

**Wednesday 27 November 2019**

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

**TABLED PAPER**

**Government Administration Committee A - Special Report on Resolution to Establish Sub-Committee**

**Ms Forrest** presented the Government Administration Committee A - Special Report on Resolution to Establish Sub-committee.

**Report received.**

**JUSTICE LEGISLATION AMENDMENT (ORGANISATIONAL LIABILITY FOR CHILD ABUSE) BILL 2019 (No. 36)**

**LONG SERVICE LEAVE (STATE EMPLOYEES) AMENDMENT BILL 2019 (No. 47)**

**Third Reading**

**Bills read the third time.**

**BURIAL AND CREMATION BILL 2019 (No. 42)**

**In Committee**

**Resumed from 21 November 2019 (page 63)**

**Postponed clause 32 -**

Approval of persons as cemetery manager

**Mrs HISCUTT** - Madam Deputy Chair, before we start on this, we were given a paper this morning in our briefing on this bill that covered much of what we were talking about. Although I anticipate referring to parts of this, I seek leave to table this briefing paper and incorporate it into *Hansard* so we have the full story there.

**Leave granted.**

**Ms FORREST** - I wish to move an amendment to clause 32. I appreciate the opportunity to have more time for the Government to consider this as well as for members to hear from people directly interested in this matter. This point will require recommittal of clauses 37 and 95 at a later time.

Madam Deputy Chair, I move -

That clause 32(4)(c)(ii) be amended by:

*Leave out 'from the State, or a council,'.*

I wish to read an email sent to all members that relates to understanding why this amendment has been requested after further discussion with the people directly involved in this matter and for other people who may potentially wish to lease land.

As the member for Hobart referred to in the briefing, someone may buy a church with a cemetery around it. That person wants to live in the church as a house and lease the land around it to another cemetery manager so they do not have to worry about managing and maintaining it. If that person decided to end the lease, they would have to deal with it at that point, and there are provisions to deal with that. That is what has led to some of the subsequent amendments that provide the regulator with the power to appoint a cemetery manager should the cemetery manager leasing private land or public land, die, disappear or cancel the lease.

I will read this email so members understand what we are talking about. This example relates to natural burials; the other relates to managing a cemetery on private land that may be in the vicinity of a church. This email is from Rebecca Lyons. I know all members received it -

I write to outline my position in relation to the potential lease of private land for the establishment of a natural burial ground. I am a 2018 Australian Churchill Fellow, and Independent Funeral Director (approved Prescribed Business) and End of Life Doula. I am a strong advocate for people to have agency and choice in all aspects of dying and death, providing for a personal approach to end of life without the big bills that can all too often accompany it. I educate our local community as well our medical and health care professionals about the choices and options available to them.

Funerals can be very expensive, and people try to minimise the costs by making their own coffins and by looking at other mechanisms to reduce the cost. Some people simply do not want to go through all the process involved with a burial in a traditional sense in a cemetery; some will choose cremation and have their ashes scattered far and wide. Others want to take a natural burial approach. It happens around the world and in South Australia and the Australian Capital Territory. Back to Ms Lyons' letter -

I am seeking to establish the first stand alone natural burial site in Australia. While natural burial is allowed and being done in pockets of existing cemeteries -

We heard that the Burnie cemetery is allocating an area which, I think, is in the bush behind the cemetery, an ideal location for a natural burial site -

... there is a strong support for the establishment of a stand alone site. There are land owners in Tasmania willing to consider their land for these pilot sites. My hope is that if done correctly, this will establish a best practice standard for Australia based on what I have learned from the USA, UK and my own background and knowledge. I have a policy and procedure manual in development to this end and have reserved a Business name that I hope to incorporate and seek approval for cemetery management.

To address the concerns raised in debate which I have been informed of by Ms. Forrest, I offer the following for consideration -

- In relation to the concern that there is a risk to the longevity of the cemetery by allowing the leasehold of private land for a cemetery I remind Members that under Part 4, Division 1, Section 37 says that the owner of the land will be taken to be the manager if the leasing manager ceases. However if it was to occur that a cemetery manager had leased private land for a burial ground and then abandoned their management leaving an unapproved (and unable or unwilling to be approved) land owner, under Part 2 Section 13 of the draft Bill the Regulator has the power to give written direction to the manager of a regulated business to ensure compliance and that direction must be complied with. With a small amendment, or with application under Part 6, Section 95 (5)(b) (where there seems to be the discretion to allow the regulations to apply to varied circumstances), it is possible that the Regulator could direct another approved manager to caretake that site until a suitable manager was found.

On that point, Madam Deputy Chair, a number of provisions are already in the bill to deal with this situation should it occur.

My further amendments, particularly in clause A, that are set up in amendments to clauses 37 and 95 would also provide the regulator with very clear provisions through regulation to enable them to appoint an interim cemetery manager basically to deal with that. That would happen whether the lessee was leasing land that was public or private, should this proposed amendment be successful.

In relation to the concern that a private landowner may put restrictions on land that are not in keeping with the management of the cemetery, this concern would entirely depend on the terms of the lease agreed to and signed by the parties. It would be counterintuitive for a cemetery manager to agree to a lease that would compromise their ability to govern the burial ground within legislative compliance.

However, I remind members, the land use as a cemetery still needs to go through a rigorous two-step approval process, under both the Land Use Planning and Approvals Act 1993 - LUPAA - and by the regulator.

Under clause 44(2)(b)(ii), the regulator can ask for -

any other information that the regulator considers relevant to the application ...

The siting and approval of any lease for private land for the use of establishing a burial ground could be one such condition.

The regulator still has to approve any area that is to be set up as a cemetery, whether it is an existing cemetery that has been taken over, or a new cemetery. For new cemeteries, you have to go through all these requirements.

If, for example, the private land was landlocked, and there was no easy public access to it, I am sure the regulator would use their discretion not to approve and then have to give reasons. There is a right of appeal, of course. When you look at meeting the requirements of the bill, you would have to enable public access.

The letter goes on -

- Lease arrangements in many and varied forms continue over real property that is bought and sold as a common matter of course through conveyancing and adherence to leases over burial grounds, should the private land on which the burial ground be offered for sale, would be no different.

That is what we talked about in the briefing. Where land is being sold, if there are any caveats on it, any easements or limitations on its use, the vendor has an obligation, under vendor disclosure, to disclose those matters. A person buying that land would be well aware of the existing arrangements of the lease.

Further in the letter -

- Long term effective control of the land will not be compromised if lease hold of private land for a burial ground is allowed -

which is a concern raised by the Government -

- the land will still have to undergo all of the approval processes as dictated by the legislation and to that effect all of the Public Health concerns of the positioning of the land (to water courses etc) will be assessed and considered safe through that approval process. Further, the burial ground will still have to be managed in exactly the same way as any other cemetery and all legislative requirements and protections adhered to.
- There is international precedent for the establishment of burial grounds on privately leased land. In 2017 I visited the UK where they have nearly 200 natural burial grounds established, I learned that many of them started under leasehold arrangements over private land. This has worked successfully and offers a cost effective and environmentally friendly option to the community along with opportunities for capacity building within the community through various community based engagements. I interviewed four cemetery managers/owners and the head of the Natural Death Centre Charity (who has established lease hold cemeteries on private land herself). The Natural Death Centre Charity run the natural burial compliance for the UK.
- In 2019 I visited a conservation burial site that has been serving it's community in the USA for over 10 years and I met with representatives from the USA Green Burial Council. There are many of these unique arrangements being discussed worldwide.

The Regulator, as defined in this Legislation, has a large amount of scope in the delivery of regulation and much discretion in what they can ask for, investigate, give direction on and enforce. This ensures that the safety of the site, the access and the protections that the public has asked for will be adhered to regardless of the ownership of the land for all the reasons pointed out above.

Allowing someone to lease private land on which to establish or manage a cemetery does not absolve them from any of the responsibilities in this bill. The regulator's powers are still there in the order of the requirements and conditions the regulator can impose. The regulator, first of all, has to approve it, and the regulator has the power not to approve it.

My subsequent proposed amendments, particularly in terms of the regulation-making power that enables the regulator to appoint a cemetery manager, would also be of benefit in, for example, the case of a smaller cemetery managed by a cemetery manager on public land who has died, disappeared or for some other reason was not fulfilling their obligations. In such a case, the regulator could then appoint another cemetery manager. That would assist in the public land as well as any cemetery that may be established or already exists on private land.

Last week when we dealt with the bill, I clarified that there is an option for a private owner to be the cemetery manager and then subcontract the management of the cemetery itself. That is one way to deal with this in some respects, but if someone really does not want to be the manager, does not want that responsibility and is happy for another person to manage that land and fulfil all the obligations under this bill, knowing that the regulator can appoint another manager, if something did go astray, I think it gives adequate protection.

Nothing is removed from the requirements of this bill under the proposed amendment. I ask members to consider my proposed amendment in light of the other subsequent amendments that will give full effect to it.

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### **Recognition of Visitors**

**Madam DEPUTY CHAIR** - Honourable members, we welcome to the Chamber the Tasmanian TAFE English speaking language class. We are very pleased to have you here. At the moment we are dealing with the Burial and Cremation Bill.

**Members** - Hear, hear.

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**Mrs HISCUTT** - Madam Deputy Chair, in response, the Government would add that, other than the briefing paper I tabled this morning, which all members have had the chance to look at and which outlines excellent reasons this should not happen, there is no other natural burial ground in Australia according to the submission made. The intent for Tasmania to have a natural burial ground pilot means there is risk in both the Tasmanian and the Australian context in how well managed it might be over the entire time a cemetery manager has the obligations.

In itself, that is a stronger reason for the conditions in the bill to be maintained, including for ownership. Nothing in this bill stops a natural burial ground being established as long as the conditions are met, and that includes ownership. This bill is for the management of all cemeteries, and it has been constructed to increase protections that were strongly supported in both the 2018 amendments and for this bill.

As you can see, members, there is a way forward for natural burials as the bill is, but it does not give controls over the entire length of the time. I urge members not to support this amendment.

**Mr VALENTINE** - During the briefing we had this morning I asked about somebody considering buying a church that has an active cemetery associated with it and their capacity in the process of that sale to engage an incorporated body to manage the cemetery because they did not

want to deal with it. I want to make sure what circumstance exists under this bill in relation to this amendment.

I do not see that the proposed amendment will be in any way detrimental to somebody being able to go through that process and apply for an incorporated body to be the cemetery manager. I would like some clarity around that in relation to this amendment.

**Mrs HISCUTT** - Basically, the answer is no. A community group can purchase a cemetery and become a cemetery manager, or support the cemetery manager/owner in the running of the cemetery. However, the owner remains the cemetery manager and is therefore accountable for ensuring the community group acts in accordance with the act.

During the public consultation process, the Government did not receive any feedback from community members that they wanted to lease a cemetery. They are happy to have involvement through engagement with the owner or become the owner. It is unlikely that a community group would want to increase its compliance risk without having the benefits of owning the land. Does that answer the member's question?

**Mr VALENTINE** - I will have another crack at it.

As I read it, the owner of the land has to be the cemetery manager. Once the sale has gone through, and the person becomes the cemetery manager because they have purchased the church and the cemetery grounds, is there the capacity for a new cemetery manager to be appointed once an incorporated body is set up to manage it in the future?

**Mrs Hiscutt** - I think we understand the question. Just clarify it; I am listening.

**Mr VALENTINE** - I will repeat it.

If I purchase a church that has an active cemetery, I become the cemetery manager. If all the families associated with people buried in the cemetery banded together and say they want to form an incorporated body and they want to be the cemetery manager, and I own it, can I stop being a cemetery manager and an incorporated body become the cemetery manager?

**Mrs Hiscutt** - On your land?

**Mr VALENTINE** - On my land.

**Mrs HISCUTT** - The answer is no, they would have to buy it from you. Using the member for Hobart's example, if you owned the church, you are going to turn it into your home with a cemetery attached - this is what you are talking about, I presume?

**Mr Valentine** - Yes.

**Mrs HISCUTT** - You, as the owner, are the cemetery manager. They could buy it from you, but that involves a sale. You could try subdividing or whatever the planning scheme would let you do, but the owner of the land is the cemetery manager.

You may wish to let the community group maintain it. You could do that under a contract arrangement or whatever arrangement you wish, but you, as the owner, are ultimately responsible as the cemetery manager. Does that cover it?

**Mr Valentine** - Except I want to know how this amendment impacts that.

**Mrs HISCUTT** - It allows it to lease.

**Mr Valentine** - Allows it.

**Mrs HISCUTT** - Just for clarity, are you asking another question?

**Mr Valentine** - I am asking for clarification because I wanted to know how this amendment - because we are dealing with an amendment, not the clause - is going to affect the process you are talking about.

**Mrs HISCUTT** - We are doing this in sections as we go, so I will start with intent. I think I have covered this already. The family group can manage the cemetery in a subcontract arrangement, but the owner would be the cemetery manager. The distinction here appears to be the difference in wanting to be the cemetery manager versus wanting to maintain the cemetery due to personal connections and interests. I think we have covered that.

The proposed amendment would allow a community group to lease the land as a cemetery manager; however, it is unlikely that a community group would want to increase its compliance risks without having the benefits of owning the land.

**Mr DEAN** - I thank the Government for the briefing this morning. It was a very strong briefing. The document that has been tabled and provided to us sets out, in a fairly strong way, the reasons this amendment should not be accepted in the circumstances. If you look at the first part of it, the Local Government Division has been working closely with Office of Parliamentary Counsel - OPC - and the Solicitor-General in drafting this bill.

They have seen fit not to include private land in the position of cemetery ownership and the leasing of land for specific and strong reasons. One is the reduction of risk that could be associated with a person being an owner of land leasing their land for a cemetery. During the briefing I put the position forward that if I leased property, becoming the cemetery manager - you are signing up for a long term; it is not just signing up for a couple of years -

**Mrs Hiscutt** - You are signing up for 100 years.

**Mr DEAN** - You are signing up for 100 years. You have to look at that, and I think you have to be responsible and reasonable in looking at that. Who can sign up to a lease for 100 years and ensure that cemetery is properly managed and controlled in all circumstances? What happens if I fall off the perch, if I commit a crime and go to jail or flee? These are real issues; they are not just things that might happen - they do happen. You only have to look at leases in place now and what happens with them. I can give you some personal examples if you want me to. This is what happens and it is a real problem that could occur, so why would we seek to incorporate that risk into this bill? I cannot understand why people would want to do that. I think we were told - and the Leader might be able to give more detail on that - that there is now the right for private ownership in some situations. What was the comment you made towards the end?

