



LEGISLATIVE COUNCIL

SESSION OF 2021

(FIRST SESSION OF THE FIFTIETH PARLIAMENT)

VOTES AND PROCEEDINGS

No. 18

TUESDAY, 26 OCTOBER 2021

1 COUNCIL MEETS.— The Council met at 11.00 o'clock in the forenoon.

2 ACKNOWLEDGEMENT OF TRADITIONAL PEOPLE.— The President said: “We meet today on Tasmanian Aboriginal land. We acknowledge and pay respect to the Tasmanian Aboriginal people and elders, past and present. We recognise them as the traditional and original owners and the continuing custodians of this land.”

3 PRAYERS.— The President read Prayers.

4 E-PETITION.— Mr *Valentine* brought up an E-Petition from 1744 citizens of Tasmania drawing attention to the urgent need for a comprehensive review of Tasmania’s property related taxes, including conveyancing duty, land tax and duty on property insurance and requesting the House support a comprehensive review by the Government of Tasmania’s property related taxes.

Ordered, That the Petition be received. (Mr *Valentine*)

5 LEAVE TO TABLE ANSWER TO QUESTION AND INCORPORATE ANSWER INTO HANSARD.—*Ordered*, That Mrs *Hiscutt* have leave to Table answer to Question No. 4 and have the answer incorporated into the Hansard record.

6 WORKSAFE TASMANIA.— Ms *Rattray* asked the Honourable the Leader of the Government with regard to WorkSafe Tasmania —

(1) Which section of the *Work Health and Safety Act 2012* (Tas) prohibits a third party from lodging complaints and submitting a report of a Reportable Incident?

(2) (a) Does WorkSafe Tasmania have a new policy in that they do not accept complaints raised by third persons (i.e. public citizens) in relation to workplace issues that involve protesters; and

(b) if so, what is the reasoning behind this policy to not accept evidence or information from a third party about dangerous conduct during protests, when such evidence has legitimately caused the Regulator to act in recent years?

(3) What is the Regulator’s policy on accepting information and dealing with concerns raised by a third party in relation to safety issues of a Person Conducting a Business or Undertaking that arise during a protest activity in a workplace?

The Leader answered,

(1) There is no provision within the Act prohibiting a third party from ‘lodging complaints and submitting a report of a Reportable Incident’.

I note that Part 3 of the *Work Health and Safety Act 2012* deals with incident notification – where a notifiable incident means the death of a person; or a serious injury or illness of a person; or a dangerous incident. Serious injury or illness and dangerous incidents are defined in the legislation.

Section 38 creates a duty on a person who conducts a business or undertaking to ensure that the Work Health and Safety Regulator is notified immediately after becoming aware that a notifiable incident has occurred.

(2) (a) There is no new policy in place. Incident notifications and complaints are assessed on a case by case basis using WorkSafe Tasmania’s triage policy and the criteria set out in Safe Work Australia’s National Compliance and Enforcement Policy to determine whether a workplace will be inspected in response to notification of a ‘notifiable incident’ or a complaint, and what action is taken.

Highest priority is given to notifiable incidents where there is a fatality, serious injury or illness, with the next priority being dangerous incidents where there is imminent or immediate risk to persons in the workplace. The Act and Regulations set out specific types of dangerous incidents that are notifiable. Complaints where the alleged unsafe practice would not meet the definition of a notifiable incident are the third priority.

(b) There has been no change to WorkSafe Tasmania’s policy.

(3) WorkSafe Tasmania undertakes a compliance monitoring, incident response and investigation role in relation to unsafe work practices within workplaces throughout Tasmania, and accepts complaints made by third parties in relation to safety issues. As incident notifications are those matters that are notified to the Regulator in accordance with Section 38 of the Act, these are made by a person conducting a business.

