

Thursday 15 August 2019

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

RECOGNITION OF VISITORS

[11.05 a.m.]

Mr PRESIDENT - Honourable members, I welcome students from Holy Rosary School in Claremont. That is in the Division of Derwent and I happen to know your member for Derwent is a fairly decent sort of representative any time you need to make yourself known. I have been to a few of your prize nights and really enjoyed it.

On behalf of all members I welcome you to the Legislative Council and trust you will enjoy your time. If, like any other school students, you have any questions about the processes of parliament, members of the Legislative Council are always very keen to come along and explain them to you.

Welcome here today.

Members - Hear, hear.

FOREST PRACTICES AMENDMENT BILL 2018 (No. 61)

Third Reading

Bill read the third time.

SUSPENSION OF SITTING

[11.07 a.m.]

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

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

This is for the purpose of continuing our briefings.

Sitting suspended from 11.07 a.m. to 11.35 a.m.

GOVERNMENT PROCUREMENT REVIEW (INTERNATIONAL FREE TRADE AGREEMENTS) BILL 2019 (No. 23)

Second Reading

[11.35 a.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.

I am pleased to introduce the Government Procurement Review (International Free Trade Agreements) Bill 2019.

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership, also known as the TPP 11, came into force in Australia on 30 December 2018. TPP 11 requires that all states, territories and the Commonwealth introduce an independent review mechanism for government procurement. The bill ensures Tasmania's compliance with that requirement.

The bill designates the Tasmanian Supreme Court to receive and review local and international supplier complaints. It applies in relation to an alleged contravention of Tasmania's commitments under TPP 11 and other free trade agreements with which Tasmania complies.

The bill expects suppliers and procuring entities to make a genuine attempt to resolve a complaint. A supplier can only make an application to the Supreme Court for a declaration in respect of conduct that has, or would, contravene an enforceable procurement provision if they have first made a complaint to the procuring entity.

Once a complaint is received by the procuring entity, the procurement must be suspended while an investigation is undertaken, except where the entity has issued a certificate stating that it is not in the public interest to suspend the procurement. The bill preserves the supplier's ability to participate in procurements, while also recognising that some procurements are so important that government entities should be able to continue with the procurement while an investigation is being resolved.

The bill imposes strict time limitations for an aggrieved supplier to make an application to the Supreme Court. However, the Supreme Court can allow an extended period if it considers it is appropriate to do so.

When considering whether to issue a declaration, the Supreme Court may grant an interlocutory or interim injunction restraining the relevant agency from engaging, or proposing to engage, in conduct that is contravening, or would contravene, an enforceable procurement provision.

The Supreme Court is also to consider, where an application for compensation has been made, whether the issuing of a declaration or granting of an interlocutory or interim injunction would result in a significant delay to the procurement and whether compensation would be a more appropriate remedy.

An aggrieved supplier can also apply to the Supreme Court for an order for payment of compensation in conjunction with, or independently of, an application for a declaration. Compensation is limited to expenditure reasonably incurred by the supplier in preparing a tender for the procurement, costs incurred in making the complaint, together with any costs incurred in attempting to resolve the complaint.

For completed procurements where a contract has been awarded, compensation is the only available remedy. The contravention of a procurement obligation does not affect the validity of an awarded contract.

The bill ensures that complaints can be dealt with in a timely, effective and transparent manner.

The decision to vest jurisdiction on the Supreme Court was informed by consultation between the Solicitor-General and the Crown Solicitor. This approach is also in line with the New South Wales position.

The bill demonstrates the Government's commitment towards its obligations under free trade agreements. The bill also supports the Government's commitment to transparent and competitive procurement. It implements internationally agreed standards for the independent review of government procurements. Equally, it ensures that Tasmanian businesses have the opportunity to participate in procurements in nations participating in TPP 11.

I commend the bill to the House.

[11.40 a.m.]

Ms SIEJKA (Pembroke) - Mr President, as mentioned, it is Tasmania's responsibility to provide a dispute resolution mechanism for disputes that may arise under procurement decisions. It is necessary for Tasmania to provide that dispute resolution in order for the Commonwealth to be able to meet its obligations. For that reason, as mentioned in the other place, Labor supports this legislation.

I raised some concerns in briefings about the perceived or potential impact on Tasmanian businesses. I also wanted to know how the bill would intercept with Government policies and programs. I appreciated receiving additional information from the department in relation to this. The exemption explained certain policies and measures, such as for disability enterprises.

There are many Australian disability enterprises in our community doing great work and, further, there is considerable opportunity for greater government procurement of their goods and services. Therefore, it is reassuring to see this exemption is in place. We are now operating in a global context and many opportunities come with this. However, given the number of local Tasmanian workers ready and able to work, it is also encouraging that the buy local policy mandate in relation to small- to medium-business enterprises is included. Knowing we have such a high rate of youth unemployment, it is reassuring Tasmanian jobs and businesses will not be disadvantaged as a result of the legislation.

Mrs Hiscutt - While the member is on her feet, I think you answered all your questions.

Ms SIEJKA - Yes, Leader, it was asked in the briefing and I had additional information, which was good.

[11.42 a.m.]

Mr ARMSTRONG (Huon) - Mr President, as noted in the second reading speech, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership - TPP 11 - requires all states and territories to introduce an independent review mechanism for government procurement. This bill ensures Tasmania's compliance with that requirement.

When TPP 11 was ratified last year, I recall much discussion around legislative challenges that will require addressing as time passes, and this is one of them.

Debate in the other place centred on how this bill might interact with things such as local procurement policy and public interest certificates. All questions in that regard were answered to the satisfaction of all parties.

For the record, I am a great supporter of international free trade agreements and the advantages they supply to our businesses. A great example is our cherry industry in our free trade agreement with Korea, which has seen our cherry exports jump significantly. I support the bill.

Bill read the second time.

GOVERNMENT PROCUREMENT REVIEW (INTERNATIONAL FREE TRADE AGREEMENTS) BILL 2019 (No. 23)

In Committee

Clauses 1 to 6 agreed to.

Clause 7 -

Supplier may make complaint

Ms RATTRAY - Madam Chair, clause 7 relates to a discussion held in the briefings about suppliers making complaints about agencies undertaking procurement. For the record, the only complaints received to date were about the suppliers' disappointment that they had missed out on securing a tender. That was my understanding from the briefing.