**Mrs Hiscutt** - I think you can buy a cemetery as long as you are a fit and proper person to run it.

**Mr DEAN** - To me, all the circumstances do not support the amendment in any way whatsoever. All the obligations that rest with the manager of a cemetery are in a tabled document. I do not need to go through it again, but I will pick out one or two points: 'ensure public access is provided to the cemetery' - these people have virtually a full-time responsibility and job. It is not something to be taken lightly at all. They have to manage the risks involved. They have to have authority to grant rights over the land, including burial rights for at least a minimum term set out in the bill, a default of 100 years. To me that is a very strong reason why you could not, and should not, support this amendment under any circumstances. If it were 10, 15 or 20 years, I could possibly support it.

**Ms Forrest** - What about all those who are currently operating leased cemeteries? There are lots of them. They are already signing up to that long-term commitment.

**Mr DEAN** - It is public land, council land. That is the difference.

**Madam DEPUTY CHAIR** - It would be best not to have discussion. The member for Murchison has had three calls on the amendment.

**Mr DEAN** - I was baited, and I took the bait.

**Ms Forrest** - You are making a point though; it is a reality.

**Mr DEAN** - The significant difference is that it is public land or council-owned land or crown land. The council is not going to fall over, or go to jail or flee. The state government or the Crown will not do any of those. They cannot do any of those things, but, with private ownership, the whole thing changes and those things can all happen.

Another thing has been pointed out in this document. I thank the Leader very much for this document - it really is good to have matters set out clearly in writing and tabled.

The landowner - that is, the owner of the property being leased -

may also seek to prevent work on the land that is consistent with its use as a cemetery, such as opposing monuments or memorials being built on the land.

The owner still has control. Much of this would be in the lease, quite obviously. Leases can be changed in certain circumstances.

The other point is that it is also possible that the landowner will seek to retain certain rights over this land. You could be having burials while the landowner is operating their machinery - their tractors - and spraying produce and crops in and around the cemetery. That sort of thing could happen. Many risks are attached to this proposed amendment. I urge members to look at it very closely and examine the long-term position and what could happen. I cannot support the amendment. I will listen to any further debate or argument, but at this stage I cannot support it.

**Mr VALENTINE** - I hear what the member for Windermere is saying. This is dealing with leases. But is it not the case that if somebody owns a church and a cemetery and is the designated cemetery manager, the same risks will apply?



**Mr Dean** - The cemetery manager is the owner of the property.

**Mr VALENTINE** - But there is a chance of them falling off the twig.

**Mr Dean** - But as they are the owner of the property, the property regulator becomes involved.

**Madam DEPUTY CHAIR** - I am giving you the same amount of time. I will stop the member for Windermere.

**Mr VALENTINE** - I am not trying to bait you; I am simply trying to say the same level of risk associated with private ownership on private land exists in this lease arrangement. I cannot see it is made any worse by putting this amendment in. It will not be any worse or better than it is now, except it is going to deal with private land, not council or crown land.

**Mrs HISCUTT** - If the landowner is the cemetery manager, the risk of abandoning the land is lower, given the financial interest through ownership, which basically means that even if there is a debt, there is still a pathway to ownership. It either goes into the estate which then becomes the responsible person and then it goes onto a sale, and the buyer then becomes the responsible person. All the way through there is a traceable person, someone will own the land. If it is a lease arrangement, heaven knows what will happen.

**Mr Valentine** - An incorporated body has longevity, doesn't it?

**Mrs HISCUTT** - The owner must be a body corporate. The proposed amendment creates a pathway whereby a natural person or an unsuitable person could become a cemetery manager. If the cemetery manager abandons their responsibilities, the role falls back onto the landowner who may not be the body corporate and may not meet the fit and proper person test. I could repeat that. Is that clear? That sounds very sensible to me.

**Mr DEAN** - There is a huge difference, which the Leader has explained. The problem with this amendment is that people already have their minds made up, and their minds were made up yesterday, the day before and the day before that. Before the briefing was provided to us this morning by the Government members, that is the situation we have - and I can tell you where it is going to go now. I ask the members to look at this proposed amendment very closely and at the significant difference between public ownership, council ownership, state ownership and privately owned land in the circumstances. It is clear; the difference is stark, and the risks are stark. The risks are real.

**Ms Forrest** - Are the risks with private landownership?

**Mr DEAN** - The risk with private landownership is real.

**Ms Forrest** - It is already possible, though. You are making an incorrect statement. Private landowners can be cemetery managers and are under the current bill. This amendment does not change that.

**Mr DEAN** - This amendment provides for private land to become cemeteries.

**Ms Forrest** - No, the bill already does that.

**Madam DEPUTY CHAIR** - The member for Murchison does have three calls on the amendment, so she can jump up and clarify that. Member for Windermere, you can stop being baited.

**Mr DEAN** - You can get up at any time. The Leader might clarify some of that.

Here we are - and it happens time again in this place - putting ourselves up as knowing far more about this than the Solicitor-General, OPC and local councils that are involved in these matters. They have looked at this and considered this bill for two years. They have been working on this since the last bill was passed by this place in 2018. They have given much thought to this bill and have constructed it the way they have because they see that is the best position for Tasmanians at this time. As to these lease risks, I am not sure why you would include in a bill amendments and changes that would create unnecessary risk. I am not sure why you would deliberately go down that path by doing that. Of course, we make amendments here at times when things are not right in a bill. We have pointed out a number of times that we amend a bill where very clearly it is not right and amendments are necessary.

But in this instance that is not the case. The Government and the department this morning identified to us in very clear terms why this amendment is not a good amendment and should not be supported in this instance.

I will wait to see what the Leader says about a couple of those issues. I urge members to please look at it afresh. Do not go on what you had made up your minds to do three days ago or last week. Do not do that.

Look at the amendment; look at the changes it will make. Look at the briefing as it was provided to us this morning. Look at the circumstances provided in the tabled document this morning and weigh them up against what the amendment will do. I ask you do to that. Do it effectively and do not bring personalities into this, either. I do not think that is necessary. We need to do this in the best interests of this bill.

**Mrs HISCUTT** - Yes, it is true that the department and the regulator have been working on this since mid-2018. A lot of work has gone into it. The bill before us has been identified as the way forward. There are very good reasons set out in the tabled document. I know that members have read that, but the protections afforded by the transfer of loan provisions of freehold property title provide greater opportunity to ensure the identity of the cemetery manager is known to the regulator, and that the regulator has recourse in the circumstances of an owner absconding.

These, in conjunction with the requirements going forward that the cemetery manager be a body corporate, are two strong indicators of the intent of the bill to increase protections for cemeteries over the duration of their existence, rather than to decrease protections. The intent of the bill has been determined with considerable community support for increasing protection for the burial sites of their loved ones.

As I have just said, it has been thoroughly consulted with the community and it was overwhelmingly supported. This may have been mentioned by two people. Everybody else who was consulted agreed that this is the bill to move forward with. The department has put the work in and everybody is comfortable with that. The two people who had different ideas are the people whom the member for Murchison is representing. But you have to think of everybody else. Everybody else was consulted. Everybody is comfortable with this. It is seen as a safe way to

move forward. It covers all aspects of what may happen here or there. This amendment will introduce something that is not controlled. Tasmania does not need to be the experiment state here. Members, I urge you not to support this amendment.

**Ms FORREST** - Madam Deputy Chair, many very provocative statements have just been made. It is terribly provocative to say that this is just two people and that no-one else supports their view. I will go back and do the history lesson again. The member for Hobart can enjoy this; I did it last week when he was not here because he was ill - thankfully not on his deathbed or he would not even be here and we would be talking about his own burial.

The Government took action when the Anglican Church decided to sell a number of churches. A number of those churches had cemeteries attached to them. People were rightly concerned about the implications of that and what would happen to the cemeteries particularly. Some of them were very concerned about the churches too, I might add, wanting to maintain the churches as churches or public buildings of a sort. There was a lot of uproar about that.

In the Government's rush to bring forward legislation to deal with that, some of these things were not fully considered. This was one of them. The people who are interested in being involved in the natural burial concept and others who might want to own churches with burial ground around them - we were told at the time those concerns would be dealt with at a later time. I subsequently asked questions during the year when this bill came out as a draft for consultation. Some changes were made during that consultation process - maybe the Leader can confirm that - and these were matters raised again.

The Government made the decision and it is entitled to make that decision to establish it this way. Advice of the Solicitor-General - will this work? Of course, this will work, but it limits an opportunity here for someone to own private land and then lease it to a body corporate which has met all of the fit and proper person test to manage a cemetery because they may not want to do it.

What we are looking at here is legislation that has come forward and this was raised. It does not just affect two people; it affects all the people who die and for others to access this site in the future. It is about giving an option for people.

It would be a pilot in Tasmania in the actual natural burial process, which this Churchill Fellow has studied around the world to see what best practice looks like and to make sure that is what would be implemented here.

South Australia does not prohibit the use of private land and neither does the ACT. All states are a little different in the way they manage these matters. To say there is a real risk associated with that is pretty disingenuous, because it is not only the natural burials we are talking about, it is cemeteries owned by private individuals.

The member for Windermere said that is a huge risk. That is what this bill allows for now. The bill as printed and presented allows private people who own private buildings that were churches with or without cemeteries around them to be cemetery managers when they pass the fit and proper person test. Those people could die or disappear, and they might own the church with the cemetery around it and be the cemetery manager because they have gone through the process because they have to - you cannot own it without going through all this. They are there occupying their church, or now house, managing the cemetery and they disappear.

**Mr Valentine** - Then the executor takes over and they might not be a fit and proper person.

**Ms FORREST** - That is right. There is a period when we might not know they have disappeared. In the interim period the cemetery is not being managed by anybody; someone could get in and desecrate the area - all those risks the member for Windermere seems so terribly concerned about could happen under the arrangements currently in this bill. They are dealt with by the processes put in here to enable the regulator to act. There are processes, rightly so, in this bill to enable the regulator to act to deal with those sorts of circumstances.

What I am proposing is private land can be owned by somebody - as it is in the current circumstance. It can be leased under a leasing arrangement that the regulator would need to approve, because they have to approve that body corporate to be the cemetery manager. They have to go through all the requirements in here before they can even take over the existing cemetery or establish a new one. They have to meet all those requirements.

The further amendments I am proposing are the belts and braces around this to enable the regulator, if something did go wrong under the current bill - because it is lacking in some respects in this where the lease is on council or state land - the regulator can act promptly and swiftly to address the issue to make sure there is an ongoing cemetery manager.

In terms of this massive risk of people wanting to take on the long-term commitment to manage a cemetery, because of its very nature all those leasing land from council like the North West Environment Centre - they lease land from council for an actual burial ground in Penguin.

**Mr Dean** - It is council-owned property.

**Ms FORREST** - They are still the cemetery manager for it. They are still leasing it. All the inherent risks are there. The North West Environment Centre, a small not-for-profit organisation, has made a commitment under a lease to manage this cemetery for as long as is necessary, as long as this legislation requires. That is not one person agreeing to that, because one person is not going to live 100 years, particularly, when they are already an adult.

The reality is the existing system already imposes the exact same risk in terms of the livelihood of someone defaulting on their lease, or defaulting on their responsibilities under this, whether it is privately leased land, or publicly leased land. The fact is, if someone dies, disappears, or does not fulfil their obligations as cemetery manager, the regulator can step in, and should, and will. It is conflating and confusing an issue not really there, because the risk is already there.

There are provisions to deal with it and the belts and braces approach by inserting further provisions for regulations to be made. Giving power to the regulator to appoint an interim cemetery manager, or a new cemetery manager, will actually back that up.

It is disingenuous to say this is a completely new risk, because the risk already exists. There are big companies like Millingtons that lease land from the state to run the Cornelian Bay Cemetery. They are unlikely to go bankrupt, but you never know. Companies can, and quite surprisingly sometimes. If they did that, it would default back to the state. The regulator would still need to be involved in appointing or making sure there is a new cemetery manager appointed.

I do not think the state is in the business of actually running cemeteries. That is why Millingtons is running and managing it, with all the obligations set out in this legislation.

I have talked about the private owners of land where a cemetery may be established. I could go and buy a block of land, or I own some land. I could apply to be a cemetery manager, meet the fit and proper person test, and the rest of it, under the provisions of the act.

**Mr Valentine** - Not after this.

**Ms FORREST** - Maybe not. I could be blacklisted after this.

I could establish a cemetery, natural or otherwise, and the obligations would sit with me. The risks are still there. I am not going to live for 100 years. I have to be a body corporate. The requirements and risks are still there, and that is why the belts and braces are already in this bill, to deal with privately owned land.

**Mrs Hiscutt** - The risks are lower.

**Ms FORREST** - Yes, but I am adding another measure to deal with that alleged risk. The risks are already there. Privately owned land with privately owned cemeteries effectively being run by private cemetery managers. It is already there. I am not changing that.

I am only allowing private land, as well as council and state land, to be leased, with all the obligations that need to be met under here. The regulator has to approve it. The regulator will not approve it unless it ticks off on all the requirements in the act.

This is clause 43(2) -

For a new cemetery to be established under this Part, the person who intends to establish the cemetery must be -

- (a) responsible for the management of the cemetery; and
- (b) approved under section 32 as the cemetery manager for the cemetery.

Then you go back to clause 32, which is where we are now, and that gives you all the requirements and everything it has to go through and the regulator's responsibilities in making sure that you are a fit and proper person. You cannot just read one clause in isolation, you have to read the whole bill. You have to read the whole bill and see all the other requirements there are.

The effect of the sale of a cemetery, if someone decides to sell the land - private land we are talking about, either attached to a church or otherwise - under clause 62(1) is -

On transfer of the ownership of all, or any portion, of a cemetery in accordance with a contract to which this Part relates, the person who is the owner of the cemetery after the transfer is the cemetery manager for the cemetery.

That part goes on, but if there were a lease arrangement, that would be part of the consideration of the sale. When someone sells a property, they have to disclose. If you are selling a rental property and you have a lease with tenants for the next 12 months, you have to disclose that. You cannot just toss your tenants out. You may be able to renegotiate the lease, but you cannot just toss them out. Leases are legal documents, legal contracts.

**Mr Gaffney** - Can I ask a question?

**Ms FORREST** - I only have one more call left, so if you are going to ask questions, it would be helpful if you could answer them.

**Mr Gaffney** - Okay, so you are better off to ask a question now, while you are on your feet?

**Ms FORREST** - Yes, I will finish what I was going to say and you might want to ask then.

I think it was very disingenuous of the member for Windermere to suggest that members already made up their minds last week. If that had been the case, we would have voted on it last week.

**Mr Valentine** - I only read it last night, at 2 o'clock.

**Ms FORREST** - That is what you said. You said members had made up their minds last week. It is very disingenuous to say that because there was a discussion to adjourn the debate.