7 PAPERS.— The Clerk of the Council laid upon the Table the following Papers:—

- (1) Tasmanian Planning Commission: Annual Report 2020-2021.
- (2) Marine and Safety Tasmania: Annual Report 2020-2021.
- (3) State Grants Commission: 2020-2021 Annual Report including 2021-22 Financial Assistance Grant Recommendations.
- (4) Department of Premier and Cabinet: Annual Report 2020-2021.
- (5) Brand Tasmania: Annual Report 2020-2021.
- (6) Tasmanian Public Finance Corporation: Annual Report 2020-2021.
- (7) Motor Accidents Insurance Board: Annual Report 2020-2021.
- (8) Tasmanian Irrigation: Annual Report 2020-2021.
- (9) Ombudsman Tasmania: Annual Report 2020-2021.
- (10) Teachers Registration Board Tasmania: Annual Report 2020.
- (11) Health Complaints Commissioner Tasmania: Annual Report 2020-2021.
- (12) Tasmanian Audit Office: Annual Report 2020-2021.
- (13) Department of Treasury and Finance: Annual Report 2020-2021
- (14) Tasmanian State Service: Annual Report 2020-2021.
- (15) Tasmanian Economic Regulator: Comparison of Electricity and Gas Prices Available to Small Customers in Australia. September 2021.

- (16) Health Act 1997: Statutory Rules 2021, containing Health (Fees) Amendment Regulations 2021.
- (17) Poisons Act 1971: Statutory Rules 2021, containing Poisons Amendment Regulations (No. 2) 2021.
- (18) Ambulance Service Act 1982: Statutory Rules 2021, No. 69, containing Ambulance Service (Fees) Regulations 2021.
- (19) Rail Safety National Law (South Australia) (Alcohol and Drug Offence) Amendment Act 2021.

8 DISCLOSURE OF MEMBERS' INTERESTS.— In accordance with Sections 19 and 20 of the *Parliamentary (Disclosure of Interests) Act 1996* (Act No. 22), the Clerk of the Council laid upon the Table of the Council the Register of Members' Interests for Members representing 14 Legislative Council electoral divisions for 2020/2021.

This Register of Annual Returns does not include a Return for the Member for Windermere, Mr Duigan, who has already provided a Primary Return which was Tabled on Thursday, 1 July 2021.

The 14 Annual Returns having been lodged with the President and this day Tabled and published on the Parliament's website, are deemed to be published

9 COMMITTEE REPORT: GOVERNMENT RESPONSE. — Mrs *Hiscutt* laid upon the Table of the Council the Government Response to the Report of the Legislative Council Government Administration Committee 'A' on Horizontal Fiscal Equalisation.

10 MOTION WITHOUT NOTICE.— *Ordered*, That Mrs *Hiscutt* have leave to move a Motion without Notice.

11 LEAVE OF ABSENCE.— *Ordered*, That the Honourable Member for Huon, (Dr *Seidel*) be granted leave of absence from the service of the Council for this day's sitting. (Mrs *Hiscutt*)

12 SPECIAL INTEREST MATTERS.— The President advised the Chamber of five Members who had indicated their desire to speak and of the order in which they were to speak as follows —

- (1) Ms *Lovell* — Retired Unionist Group;
- (2) Mr *Willie* — Glenorchy Knights;
- (3) Ms *Armitage* — Launceston Ionian Club;
- (4) Ms *Forrest* — Kirsten Slemint, Science communicator and filmmaker; and
- (5) Ms *Palmer* — TNT9 60th.

At the conclusion of Special Interest Matters the Council proceeded to Orders of the Day.

13 PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS REPORT NO 14.— A Motion was made (Ms *Forrest*) and the Question was proposed, That the Parliamentary Standing Committee of Public Accounts Report No 14: Office of the Ombudsman and Health Complaints Commissioner be considered and noted.

A Debate arose thereupon.

Ordered, That the debate be adjourned. (Ms *Rattray*)

14 SITTING SUSPENDED.— *Resolved*, That the Sitting of the Council be suspended until the ringing of the Division bells. (Mrs *Hiscutt*)

The Sitting was suspended at 11.56 o'clock a.m. and resumed at 2.30 o'clock p.m.

15 QUESTION TIME.—The President called for Questions without Notice. There were eight Questions asked.

Ordered, That Mrs *Hiscutt* have leave to Table answer to Question from the Member for Murchison (Ms *Forrest*) in relation to the review into the legislation providing for the expungement of historical records for homosexuality and cross dressing and have the answer incorporated into the Hansard record.

16 PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS REPORT NO 14.—The Council, according to Order, resumed the Debate on the Question, That the Parliamentary Standing Committee of Public Accounts Report No 14: Office of the Ombudsman and Health Complaints Commissioner be considered and noted.