Can the Leader confirm that is not a valid complaint as such? Unfortunately, we hear many complaints, right across the board, when it comes to government services when companies have missed out. When companies hear who has won the tender, they feel their product is equally as good and they cannot quite understand why they missed out.

I am interested in getting that on the record, but I am also interested in getting some understanding of the feedback companies are given once it is announced that a tender has been awarded to a particular company. Do companies get feedback? When you unsuccessfully apply for a Tasmanian community grant, there is a feedback process. That process helps people and organisations work through their disappointment.

Mrs HISCUTT - It is true that most people or companies that miss out on a procurement contract are upset because they have missed out, but it is unusual for there to be a process, a procedure failure. Most people are upset because they did not make the grade because of pricing.

With regards to feedback, a debrief is given if required or asked for.

Ms Rattray - An organisation needs to make contact and ask for that?

Mrs HISCUTT - They would probably be upset for missing out to start with, and they may ring up and ask why. They would then go through the debrief process. They are informed they can have a debrief about why they missed out, and then they can request it.

Clause 7 agreed to.

Clauses 8 to 13 agreed to.

Clause 14 -

Compensation for contravention

Ms RATTRAY - In regard to compensation for any contravention, what type of compensation would be available under this clause? Is it to the value of the contract? I am interested in the compensation aspect of the clause 14. I have read clause 14(2)(a) and (b).

Mrs HISCUTT - Clause 14(2)(a), (b) and (c) talk about what can be claimed. Would you like me to go through that for the purposes of the *Hansard*?

Ms Rattray - We often debate the definition of 'reasonable'.

Mrs HISCUTT - We have had that debate many times - it is what a reasonable person would expect and a court would determine in the end, if it came that far.

Ms RATTRAY - To get to the compensation part, would it have to go through a legal process? Is there a compensation avenue between the various departments and a person who is obviously aggrieved and has gone through a compensation process? Does it have to go to a court process or is there a compensation process outside the court situation?

That is where I struggle a little with the word 'reasonable'. If I have spent \$10 000 putting together a submission or a tender document and I am then offered \$2000 in compensation but it is found that I am in the right, I am probably not going to believe that \$2000 is adequate. If I have to engage a lawyer to defend my compensation claim, that \$2000 would not cover my costs and I might be in the minus figures.

Mrs HISCUTT - The compensation for this would depend on the terms of the agreement. It may be in the terms of the agreement between the agency and the aggrieved party. To start with you would have to look at the contract to see which way to go. It could be in the contract.

Mr VALENTINE - During briefings I asked a question about clause 14 because I was interested in payments by government departments to bodies providing goods and services to them. I am slightly confused in this regard in the sense that it says in clause 14(1) -

If a relevant government agency has contravened, is contravening, or is proposing to contravene, in relation to a covered procurement, an enforceable procurement provision, the Supreme Court may, on the application of a supplier whose interests are affected by the contravention or proposed contravention, make an order -

The subclause then goes through what is to happen there.

First, an abnormally slow payment a contravention in the sense that the government department is not paying on time?

Clause 14(2) says -

For the purposes of subsection (1), the relevant amount in respect of a contravention or proposed contravention, in relation to a covered procurement, is an amount that is not more than the sum of -

whatever, and this is where the confusion comes in.

Subclause (2)(c) says it is not more than the sum of -

reasonable expenditure incurred by the supplier in connection with making a reasonable attempt to resolve the complaint.

I am slightly confused that the Government department is in contravention here. Why is subclause (2)(c) talking about the supplier trying to resolve a complaint? Is it because there has been a complaint from a government department that the supplier's goods are not good enough, or something of that order?

Is slow payment by a government department considered a contravention? Can the Leader explain what subclause (2)(c) is getting at?

Mrs HISCUTT - In respect of the member's first question, a slow payment by a government department is not an enforceable procurement provision. Payment terms are captured under financial management in the Treasurer's Instructions rather than in the procurement provisions so it is not part of this bill. The member's second question about clause 14(2)(c) relates to expenditure incurred when participating in the pre-court process when a supplier makes a complaint to the accountable authority. Basically, it is the first step in the complaint process.

Clause 14 agreed to.

Clauses 15 and 16 agreed to.

Clause 17 -

Contravention of enforceable procurement provision does not affect validity of contract

Ms RATTRAY - Madam Chair, I would like this clause clarified -

- (1) A contravention of an enforceable procurement provision does not affect the validity of a contract.
- (2) For the purposes of subsection (1), it is immaterial whether the contravention occurred before, at or after the commencement of this Act.

Is this protecting the supplier or is it intended to protect the department which is actually receiving the services, goods or whatever? It might be something to do with procuring supplies for the fox task force, or something like that. What party it is actually protecting? Is it for both parties?

If the department has contravened the procurement provisions but it says it does not affect the validity, who are we trying to protect here?

Recognition of Visitors

Madam CHAIR - Honourable members, while the Leader is seeking advice, I welcome a second group of students from the Holy Rosary Catholic School at Claremont. We welcome you to the parliament. It must be quite a big group with all of you here. We are in the Committee stage

of a bill at the moment, where we actually look at each part of the legislation we are passing. It is perhaps not a particularly exciting one from your point of view, but that is the process we are in.

The President, the member for Derwent, Mr Farrell, who is your elected member, is out of the Chamber at the moment because he has to come in and rule if I cannot make a decision as the Chair in this process. He might catch up with you later. He says he is a very nice man so I am just reiterating that. Welcome and I hope you enjoy your time here.

Members - Hear, hear.

Mrs HISCUTT - I hope we have an answer the member approves of. This provision seeks to give certainty to completed processes. If there has been a breach of a provision and a contract has been entered into, it protects the supplier awarded the contract. The protection for the supplier that makes the complaint is that they have the ability to obtain compensation. That is what that is about.

Ms RATTRAY - Honourable Leader, I am pleased that is the aim of it because I would not want to see the situation where a supplier felt they could not make a complaint for fear of losing their contract. I was looking for that protection of their rights as a supplier. From what you have said, I believe this provision does that. That is important.