**Madam DEPUTY CHAIR** - Could you not bait the member for Windermere?

**Ms FORREST** - No, I am talking about what was said, Madam Deputy Chair. The reason we are here this week is that a decision of this Chamber was made to adjourn the debate or to report progress so that we could (1) get more information from the Government, and (2) hear from these other people who are out there deeply engaged in this and wanting to put that perspective there, which is what we have done.

**Mr Dean** - How many people did we hear from?

**Ms FORREST** - Everyone got the email I read out.

**Mr Dean** - I asked, how many?

**Madam DEPUTY CHAIR** - Member for Windermere.

**Ms FORREST** - If you would you like to go back to *Hansard* from last week, that was what we talked about. The member for Mersey raised that he wanted to understand more about what was being proposed. I made a commitment to do that and that was the result. Everyone got it and everyone had the chance to read it. I think it was sent on Friday, from memory. As soon as possible after that the information was sent to you.

I do not believe members had made up their minds last week; I think they came with an open mind this week. The member for Mersey was asking those questions about what does this mean, and that is one of the reasons we adjourned.

It may have been mentioned by a small group that has been very committed to this, but many other people who are not interested in opening up a cemetery or managing a cemetery, whether it be attached to a church or whatever, are not going to have an opinion on this. It is a fairly specialised field. Not everyone is into death and dying. I am certainly into full choice around death and dying. I am an absolute advocate for choice about birth and death. People should be able to make choices

about how the birth of their baby is managed and how their death is managed. I know there will be more legislation we will get next year relating to serious aspects of that.

This is providing an opportunity for people to have that choice in a way that is not really any more risky at all than what currently is provided for, with a small organisation running a natural burial site on council land, for example.

The Leader mentioned the consideration of loved ones. I am considering loved ones and those who wish to be buried or have their remains disposed of in certain ways. Some want to be cremated and perhaps spread on the Parliament House lawns. It is certainly on the list of considerations - maybe round the outside of the Chamber. Who knows?

This is another option. For a lot of people who do not want to be traditionally buried, a natural burial makes a lot of sense to them. It is the cost factor as well. It is much cheaper; it is returning your body to the natural earth. That has an appeal to many people but they are not the people who want to run the cemetery; they are people who want to be buried in it. It is not just the people here, it is the people who will use such a service, so let us be fair and reasonable to them too.

The member for Mersey wanted to raise a question?

**Mr Gaffney** - I think I have forgotten now. No, I have not. I raised it with the Government. Private land lease arrangements, as you can do natural burials there. Land gets sold, lease runs out, the new owner does not want anybody else accessing the land because it is their land now. The lease has run out for the managers and says, 'You cannot come onto my land anymore'.

**Madam DEPUTY CHAIR** - Is this very long? You do have three calls.

**Mr Gaffney** - The honourable member does not have three calls.

**Madam DEPUTY CHAIR** - It seemed like rather a long question.

**Mr Gaffney** - What do you want me to do?

**Madam DEPUTY CHAIR** - Do you have much more to ask?

**Mr Gaffney** - I would have finished by now.

**Madam DEPUTY CHAIR** - I think rudeness is unnecessary. Thank you. If you would like to continue.

**Mr Gaffney** - If the new owners do not want the lease to continue and people are not now allowed access to where their relatives have been buried, in that situation, what recourse do they have where on public or state-owned land they could appeal to the registrar?

**Ms Forrest** - They still can.

**Mr Gaffney** - They still can for access. What I am asking is: do you have an answer to what would be the recourse for somebody where the new owner would not allow them to access the land?

**Ms FORREST** - The regulator still has to approve the use of a burial ground. So, the lease would need to cover the period that is to be expected - I forgotten the exact details but is a 100-year time frame but that is some years from the last burial. I can find that provision.

**Mr Gaffney** - I will ask the Government.

**Ms FORREST** - There are provisions for the regulator to make determinations around that. It can happen now. An owner, who is the cemetery manager running a little cemetery attached to the church, sells the church and the cemetery. The person who buys it has to be a body corporate or has to be a cemetery manager, but if they then decide they do not want to do that anymore, there are provisions in the legislation to deal with that. Why would the provisions dealing with a lease be different? There has to be a new lease negotiated on public land.

If Millingtons funeral homes fell over and ended its lease for some reason, there would have to be a new lease. The state would have to deal with that through the regulator. The regulator would have responsibilities to ensure there was a newly appointed cemetery manager. The further amendment would give them that additional power to appoint an interim manager until a new manager was put in place. As I understand it from reading the whole bill, the provisions are the same regardless. You have to look at it in context, not just one part of it.

Anyway, I have made the comments I wish to on that. I have one more call, but I will try to wait for any other questions that might come.

**Mrs HISCUTT** - We have a bit to work through here. I will start at the start and we will go through it again. I wanted to make a comment on the member for Murchison's accusation I have been disrespectful. Can I just say, the two submissions that came in from Rebecca Lyons and Lyndal Thorne - I know Lyndal, and Lyndal if you are listening in, I certainly respect and know you well. My point was in stage 1, there were 60 submissions and there were two submissions against or to the contrary and they were the two I just mentioned. In stage 2, there were 17 submissions and there were two submissions in favour of what the member for Murchison is talking about, and they are the two same submissions. These two submitters - I will not say people - were on the same page, but they were only two submissions at stage 1 out of 60 and they were the same two submissions at stage 2 where there were 17. Lyndal, if you are listening in, there is certainly no disrespect and I certainly have a great deal of respect for you.

I shall go into our last-ditch attempt. The bill retains the existing framework for the management of cemeteries, crematoria and regulated businesses, while making a number of important improvements that reflect the feedback received through the public consultation process I just covered. Importantly, the bill retains the strength and sale enclosure processes introduced in stage 1. The issues of leasing were considered in 2018 and I have covered these already. The key changes from the existing act include -

- Increasing protection of cremated remains by providing for exclusive rights of interment of monuments - that is, columbaria - requiring access to monuments and notification requirements if cremated remains in a monument are to be moved.
- Aligning the requirements for crematoria and regulated businesses with those cemeteries by establishing the regulator role for crematoria and regulated businesses and introducing an application process to manage these businesses.



- Strengthening compliance and enforcing powers by allowing the regulator to request an audit of a cemetery, crematoria, or regulator business requiring managers to notify the regulator if they become aware their business is not listed on the register held by the regulator and new and increased penalties for noncompliance.
- Allowing the regulator to approve a person other than a body corporate to purchase cemeteries purchased by individuals under the previous legislative framework.
- Clarifying that cemetery owners may participate in non-binding presale negotiations, clarifying that cemetery managers may lease a cemetery on publicly owned land.
- Restructuring the legislation to improve clarity and consistency and support potential changes to administrative responsibilities and introducing minor amendments to improve overall clarity and consistency of the bill.

Once again, natural burial sites are not precluded by the bill. It is important not to conflate the issues of natural burial sites and the broader proposal that private land be available for leasing for the purposes of a cemetery. As the member has identified, a natural burial site could be opened up now on private land, provided the owner of the land is willing to take the legal responsibility of being the cemetery manager.

In the stakeholder cases in point, if a private landowner is willing to have their land used as a cemetery, the question then becomes: why are they willing to provide their freehold land for the purposes of a burial site that will be there for 100 years, but not actually accept legal accountability for the purpose for which their land is being used? Acknowledging the impact this purpose will have on the owner's ability to deal with that land for the next century raises the question of whether the owner is fully apprised of the impacts of the lease arrangement.

Finally, the public - this is a comment which came out of the public consultation paper from June 2019. The public raised issues with private ownership, including that the right for public access is inconsistent with a property rights owner to private enjoyment of their property. Private owners may wish to use the land for other purposes, which may be an incentive not to accept further burials at the cemetery.

Honourable Members, I think the Government has put forward its case. We are certainly not in favour of this amendment, and I urge members not to proceed with it.

**Mr GAFFNEY** - Last week we asked for more time to understand and that was a wise decision. We voted on that as a group. I appreciate the briefing, and receiving information from the two people who are concerned with this.

I am not overly fussed about the number of submissions that have come in, because of the 61, 59 of those submissions might not have had any issue with this part and might not have wanted to provide comment. Even when you went down to 17, the two submissions we received were dealing with this. It might not have even occurred to the others that it was important.

**Mrs Hiscutt** - My point was that there was no disrespect, as was alluded.

**Mr GAFFNEY** - I actually thought the words the member made were that she thought some of the statements were provocative and she was responding to that, not about the intent to disrespect anybody. She thought some of the comments were, and I thought they were, too.

While I appreciate the member for Windermere saying it had been checked by officers and the Solicitor-General and asking why do we not accept it - there have been many times in this place where we have suggested amendments, whether the officers have looked at them for two, five or 10 years. Sometimes the Solicitor-General's advice has been found to be wanting for no particular reason. Even the one that went to the High Court and said that advice is incorrect. I appreciate we need to have these amendments to challenge some of the things said.

My question to the department is: if this amendment were to proceed, the Leader said in the briefing this morning that there might be some ramifications for the legislation. If this amendment were to be accepted, is there anything that might need to be changed within the rest of the bill to allow that to occur?

What might the ramifications of this be if it were accepted? That was alluded to this morning in the briefing. Any further information on this would be helpful.

**Mrs HISCUTT** - Madam Deputy Chair, I think I might just read some of the reasons for the consequences of the proposed amendment.

The framework established by the bill and current act is predicated on a cemetery manager owning the land. Therefore, the proposed amendment has broader consequences for the bill, as I will now outline -

First, in the scenario where a landowner, who is not a cemetery manager, wishes to sell the cemetery, it is unclear whether the leaseholder could continue to manage the cemetery, or whether clause 62(1), which provides that on transfer of the ownership, 'the person who is the owner of the cemetery after the transfer is the cemetery manager', would prevail, and the purchaser would become the cemetery manager.

This scenario would create uncertainty as to who is the cemetery manager, and owner, leaseholder rights and obligations.

Second, the proposed amendment creates a pathway whereby a natural person, or an unsuitable person, could become a cemetery manager. If the cemetery manager abandons their responsibilities, the role falls to the landowner who may not be a body corporate and may not meet the fit and proper person test.

Establishing a cemetery on the land would restrict the landowner to selling to a body corporate which must be approved as a cemetery manager in the future. The exemption allowing cemeteries owned by natural persons to be sold to natural persons would not apply, as it has been drafted with the exception that natural persons are no longer able to become the owner or manager of a cemetery.

Third, the sale process would apply to the cemetery. However, as the landowner is not the cemetery manager, they do not hold the records and information necessary to obtain a certificate of compliance needed before they sell their land. A revised bill that allows the separation of ownership

and cemetery management may weaken the overall framework which has been well supported by the community.

**Ms FORREST** - I thank the honourable member for Mersey for his comments. I was going to mention the point about the number of submissions. To go back in history again, when this bill was introduced in 2018, almost without exception everyone was very focused on the sale of the churches and the graveyards that were already established. Everyone was very concerned about what was going to happen with those, the length of the requirement. Bishop Condie had genuine concerns, I believe, and the member for Windermere sought to move an amendment to the legislation regarding the length of tenure.

**Mr Dean** - Fifty years.

**Ms FORREST** - But that was unsuccessful, even though I supported it.

There were changes proposed, even though broad community consultation has said sometimes they are accepted and sometimes they are not. The major focus of the submissions was the very real and genuine concerns people in Tasmania had about the sale of their churches, particularly those with cemeteries around them. The Leader read out a list of things a moment ago. One in particular was maintaining public access. We have all had debates on that. What if it is Christmas Day and they shut the cemetery and people want to go and visit? All those sorts of measures. What was a reasonable time? We dealt with that in the bill in 2018 and we have dealt with it again in this bill.

The number of submissions is irrelevant. The majority of people who made them were on the matters I have just raised, about the access and what was going to happen with the churches and the cemeteries. Some of the churches have been funded by the communities and, arguably, were not really owned by the church as such, but that was the existing structure. People were focused on that.

Those who put submissions into the process about this particular issue were focused on this issue because this issue matters to them. It is not of interest to all those other people. All those other people worried about accessing the existing cemeteries and what would happen to their churches, how long a cemetery manager might need to do it, and who would meet the fit and proper person test - all those requirements.

It is a big bill with a lot of detail in it. To say that there were only two submissions on this particular aspect is inappropriate because they are relevant.

**Ms Hiscutt** - That's a better word, rather than disrespectful.

**Ms FORREST** - I never said 'disrespectful'. I said that it was provocative. I was not just talking about that. I was talking about some other comments that the member for Windermere had made, about us already making up our minds about things. That is provocative, particularly for the member for Hobart who was not even here and who has had an interest in this. That is what I was referring to. I am sorry you took that comment personally. It was not directed at you.

I have had submissions from and meetings with the people involved over the last two years, when the first bill came in and then with this one as well. The major focus last time was to rush to get the legislation through effectively, in my view, to try to stop the Anglican Church easily selling

some of these little churches. People do not have to agree with that but that is what is was. In that rush to do it, there were things that were not dealt with. We were told at the time that we would be back with what we now have to deal with, some of these other matters.

These other matters are some of the things dealt with in this bill. It was still ongoing and here we are, trying to deal with it. I am prosecuting the case that this is something that matters. It is not a small issue that only affects two people. That is not true.

The issues raised about private ownership exist with privately owned cemeteries now and will continue to exist. The Leader read from the document, but I will re-read some of the consequences of the proposed amendment. I am going to add in a couple of words to make it clear.

The framework established by the Bill (and current Act) is predicated on a cemetery manager owing the [private] land.

The cemetery manager has to own the land, but it is private land I am talking about in this context -

Therefore, the proposed amendment has broader consequences for the Bill, as outlined below.

1. In a scenario where a landowner who is not a cemetery manager wishes to sell the cemetery, it is unclear whether the leaseholder could continue to manage the cemetery, or whether section 62(1) (which provides that on transfer of the ownership, the person who is the owner of the cemetery after the transfer is the cemetery manager) would prevail, and the purchaser would become the cemetery manager.

I addressed this one in my previous comments so I am not going to reiterate all that.

The second point says -

2. The proposed amendment creates a pathway whereby a natural person (or an unsuitable person) could become a cemetery manager. If the cemetery manager abandons their responsibilities, the role falls to the landowner, who may not be a body corporate (and may not meet the fit and proper person test).

We could have someone buying a church and a cemetery as a private landowner. They cannot sell that unless they are selling it to someone who does meet the fit and proper person test. What happens if that person walks away from it or does not fulfil their obligations? There are provisions in the act to deal with it.

I have made the point and other people will make their own determinations. This is an important consideration. The fact that you can establish a natural burial ground on council land or state land is a good thing. We need to try to make it as accessible as we can.

