That is in regard to the level of regulatory oversight for building work matching risk to public health and safety.

Mr Webster outlined this morning the four groups that were established to take over from the committee previously disbanded in 2017, and that question was also asked. The second reading speech stated that -

> … the Director of Building Control has regularly consulted with stakeholders who deal with the legislative framework …

The four groups were mentioned this morning. I want to make sure I have it right. We now have the industry reference group, the local government reference group, the technical reference group and the consumer group. Many people from the various groups are invited to be part of these groups. Most peak bodies are included in those groups. Could the Leader confirm I have those right and note who is invited along to those meetings?

There was a question about clause 7. Most of these questions were answered this morning and I was very pleased they were. It is purely a matter of putting them on the record. I think they will be satisfactory to the individuals who put the questions. The Australian Institute of Building Surveyors had concerns with regard to inferring that the designer provides the assessment method to the building surveyor, which is questionable in professional practice. Building surveyors were concerned because they felt it should be the designer in consultation and with the agreement of all stakeholders, including the building surveyor who determines the assessment and/or verification methods to be adopted for the performance solution. As clause 7 currently reads, it was felt that it implies the designer chooses the assessment methods, negating the building surveyor's responsibility for revision of acceptance and approval of any assessment methods as the appropriate authority identified in the Building Code of Australia. It would be good if Mr Webster or the Leader could clarify that.

I am almost finished with my constituents' questions. In regard to clarity around renovations, at what point does the whole property need to be upgraded to meet the National Construction Code? Applying the new rules within this bill will mean that the entire house will not be required to be upgraded if the renovations make up less than 50 per cent of the building. This is most welcome.

I believe with the answers received this morning and the briefings, which were very pleasing and very clear, we have answered most of these queries. There are always going to be some that will not satisfy the questions asked. I believe most were answered satisfactorily and the amendments provide for more certainty and greater safety within our community. They appear to be providing further clarity for owner-builders and I believe they are practical administrative changes. I will support the bill.

[5.10 p.m.]

Ms FORREST (Murchison) - Mr President, the member for Launceston has covered the majority of issues. I am aware of the constituents she is referring to because I discussed this with them as well. It has been an area of concern. The Building Act is complex legislation. It is a lengthy act. You have the regulations below it, the national code and it fits together. It is vitally important we have robust legislation in this area because there is nothing worse than having a substandard building. We have heard some horror stories in this place over the years about substandard buildings that have had to be demolished or are entirely unsafe. The member for Launceston's constituents raising some of these issues raised concerns about this occurring under the current framework.

Ms Armitage - They would have liked a committee, yes.

Ms FORREST - There are reasons that is not happening at the moment - that is, a committee deliberation and discussion - but there are ongoing issues. I was going to stay in some accommodation on the west coast recently but I had a call that morning from the people who are running it saying the shower had collapsed and they had to find us a room somewhere else. This property was built a little while ago. It was probably because the place was not waterproofed properly. I am making that assumption. These people are losing some income while that is remedied and it could be quite a major bit of work.

There are reasons we have rigorous and robust building legislation, building regulations and a national code. We have to remember that many of the builders who are trying to build according to the legislation are not lawyers. They are not even people like us, necessarily, who read and understand legislation. That is our job. That is what we do. We make laws; we scrutinise laws and

it is our job to understand what the law is seeking to do and to question that. They are doing their best to be builders, building according to the plans provided to them, the architects' instructions, the engineering design and so on.

When we say it is simpler and easier, sometimes they would argue it is not and it can be quite difficult. I do not remember if the member for Launceston alluded to this, that it is supposed to be simpler, quicker, faster and cheaper, but some of the criticisms I have been hearing is that it may not be that simple and it is not simpler. The director's directions are not simple to interpret at times.

In the Leader's second reading contribution she noted that the bill provides for the Administrator of Occupational Licensing to make a detailed determination as to the specific types of buildings or building work that require an owner-builder permit and the particular types of lower risk work that must be constructed by a licensed builder. It seems to me that the process of making that detailed determination is quite detailed and not necessarily easy to understand. It is a challenge to find that balance and making it simple enough to be clear to all those who need to understand it.

Ms Armitage - It still needs to be robust.

Ms FORREST - Yes, and robust enough to ensure we have high-quality building work. This bill is not bringing in major change. It is correcting a few areas that have been identified as not working well. If I looked at *Hansard* from the time we put through the last iteration of the Building Act, or the current Building Act, I would have said this is complex legislation. I am sure we will be back at different times to deal with some of the issues and challenges with it.

Having been through a building process myself a couple of times recently, it is not easy. You can have all sorts of challenges. You can have the best builders in the world - and I believe we had very good builders - but it can still be challenging to understand all the complexities of that, and it was a residential house being built, not a commercial building.

I understand the need for what has been called minor and non-controversial amendments. I think there is an ongoing need for review of the operation of the Building Act. As the member for Launceston alluded to, constituents of hers, particularly building surveyors and building designers, have identified challenges. I do not believe these amendments address all those, although she has asked some of the questions and got some answers to those. There needs to be a continued review of that.