As an aside, while I have been thinking through the contravention of the procurement process and provisions, if it is not a financial contravention of a contract, what would it be? Would it be the quality of the shirts, for example, provided under the task force or whatever? What is it? If it is not timely payments, is it more about the quality of a product or service?

Mrs HISCUTT - Enforceable procurement provisions are provisions that can ground a complaint. They relate primarily to the process and procedures of a procurement. Some examples of enforcement procurement provisions include -

- ensuring there are not unfair conditions for participation and technical specifications that are not unduly narrow
- giving notice of intended procurements to ensure adequate notice is given to the market of opportunities
- ensuring tender documents are accessible to all interested suppliers
- providing minimum time periods for which tenders must be open to ensure suppliers have opportunity to respond.

Ms Rattray - It is more about the front end process than the process after you have won a tender.

Clause 17 agreed to.

Clauses 18 to 20 agreed to and bill taken through the remainder of the Committee stage.

LOCAL GOVERNMENT (HIGHWAYS) AMENDMENT BILL 2019 (No. 17)

Second Reading

[12.12 p.m.]

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

That the bill be now read the second time.

The purpose of the Local Government (Highways) Amendment Bill 2019 is to modernise the legislation to reflect advances in parking payment technologies and also ensure the effective operation of controlled parking on state highways in municipal areas.

The Local Government (Highways) Act was drafted at a time when coins were the only option available to pay for parking. It is now timely to modernise the legislation to ensure it reflects the range of payment options currently available and also to futureproof it for new and emerging payment technologies.

While coins remain an option to pay for parking at parking meters and voucher machines, there is a trend towards offering the community greater choice and convenience with respect to parking payments.

Councils are increasingly providing options such as payment by credit or debit card and we are also seeing the uptake of new parking payment technologies that allow parking payments to be made via an application on a mobile phone or device.

It is foreseeable this shift towards mobile phone or device-based parking technologies will continue, particularly as these technologies become integrated with real-time information such as the availability of parking spaces. The bill seeks to futureproof the legislation by introducing the concept of a virtual meter, defined as a piece of software that can be run on a computer, mobile phone or other electronic device, that allows payment to be made for parking in a parking space. The bill also modernises the language used in legislation with respect to payment methods.

The legislation retains the requirement for parking meters or voucher machines to be available where there are parking spaces.

Mr President, the bill also presents an opportunity to make some further amendments to the Local Government (Highways) Act to ensure the effective operation of controlled parking on state highways in municipal areas.

The bill clarifies the respective powers of the minister who has responsibility for state highways and the municipal councils regarding controlled parking on state highways. In particular, it provides that the minister remains responsible for establishing the location and hours and days of operation of controlled parking on state highways, while councils are responsible for the day-to-day management of controlled parking and enforcement activities on state highways.

In developing the bill, the Department of State Growth has consulted extensively with the Hobart, Launceston, Devonport and Burnie city councils.

The bill also addresses a statutory impediment in section 100 of the Local Government (Highways) Act to the minister who has responsibility for state highways prescribing the penalty for parking infringements on state highways in municipal areas.

Finally, the bill makes a number of minor and technical amendments designed to ensure the effective operation of controlled parking under the Local Government (Highways) Act.

In regards to fees, it is the intention that parking fees on state highways will be consistent with those on local roads within the relevant municipality. This will be achieved by the publishing of a notice referencing council fees.

Mr President, I commend this bill to the House.

[12.15 p.m.]

Mr VALENTINE (Hobart) - Mr President, I support this bill, and indeed so does the sole council in my electorate -

Ms Rattray - Possibly not many of us have parking meters.

Mr VALENTINE - It may happen one day.

Ms Rattray - I hope not. Probably the first place we need parking meters in my electorate of McIntyre is Derby.

Mr VALENTINE - For bicycles.

Ms Rattray - For cars, with their bicycles gone elsewhere.

Mr VALENTINE - This is not a bad problem to have, Mr President, in terms of tourism.

I was in fact saying how lucky I am to have only one council to deal with. Some members have up to seven. I appreciate other members have more people to talk to about this issue.

Specifically, this has been caused by the Government taking over Macquarie and Davey streets. For the record, I have to say the government had them in the first place, and in fact wanted to swap them for part of the Brooker Highway; indeed, as far as Macquarie and Davey streets are concerned, that situation is now reversed because of the congestion issues.

Of course, whenever state roads go through municipalities and the like, there are issues like this that need to be cleaned up in terms of jurisdictions. Parking meters have certainly been a topic of conversation in Hobart over quite a time now. Thankfully, as the second reading speech points out, the bill will also update the changes in how people pay for parking by methods other than just plugging coins into a meter. I am in the happy situation of having a parking app, and I can tell you it makes life a lot easier. If people out there are struggling with the parking meters, all I can say is get the app because it is so much easier to work. You do not have to go near those machines on the footpath.

Ms Forrest - That is okay if you have wi-fi and you are not a tourist.

Mr VALENTINE - You do not have to have wi-fi. You can do it on 4G.

Ms Forrest - If you have connectivity, I mean. Some of them do not come with connectivity.

Mr VALENTINE - I have not experienced that, but you might be right. Overseas, yes, there might be some issues there. Thankfully in Hobart they seem to work. Certainly the app works. It is a great addition and it is a lot cheaper, because you do not have to just plug in the \$2 coin. You just dial up what you want. You might have a one-hour slot and get back 30 minutes earlier. You dial up the hour and press a button, start the park, get back 30 minutes earlier and stop it - it only charges you what you use. It does not charge you for the whole hour. There is much to be said for it. Nevertheless, this is not about the operation of apps as such, but the availability of them.

I support what this bill is trying to achieve in ensuring it is all covered legally, having one jurisdiction going through another. I support the bill.

[12.19 p.m.]

Mr FINCH (Rosevears) - Mr President, I support the bill, but I am rising to speak because the member for Hobart has helped me recall a story I ran by him some time ago in Hobart, about when I was trying to use one of the newfangled parking machines in Hobart for the first time.

Mr Valentine - This is not the place to lobby, Mr Finch.

Mr FINCH - No, I tried that and I came a gutser. Do not worry, but it was unfortunate. I was trying to work it out with the instructions on the side of the parking meter. I wanted to go to the bank just a block away. I am on my way to pay a bill and I want to go to the NAB bank and -

Mr Willie - In Balmain.