It is not just about that, it is also about privately owned cemeteries attached to churches, where someone may - as the member for Hobart alluded to - want to lease out the land. They may not want the responsibility; they might want to allow another organisation to become the cemetery manager because it has a very deep and connected interest in it. But they cannot do it under this.

They can subcontract, the next best option, I guess. But these people might want to take on the responsibility and that then gives the owner of the property, the church and/or cemetery, the chance not to have to concern themselves with that management during that time.

I think there is a little bit of jumping at shadows here. Of course I will accept the will of the Chamber; I always do. Trying to diminish this as a small issue that only affects a small number of people is disingenuous. It is a bigger issue. It has been raised repeatedly since the first iteration of the legislation in 2018, but that was very much focused on the protection of churches and cemeteries that already exist, and trying to ensure that if they were sold by the Anglican Church, which is predominantly what we are talking about, they would be managed properly and access would be maintained. I can understand the very real desires of people to ensure that. They were very focused on that, and rightly so.

**Mrs HISCUTT** - When the Anglican Church announced its plans in the first half of 2018, the Local Government Division commenced discussions with the Solicitor-General's Office to understand the implications of particular scenarios. This included the issue of whether the church could sell a property but still be the cemetery manager if it so desired.

The position that ownership and cemetery management are intertwined is based on a trustee responsibility, holding the land in trust for the purposes of a cemetery. A private landowner could not be holding the land in trust for such a purpose.

The Government's commitment to bring back further changes was to deal with other matters not covered in the 2018 amendments. The question of leasing was considered then. The substance of the bill, compared to the current act, is predominantly dealing with the crematoria and funeral industry businesses. These were the main issues unable to be dealt with last year, along with the legacy owners of cemeteries.

We want to point out another implication in the bill in other places. The bill currently enables the cemetery manager to be identified through the transfer of land processes administered by the Land Titles Office. This does not apply in the case of a lease arrangement.

Given the private contractual nature of lease arrangements, lessees and lessors could terminate contracts, subcontracts or enter into a lease arrangement with third parties with no clear trigger for the regulator to be notified or be aware when these private contractual arrangements change.

Honourable members, the Government has put its case but again we feel very uncomfortable with these amendments and urge you to vote against them.

**Mr DEAN** - So I am absolutely understanding this - the member for Murchison has, by way of interjection or by other means, talked about the current position and whether there can be cemeteries on private land. But the private landowner must be the cemetery manager - that is the big difference. This amendment removes the landowner being the cemetery manager and that can pass over to a person wanting to lease the land for a cemetery - there is the stark difference.

If this amendment had been considered or moved when we discussed the previous bill, the amendment I tried to move of 50 years may well have succeeded. Tying a lease in to 100 years is unheard of.

**Ms Forrest** - They do on council land.

**Mr DEAN** - Crown land has 99-year leases and they have now restricted those. As I understand, you can no longer have a 99-year lease from the Crown. It is now either 40 or 50 years. I know of some people who have been only able to get either a 40- or 50-year lease, and that is over a driveway or access over crown land. I think I am right in saying you can no longer get a 99-year lease. It is remarkable we would want to have a lease over private land for a cemetery for that period of time. I cannot accept that and find it disingenuous to even want that to happen in the circumstances.

The member mentioned we should have choices when we kick the bucket as to where we want to go. We do have a choice, but our choices are significantly restricted. We do not have the choice of being buried wherever we want to be, to be doing whatever we want in death or for people to do that with us, and there are significant restrictions on where and what can happen in death - where you go, buried or cremated, whatever.

I have tried to look at this. I have tried to take emotion out of it. I have tried to take out any issues, concerns and everything else about it, but I cannot come to the position with all the information we have on this - the tabled document and all the other evidence we have been given - that we would want to ignore that. We have a position of two people coming forward; I can understand their position. I do not know the people but they are very respectful, respectable and very good people. I am not bringing that into question at all. The fact is that when you are dealing with any legislation, you have always people who want something else, who want something different, who are not happy with that legislation for whatever reasons. You look at that realistically in the best way possible and weigh up all the evidence to see whether the changes those people want should be pursued. We have a bill coming up later where that could well be the case. So, if here we had a torrent of people coming forward, it would weigh probably heavier - that is not to say I am not considering those two people, but I just cannot accept and will not support the amendment.

**Ms WEBB** - To be honest, I am quite unfixed in my view. I have not come with anything particularly fixed about one way or the other. In fact I came probably inclined not to support the amendment, and I am still probably leaning that way. However, some of the things raised have caught my attention, and I wanted to highlight them.

To pick up the most recent one where the Leader mentioned a new concern identified in the last set of responses provided around changes to lease arrangements between a private landowner and somebody leasing a parcel. The Leader talked about a change being made and not being triggered anywhere in the Land Titles Act. For lease arrangements with state or councils, changes to those lease arrangements are triggered in that way, and therefore would there be an official way a change is flagged and covers that in a way the private one does not? That was one thing I was wondering about. If that is the case at the moment, is there not the opportunity between a private arrangement of a private owner and someone leasing from them to insert a flag process around that lease? I am not sure.

The other thing that has come up a few times, and did so again in the Leader's and the member for Windemere's contributions, is the concern that it is all going to fall apart and willy-nilly people will be given the ability to lease or to take out a lease. There is substantial regulation in this bill around becoming a cemetery manager, establishing a cemetery, sale of cemeteries. The Leader suggested it is hard to imagine why anyone would want, as a private landowner, to lease a parcel of their land where this is to be allowed if this amendment goes through. I agree - and potentially there never will be anybody who might want to do that, because there is quite robust regulation.

If we were to pass this amendment and this becomes available as an option within this very robust regulatory environment on all those other matters, it may be we never see a situation arise where a private landowner negotiates with somebody who wants to lease their land and become a cemetery manager, or lease a parcel of land and set that arrangement in place. We may never see it happen because there might never be two parties at the same place at the same time who actually feel they can navigate their way through the regulatory requirements. Perhaps, if at some point there is a private landowner with an appetite to do this and somebody wants to lease a parcel of their private land to establish a natural cemetery or a cemetery and those two parties were willing to engage and navigate their way through the regulatory environment there - my goodness, that would indicate a very enduring commitment to see that situation through.

**Ms Forrest** - The regulator would be well aware of it because he has to ensure the approvals.

**Ms WEBB** - Well, he has to jump through all the regulatory hoops so, rather than feel concerned and raise a question of, 'Gosh, why would anyone want to do it?', that probably makes us more inclined to think there are quite appropriate regulatory requirements and standards to be met and approvals to be given at each stage of that, such that we would see quite an enduring commitment in anyone who did want to take that on. That probably makes me more inclined towards thinking that there is an opportunity here to allow the option, unlikely as it may be, simply because there is value in offering choice, as the member for Murchison says.

It may be that for dedicated people who are interested in providing that choice in an enduring way, this allows that to happen. For some in the community, on this very sensitive matter of how their death and their burial would be dealt with, this would be an appropriate and available option.

I am still wavering on this one, but those are my comments on what I have heard so far today.

**Mrs HISCUTT** - Unless the public land a cemetery is on is sold, the issues of leasing and transfer do not apply. In the unlikely event that it is, there are regulatory processes in public authorities compared to private ownership that would trigger recognition. For example, a council has to go through a public process under the Local Government Act so that is how that part works.

**Ms Webb** - Wasn't the question about changes being made to lease arrangements, not sale of land?

**Mrs HISCUTT** - I think I have it straight. If it is a sale of land, it goes through the Land Titles Office; therefore, there is the trigger of a sale. If it is a lease arrangement and the lease is changed, there is no trigger and no reporting mechanism for that. It is done by lawyers over there somewhere. If it is through the council or crown land, it has to go through a public process under the Local Government Act. For example, if a council is doing it, it has to go through a public process under the Local Government Act.

**Ms Webb** - A lease arrangement or a change to a lease arrangement, is that what you mean?

**Mrs HISCUTT** - No, just the sale of the public land.

**Ms Webb** - I am talking about a change to a lease. Right now, we have a situation where parcels of land are being leased from councils or the state, and I imagine that there is a lease

arrangement in place. The issue you had is with potential changes to lease arrangements between private -

**Mrs HISCUTT** - And no trigger.

**Ms Webb** - What is the trigger for changes to lease arrangements between council and state and someone private?

**Mrs HISCUTT** - I will seek some more advice, Madam Deputy Chair. I will finish the first part. I am seeking more information, which is coming.

In terms of a current landowner and leaseholder having good intent, that may well be the case. But the provisions of this bill put the regulatory controls and obligations on the cemetery manager. If the landowner is separate, it creates a range of issues with the ability to ensure that the requirements in the current act, which are being carried into the bill, can be enforced and complied with. The current landowner is unlikely to be the landowner in decades. Who can know whether they would have the same intent? The state or the council is different in this respect because the intent would be the same.

The bill is not preventing choice about natural burials. The issue of ownership is agnostic in this type of burial.

Madam Deputy Chair, I will see whether this answers the intended question. In the context of this bill, changes to lease arrangements that are relevant from a regulator's perspective will be those material changes that affect either the identification of the cemetery manager or the administration of their responsibilities. Lease arrangements with councils or the state are not necessarily captured as dealings by the Land Titles Office. However, given the status of public authorities, the accountability and transparency responsibilities that levels of government have to the community provide greater protection than private land leasing arrangements in the event that lease parties or arrangements change in a way relevant to the bill.

Having ownership within government or with councils creates the ability to ensure this, noting that the incidence is likely to be very low. Certainly, in the case that there are issue with a lease over land used for a cemetery, having a public landowner affords greater protection for the regulator to have recourse to the entity even in the event that the lessee cemetery manager becomes unavailable to fulfil their obligations.

**Ms WEBB** - I think we have all heard it very thoroughly, and probably others will accept - I certainly accept - that it is clearly much easier when the entity leasing the land is the council or the state government. There is no question about that; you do not have to tell us again. I think we have all heard that really clearly and would accept that it is true. It is a much more straightforward proposition if there are any changes - although there still seems to be a little gap there with no particular flag about changing lease arrangements then coming back through to the regulator. It is easier.

It does not necessarily mean that just because it is the easier proposition that the other one cannot be buttressed with appropriated regulation to deal with some of that risk and uncertainty. I guess that is really the essence of this amendment: it is not can we make it as easy, straightforward and as risk-minimised as it would be with councils or the state, but can we make it an acceptable option with appropriate minimisation of risk through effective regulation, with the regulation that



is already there and potentially some extra regulation? I know the member for Murchison has a series of amendments that come after this that aim to put some extra measures in place around that.

I am quite interested not in whether we can make it as easy as it is with a council or the state, but whether we can make it possible so that we can be overwhelmingly sure the regulation will be appropriate. I did not use the term 'good intent'; I was not talking about a potential private landowner and private lessee having good intent - let us just assume that - I was not talking about that. I am talking about navigating their way if they have an appetite to try to make this happen - a landowner prepared to lease a parcel of land and an entity wanting to lease that parcel of private land. If we had that happen, where those two interested entities are there and there is a quite robust regulatory environment already in place on registering cemetery managers, establishing cemeteries, restrictions on how to end a cemetery and restrictions on sale of cemeteries, all those things are already in place.

What I described was that if they were to pursue this, they would have to have a very enduring commitment to seeing it through. We would not have people willy-nilly coming forward to do that.

It might be they are not even able to navigate their way through that effectively to put something in place with what we require of them to make it possible.

I am in way saying it just needs good intent. What I am actually pointing out is the enduring commitment there would have to be to navigate their way through this.

Can we make a regulatory arrangement, for example, that deals with the issue of a flag that goes up on leases changing, or a requirement they do not change in the first place, as part of the regulation?

Is there a way we can, through regulation, make it possible to address some of those issues? It is not a matter of saying we cannot make it as easy and as robust as it is with the state and council.

**Mrs HISCUTT** - We are very keen to point out to the member that it is not a question of ease. It is a question of risk.

**Ms Webb** - There is more ease in managing the risk. I have just acknowledged this.

**Mrs HISCUTT** - The risk has been thoroughly considered in the course of the 2018 amendments and is being brought across into this bill.

The requirement for ownership has been determined because the risks, and particularly the ability to exercise effective control over time, have been assessed as too high or potentially not practically able to be done.

The bill is not attempting to prevent natural burials, but rather to have the same rules apply to whatever type of cemetery is intended to be established.

The member talks about easing - there is an established way, but it is not ease, it is risk we are trying to manage here. If there is a good intent over 100 years on a lease arrangement, that good intent can be sidelined at any time, at 50, 60 or 70 years.

**Ms Webb** - I am not talking about good intent.

**Mrs HISCUTT** - That is what I am trying to say. The lease arrangements are not. You do not know what is going to happen.

I add it is submitted that the word 'easy' is better replaced with the word 'effective'. The public consultation process has clearly demonstrated the community wishes for there to be a greater protection afforded to the gravesites of their loved ones.

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

## QUESTIONS

### Tasmanian Companion Card - TT-Line

[2.31 p.m.]

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

When an individual who requires a carer due to a disability that prevents them from flying needs to travel by the *Spirit of Tasmania* to access services on the mainland, why is the Tasmanian Companion Card scheme not honoured by TT-Line to enable such travel to be more affordable for those with disabilities?

### ANSWER

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

The TT-Line provides discounts for the carers of individuals with disabilities who are travelling on the *Spirit of Tasmania*. The company provides the same pensioner discount to the carer as to the individual travelling if they meet the following criteria -

- the person they care for must be a recipient and holder of an Australian Pensioner Concession Card;
- the carer must travel on the same booking with the pensioner they care for;
- the carer is entitled to the pensioner fare, provided they are not a professional carer; and
- a carer travelling with a Totally and Permanently Incapacitated - TPI - pension card holder is entitled to the discount.

### Health Professionals - Recruitment and Retention

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

[2.32 p.m.]

Mr President, as a follow-up to my question to the Leader on 21 November regarding the Government's plans to attract and retain talented and able health professionals to Tasmania in the years ahead, would the Leader please advise -

- (1) In 2018, the then Health minister established and fast-tracked the Tasmanian Health Recruitment, Retention and Workforce Planning Unit to assist with the delivery of more than 1300 new Health staff over the next six years. Can the Leader please advise what quantifiable deliverables have been achieved by this unit to date?
- (2) What strategies are in place to achieve the delivery of 1300 health professionals by 2024?
- (3) Are the unit, the Government, the department and other associated stakeholders on track to deliver these 1300 health staff by 2024?