She mentioned that her constituents believe there should have been an inquiry into it. Government Administration Committee A looked at it and wrote to the minister about it; we have had a change of minister since so it might change. There is a need for a review of such complex legislation. I am interested to know from the Leader if a broader review is on foot, or if it is going to be. When we last asked it was not the case, but then suddenly this bill appears, which means there is work going on all the time. It might not be a full-on review but obviously the operation of the act is being reviewed, possibly on an ongoing basis. That is fine, but a review of the overall operation is needed when clearly there are people finding the current act a challenge. Even with these amendments, from the feedback I got, the member for Launceston confirmed it does not appear to address many of the concerns that some building surveyors in particular, and building designers and perhaps some ancillary tradespeople are experiencing.

I do not have any problems with this bill. The member for Launceston may have other questions during the Committee stage. It is a complex area and we will probably will be back at different times to see further amendments.

[5.17 p.m.]

Mr VALENTINE (Hobart) - Mr President, I had some communication with the local council I had previous involvement with and they had some concerns in relation to sections 115 and 178 of the Building Act. They recognised the administrative difficulties that may be faced in obtaining a standard of work certificate where the responsible plumber is unable or unwilling to provide the certification. I think they were considering that in the end it might all come back on the council if something went wrong.

I am advised that a component in clause 15 gives the council enough jurisdiction to deal with things the way they see fit. I am happy to say I have not had any communication back from them as a result of informing them of this. It seems to me there is no particular concern with that. I can see the benefit of these changes. I guess it remains for us to go through the bill clause by clause in Committee. At this point I intend to support the bill.

[5.19 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I have some information here and there is more to come. This has the member for Launceston all over it.

(1) A licence holder is required to comply with legislation; therefore, a refusal to issue a standard of work certificate can be reported to the administrator for investigation of a breach of a licence.

(2) The change to owner-builders will result in allowing one-off situations such as sheds on rural properties, home office conversions to be included, but it is not the Government's intention to allow commercial work beyond these minor categories to be done by an owner-builder.

(3) There is a large degree of streamlining in the act. This is supported by industry and industry associations. The act is repetitive because each of these categories and the building, plumbing and demolition are separated out, and therefore can stand alone. Once the planning reform is completed and the funded ICT application process is completed, then the repetition in filling out a number of forms will disappear.

(4) The nine-member board of the Building Regulation Advisory Committee has been replaced with four groups - the industry association group, the local government group, technical group and consumer group.

(5) Clause 7 does not remove the role of the building surveyor to make an assessment the design meets the performance requirements of the National Construction Code. Instead, it makes sure designers provide the information they used to decide a performance measure would work to the building surveyor.

(6) Wet areas and condensation were a major area of complaint in Tasmania. As a result, the Government funded the University of Tasmania to undertake research resulting in the 2014 *Condensation in Buildings Tasmanian Designers' Guide*, which will be revised in early 2019.

Ms Armitage - Is that with regard to the scrutiny in bathroom construction waterproofing and mould growth?

Mrs HISCUTT - Yes, that is correct.

Ms Armitage - Sorry, waterproofing is probably different to condensation.

Mrs HISCUTT - It is together. The Government also funded training across Tasmania in wet area treatment from 2015 on. The 2019 NCC will manage condensation control matters.

Ms Armitage - But will there be scrutiny on bathroom construction waterproofing and mould growth?

Mrs HISCUTT - It has continued to be monitored and the complaints are down. The 2019 NCC will contain new condensation control measures.

Ms Armitage - I was looking at waterproofing as opposed to condensation, waterproofing measures obviously, if you have rooms underneath.

Mrs HISCUTT - I will clarify with some more advice in a moment. The department constantly interacts with industry and continues to talk to its reference groups. This resulted in the bill before the House and this process will continue. Yes, there will be ongoing reviews. I have one more piece of information to seek, Mr President.

The condensation aspect you speak about relates to verandas and such-like, but it is all-inclusive, including bathrooms, so all wet areas.

Bill read the second time.

BUILDING LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2018 (No. 27)

In Committee

Clause 1 -
Short title

Mr Valentine - I rise because I neglected to say I have two sons who are building designers. I believe any benefit to building designers in this is absolutely miniscule, but I am putting that on the record.

Clause 1 agreed to.

Clauses 2 to 58 agreed to.

Clause 59 -
Section 37C amended (Certain organisations may apply for building services licence)

Mrs HISCUTT - Madam Chair, I move -

That clause 59, paragraph (b) be amended by leaving out that paragraph.

Members, this proposed amendment enables the Government to move the amendments I discussed earlier. I will speak on the substantive amendments when we get to that clause. I move that we leave this paragraph out.

Madam CHAIR - If you want to convince members we need it, you might give some context about why. You should explain why you want us to leave it out.

Mrs HISCUTT - The amendment we have coming needs to omit clause 59 of the bill. Based on advice received from the Solicitor-General, to appropriately clarify the licence requirements, an amendment of the offence provision in section 22A of the act is required rather than an alteration of the licence application process under section 37C. I will speak more to the doubts removal clause which is to be inserted following clause 63. We need to get rid of that one.