And the Question being put,

It was resolved in the Affirmative.

17 MINIMUM AGE OF CRIMINAL RESPONSIBILITY.—A Motion was made (Ms *Webb*) and the Question was proposed,

- (1) That the Legislative Council notes:
 - (a) The United Nations Convention on the Rights of the Child requires countries to establish a minimum age below which children are presumed not to have the capacity to breach the criminal law, and that countries should work towards a minimum age of criminal responsibility of 14 years or older; and
 - (b) the global median minimum age of criminal responsibility is 14, while the minimum age of criminal responsibility in all Australian jurisdictions is 10 years.
- (2) That the Legislative Council further notes:
 - (a) Groups including, but not limited to, Amnesty International, the National Aboriginal and Torres Strait Islander Legal Services, Australia's National Children's Commissioner, the Australian Medical Association, the Royal Australian and New Zealand College of Psychiatrists, and the Royal Australasian College of Physicians have called on governments to raise the minimum age of criminal responsibility to at least 14;
 - (b) in Tasmania, groups including the Commissioner for Children and Young People, the Law Society of Tasmania and the Tasmanian Council of Social Service (TASCOSS) agree that the minimum age of criminal responsibility should be raised to at least 14 years;
 - (c) evidence demonstrates that, at the age of 10, a child's brain is still developing, particularly as to reasoning, impulsivity and consequential thinking;
 - (d) evidence shows that many children involved in the criminal justice system come from disadvantaged backgrounds and have complex needs better addressed outside the criminal justice system through a developmentally appropriate, trauma-informed and culturally safe early intervention model that supports children in their families and communities; and
 - (e) evidence also indicates that the younger children are when they first encounter the youth justice system, the more likely they are to reoffend.
- (3) That the Legislative Council further notes:
 - (a) The Council of Attorneys-General initiated a Working Group on the minimum age of criminal responsibility in November 2018, but have not reached a nationally agreed way forward; and
 - (b) notwithstanding the national Working Group discussions, the age of criminal responsibility is entirely a matter for the state, and there is no reason why Tasmania cannot proceed to raise the age of criminal responsibility in this state.

- (4) That the Legislative Council call on the Tasmanian Government to:
 - (a) Raise the minimum age of criminal responsibility to at least 14; and
 - (b) commit to the principles of justice reinvestment, divert young people – particularly those under the age of 14 – away from the youth justice system into programs and services that address the underlying causes of their behaviour, and implement a program for Aboriginal youth led by Indigenous people.

A Debate arose thereupon.

Ordered, That Ms Webb have leave to Table a statement of support to raise the age of criminal responsibility in Tasmania.

Ordered, That the Debate be adjourned. (Ms Armitage)

18 SITTING SUSPENDED.—*Resolved*, That the Sitting of the Council be suspended until the ringing of the Division bells. (Mrs Hiscutt)

The Sitting was suspended at 5.58 o'clock p.m. and resumed at 7.00 o'clock p.m.

19 MINIMUM AGE OF CRIMINAL RESPONSIBILITY.— The Council, according to Order, resumed the Debate on the Question,

- (1) That the Legislative Council notes:
 - (a) The United Nations Convention on the Rights of the Child requires countries to establish a minimum age below which children are presumed not to have the capacity to breach the criminal law, and that countries should work towards a minimum age of criminal responsibility of 14 years or older; and
 - (b) the global median minimum age of criminal responsibility is 14, while the minimum age of criminal responsibility in all Australian jurisdictions is 10 years.
- (2) That the Legislative Council further notes:
 - (a) Groups including, but not limited to, Amnesty International, the National Aboriginal and Torres Strait Islander Legal Services, Australia's National Children's Commissioner, the Australian Medical Association, the Royal Australian and New Zealand College of Psychiatrists, and the Royal Australasian College of Physicians have called on governments to raise the minimum age of criminal responsibility to at least 14;
 - (b) in Tasmania, groups including the Commissioner for Children and Young People, the Law Society of Tasmania and the Tasmanian Council of Social Service (TASCOSS) agree that the minimum age of criminal responsibility should be raised to at least 14 years;
 - (c) evidence demonstrates that, at the age of 10, a child's brain is still developing, particularly as to reasoning, impulsivity and consequential thinking;
 - (d) evidence shows that many children involved in the criminal justice system come from disadvantaged backgrounds and have complex needs better addressed outside the criminal justice system through a developmentally appropriate, trauma-informed and culturally safe early intervention model that supports children in their families and communities; and
 - (e) evidence also indicates that the younger children are when they first encounter the youth justice system, the more likely they are to reoffend.
- (3) That the Legislative Council further notes:
 - (a) The Council of Attorneys-General initiated a Working Group on the minimum age of criminal responsibility in November 2018, but have not reached a nationally agreed way forward; and