## **ANSWER**

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

(1) to (3)

The fast-tracking of the dedicated Health Recruitment, Retention and Workforce Planning Unit was an election commitment. The unit was established to assist with the delivery of more than 1300 FTEs of new Health staff across the next six years. For many years Tasmania experienced challenges in attracting and retaining certain health staff leading, for example, to our reliance on locums to ensure delivery of some services. The unit has therefore been crucial in supporting the Government's significant recent recruitment efforts combined with support from strength and local hospital leadership.

In the last financial year, the Tasmanian Health Service recruited 350 additional FTEs, including 160 FTE nurses, 55 FTE doctors and 42 FTE allied health staff. The Government is on track to recruit 1300 additional FTEs by 2024 with the support of the important unit.

## **Evade Police Offences**

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

My questions relate to evade police offenders - 'Evading Police (Aggravated Circumstances)'.

In 2017-18, 222 offenders were charged with this more serious offence, 'aggravated circumstances'. In 2018-19, 285 offenders were proceeded against in this category - that is an increase this year of about 63 offenders.

Will the Leader please advise -

- (1) Does Tasmania Police record details on the occasions where these offenders avoid detection and apprehension by evading the police?
- (2) If so, what numbers were able to avoid apprehension during the financial years 2017-18 and 2018-19?

- (3) In 2018-19, how many evading police (aggravated circumstances) involved property damage and injury or death?
- (4) Is Tasmania Police able to provide an explanation for the increase in this category?
- (5) As each offence in this category puts the public, the police and the offender and any passenger at grave risk of serious injury and/or death, what further actions, if any, is Tasmania Police taking or considering to take control of this highly dangerous activity?
- (6) Is Tasmania Police considering changes to current legislation concerning evade police offences and particularly 'aggravated circumstances'?

## ANSWER

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

- (1) Wherever possible, details are recorded in relation to vehicle particulars and registration numbers. It is important to note that at times it is difficult to identify an offender, depending on the particulars of the incident.
- (2) It is not possible to provide the details of the data requested within the time frame available; however, the member can be assured that every effort is made to apprehend offenders who evade police where safety to police, the community and offenders is not compromised.

As I have the question here, honourable member, do you want me to resubmit that at a time, bearing in mind it probably will not come tomorrow?

**Mr Dean** - Yes, thank you.

**Mrs HISCUTT** - For question (3), unfortunately, it is the same there. The data relating to this question cannot be obtained within the available time frame.

**Mr Dean** - The same with that one, thank you.

**Mrs HISCUTT** - So long as you are happy not to expect it tomorrow.

**Mr Dean** - Yes. I am happy to wait.

**Mrs HISCUTT** -

- (4) The increases can be attributed largely to high-visibility patrolling in both rural and urban areas and the interception of motorists. Intelligence-led traffic policing, including 'choke point' corralling of offending vehicles, dash cam footage and investigations have also assisted in a greater number of drivers being apprehended.
- (5) Tasmania Police will not compromise safety and will disengage if the situation requires it, and they continually look at strategies to apprehend offenders without compromising the safety of any involved parties.

- (6) The Police Legislation Miscellaneous Amendments Bill 2019 has just been passed in the House of Assembly and will come before the Legislative Council in due course. The amendments seek to align with the Road Safety (Alcohol and Drugs) Act 1970 for the aggravated evade particulars of driving with an illicit drug. The current legislation does not invalidate the aggravating particulars.

### **Evade Police Offences**

[2.38 p.m.]

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

My further question relates to the same issue but to a different area, evade police offences, including 'Evading Police (Aggravated Circumstances)'. Offences in the latter area rose by 63 during the 2018-19 year.

Will the honourable Leader please advise -

- (1) Is the Government/department currently considering any legislative changes regarding the evade police legislation, and particularly with aggravated circumstances?
- (2) Is there a need to consider the current penalties provided for and being imposed by the courts?
- (3) Will the Government/department consider re-categorising the evade police (aggravated circumstances) charge to one of a crime?

### **ANSWER**

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

- (1) The Police Legislation Miscellaneous Amendments Bill 2019 has just been passed in the House of Assembly and will come before the Legislative Council in due course. The amendments seek to align with the Road Safety (Alcohol and Drugs) Act 1970 for the aggravated evade particulars of driving with an illicit drug.

The current legislation does not invalidate the aggravating particulars, and I think the member acknowledged that it was the same answer.

- (2) We are always prepared to review whether current penalties are adequate.
- (3) The penalties including terms of imprisonment are appropriate in the circumstances; however, legislation is always reviewed when necessary.

## Wombats - Numbers

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

[2.40 p.m.]

- (1) What progress has the Government made in combating wombat mange in the past 12 months?
- (2) What funds have been allocated to fight wombat mange in the past 12 months?
- (3) How are wombat numbers calculated?
- (4) Is there evidence wombat numbers are declining?
- (5) Does the Government allow the culling of healthy wombats and if so why?
- (6) Given Australia is now in the midst of a species extinction crisis, can the Government form a separate wildlife and environment department so these areas are not submerged below the competing interests of Primary Industries.

In other words, where is the 'W for wildlife' in the current Department of Primary Industries, Parks, Water and Environment - DPIPWE - model?

## ANSWER

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

- (1) The Government recognises mange is affecting wombats in some areas across the state and is supporting ongoing monitoring and research to address the issue. It is pleasing to note that at a statewide level, the wombat population has generally increased between 1985 and now. Recent surveys have also documented a low overall level of mange prevalence. In the past 12 months, the Government has undertaken targeted monitoring to enable assessment of the prevalence of mange.

We have also partnered with the University of Tasmania to research improved treatment options. The results of research over the past 12 months are promising, with wombats receiving the treatment showing remarkably rapid recovery. Field trials using the new treatment option will commence in the new year.

- (2) In the past 12 months the Government has directed an additional \$30 000 plus in-kind support to the University of Tasmania towards its work on mange treatments. This sits alongside the \$100 000 the Government committed in 2017 to address wombat mange. The department has also continued to commit resources and effort to monitoring wombats, which includes annual statewide spotlight surveys, annual strategic targeted surveys to detect mange prevalence and various camera monitoring activities designed to monitor a range of wildlife, including wombats.

- (3) Wombats are included in the statewide spotlight surveys that have been conducted annually since 1985.
- (4) The DPIPWE spotlight survey data indicates wombat numbers have increased at a statewide level over the past 34 years. While mange has had a localised impact on wombat numbers in the West Tamar region, recent camera-trapping surveys undertaken by the department have shown that wombats still remain in the area, with mange-free wombats observed in the Narawntapu National Park over the last two years.
- (5) In recognition of the impact of mange on wombats, the process for assessing crop protection permits involving wombats has been significantly tightened. This has resulted in a reduction in the number of permits issued for wombats from an average of 34 annually between 2010 and 2016 to zero in 2019, as at the 22 November 2019. In the West Tamar area crop reduction permits for wombats are no longer permitted.

Based on the evidence from long-term monitoring of wombat populations that demonstrate the statewide population is not declining, together with advice from the Chief Veterinary Officer, there is no justification to impose a blanket moratorium on crop protection permits for wombats in other areas with stable or increasing wombat populations.

- (6) The Government takes the responsibility and conservation of threatened species seriously and accordingly provides DPIPWE with significant resourcing for wildlife and threatened species matters.

This includes a specific Threatened Species Section Wildlife Operations, Marine Conservation Program and Conservation Assessment Section, for example, within the Natural and Cultural Heritage Division of the department. The Parks and Wildlife Service and the Inland Fisheries Service also address threatened species matters. Staff in all these areas are highly qualified and skilled professionals. The Tasmanian Government's commitment to threatened species and other wildlife protection is significant, ongoing and integrated, and the creation of a separate wildlife and environment department is not warranted.

## **BURIAL AND CREMATION BILL 2019 (No. 42)**

### **In Committee**

**Resumed from above.**

#### **Postponed clause 32 -**

Approval of persons as cemetery manager

**Mrs HISCUTT** - Madam Deputy Chair, it is submitted that the word 'easy' is better replaced with the word 'effective'. The public consultation process has clearly demonstrated that the community wishes greater protection to be afforded to the gravesites of their loved ones. This ensues from incidences in the past where gravesites in cemeteries have not been properly cared for and maintained by the designated cemetery manager. Key amendments to the current act requiring that owners of cemeteries on private land be bodies corporate is a good example of this, as is the requirement that private landowners on whose land a cemetery lies must currently be the cemetery manager.

During our lunchbreak, my team has been working away diligently. The member for Nelson also asked what other sections of the bill may be affected by this amendment if it were to be implemented -

**Ms Webb** - I think that was the member for Mersey's question.

**Mrs HISCUTT** - I do beg your pardon. I have an answer for whoever asked the question. The team has been through and come up with two pages. I will read it. It is not an exhaustive list as they only had a short time to have a look at how the amendment may affect the bill. It is not to say there will be more, but unless they have a more thorough look, this is only a quick look during the lunchbreak.

Leasing of cemeteries - further changes to the Burial and Cremation Bill 2019 arising from the proposed amendment to section 32: the first identified was clause 50(1), which provides -

A person must not sell a cemetery to another person, unless -

...

... the purchaser has been approved under section 32 as the cemetery manager ...

The implication is that there is a need to clarify that this does not apply if there is a lease over the cemetery that will continue after the sale, or clarify that the purchaser must still be approved, even if they are not to become a cemetery manager.

That particular clause is a potential loophole. Any cemetery manager could lease the cemetery, then sell it to a person who has not been approved - potential fake leases to facilitate a sale process. Or, if the purchaser must sell, if the purchaser must still be approved, it is an anomaly that the owner at the time the cemetery is established does not need to be approved as a cemetery manager. That was just the first clause.

The next clause identified is clause 62(1), which provides that -

On transfer of the ownership ... the person who is the owner of the cemetery after the transfer is the cemetery manager ...

The implication is that the qualifying clause requires that if there is a lease over the property, the leaseholder continues as a cemetery manager.

The risk is that it may become difficult to sell the property if purchasers are unwilling to purchase the land over which they are able to exercise little control but wear a significant risk.

**Ms Webb** - Just to clarify that: so the risk there is to the person who owns the land who might have more trouble selling it in that instance? It is not a risk to the government or the regulator? The risk is being borne by the owner of the land, and they would understand that when they entered into the lease, I assume?

**Mrs HISCUTT** - What you are saying is correct.



The next one is clause 62(2), which requires the Recorder of Titles not to register a transfer if it has not complied with the act. The implication is that no equivalent provision is in place to monitor a lease ending or a new lease being issued.

The risk is that if leases are allowed, a person can take control as cemetery manager without being approved by the regulator. The limited number of leases in place by the state or council are to be monitored.

**Ms Forrest** - That is an issue with the current leasing arrangement in the bill. There is no provision. You show me a provision that says when a lease changes hands on council land, like the North West Environment Centre selling -.

**Mrs HISCUTT** - My team understands your question. I will continue with this while they find that answer again. They said it has been answered once, but they will find it again.

Clause 50(1)(a) says that person must not sell a cemetery to another person, unless 'a certificate of compliance has been issued in respect of the proposed sale'. The implication is that if the landowner is not involved in the management of the cemetery, they do not have the necessary information to obtain the certificate of compliance and sell the cemetery.

A new clause is needed requiring a leaseholder to support the landowner in the certificate of compliance process.

The risk there is the landowner may be left without the necessary information for the regulator to make a proper assessment as to the cemetery's compliance. This information is also lost and cannot be provided to the purchaser.

The answer to the member's first query has been put on *Hansard* once, but I will say it again: in the context of this bill, changes to lease arrangements that are relevant from a regulator's perspective will be those material changes that affect either the identification of the cemetery manager or the administration of their responsibilities.

Lease arrangements with councils and the state are not necessarily captured as dealings by the Land Titles Office. However, given their status as public authorities, the accountability and transparency responsibilities that levels of government have to the community provide greater protection than private land leasing arrangements in the event that lease parties or arrangements can change in a way relevant to the bill.

Having ownership within government or with councils creates the ability to ensure this, noting that instances are likely to be very few. Certainly, in the case that there are issues with a lease over land used for the cemetery, having a public landowner affords greater protection for the regulator to have recourse to that entity even in the event that the lessee cemetery manager becomes unable to fulfil their obligations. Are you commenting on the next one?

**Ms Forrest** - I have revoked that and the one you have just answered, if you have completed that.

**Mrs HISCUTT** - I have completed that one.

**Ms Forrest** - Clause 95 is the regulation-making power; clause 95(2)(n) has a provision that allows for regulation making to -

provide for the keeping of records of any matter to which this Act applies and where and when the records are to be available to the public ...

Regulations could easily be adopted under that clause to facilitate the certificate of compliance to be provided to the landowner in the event of a sale. All the other matters relating to the details of leases could be put in the regulations under the power that already exists within the bill.

**Mrs HISCUTT** - While the team is looking for an answer for that, I will continue with the list of problems they found during their lunchbreak.

Clause 50(1)(a) is the requirement to have obtained a certificate of compliance. Clause 58 contains an obligation to issue cemetery disclosure documents before entering into a contract of sale. The implication is the lease may end, but there is no trigger for a certificate of compliance application process, which allows the regulator to assess compliance and request risks be addressed before the cemetery manager finishes in the role and before a new cemetery manager commences.

The certificate of compliance process also provides information to the new cemetery manager and any risks or noncompliance. If leasing is allowed, a clause requiring orders before the end of the lease term and a penalty for abandoning the lease before an audit has been undertaken, and compliance issues, are addressed as requested by the regulator. These should be considered.

The risk is that even if a penalty is applied, if records are lost or there are compliance issues, there is a significant issue for the landowner. These changes reflect amendments identified to date arising from the proposed amendment to clause 32(4). If the amendment were to be passed, the bill would need to be reviewed in detail by the Department of Premier and Cabinet, the Local Government Division and the Office of Parliamentary Counsel, given the entire bill is based on the principle that cemetery management and ownership should not be separated.

This was the work done during the lunchbreak. I have an answer coming.

**Ms Forrest** - I will address that through the Deputy Chair.

Again, I take the Leader to clause 95(2)(n). The dates reiterate the comment I made in response to the previous comment which provides that this is a regulation-making power to -

provide for the keeping of records of any matter to which this Act applies and where and when the records are to be available to the public ...

Again, the certificate of compliance referred to can easily be dealt with under the regulations under the existing power.

**Madam DEPUTY CHAIR** - Leader, I advise that the member for Murchison has had her three speaks. It is very difficult because the mover of the amendment will not be able to get up again when the Leader can continue. I advised the member for Murchison earlier that it was all right to ask questions through the Chair, so she has ample opportunity to ask some questions without any further speaks.