Mr FINCH - Yes, laugh though you may. I did not hear the interjection so I do not know what you are laughing at. You had another shot at me last night which I did not hear but it came up pretty well in *Hansard*. So, keep it up.

I have a parking meter a block away from the bank and I want to pay the parking meter. The instructions are on the side, on the front, all around. I could not understand what the hell was going on - how you actually make this transaction with the parking meter. I was under a little pressure to get to the bank and get this bill paid so I looked around for somebody to help me. Is there a pedestrian in the street who can help me? I could get nobody. No local could help me. So, I thought, 'Look, it is only down the street. I will whip down, I will hotfoot it down, get the money and come straight back'.

I was gone for about four minutes and 30 seconds but when I came back, in the meantime I had been given a ticket.

Ms Forrest - They were waiting for you. They were watching.

Mr FINCH - No, well, they did recognise me, so probably yes.

It is very frustrating. I pleaded my case to the council. I wrote an email pleading my case, saying it was the first time I had ever used the parking meter. I normally have the parking space down here at Parliament House but my pleas fell on very deaf ears, which I have a problem with, so we are in the same boat.

It was very frustrating. So, while the member for Hobart speaks about a technology and oh, you just do this, you just get the app and you just whip it in - he is a whiz at technology.

Mr Valentine - It is easy.

Mr FINCH - We are dragging the general public, I believe, kicking and screaming into this new style of operation, using your phone and your app and all that sort of thing. There are people out there who have no comprehension of this, who do not want to embrace it. They keep it as a barrier and do not embrace it, so I think there has to be some sympathy for people who do not understand how this new technology works.

You say they have to get up to speed. Many people are just not going to do that. I want to, but as I say, it is understanding the instructions as well. It is gobbledegook when you see it for the first time and being in a bit of a rush, you try to understand it. I just make that contribution, but of course it is modernity, it is contemporary.

Mr Gaffney - How much was your fine?

Mr FINCH - About \$75 or something so it was not inexpensive to have that impost when I thought I had been caught quite innocently.

Mr Gaffney - Because you complained, they could have bumped it up to \$210.

Mr FINCH - I might still get a message in the mail that they have changed their mind. However, I will support the bill.

Mr Valentine - Before the member sits down, the difficulty is that when you park on those parking meters there is a sensor that says there is a car here and they know it has not been paid for.

Ms Forrest - I do not know if they have them in Launceston. They have them in Hobart.

Mr FINCH - This is more technology I do not understand. I do not want to, either.

Mr PRESIDENT - We will find out what they have in Launceston.

[12.24 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I agree it is timely the act is being updated.

Coming back to the present - coins: who can ever find coins when you need them? However, I agree with the member for Rosevears, obviously there is an issue that is not part of the bill - people are having great problems with these newfangled meters. It probably affects the elderly - and I class myself as elderly - and anyone over 60 is elderly when they are looking at how these meters work.

So, member for Rosevears, this is a thing of the future. We either keep up with it or we die. Fortunately living in the city, I do not have to use the meters. I was looking at an article in the *Examiner* about the Launceston City Council putting in computerised new meters last year. Those meters do stop you overstaying. If you are putting money in, the meter does not really understand what car has put it in, but when you are using the app, you can only load up to the time you are actually allowed. If you are only allowed an hour -

Ms Forrest - You can also stop it so you pay only for the time you are there. It is actually cheaper.

Ms ARMITAGE - Absolutely. It has been found that people are not being booked as often when they use the app because they are actually paying until they get back. Of course, not if you overstay your meter past the hour. The idea is to have turnover on the on-street meters and to encourage people to go into the car parks.

I have gotten off the bill slightly. My understanding - from speaking with council - is it is trying to encourage people into off-street parking. Many of those have become peak places too, without someone sitting there, it is still computerised and computer-generated. The act needs to be contemporised and updated - not everyone uses coins now. There will probably come a time when there are no coin meters, which will disadvantage our older citizens coming in to shop. It is difficult to use some of these apps, even for those of us who use mobile phones all the time and understand apps. Sometimes it is hard to see the screen at times if you do not have your glasses and it is not always easy to use an app.

I certainly support the legislation.

[12.26 p.m.]

Mr DEAN (Windermere) - Mr President, I support the bill and thank Shane Gregory for his briefing yesterday. He was forthright and upfront and that feedback will be given to him. He did a very good job of clearly explaining this to us.

The member for Hobart raised some very important things about the app and what it provides. I was not really aware of apps; my sons are very good at using them. They are wizards at it, as you expect the younger ones would be. If you come back to your car early, you can cut the meter off there and then, reducing your payment to the time you spent there. You do not pay for the extra half hour as you do when you use coins so that is an incentive for people to use the app.

Mr Valentine - Anything under five minutes might be free.

Mr DEAN - In the briefing yesterday I raised the issue that this currently relates only to Macquarie and Davey streets. Wellington and Bathurst streets are coming online at some point. When I was mayor of Launceston in 2003-04, we talked about the changeover of Wellington and Bathurst streets to the state. It never eventuated, but Mr Gregory told us yesterday it could happen by the end of this year. I will not hold my breath, but will see what happens. He said councils do not have the right to install these meters on state roads wherever they want. It is a decision for the state. The state will have some say in that and also in the hours of operation and where free spaces will be and so on. I understand from yesterday's briefing that is the case, as it should be. If it is a state road, the state should control where meters will be.

The member of Hobart is right, parking meters are a topic of discussion wherever you are, not just in Hobart. I can assure members, we have had our fair share of discussion in the Launceston area. A number of people have come to me to try to get them out of an infringement notice. It is a fairly common thing, member for Rosevears. Councils are used to hearing all these explanations and excuses. They get a whole list of them, and at times it is interesting to ask them for a list of some of the excuses they have had. It makes for very interesting and quite humorous reading at times.

I will certainly support the bill, Mr President.

[12.30 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I thank the members who commented on the bill.

With regard to what the member for Windermere said, yes, that is correct. The state will have a say in where the parking meters can and cannot be, but the state is more interested in clearways; the council collects the money and so on.

Bill read the second time.