- (b) notwithstanding the national Working Group discussions, the age of criminal responsibility is entirely a matter for the state, and there is no reason why Tasmania cannot proceed to raise the age of criminal responsibility in this state.
- (4) That the Legislative Council call on the Tasmanian Government to:
 - (a) Raise the minimum age of criminal responsibility to at least 14; and
 - (b) commit to the principles of justice reinvestment, divert young people – particularly those under the age of 14 – away from the youth justice system into programs and services that address the underlying causes of their behaviour, and implement a program for Aboriginal youth led by Indigenous people.

And the Question being put,

It was resolved in the Affirmative.

20 TOKYO PARALYMPIC GAMES.— A Motion was made (Ms *Howlett*) and the Question was proposed, That the Legislative Council:

- (1) Acknowledges our Tasmanian athletes who have represented Australia at the Tokyo Paralympic Games - Todd Hodgetts (shot put), Alexandra Viney (rowing) and Deon Kenzie (1500 metre);
- (2) pays tribute to their dedication and hard work in realizing their Olympic dream; and
- (3) recognises them as outstanding and inspirational role models for all young Tasmanian athletes.

A Debate arose thereupon.

And the Question being put,

It was resolved in the Affirmative.

21 WYNYARD YACHT CLUB HANSA PARA WORLD CHAMPIONSHIPS.— A Motion was made (Ms *Forrest*) and the Question was proposed, That the Legislative Council notes:

- (1) The achievement of Wynyard Yacht Club members Chris Symonds and his support worker Ela Klinger who will be travelling to Palermo, Sicily, to participate in the Hansa Para World Championships scheduled for 2-9 October 2021;
- (2) Chris Symonds:
 - (a) has been living with Kennedy’s Disease, a rare neuromuscular disorder, for a number of years and is an NDIS participant;
 - (b) started sailing in the Hansa 303 class in 2014, competing nationally and internationally; and
 - (c) is the winner of two World Championships and runner up in five since 2017;
- (3) Chris Symonds and Ela Klinger are the only Australians of the 101 entries from 23 nations to compete in the Para World Championships in Palermo, Sicily in 2021; and
- (4) an exemption for Chris Symonds and Ela Klinger to depart Australia was granted in the “National Interest” on 28 July 2021, and that strict COVID safe protocols will be followed for the duration of the competition and on their return to Australia.

A Debate arose thereupon.

And the Question being put,

It was resolved in the Affirmative.

22 LEGISLATIVE COUNCIL GOVERNMENT ADMINISTRATION COMMITTEE ‘A’ INQUIRY INTO THE IMPACT OF THE COMMONWEALTH HORIZONTAL FISCAL EQUALISATION SYSTEM.—

A Motion was made (Ms *Forrest*) and the Question was proposed, That The Report of the Legislative Council Government Administration Committee ‘A’ Inquiry into the Impact of the Commonwealth Horizontal Fiscal Equalisation System as assessed by the Commonwealth Grants Commission as it applies to Tasmania’s expense and delivery of services be considered and noted.

A Debate arose thereupon.

And the Question being put,

It was resolved in the Affirmative.

23 ADJOURNMENT.— *Ordered*, That the Council will at its rising adjourn until 11.00 o’clock a.m. on Wednesday, 27 October 2021. (Mrs *Hiscutt*)

A Motion was made (Mrs *Hiscutt*) and the Question was put, That the Council do now adjourn.

It was resolved in the Affirmative.

The Council adjourned at 9.14 o'clock p.m.

D.T. PEARCE, *Clerk of the Council*.

Briefing:

- *Sue Neil Fraser Criminal Conviction Appeal*