Amendment agreed to.

Clause 59, as amended, agreed to.

Clauses 60 to 76 agreed to.

New clause A -
X. Section 22A further amended (Obligation to hold building services licence)

New clause A presented by **Mrs Hiscutt** and read the first time.

Mrs HISCUTT - Madam Chair, I move -

That new clause A, to follow clause 63, be now read the second time.

New clause A read the second time.

Mrs HISCUTT - Madam Chair, I move -

That section 22A(2) of the Principal Act be amended by inserting the following paragraphs by inserting the following paragraphs after paragraph (b):

(ba) an organisation, whether incorporated or unincorporated, if each person managing or carrying out building services work, or entering into a contract to manage or carry out building services work, on behalf of that organisation -

(i) holds a building services licence of the occupation and class relevant to the building services work being managed or carried out by that person; or

(ii) is not required, under this subsection, to hold such a licence while the person manages or carries out the building services work; or

(bb) a person who is carrying out building services work, if the person -

(i) is employed or engaged to carry out that work by a person (*the relevant employer*); and

(ii) is carrying out that work in accordance with a request of another person and the other person -

(A) is also employed or engaged by the relevant employer; and

(B) holds a building services licence of the occupation and class relevant to that work; or

The motion is to insert a new clause following clause 63 to amend section 22A of the act. This new clause amends section 22A(2) by inserting new subparagraph (ba) to exempt an organisation from the requirement to hold a building services licence where each person carrying out work, managing work or entering a contract for building services work on behalf of an organisation holds a licence in the relevant occupation and class.

This proposed amendment will clarify that each person who is responsible for building work on behalf of the organisation must have a licence appropriate to the type and complexity of the work performed, and if this is the case, the organisation does not require an entity licence. The clause also clarifies that employees or subcontractors, including apprentices, trainees, trades assistants, or labourers on a building site who work under the direction of the licensee are also not required to hold a licence in accordance with existing exemption arrangements.

The addition of proposed subparagraph (bb) clarifies the intent that not everyone on the building site performing building services work needs an individual licence in their own right, so long as there is a licensee employed by the organisation and employees and subcontractors undertake work as managed and directed by the license holder.

The policy intent of the introduction of the entity licence class was to provide an option for building companies, corporations, or partnerships to apply for a licence rather than natural persons only.

The proposed amendment to this provision addresses any ambiguity around the obligations for organisations to hold a building services licence.

New clause A agreed to and bill taken through the remainder of the Committee stage.

GAS SAFETY BILL 2018 (No. 41)

First Reading

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

ADJOURNMENT

[5.40 p.m.]

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

That at its rising the Council adjourn until 2.30 p.m. on Thursday 22 November 2018.

Motion agreed to.

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

That the Council do now adjourn.

Questions without Notice - Complaint about Government Handling

[5.41 p.m.]

Ms FORREST (Murchison) - Mr President, I wish to make a brief complaint about the handling of questions without notice by the Government. In the last sitting a couple of weeks ago I asked a question that took some time to get answer to regarding the meetings or communications between the then Minister for Police, Fire and Emergency Services, the honourable Rene Hidding MP, and the Shooting Industry Foundation of Australia.

The question was not answered as the question was posed. At the time I said I would put it on notice, which I did on 6 November. The Government had already had the question for some weeks. I put it back on notice within a day or two of our last sitting day. It is now 21 November. That is more than two weeks. It was not a new question. It was not reframed. It may have been clarifying the question I was asking but I still do not have an answer. I understand there may an answer tomorrow.

Mr President, I acted in good faith. I asked the questions as clearly and concisely as I could. We do not receive answers in a timely manner. This is without notice. I asked another question on 8 November, just under two weeks ago. I sent it through without notice. I did receive a call from the minister's office related to the TT-Line's annual report and I understand the minister had received a significant amount of information last week. I received a call about that and was told the answer was being prepared. I said that was fine. I asked if I would have it next week and was told, yes.

The reason I am raising it today is because it is Wednesday. Tomorrow is the last day. If the question is not answered I will not have another chance until next week, which is our last sitting week. I know the member for McIntyre often raises this question. There is almost always a supplementary when she asks a question without notice because the question has not been answered. I try really hard, and I am sure other members do too, to make the questions very clear but the questions are still not answered. We put it on notice, as requested, the following day. In two weeks or 15 days later, there is still no answer to a question that was not new.

It was not as if a follow-up question needed to be answered because the information received provided a lack of clarity or new information was sought. It was the same question. Mr President, questions without notice are becoming a mockery. We are being treated with disrespect in this House. We act in good faith when putting questions on notice.

Another I sent through on 15 November was a follow-up question and not a restudying of the question. It was a follow-up question to a question I asked about the Murchison Highway and the

poor condition it is in. I asked a further question relating to the answer I received. That is still six days, when we are supposed to have a question answered within 24 hours. I understand it can take a bit longer. This seems disrespectful to me, particularly when the same question was asked 15 days ago and there is still no answer. It is not good enough and we should be treated with more respect by the ministers who are not answering our questions.

The Council adjourned at 5.45 p.m.