**Mrs HISCUTT** - We think we understand what you are saying, so the regulations set out that they can provide for the keeping of records. This is different to the process for the certificate of

compliance. The regulations cannot impose on someone an obligation not provided for in the bill. The bill would need to be amended to ensure a leaseholder, as a cemetery manager, would be required to seek a certificate of compliance.

Honourable members, the crux of the matter is during the lunchbreak the team picked up the best they can of what they see as risks associated with this amendment. Now there may be more, there may not be any more - I do not know. The point is that just in the hour they had, they found five potential risks. If the amendments were to be passed, the bill would need to be reviewed in detail. The whole idea of the bill is based on the principle that cemetery managers and ownerships should not be separated. Honourable members, I ask you to consider seriously this information discovered during the lunchbreak. The officers did a fair bit of work in their lunchbreak to identify these risks. This amendment is not designed for this bill. I ask members to vote against it.

**Ms Forrest** - I do not think you actually answered the question about the leaseholder being required to seek a certificate of compliance. If that is an issue for people seeking a lease on private land, it must be an issue for people leasing land from councils or state land. That is already a deficiency, if that is in fact a deficiency.

The issue about the fines. Your comment was that there needs to be a penalty imposed on people who do not do the right thing. Clause 94, Infringement notice offences, gives a regulation-making power to prescribed infringement offences penalties payable under infringement notices, and prescribes different penalties for bodies corporate and individual. The regulation-making power for penalties is also there in the act or the bill.

**Mrs HISCUTT** - Can the member for Murchison clarify the last part of the question?

**Ms Forrest** - Leader, in your last comment, you did not make clear that there was a requirement for a leaseholder to see the certificate of compliance. That must apply to all leaseholders, whether on public or private land. If that is the case, it is already a problem.

**Mrs HISCUTT** - We will clarify that. Did the member have a question around penalties?

**Ms Forrest** - No, I made a statement dealing with your earlier comment; it was not a question.

**Mrs HISCUTT** - It is accurate there will be no certificate of compliance for crown or council land leased and proposed to be transferred to a new leaseholder. However, there is only one in the state, Millingtons, which is a large organisation and its compliance status is known to be strong. In considering the approval of future leases for public land, the approval for a prospective leaseholder would still take into account their knowledge of the compliance status of the cemetery. The regulator would give strong consideration to this factor. The regulator can also give direction under the bill and require audits. That could be done in lieu of a certificate of compliance to achieve the same end.

Honourable members, I still need to read -

**Ms Forrest** - What about the North West Environment Centre? Millingtons is not the only one on council land.

**Mrs HISCUTT** - I reiterate that over the lunchbreak, five risks were identified in five parts of the clause.

Members, I urge you not to vote in favour of the amendments.

**Mr GAFFNEY** - Madam Deputy Chair, this is a significant bill and clause 32 is pretty lineball at the moment. It is important because good cases have been put forward along with a case suggesting otherwise.

The potential for the amendment to be accepted will see the Government going back to the premise of whether this was supposed to be for state- or council-owned land. We have to go right back to the drawing board to see how this works.

Two people have put private burials forward as being a significant part of the Burial and Cremation Bill 2019 - society is evolving and people are becoming more interested in natural burials.

On one hand, if we accept the amendment, the government of the day will have to go back through all that to see what is going to happen. On the other hand, if we defeat the amendment and set the bill the way it stands, the whole idea of private burials is cut off.

Neither party will be happy with this, but I am going to put it out there anyway: if the bill were passed in its current form, the Government could undertake to immediately go back and look at the way burials on private ground could be a part of the Burial and Cremation Bill. Natural burials on private land are becoming more common; as it has been said, it is allowed in South Australia and the ACT and in other parts of the world.

**Ms Forrest** - They have made it pretty clear that they do not want to do that.

**Mr GAFFNEY** - That is the Government's call. If the amendment is accepted, it is going to have to go back to square one to do that anyway. This is an opportunity for the Government to think, 'Okay, we have a chance - we could make a commitment to look at natural burials on private land, and we should do that.' It is lineball at the moment.

**Mrs HISCUTT** - It is important to confirm that proponents of natural burials can have natural burials under the current legislation on private land, provided the private landowner is willing to be the cemetery manager and the proposal for the burial site gets through the necessary approvals - health, for example.

Natural burials are occurring now on both private and public land, as evidenced by the fact that at least one council - the Burnie City Council - has set aside a plot of land in its public cemetery for natural burials. The Government's concerns about the proposed amendments relate to the proposal that private land should be available for a lessee who wishes to manage a cemetery.

The desire to ensure that the landowner who has the freehold title is the cemetery manager stems from the commitment to reflect community support for increased protection of cemeteries and responsibilities of managers as well as legal considerations regarding trustee obligations and the ability to exercise effective controls. Again, this was considered at length in 2018. If the amendment is passed, the Government will need to reconsider the bill.

Again, I note that in the case of the constituents' wishes to have a natural burial ground on private land, they are not precluded, provided the landowner rather than themselves is willing to be

seen as the legally responsible cemetery manager. Any subsequent contracting out of maintaining the plot et cetera can still be done outside of the legislation.

**Mr GAFFNEY** - I appreciate the response from the Leader and advice on that point. I have a question here on behalf of a colleague who has already had his three speaks, and has on a much nicer tie than I. In regard to the risks tabulated over the lunchbreak, are the risks already there for current private landowners who are cemetery managers?

**Mrs HISCUTT** - No, because these risks are associated with what would happen if the amendment were to pass. Substantial changes to the bill would need to be made to attempt to mitigate some of the risks.

**The Committee divided -**

AYES 5

Ms Forrest  
Mr Gaffney  
Ms Lovell (Teller)  
Mr Valentine  
Mr Willie

NOES 7

Ms Armitage  
Mr Armstrong  
Mr Dean  
Mr Finch  
Mrs Hiscutt  
Ms Howlett (Teller)  
Ms Webb

PAIR

Ms Siejka

Ms Rattray

**Amendment negatived.**

**Clause 32 agreed to.**

**Schedules 1 and 2 agreed to and bill taken through the remainder of the Committee stage.**

**POISONS AMENDMENT BILL 2019 (No. 45)**

**Second Reading**

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

That the bill be now read the second time.

This bill amends the Poisons Act 1971 to deliver on the Government's commitment to ban the sale and display of ice pipes by retailers and wholesalers.

We know that crystal methamphetamine, or ice, is one of the most dangerous drug scourges to face Australia.

It is considered to be more potent, more dangerous and more addictive than other illegal drugs.

The National Drug Strategy Household Survey and the National Wastewater Drug Monitoring Program confirms while cannabis remains the most commonly used illicit drug in Tasmania, the misuse of methamphetamine is of great concern.

This is a very important issue in our community, which is why we have committed to strengthening Tasmania's response to the problems posed by all drugs in our society, with a particular focus on ice.

All Tasmanians deserve to live in safety and free from the harms of drugs and this bill is another step towards delivering on our commitment to protect our community.

We know the current law sends a mixed message where the drug is illegal, but the paraphernalia used to consume it has been available for purchase in some retailers with no specific powers to prevent it.

Ice pipes are pipes made of glass or other materials, and are commonly used for smoking ice, and other drugs such as crack cocaine.

Our commitment and this bill will fix this contradiction and will restrict access to this method by banning the sale of ice pipes through retail and wholesale stores and outlets.

Like many other jurisdictions, Tasmania has generic drug paraphernalia possession offences. However, currently only Tasmania and Western Australia do not have specific offences relating to restricting or prohibiting ice pipes in retail or wholesale settings.

These amendments will therefore better align our laws regarding illicit drugs and provide for quick and decisive action to limit the visibility of ice pipes to the general public.

This will serve to help reduce the uptake of illicit activities by people purchasing the pipes for the intent of smoking ice.

Banning the sale of ice pipes will also reinforce the very strong message to Tasmanians that the illegal use of ice is highly addictive, dangerous to health and will further discourage its use.

I will now turn to the specific provisions of the bill.

The key amendment is the introduction of an offence for anyone found to be selling an ice pipe in a shop or in connection with a shop.

Due to the broad definition of 'selling' in the principal act, the offence also captures sales by wholesale or retail stores, as well as the display and possession of ice pipes with the intent to sell.

The wide range of retail sales will mean these devices will no longer be able to be displayed or sold at market stalls, booths, vehicles, as well as traditional bricks-and-mortar shops.

The specific reference of sales 'in connection with a shop' has also been included, so that a person cannot escape the offence by displaying or selling ice pipes outside the business premises.

By making the display and sale of ice pipes illegal, they will not be out on display and readily available, which only serves to 'normalise' the devices as everyday retail items.

This will address the somewhat confusing message to the community - to young Tasmanians in particular - that while it is illegal to possess or smoke ice and other illicit substances, it is currently ok to display and sell equipment whose primary use is for that purpose.

The definition for ice pipes is based on the scope of similar offences from other jurisdictions.

The focus is on a device that is capable of being used for the inhalation of fumes from heating a controlled drug in a crystal or powder form.

This targets ice specifically, but also applies to other drugs that can be smoked in ice pipes, like crack cocaine.

The definitions of ice pipe and shop are broad enough to ensure effective enforcement of the provisions by police officers and inspectors, as appointed under the Poisons Act.

The scope of the definitions includes any additions or exclusions of particular types of shops or devices provided for in regulations.

This new offence will incur a maximum penalty of 100 penalty units - which currently equates to a maximum fine of \$16 800.

The high level of the penalty is in line with other jurisdictions and reflects the seriousness attributed to the offence of selling these devices.

The amendments also retain the power to issue on-the-spot infringement notices for offences. Infringement penalties will be prescribed in the regulations.

It is important to note the amendments include a defence.

That is, a defence applies if a person charged proves the ice pipe is designed primarily for a purpose other than administering a controlled drug.

In order to use the defence, it is up to the person charged with the offence to provide further evidence to show the primary design and use of the device is for another purpose.

However, it will not be enough for a retailer to simply claim by an oral or written disclaimer that an object meeting the definition of ice pipe is designed or intended for some other use.

The bill includes similar enforcement provisions for police officers and inspectors in line with existing powers under the act.

This includes powers relating to entry to a shop, inspection and seizure of devices by police officers and inspectors.

There is also a requirement for the return of anything seized, if the reason for its seizure no longer exists. This ensures seized things are returned if the police officer or inspector determines they are not ice pipes.

In addition, where a person is found guilty of the offence, or taken to have been convicted after issue of an infringement notice, there is power for the court or secretary of the department to direct the ice pipes are destroyed.

In addition to the new offence relating to ice pipes, the bill increases the penalty for the current drug paraphernalia possession offence in the act, from 20 penalty units to 50 penalty units.

This increase will address a current inconsistency and bring the penalty into line with the similar offence under the Misuse of Drugs Act 2001.

This bill delivers on an important election commitment by this Government to tackle the serious and insidious public health impacts caused by the presence of ice and crystal methamphetamine in our community.

We know the significant harm and costs this drug has on individuals, their families and the broader Tasmanian community.

The introduction of this ban will restrict the very small number of unscrupulous retailers who currently display and sell these devices and go a long way to changing the views held by some that smoking methamphetamine is acceptable.

I commend the bill to the House.

[3.47 p.m.]

**Ms LOVELL** (Rumney) - Mr President, I will make a small contribution on this bill. As in the other place, we will be supporting the bill but I would like to put a couple of points on the record.

I understand this bill essentially closes a loophole and will affect a small number of retailers. It is important for people to understand that while currently it is illegal for a person to possess an ice pipe, as an example, for the purpose of using ice, it is not illegal for a shop holder to display these products for the purpose of sale. Under the current legislation, an ice pipe in a shop is not illegal, but as soon as somebody walks in and purchases that ice pipe for the purpose of taking ice, it becomes illegal. So it is a loophole that will affect only a small number of retailers.

The reality is that this is likely to have very little impact on ice use. This policy does nothing to address issues of addiction. It does not support people with a substance use problem with any form of rehabilitation, and that is what we should be focusing on.

I understand this was a government election commitment and we will not stand in the way of delivering on that commitment, but let us be honest and acknowledge that in terms of drug use and ice use, this bill is likely to have very little impact.

Drug and alcohol use is a health issue; substance abuse is a health issue and it should be treated as such. This is what we should focus on. There is a great deal more for the Government to be doing in this area by investing in drug and alcohol rehabilitation support services and



community-based services. We should be focusing on this as a health issue. We should not be focusing on ineffective policy changes that will, in reality, have very little impact on drug use.

We will support the bill, but we want to put on record that drug use is a health issue and should be treated as such.

[3.50 p.m.]

**Mr DEAN** (Windermere) - Mr President, ice is a real problem. It is an epidemic; it is out there everywhere. Some youngsters were advising me recently that you can get ice just about anywhere you want to go. If you go to a nightclub, ice is available. They were saying you used to be able to pick it up on a street corner,. It is becoming a little like weed, like marijuana. It really is something we have to try to put a stop to.

We should not make it easy for people to take drugs we know are dangerous. Ice fits right into that category. If we continue to permit the display and sale of ice pipes, it could be seen that we condone the activity of ingesting ice.

We banned dope-smoking devices - bongs - a long time ago, well and truly before I entered this place. At one stage, bongs were all over the place. There were not too many people who did not have one. I had a souvenir one myself. I put concrete in it to make sure it could not be used. It was a head of Malcolm Fraser. Not many of them around. It is still about but it is concreted in -

**Mr Valentine** - As long as you are not trying to cement the habit.

**Mr DEAN** - Ice is commonly blamed now as the cause of much violent crime. Only last week, we saw a family feared their son's death. That was in *The Examiner*. When you read through that story, it involves ice.

A number of people were involved in ripping off a person who was selling ice, and they, too, were involved in ice. It just goes on and on. The front page of the same paper showed a photograph of police and the ice they had recovered in Launceston a couple of days before.

The front page headline of that *Examiner* read 'Drugs Seized'; the article said that police took possession of -

About 12.5 ounces of ice, five ounces of speed, hundreds of MDMA tablets, ammunition, \$175,000 in cash and more than \$200,000 in property ...

If you look at a lot of this, it is around ice, the sales of ice, the money that becomes involved with ice, and so on. It just goes on and on.

Outlawing the sale of these so-called ice pipes is one way of saying that we are serious about our endeavours to get some control over this scourge. To leave them out in the community sends a very poor message.

This bill also covers an increase in penalty for drug paraphernalia. It goes from 20 penalty points to 50 penalty points. I think that is a good point.

I thank department members for the briefing we had last week. I raised my concern about this bill possibly not being proclaimed until early next year. I do not think many tobacconists or places

sell these ice pipes. One could not blame them for it, but they will try to sell off the ice pipes they have. Many people, unfortunately, will get them for the wrong purposes and the wrong reasons. They will run that risk.