LOCAL GOVERNMENT (HIGHWAYS) AMENDMENT BILL 2019 (No. 17)

In Committee

Clauses 1 to 3 agreed to.

Clause 4 -

Section 94 amended (Interpretation of Part VII)

Mr DEAN - My sons say it is possible in their apps to identify where free parking meters are. This is on the mainland, in some of the areas that have that app. I am not quite sure whether that app is available. If it is available, do you have to be right at the meter when you use that app to book your car? I guess it only reads if a car is present. The car has to be on the meter at the time for the app to read the fact that the meter is being used. I am asking the department: just exactly how do they operate?

Mrs HISCUTT - The parking technologies will be determined by the council as to what is appropriate for their municipality. I think your question is broader than that, and you are delving into technology. I am of the opinion - and the member for Hobart may be able to do a sweep here - that, yes, there will be technology that will tell you where the parking place is, but I do not know that it will necessarily book it for you.

Madam CHAIR - Maybe that is something that can be followed up outside this process because it is not relevant to the bill.

Mrs HISCUTT - It is really not part of this bill, but it is a very interesting question.

Mr Dean - Well, it is. We are talking about apps, so it is a part of the bill.

Mrs HISCUTT - Yes, and I think the app will be there in time. I am not sure it is here at the minute, but my opinion is that there may be an app that will show you where the parking meter is, but it will not book it for you.

Clause 4 agreed to.

Clauses 5 to 13 agreed to and bill taken through the remainder of the Committee stage.

**CRIMINAL CODE AND RELATED LEGISLATION AMENDMENT
(CHILD ABUSE) BILL 2018 (No. 63)**

Second Reading

[12.36 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.

All Tasmanians were appalled by the shocking revelations of child sexual abuse that emerged from the Royal Commission into Institutional Responses to Child Sexual Abuse.

On 20 June 2018, the Attorney-General tabled the Government's response to the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse and the earlier working with children checks, redress and civil litigation and criminal justice reports.

The final report was the culmination of the work of the royal commission over its five-year inquiry. It sets out what the royal commission heard, concluded and recommended to better prevent and respond to child sexual abuse in institutions.

In the 17 volumes of its final report and its earlier reports on specific areas, the royal commission made 409 recommendations across a wide range of policy areas aimed at improving institutional responses to child sexual abuse.

Broadly speaking, the royal commission's recommendations aim to -

- prevent abuse or, at the very least, identify it as early as possible;
- improve the way perpetrators are investigated, prosecuted and sentenced; and
- improve survivors' access to justice and ongoing support.

The royal commission's recommendations recognise that governments, institutions and the broader community share responsibility for keeping children safe.

I again wish to acknowledge the courage of people affected by institutional child sexual abuse who shared their stories with the royal commission. Without the bravery of those victims and the families of victims, we would not have the benefit of the vast work of the royal commission. Not just that work contained in its final reports, but also that work that can assist us to address the evils of child sexual abuse derived from the royal commission's case studies and enormous body of commissioned research.

The Tasmanian Government remains committed to protecting our vulnerable children better, and the work of the royal commission will help shape future reforms to achieve this. This bill is just one of the many significant systems and legislative reforms we will implement to continue to work towards a safe Tasmania for our children.

This bill fulfils the Government's commitment to introduce a bill to introduce various legislative amendments by the end of 2018.

The Criminal Code and Related Legislation Amendment (Child Abuse) Bill 2018 addresses a number of recommendations made by the royal commission, particularly in the area of criminal justice as well as mechanisms to improve child safety through the reporting of concerns relating to children at risk.

Specifically, the bill amends the Children, Young Persons and Their Families Act 1997, the Criminal Code Act 1924, the Evidence (Children and Special Witnesses) Act 2001 and the Sentencing Act 1997. I will now address the proposed amendments in turn.

The bill amends the Children, Young Persons and Their Families Act 1997 to include members of religious ministry and members of the Tasmanian Parliament as 'notifiers' for the purposes of mandatory reporting risk to children under section 14 of that act.

This inclusion of people in religious ministry as mandatory reporters or notifiers is a specific recommendation in the final report of the royal commission - recommendation 7.3.

Further, the bill specifies that such members of religious ministry may not rely on confessional privilege to refuse to disclose information under section 14.

I appreciate the significance of this amendment and, in particular, the opposition made by Church authorities. However, it is for the state to legislate in relation to the safety of the community and in particular our children.

This area was the subject of significant work and consideration by the royal commission. The abrogation of the confessional privilege insofar as it relates to the requirement that clergy be included as mandatory reporters is a specific recommendation of the royal commission final report, recommendation 7.4.

The bill also includes members of the state parliament as notifiers or mandatory reporters. This reflects that, through positions held in parliament, many of us may receive disturbing information about the safety of children. The member for Elwick spoke about this yesterday during our briefings. We should also be required to report any information or concerns that we may have for the welfare of children to appropriate authorities.

The bill also amends the Children, Young Persons and Their Families Act 1997 to clarify that the identity of notifiers may be provided to law enforcement agencies.

The bill amends the Criminal Code Act 1924 to provide a new crime of 'failing to report the abuse of a child'.

A person is guilty of the new crime of 'failing to report the abuse of a child' where a person reasonably believes that a child abuse offence has been committed and fails, without reasonable excuse, to inform a police officer as soon as practicable.

The crime applies only where information is obtained on, or after the commencement of this act, but applies regardless of the date of the alleged child abuse offence. That is, the information may relate to a child abuse offence that is alleged to have been committed prior to the commencement of the act.

A 'child abuse offence' is defined in the bill to include child sexual offences and any serious assaults against a child or ill-treatment of a child.

Importantly, the new crime provides a number of safeguards that protect the rights of victims and the vulnerable. The crime does not apply to knowledge held by the victim of the child abuse offence. Nor does the new crime apply to information where it is received -

- by a child; or
- by a person from a victim who has attained the age of 18 years and who wants the information to remain confidential.

A person is not guilty of the new crime if the information relating to a child abuse offence was not provided to a police officer where -

- the information is already generally available to members of the public; or
- a person has a reasonable belief that -
 - the information has been reported or is known to a proper authority; or
 - reporting the information may endanger the safety of any person (other than the alleged perpetrator).