I raise that specifically to indicate we need to do something about it. Should not we bring in this bill sooner, rather than leave it until later next year?

The member for Mersey raised a good point during that briefing in regard to a buyback. He might want to explain that further. I do not know.

**Mr Gaffney** - No, I accepted the response from the members that it would not be a good idea. Therefore, I am not going to raise that.

**Mr DEAN** - Right. I thought it was a good point you raised because it would get them off the shelf. It would get them out of the hands of those who want them and are ingesting ice.

**Mr Gaffney** - Just on that, I think the reason given was the Government buying back a product it was going to consider illegal would have ramifications. That was considered, but the ramifications of that were that it would be buying back a product it was going to make illegal.

**Mr DEAN** - I thank you for that. I accept that as probably being the reason that should not happen. It concerns me that the paraphernalia will be out there for two to three months still, and that the ice pipes will be sold and will be sought after by some.

I have been asked by a member of the public who is well known to the members for Launceston and Rosevears, in relation to a tragic situation involving his son and ice. I will not mention his name, albeit he asked me to, because it is before the courts and I do not think it is appropriate I use the name. I will paraphrase this so that I can appease him in wanting to bring this matter to the attention of the Government, the departments and everybody else.

His son is a 20-year-old young lad who was a good and hard worker. Sadly, a few weeks ago he was retrenched from his job. There was not sufficient work there for him. Immediately thereafter, he started to get on the wrong side of things and - I can use the father's words here - 'Then he was introduced to the dreaded ice, and that was the end of everything he achieved.'

In the letter he goes on to tell me how the last weeks have been sheer hell: abuse, abuse and more abuse, stealing to support the habit, fights, slyness, more stealing, a danger to society and himself. The father sought help from me; he sought help from the Treasurer as well. He sought help from a number of other people to try to get his son out of and away from ice.

He then goes on to say, 'This is not the boy I raised. The devil took over his mind - ice.'

Last week, on Thursday or thereabouts, the lad went off his trolley and stole a car, high on ice, and drove around like a maniac to such an extent that they had to close a primary school in the area. That is how he drove.

He was arrested and he played up on police. However, against the wishes of the father, he was bailed the next morning, and you know what happened from there - more ice, more drugs. Within hours of that, he went and committed an armed robbery, stole a car, burnt the car out and did a lot of other things - a sad situation. What the father is saying is that we have to help these kids. We

have to do something about it. He was a good kid, doing everything right and he was introduced to, and is now involved with, ice.

I raise that story on behalf of his father who is at his wit's end - he is a good man, a great man. He has two other sons, I might add, who are model kids, working hard and doing a great job. It really is absolutely cruel.

**Mr Armstrong** - As was that one.

**Mr DEAN** - As was that one. It really is a sad situation.

Mr President, having said that, I certainly support the legislation and support removing these devices from the shelves, from public display and from being able to be purchased by other people for the wrong purposes. However, I am of the same view as the member for Rumney - we need to do more in relation to ice addiction and the removal of these drugs. The police are working hard and really cannot keep up with it. If you were to take drugs off the street, police work would probably be halved. Ice use is epidemic and we have to do more about it.

I support the bill.

[4.00 p.m.]

**Ms ARMITAGE** (Launceston) - Mr President, like the other members who have spoken, I find it very difficult to believe this paraphernalia is available for sale. The fact you can have something legally available for sale on shelves and then the minute you buy it, you can get picked up by the police for having a smoking implement - I cannot believe something like that could be for sale.

I have mentioned I am an independent person with the police and I help deal with young people who have offended. On occasions I have dealt with young offenders who are in police custody for a variety of reasons - often, as the member for Windermere was saying, for having stolen a car, which is probably the most common thing they do. When I ask them whether they work, they say no. When you ask them how they get their money, they say they sell drugs.

It is so commonplace to some of these young people. My understanding is ice is one of the cheaper drugs to buy, and it is cheaper to get you addicted. Once you are addicted, you have to have it. They make it cheap because they know if you have ice once, you are hooked because it is very addictive.

It really is a no-brainer. Ice pipes should not be for sale. It is normalising drugs. If someone sees you can buy an ice pipe, it makes it seem all right to smoke ice, because why else would you be able to buy one of these pipes in certain shops?

I do not have a lot to say. Most has been covered. I agree totally with the member for Windermere - it is a dreadful thing.

We all know people who have basically lost the life they knew because of it. It was not the one the member for Windermere was speaking about, but I saw on the court list last week a young chap who went to school with my boys at St Patrick's College. There were a variety of different crimes and I am led to believe most of them started because of ice. His mother became ill; he took ice, lost a job and all of a sudden he is on a downward spiral. With something like ice, it is very hard to get out of that spiral. I am sure it is an addiction that is really hard to get out of without a

lot of help. Anything we can do to stop that spiral and to stop people thinking it is okay to try it once and, 'Gosh, you can buy the pipes so it cannot be that bad'.

This is a no-brainer. I thank the Government for bringing it forward. It should probably have been brought forward a lot earlier when it was known these things were for sale in stores but at least it is there now.

I support it the bill.

[4.03 p.m.]

**Mr VALENTINE** (Hobart) - Mr President, I too think this legislation will make little impact. Quite clearly, if these are taken off the shelf, they will manufacture something to put in its place.

It is a gesture. I do not have a problem with seeing the ice pipes disappear in the sense it is not encouraging people to use ice.

With the increase in the penalty units, knowing they are simply going to go and find some other way around this, the 50 penalty units will simply impact the more vulnerable people who are unable to pay anyway. That is my difficulty with increasing the penalty. There are already people who do not have enough money to support their habit and they are going to be in a pretty tight circumstance anyway. They are going to steal to support their drug habit and all those sorts of things. Simply putting up the penalty units because you have an ice pipe is going to make that even worse. You could say they had better learn, but when somebody is addicted, they are not going to think about that.

I am not going to vote against this because I think it is a way of sending a message. But I think increasing penalty units is not necessarily a positive thing. It will not achieve a heck of a lot in terms of really dealing with drug addiction as a health issue, rather than trying to put it in here as a crime. I know this bill is not doing that, but at the end of the day these are health issues in our community that need to be addressed. We need to think more strategically about this.

**Bill read the second time.**

## **POISONS AMENDMENT BILL 2019 (No. 45)**

### **In Committee**

**Madam CHAIR** - Just before we start, even though there are a number of subclauses to consider, we will call the whole clause because no questions were asked during the second reading debate. If members have questions, they will have to try to combine them.

**Clauses 1 to 4 agreed to.**

**Clause 5 -**

Part VI, Division 2B inserted

**Proposed section 86F, Defence**

**Mr DEAN** - Madam Chair, I refer to clause 5, proposed section 86F, Defence -

In proceedings in respect of an offence against section 86E, it is a defence for the person charged to prove that the ice pipe to which the proceedings relate is designed primarily to be used for a purpose other than administering a controlled drug.

Whatever they do with these things, I think it is pretty clear. I wonder why we would have an out here. The bill relates to police officers entering places, going into shops and confiscating them.

It is not as though they can see any residue in these pipes because they would be new. To me, that does not appear to be clear. It would be very easy for a shop owner to say the device they have is not an ice pipe, it is some other sort of pipe - it looks like one, but it is not.

I need some clarity. Is there so much difference in these ice pipes and something else that might look like one? What is the position with them? I must admit I do not know really what I am talking about when I talk about ice pipes. It just seems to me to be a Get Out of Jail Free card. When I say get out of jail, I mean that colloquially. I have some understanding of the reasons for it being there.

**Madam CHAIR** - Do you want to ask any other questions on that clause? We will go to that too, there are several parts to it.

#### **Proposed section 86G, Seizure of ice pipes, &c.**

**Mr DEAN** - I have another question; it is on proposed section 86G, Seizure of ice pipes, &c., and relates to police at any reasonable time -

... an inspector or a police officer may, at any reasonable time, without a warrant enter a shop if the inspector or police officer believes, on reasonable grounds, that the shop is being used for or in connection with the sale of an ice pipe.

Does that mean out of ordinary hours? If the shop is closed - if it is, say, 8.00 or 9.00 p.m., can a police officer demand the shop be opened so that they can enter the shop for the purposes of searching for paraphernalia?

**Mrs HISCUTT** - In answer to your first question, on proposed section 86F, the amendments include a defence; that is, the defence applies if the person charged proves the ice pipe is designed primarily for a purpose other than administering a controlled drug. However, the defence does not allow a retailer to simply claim that an object meeting the definition of ice pipe is designed for some other reason so further evidence would be required.

**Mr Dean** - The onus of proof is on them, obviously.

**Mrs HISCUTT** - This models the Queensland approach as a procedural safeguard. While it is unlikely, an overzealous inspector may overreach and the retailer has an opportunity to demonstrate a legitimate purpose. It is there as a safeguard, just in case - you never know.

The answer to your other question, about proposed section 86G, about reasonable hours, is that we are talking about a shop, not a meth lab or anything like that. Reasonable hours would be if a shop is suspected of selling ice pipes, the police would go there during reasonable hours, possibly in opening hours. They may get there at 5.30 p.m. at closing time just so that nothing can happen, but I imagine it is not something that could be teed up with a phone call, otherwise it would alert a

retailer that they have these prohibited items which they are selling in their shop. Realistically, it is a shop, not a meth lab, so the reasonable hours would be more than likely during, but not limited to, opening hours.

**Mr VALENTINE** - I just want some clarity around proposed section 86G(4). When I was talking earlier about penalty units, and I was considering it would be an individual who might be using ice: Can you clarify whether that is in fact any individual who may or may not be running a shop? Is it somebody in the street who might be an ice addict who has one in their pocket, someone who the police can pull up and request the article from?

**Mrs HISCUTT** - If the member were to follow the process back in the bill, it is proposed section 86G, Seizure of ice pipes, &c., which goes back to the purpose of ascertaining whether there is or has been a failure to comply with proposed section 86E; if you move back to proposed section 86E, it says 'Offence to sell ice pipes', so it is the person who is selling the ice pipes. It says -

A person must not sell an ice pipe -

- (a) in a shop; or
- (b) in connection with a shop.

**Mr Valentine** - It is definitely a shop, not an individual?

**Mrs HISCUTT** - That is correct. You just have to follow it back through the clauses.

**Mr Valentine** - So if they happened to have three of them in their pocket, you would try to move them on.

**Mrs HISCUTT** - This is a shop.

**Mr GAFFNEY** - I am interested in the wording of proposed section 86G(4)(b), which reads 'without reasonable cause, fail to produce, or conceal', while in the 1971 act they use the word 'excuse'. It is exactly the same as the 1971 Poisons Act. Is there a reason and an explanation of why they use the different term in this amendment bill, compared to the principal act?

**Mrs HISCUTT** - I am advised it is OPC's current drafting approach.

**Mr GAFFNEY** - Does that mean once OPC has decided this is different, it would go back to the principal act and make those changes to make it consistent? A lawyer might say there is a difference between an excuse and a cause, and in this part of act you have the word excuse and the amendment legislation the word cause. What happens for consistency within the legislation?

**Mrs HISCUTT** - I am informed this is a self-contained area, one division within the legislation. There will be a review in the future so it will all be looked at. We are assured this is self-contained in this one division.

### **Proposed section 86H, Retention, return or destruction of seized ice pipes**

**Mr VALENTINE** - I assume proposed section 86H(1) basically provides an opportunity to return something that may indeed end up not being considered an ice pipe.

**Mrs HISCUTT** - Yes, I can inform the member that statement is true.

**Mr DEAN** - On my second point on proposed section 86G, where police officers without a warrant, at any reasonable time, can enter a shop anytime they want to if it is open. Why is that in the bill? It could well be that somebody is in those premises at 9 or 11 o'clock at night or midnight, cleaning or packing the shelves.

It could be that police have evidence that shop owner is keeping ice pipes for sale. The way the bill is written, they would have the right to enter at any reasonable time. I would prefer to see it written that the police officer has 'the right at any time where it is believed activities are occurring or pipes are being kept for sale' et cetera. To restrict it to at any reasonable time without a warrant really raises some issues.

**Mrs HISCUTT** - This has been modelled on current language throughout the bill. Currently section 90 of the original 1971 talks about the powers of inspectors in respect of licensed premises and so on. For example, section 90(1) says -

- (1) For the purpose of ascertaining whether there is or has been a contravention of or a failure to comply with this Act, an inspector may, at any reasonable time, without a warrant, enter premises -

It then describes (a), (b), (c), (d) and so on. It is consistent with the primary act.

**Clause 5 agreed to.**

**Clauses 6 and 7 agreed to and bill taken through the remainder of the Committee stage.**

## **PUBLIC SECTOR SUPERANNUATION REFORM AMENDMENT BILL 2019 (No. 41)**

### **Second Reading**

[4.22. 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.

In 2013, a strategic review was undertaken into the former Retirement Benefits Fund to identify the most appropriate means to provide superannuation services to public sector employees and members of the RBF in the future.

The reform of public sector superannuation had a number of key objectives, including to -

- protect the interests of members;
- minimise the financial risk to the government; and

- ensure the efficient and effective provision of government superannuation services in the future.

In June 2016, the Public Sector Superannuation Reform Act received royal assent and this legislation -

- provided for a new default fund to be selected for Tasmanian public sector employees;
- provided for the transfer of Tasmanian Accumulation Scheme accounts from RBF to Tasplan;
- created a superannuation commission of up to three persons; and
- provided for the ongoing member administration and investment management services of the defined benefit schemes by the Superannuation Commission.

In April 2017, the RBF's Tasmanian Accumulation Scheme accounts were transferred to Tasplan, with administration of the defined benefit schemes being managed by the Superannuation Commission.

These reforms have proven to be successful with positive feedback from members and employee associations.

There are currently five defined benefit sub-funds. These are -

- the Retirement Benefits Fund Defined Benefit (Contributory) Scheme
- the State Fire Service Superannuation Scheme
- the Tasmanian Ambulance Service Superannuation Scheme
- the Parliamentary Retiring Benefits Fund
- the Parliamentary Superannuation Fund.

Since the commencement of the new framework, a number of matters have been identified to improve the efficiency and effectiveness of the new arrangements. It is therefore proposed to amend the Public Sector Superannuation Reform Act to more effectively support the administration arrangements for public sector superannuation in Tasmania.

Currently, the Public Sector Superannuation Reform Act provides the Superannuation Commission must comply with the Heads of Government Agreement in relation to superannuation. The effect of this drafting is to place a higher obligation on the commission to comply with the principles of the agreement than the obligations of the state as a party to the agreement. This includes reporting and compliance responsibilities to Australian Prudential Regulation Authority - APRA - which are not considered to be relevant in the context of a government guaranteed defined benefit scheme.