The new crime specifically excludes a member of clergy of a church or religious denomination from relying on confessional privilege as a reasonable excuse for failing to report a child abuse offence. This is consistent with the recommendations of the royal commission - Criminal Justice Report, recommendation 35.

Finally, the new crime cannot be commenced without the written approval of the Director of Public Prosecutions.

The bill also amends the Criminal Code Act 1924 to extend the Tasmanian 'grooming offence' under section 125D of the Criminal Code to include communications with third parties with intent to procure a child for unlawful sexual activity or exposure to child exploitation material.

The bill also amends the Criminal Code by inserting a transitional provision to clarify that the repeal of section 18(3) of the Criminal Code applies retrospectively. This is also a recommendation of the royal commission - Criminal Justice Report, recommendation 83.

The bill amends the Evidence (Children and Special Witnesses) Act 2001 to strengthen important protections that will assist people to participate in the criminal process.

The royal commission undertook a significant body of work in this area given its importance. The royal commission concluded that supporting victims and witnesses of child sexual abuse to give evidence is critical if the criminal justice system is to work effectively and appropriately in relation to child abuse offences.

The bill extends the pre-recording of audiovisual evidence to all victims in child sexual abuse, any children who are under 18 years, and any other witness ordered by the court upon application

by the prosecution where it is in the interests of justice to conduct the pre-recording. This follows recommendation 53 in the royal commission's Criminal Justice Report.

Consistent with recommendation 84 in the royal commission's Criminal Justice Report, the bill also clarifies that the use of earlier audiovisual recordings of evidence is to be tendered as the relevant witness's evidence where relevant to any subsequent proceedings and it is not contrary to the interests of justice. This amendment will assist to reduce the number of times a witness has to give evidence in criminal proceedings and reduce the risk of re-traumatisation by multiple criminal trials and appeals.

In line with recommendation 9(g) of the royal commission's Criminal Justice Report, the bill provides that audiovisual recordings of evidence may be used for training purposes by police officers to enable best practice approaches to police interviewing and ongoing training for specialist officers.

The bill also provides the Attorney-General with the power to approve, on specific conditions, the viewing of audiovisual recording of evidence by a prescribed law reform body for the purposes of a review of the laws of evidence.

This may only occur in circumstances where the audiovisual recording is de-identified or, alternatively, the witness whose evidence has been recorded has attained the age of 18 years and consents to the use by the law reform body.

The bill amends the Sentencing Act 1997 to require sentencing courts to indicate the sentence that would have been imposed for each offence had separate sentences been imposed when setting a sentence in relation to child sexual abuse offences involving multiple discrete episodes of offending and/or where there are multiple victims. This is in line with recommendation 75 of the royal commission's Criminal Justice Report.

Finally, the bill also amends the Sentencing Act 1997 to require sentencing courts to consider current sentencing standards when sentencing offenders for child sexual abuse offences, consistent with recommendation 76 in the royal commission's Criminal Justice Report.

The findings of the royal commission threw a spotlight onto the way in which institutions across the spectrum have failed children in the past. This Government is committed to doing all that is in its power to prevent it happening again.

In particular, the royal commission highlighted the need for all members of the community to do everything in their power to prevent child abuse and the failure of institutions to protect children in the past.

This bill represents an important step in implementing a number of the royal commission's recommendations and, in doing so, provides a number of important protections to some of the most vulnerable Tasmanians.

I commend the bill to the House.

[12.50 p.m.]

Ms FORREST (Murchison) - Mr President, I thank the Government and commend it for taking this action and being so proactive in it.

The Leader's second reading speech said many of the things I wish to repeat. It is important to have a number of things on the record. All of us cannot remain unaffected by the royal commission held into sexual assault of children. I also reiterate the Leader's words in sincerely thanking those victims and their families who came forward to give evidence because without them this would not have been uncovered. I thank organisations involved in the media who blew the lid on some of this.

I am sure members have watched the film *Spotlight*, a dramatisation of the work done by *The Boston Globe* in lifting the lid on these abhorrent sexual assaults of children within the Catholic Church in that area. As time went on, we heard of more and more cases. I have made contributions in the past about different aspects of this as they have come through, but I want to comment specifically on the provisions of this bill. I also want to thank the people who sat around the table of the royal commission. It must have been the most harrowing of jobs for those people, totally arduous work. I am sure they all probably need ongoing support and counselling themselves from having to hear those stories over and over again.

As the Leader said, there 17 volumes in the final report - a large and extensive report - and the commissioner has made 409 recommendations across a wide range of policy areas. This bill picks up some of those. Again, I commend the Government for being so proactive and stepping up and doing this. We know Victoria tabled its legislation yesterday and already the Archbishop of Melbourne has said he would rather be sent to prison than to abide by the seal of the confession. I will come to that later.

Broadly speaking, the royal commission recommendations aim to prevent abuse or at the very least, identify it as early as possible. We need to keep these things in mind because this is what this is about. Improve the way perpetrators are investigated, prosecuted and sentenced - I will come to the way that is achieved in this bill in a moment. It is to improve survivors' access to justice and ongoing support, which is absolutely critical. Unfortunately, so many people did not survive this, so many people took their own lives - and the lives it did not take, it completely destroyed. We do not have to look very far to find accounts of those stories.

I will make some general comments on a couple of particular issues in the bill. The bill amends a number of acts. It amends the Children, Young Persons and their Families Act to include members of religious ministry and members of the Tasmanian parliament as notifiers for the purpose of mandatory reporting of risk to children under section 14 of that act. As the member for Elwick mentioned in the briefings yesterday, he has been a mandatory reporter in his role as a teacher. I have been a mandatory reporter in my role as a nurse and sex educator. While the responsibility where the reporting obligations lie may be slightly different at times, we understand what the role is and the importance of it. I am sure he will speak to this when he speaks about his own personal experience.

It is absolutely heartbreaking when you have a disclosure and know you have to do something, there is absolutely no question about that. As has been included in this bill, as members of parliament, we will all become mandatory reporters. Because of the nature of our work, people come to us. Possibly it happens more in opposition and to independent members because people are frustrated by the system and they think they cannot go to the government; I do not know. As an independent member with a health background and a background in sex education and in other areas, I engage in discussions about sexuality, about growing up, about what a good and bad touch is. That is how I always described it when I talked about it, so little kids could understand what I was talking about. Of the whole session, that was when they all shut up, they all sat still and they

all listened. That is where sometimes you would get a disclosure - but not right then, it might a bit later, when they would find you in the playground.

I think it is important we lead by example, too. We are drawn into this, and we act in that way, but because it will be new to many members in both this place and the other - I know the member for Elwick will probably raise this as well - how will the protocols around it be established and managed? This is a question for the Leader to consider in her response. What training will be provided to members of parliament to ensure we do it right, that we are not given the run-around, as we heard happens currently when trying to make a notification, and how will our identities be protected? I say that because it is not we necessarily who are in the firing line, it is our staff. If someone finds out that you have made a notification - I or any of us here - and they go to our offices to discuss the matter, the staff certainly are the front line because often we are not there. I would like some clarity around those matters when the Leader replies.

This provision is based on the recommendation of the final report of the royal commission, recommendation 7.3. This is where it removes the right, if you like, of ministers of religion to rely on confessional privilege. I will come back to that point. I want to just talk about the other provisions before I get into the detail of that.

As the Leader said in her contribution, it is for the state to legislate in relation to the safety of the community, and in particular of our children, and that is why this provision has been included. It was a recommendation in the final report of the royal commission, recommendation 7.4.

The Children, Young Persons and Their Families Act 1997 also seeks to clarify that the identity of notifiers may be provided to law enforcement agencies. This is where I again raise the issue about our identities potentially being protected, to protect our staff. I do not have a problem with it being provided to law enforcement agencies because they potentially need to follow it up. It is how that is dealt with.

The bill also amends the Criminal Code to provide for a new crime of failing to report the abuse of a child. Again, this is really important. We saw in the evidence given to the royal commission that reports led to further and ongoing abuse, and failing to report the abuse of a child, even though it may not have been notification from the perpetrator themselves, potentially should also be drawn in. Again, this removes the sanctity of the confessional, if you like, as a reason not to report that. I understand the concern of the Catholic Church and I will get to that a little later.

The bill also provides some safeguards for this new kind of failure to report abuse of a child. They are listed in the bill and in the second reading speech. I will reiterate those. The new crime does not apply to information where it is received by a child or by someone from a victim who has attained the age of 18 years and who wants the information to remain confidential. The person is not guilty of the new crime if the information relating to a child abuse offence was not provided to a police officer, where the information is already generally available to members of the public, and where a person has a reasonable belief that the information has been reported or is known to a proper authority; they believe it has already been notified. This reasonable belief is well established in law and we know what it means.

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

QUESTIONS

Health Practitioners - Health Issues - Mandatory Reporting

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

[2.31 p.m.]

On questions relating to the state of laws regarding medical practitioners seeking mental health treatment, existing legislation is inconsistent between states. Tasmania's adoption of the Health Practitioner Regulation National Law places an obligation for doctors treating other health professionals for mental health issues to report this to the relevant authorities.

The Western Australian adoption of the national law contains mandatory reporting provisions which are triggered only where the treating practitioner forms a reasonable belief that the impaired practitioner has placed the public at risk of substantial harm because the practitioner has an impairment.

The Council of Australian Governments - COAG - Health Council advocates for a nationally consistent approach to mandatory reporting, acknowledging that protecting the public from harm is of paramount importance because it is supporting practitioners to seek treatment, particularly mental health treatment, as soon as possible.

Will the Leader please advise -

- (1) Will the Government consider amending mandatory reporting laws for doctors treating other medical professionals for mental health issues to mirror the proven Western Australian model which exempts treating doctors from reporting their doctor patients, given the current laws are considered to bar doctors from accessing the same level of health services their patients enjoy for fear of potential personal or professional repercussions?
- (2) If the answer is no, given that it was reported in the *Medical Journal of Australia* on 23 July 2019 that statistics show that female doctors commit suicide at 2.27 times the rate of the general population and male doctors at 1.41 times the general population, can the Leader please indicate why not?

ANSWER

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

(1) and (2)

The Government recently supported national amendments as part of the COAG Health Council process. The intention is that these new guidelines will give registered health practitioners greater confidence to seek treatment for their health issues and make it clear that only the most serious impairments which are not being appropriately managed through treatment need to be reported.

One of the key changes resulting from the amendments is a higher threshold for reporting - a threshold of placing the public at 'substantial risk' of harm. That is, a 'substantial risk' rather

than just 'risk' will apply to a practitioner-patient's conduct involving impairment, intoxication and departure from professional standards.

While these provisions are not the same as the Western Australian model, they are designed to provide a balance between ensuring practitioners seek help for their health issues and protecting the public from risk of harm.

The Australian Health Practitioner Regulation Agency will develop an awareness and education program for practitioners.

Health Practitioner Awareness and Education Program

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

[2.34 p.m.]

Leader, I seek clarification. The Australian Health Practitioner Regulation Agency will be developing some guidelines and some information for doctors. Is that currently occurring or is it coming? Has it been accepted by our state or is it being left to AHPRA, which we know could take some time, or is it in now? If so, are doctors aware of the situation?

ANSWER

Mr President, I thank the member for Launceston for her question. At present, the Government has supported the introduction of the COAG Health Council process. Because that has been accepted, AHPRA will now develop an awareness and education program for practitioners.

I do not have the time frame at hand, but they have that responsibility to start that.

Ms Armitage - I might ask in the future how the time frame is going. Thank you.

Disability Voices Tasmania

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

[2.35 p.m.]

Disability Voices Tasmania is a 12-month statewide pilot program funded by the Department of Communities Tasmania. Disability Voices Tasmania is an advocacy body that runs forums statewide for people living with disabilities. Many Tasmanians living with a disability report the program has been valuable.

The funding for Disability Voices will conclude in October this year.

- (1) Will the funding for Disability Voices be extended beyond October 2019?
- (2) Has the Government received an evaluation of the pilot project? If so, what has been the outcome? If not, when is it due, and will it be a public document?

ANSWER

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

- (1) The Consumer Voice project (branded as Disability Voices) is funded by the Department of Communities Tasmania through grant funding from the Commonwealth National Disability Insurance Scheme - NDIS - Information, Linkages and Capacity Building - ILC - and Community Inclusion and Capacity Development - CICD - program.