It is noted the states and territories are required to conform with the principles of the Heads of Government Agreement to the best of their endeavours and ensure members' accrued benefits in exempt public sector superannuation schemes are protected.

It is therefore proposed to amend the functions and powers of the Superannuation Commission to provide the commission must have regard to the Heads of Government Agreement, rather than



adhere to strict compliance, which is the intent of the agreement in respect of exempt public sector superannuation schemes.

It is further proposed to amend the Public Sector Superannuation Reform Act to facilitate the closure of the Tasmanian Government Insurance Office Reserve Account. The TGIO Reserve Account was established in 1993 following the sale of TGIO.

Currently, there is only one active former TGIO member with a Compulsory Preservation Account and 12 members with life pensions.

As there is only one active member, the cost of maintaining the account in terms of administration fees and charges outweighs any benefit from having separate accounts. Further, as the legislation requires the Government to guarantee the payment of pensions, there is no reason that TGIO pensions could not be managed on the same basis as other RBF pensions.

It is therefore proposed to amend the Public Sector Superannuation Reform Act to facilitate the closure of the TGIO Reserve Account and to provide for the balance of the reserve account to be returned to the Public Account. The employer share of benefits would be met by the Government on an emerging cost basis, as with the RBF defined benefit scheme.

This change will have no impact on the remaining members' benefits and entitlements.

The Public Sector Superannuation Reform Act currently provides that the Superannuation Commission must ensure proper accounts and records of the transactions and affairs of the commission are kept, as well as any other records that sufficiently explain the financial operations and position of the commission.

It was intended that, as part of the implementation of the structural reforms, Treasury would undertake the accounting functions on behalf of the Superannuation Commission, including the preparation of financial statements in accordance with the Audit Act 2008 as the 'accountable authority' for the commission. This bill provides that the Secretary of the Department of Treasury and Finance is the accountable authority of the Superannuation Commission for the purposes of financial reporting pursuant to section 14 of the Audit Act 2008.

Following the commencement of the new arrangements, a number of issues have arisen with some of the definitions in the Public Sector Superannuation Reform Act.

Amendment to the definitions of 'agency' and 'agency manager' is required to ensure that the definitions capture Government Business Enterprises within the meaning of the Government Business Enterprises Act 1995.

In addition, the definition of 'salary' is required to be amended to correct a drafting anomaly to ensure it includes only 'payments made in lieu of notice on the termination of employment' rather than all payments made on the termination of employment. This will ensure consistency with ATO Ruling SGR/2009/2 that specifies termination payments in lieu of notice are included as ordinary time earnings.

The current definition of salary is broader than intended and encompasses all other payments that may be payable on the termination of employment, such as employment termination payments, which are specifically excluded from the meaning of ordinary time earnings under the ATO ruling. This amendment will be required to have effect retrospectively from 31 March 2016.

It is also proposed to incorporate the Tasmanian Ambulance Service Superannuation Scheme Trust Deed and the State Fire Commission Superannuation Scheme Trust Deed in the Public Sector Superannuation Reform Regulations.

The trust deeds, as currently drafted, duplicate provisions prescribed in the act and regulations, and contain a number of drafting errors and anomalies. In addition, each time there is an amendment to the regulations, the trust deeds also require amendment to ensure they remain consistent.

As part of the amendments to incorporate the trust deeds in the regulations, it is proposed to include a provision to provide regulations must not be made unless the relevant unions have been consulted. This will include consultation on any amendment, revocation or substitution of the provisions. This is consistent with the current requirement regarding amendment to the trust deeds.

No changes are proposed to the benefits and entitlements under either of these schemes.

In addition to the amendments to the Public Sector Superannuation Reform Act, the Public Sector Superannuation Reform Regulations will also be amended to -

- amend the definition of salary to exclude allowances paid in lieu of a motor vehicle, with the effect that such an allowance would not be taken into account in determining future superannuation benefits;
- include terminal illness as a condition of early release, with the Superannuation Commission to determine whether a contributor is suffering from a terminal medical condition in line with the circumstances prescribed in the Superannuation Industry (Supervision) Regulations 1994 of the Australian Government;
- allow the Superannuation Commission to pay an additional lump sum benefit to a contributor who has retired on the grounds of total and permanent incapacity, consistent with the existing provisions for the early release of benefits on compassionate grounds;
- clarify that the Superannuation Commission must periodically determine whether an interim invalidity pensioner, who has not attained his or her preservation age, is eligible to continue to receive the whole or part of his or her interim invalidity benefit;
- allow the Superannuation Commission to reduce or suspend an interim invalidity pension in certain circumstances. This amendment will give the Superannuation Commission the discretion to reduce or suspend an interim invalidity pension where an invalidity pensioner is engaged in any business or occupation on his or her own account or is undertaking gainful employment, as well as in the situation where the pensioner has recovered from his or her bodily infirmity, physical incapacity or mental illness, so as to be able to undertake gainful employment;
- introduce a new 'interim surviving partner pension' to allow a surviving partner of a pensioner to be paid an interim pension immediately following the death of the member-partner, where the member-partner had a reversionary life pension;
- provide greater clarity to the Superannuation Commission and scheme members in the determination of surviving partners, by amending the test for the determination of surviving

- partner to allow the commission to determine a person to be a surviving partner in the case where a spouse of a fund member is not living with the fund member due to medical or other care reasons;
- ensure that the Superannuation Commission cannot allow a person to become a contributor to the defined benefit schemes through claiming lost rights by extending the operation of subregulation 101(3), which prevents the commission from enabling a person who is not a State Service employee from becoming a contributor, to include current State Service employees;
  - allow the Superannuation Commission to deduct, from a pension payable under the regulations, bank fees associated with the payment of that pension to an overseas bank account, as well as other associated fees and charges as determined by the commission. This will ensure that the higher costs associated with the payment of pensions to overseas bank accounts, as well as any other special arrangements as elected by a member, can be recovered from the pension paid to that member, rather than being paid from the assets of the fund; and
  - incorporate the relevant provisions of the trust deeds for the Tasmanian Ambulance and State Fire Commission Superannuation schemes. It is not proposed to change any of the benefit entitlements or the design of either of the schemes.

An extensive process of consultation has been undertaken with all relevant stakeholders, including unions and employee associations. Stakeholder comments are supportive of the bill.

I commend this bill to the House.

[4.37 p.m.]

**Ms FORREST** (Murchison) - Mr President, I think the second reading speech is longer than the bill. Interestingly, the reason for that is we have a full set of regulations in the second reading speech because that is what is the guts of it in many respects. It is really helpful to have a really clear outline of what is going to be in the regulations that sit below this bill. We often ask for this information. It is like pulling teeth trying to get it, but here it is, in the second reading speech.

I am not sure who made the decision to do it but well done to whoever did. It gives us a clear indication of where it was going.

**Mrs Hiscutt** - Treasury is very thorough.

**Ms FORREST** - Yes. This bill, in many respects, is a tidy up following a process of review. I will not go back over all the history the Leader and the Deputy Leader provided in their contributions. Many of us went through the whole review process where the determination was made to move the Tasmanian Accumulation Scheme members from the RBF to Tasplan and the establishment of the Superannuation Commission.

It was always my understanding during the debate on the legislation at the time that Treasury would be the engine room to provide the financial support, the financial reporting and all the other support that goes with that, and the commission would operate and manage the scheme with the support of Treasury.

As is the case in this place, sometimes when you bring in legislation you think it does what it is supposed to do, but it does not. What a surprise. We passed this legislation through this place not that long ago.

**Mr Valentine** - The question is: did we do our homework?

**Ms FORREST** - We did. I think it was debated and passed in 2016. That was my understanding and it was Treasury's understanding because we were informed in the briefing and again the speech says that Treasury undertook all the financial reporting requirements. That is what I understood was to be the case and obviously they did too, but the act was not clear in that and it requires some administrative amendments to clarify that and some definitions.

There is nothing unusual about coming back to this place to tweak legislation when it does not quite work or things have been overlooked, or there have been unintended consequences that see things not working quite as you would expect.

The interesting thing is, the engine room of this was working as was intended, even though the legislation was not clear in that, so it is important to clarify that and make sure the Department of Treasury and Finance is responsible for the areas it needs to be responsible for, as was the intention.

I found the paragraph in the second reading speech -

It was intended that, as part of the implementation of the structural reforms, Treasury would undertake the accounting functions on behalf of the Superannuation Commission, including the preparation of financial statements in accordance with the Audit Act 2008 as the 'accountable authority' for the commission.

That is what they did. That is what we understood they were going to do, but that is not what the act said, so we are addressing those matters.

The other measures included in this bill around the closing of the TGIO account make sense in practical terms and particularly in administrative cost terms. I do not have any issues with that, provided those benefits are maintained, and we have been assured they will be maintained for that one member who will be impacted by that change.

I note the requirement to consult the relevant unions with regard to the number of schemes that fall under this legislation - the Tasmania Fire Service, Tasmania Ambulance Service - I am not sure how much we will get if we stay in the Parliamentary Retirement Benefits Fund and Parliamentary Superannuation Fund, but certainly the Tasmania Ambulance Service and Tasmania Fire Service. The member for Windermere raised the issue with Tasmania Police as well. That is appropriate.

The Leader said that the amendment is to incorporate the trustees in the regulations - it is in that as part of it. It is proposed to include a provision to provide that regulations must not be made unless the relevant unions have been consulted, and this will include consultation on any amendments, revocation or substitution of the provisions.

The current regulations were made in 2017. This will be, as I understand it, an amendment to the current regulations. They will come up for their 10-year automatic repeal in 2027, and I assume that means substitution of the provisions. I am just trying to clarify that the full review has to happen after 10 years, which will fall due in 2026, because you have to have it done unless you come back to us begging for an extension. We are seeing a lot less of that in recent years. In fact,

I do not recall one last year so the departments in this area have their acts together after us banging on about it for a number of years and having bills with 20 or 25 repeal of regulation postponement requests.

I am clarifying that in 2026, when this is up for review, that will also be the case - that there will be that consultation, not just at this time. That is quite clear; I assume substitution means that, but I would like the Leader to clarify that is the case with the remaking of regulations, which is really what it is called rather than substitution when you remake the regulations.

Overall, I am happy to support this legislation. It underwent a more thorough debate at a previous time in terms of the original intent and this is really a tidy up. It is good to see the detail of what is to be in the regulations contained in the second reading speech because it gives us a lot more certainty and it is there on the public record now for those who are waiting for the regulations, which is, after all, the rubber on the road and the real direct impact on people in how this applies to individuals. I support the legislation.

[4.45 p.m.]

**Mr VALENTINE** (Hobart) - Mr President, I have been told there is nothing in this bill that should affect me. During briefings I asked whether there would be any conflict of interest. I do not believe there is, over and above any other normal person who might work or has worked for the public service in the past. I have a family member who does, so to be sure I am going to absent myself from the Chamber and not vote on this.

[4.45 p.m.]

**Mr DEAN** (Windermere) - Mr President, I appreciate the briefing this morning, where a number of issues were covered. I thank members of the department for that. I am pleased to see this bill come forward. Much work has been done in this area over a long time. The member for Murchison is right - the attention here is really on the regulations. I will comment on that in a moment.

I thank the Treasury and RBF members as well who have worked closely with the Retired Police Association. As mentioned this morning, in particular Mr Syd McClymont, who was a previous and well-recognised commandeer of police, dedicated to the job and a decorated police officer. He has put an enormous amount of work in to try to get things changed within the bill and also in the regulations. There has been a great emphasis on that.

I asked when it is anticipated the regulations will be done. I understand this legislation will not be proclaimed until the regulations have been completed or are in place. It would be interesting to know when they are coming forward. I was very pleased to hear this morning that close contact will be kept with the Retired Police Association because of its interest in this and because of its members who now, sadly and unfortunately, are having to access superannuation and pensions with partners passing on.

Under the regulations, as referred to in the second reading speech, it is pleasing to see that attention will be given to an interim surviving partner pension. That has been a really sore point for a long time. I know of two cases, unfortunately, where police officers have passed on and their wives were then trying to access money to exist on following the death of their partners. They have had the run-around for a very long time. It went on for months and months, probably even years. It was a very sad situation. In fact one wife had a mental breakdown as a result of the run-around she had been given, having to prove, after having lived with her husband for over 50 years, by

affidavits and declarations and goodness knows what else that she was the person's partner and they were living together. It is just beyond me.

In one instance the wife was told to go to Centrelink and get some money. That is exactly what she was told - 'Go to Centrelink in the meantime and get some money. When your pension comes through, you will then have to repay Centrelink the money you got from them.' An atrocious situation, absolutely unbelievable.

Another partner did not have a mental breakdown, but she certainly suffered a lot of trauma. She was in a position where she had some savings and was able to exist while the pension was sorted out.

I am very pleased the regulations will cover that. It is an important part of regulations. The Retired Police Association of Tasmania, and Mr Syd McClymont in particular, have done a tremendous job. I thank the Treasury officers for their eagerness and for speaking with Mr Syd McClymont and the RPA. I thank them very much for that and for what they are doing. They are going to keep everyone up to date with what is happening in the area.

That is really all I wanted to say on this bill. It rectifies a number of issues and finalises a couple of others that needed to be done. I look forward to seeing the regulations when they come out. I will be supporting the bill.

[4.51 p.m.]

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, there were only a couple of questions.

The existing regulations are being amended. They will be subject to their 10-yearly review, as we are aware. The question was the estimated time for the delivery of the regulations. We are only talking months. It depends how long it takes OPC to draft the regulations, how long the consultations with the unions last and whether any amendments from the unions are accepted by the Government. We are not talking years; we are talking a matter of months.

**Ms Forrest** - The full review, the remaking -

**Mrs HISCUTT** - It will be subject to the 10-year review in 2026. The review will commence in 2025.

**Ms Forrest** - It will involve all the union consultation?

**Mrs HISCUTT** - Yes, of course it will.

**Bill read the second time.**

## **PUBLIC SECTOR SUPERANNUATION REFORM AMENDMENT BILL 2019 (No. 41)**

**In Committee**

**Clause 1 -**  
Short title -

**Mrs HISCUTT** - Madam Chair, I take this opportunity to thank my deputy for taking over in my hour of coughing need.

**Clause 1 agreed to.**

**Clauses 2 to 21 agreed to and bill taken through the remainder of the Committee stage.**

## **ADJOURNMENT**

[4.56 p.m.]

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

That the Council at its rising adjourns until 11 a.m. Thursday 28 November 2019.

I remind members of our briefing tomorrow at 9.00 a.m., the driver licence face matching briefing, followed by the MARPOL briefing at 10.00 a.m.

**Motion agreed to.**

**The Council adjourned at 4.57 p.m.**