The intent of seeding this pilot project was to establish an effective mechanism with the capacity to engage with and participate actively in ongoing ILC funding opportunities made available through the NDIS.

The ILC initiative enables organisations across Australia to apply for grants to deliver projects in the community that benefit people with disability, their carers and families. The ILC strategy sets out the schedule for establishing and delivering four discrete but complementary grant programs available to ILC-type organisations across all states and territories.

Stage 1 of the Consumer Voice project was a consultation phase which delivered *The Establishment of a Collective Disability Voice in Tasmania* report. The report was released in January 2018 and included a series of recommendations regarding the establishment of a consumer voice mechanism for people with disabilities.

Stage 2 of the project - Disability Voices - was a seeding phase to implement the recommendations of the stage 1 report to -

- develop a capacity building framework;
- pilot the capacity building framework with a diverse range of communication and learning styles to reach people statewide beyond those currently active in membership-based organisations; and
- develop and pilot a Consumer Voice mechanism for Tasmania.

The project is seeking to examine stakeholder views of disability consumer voice models and mechanisms through focus groups and a survey.

Epilepsy Tasmania acts as a managing body for the funds for stage 2 (\$215 000), and the project is overseen by a reference group consisting of people with disability and representatives of a range of disability service providers.

Stage 2 of the project has been funded from 1 September 2018 to 31 August 2019.

Acknowledging the project has been supported to date with CICD funding through the NDIS ILC initiative, there is no anticipation direct funding will be provided by the Tasmanian Government following the end of the current funding agreement.

Rather, it is anticipated proponents of the pilot will continue to engage with and actively seek ILC funding opportunities.

The National Disability Insurance Agency has indicated three national ILC grant rounds will open in August and September 2019, making available a total of \$222 million to fund programs and activities that build community inclusion of people with disabilities.

- (2) A project closure report for Disability Voices is due on 30 September 2019 and a public document will be prepared.

Outcomes to be pursued for consumers, as per the funding agreement, are -

- A platform upon which to build knowledge, capital, peer support and connection amongst people with disability.
- Opportunity for individuals to share experience about navigating systems and accessing mainstream and specialist services.
- Build capacity for self-advocacy by building on individual and collective strengths to set and reach goals.
- Enhance the independence and ability of people with disability to exercise choice and control in pursuit of their goals.

The above outcomes do not represent or constitute individual disability advocacy. Communities Tasmania funds individual disability advocacy through established independent advocacy organisations, including Advocacy Tasmania, Speak Out Advocacy and the Association of Children with Disabilities - ACD.

Just as an aside, in my office we use Advocacy Tasmania quite frequently and I find them to be very good.

Hobart Private Hospital - Provider

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

[2.41 p.m.]

Can the Leader please advise:

- (1) Has an agreement been reached and finalised with a provider for Hobart Private Hospital?
- (2) When will the successful provider be announced to the Tasmanian public?
- (3) Can the Leader confirm that services at the Hobart Private Hospital will continue without interruption after the cessation of the current lease on 13 December 2019?

ANSWER

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

- (1) The Government is currently undertaking an open competitive tender process, being managed at arm's length by the Department of Health, to select the future operator of the Hobart Private Hospital.
- (2) I am advised this market tender is still subject to a live process, and proposals are being evaluated under strict probity and governance guidelines, as the community would expect.
- (3) The Government understands the desire for certainty from staff involved and from the Tasmanian community, and I am assured the Department of Health is working to finalise the process as a priority while also ensuring it gets the best possible outcomes for Tasmanians.

The Government is hoping to provide a process update in the very near future.

TABLED PAPER

Government Response - Petition

Mrs Hiscutt (by leave) tabled the Government's response to a petition, Justice and Related Legislation (Marriage Amendments) Bill 2018.

ANSWERS TO QUESTIONS ON NOTICE

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) (by leave) - Mr President, I have answers to two questions on notice, and I think one more is to come.

Screen Tasmania Expert Advisory Group

This first answer is to a question from the member for Murchison and relates to the budget process and Screen Tasmania's responses to questions.

The Screen Tasmania Expert Advisory Group - STEAG - is an expert panel constituted under the Cultural and Creative Industries Act 2007. That act provides for the Arts minister to create a register of experts, with expert panels convened from that register by the Secretary of the Department of State Growth, or a delegate, to consider applications for funding support from Arts Tasmania and Screen Tasmania.

As at 19 June 2019, the expert register consists of 214 persons.

Ms Forrest - I just wondered what my question was. I asked it a while ago.

Mrs HISCUTT - It was about Screen Tasmania and the makeup of the board.

Ms Forrest - I just wondered what it was, actually. You are giving me the answer. It would be good to have the question.

Mrs HISCUTT - I thought you would have had the question.

Ms Forrest - It was a fair while ago.

Mrs HISCUTT - With a further 30 questions pending ministerial approvals.

STEAG operates as a standing panel under this system. The initial nine members of STEAG were appointed on 30 January 2018 by the Deputy Secretary, Culture and Tourism Development, under delegated authority from the Secretary, for 12 months.

On 8 January 2019, the Deputy Secretary appointed the nine current members for two-year terms. Seven of those members were reappointed from the previous year. STEAG considers applications to Screen Tasmania's production investment, project development, games development and proof of concept production programs.

STEAG broadly sits at the end of each quarter following the closure of rounds of support for the Screen Tasmania program. Recognising the value of continuity of advice to government, some STEAG members had previously served on the Screen Tasmania Advisory Board, which ceased to operate when the act came into force.

The following list contains the names of current members; (1) the length of their service to the end of June 2019; and (2) the length of their service on the advisory board to the end of 2017 -

- Mr Nick Batzias from Good Thing Productions - (1) 18 months; (2) four years
- Ms Sue Clothier, Utopia Media - (1) six months; (2) not applicable
- Mr Michael Cordell, CJZ Entertainment - (1) 18 months; (2) three years
- Mr Mike Cowap, Princess Pictures - (1) 18 months; (2) not applicable
- Dr Kristy de Salas, Giant Margarita - (1) six months; (2) not applicable
- Ms Katrine Elliott, Reading Cinemas, Devonport - (1) 18 months; (2) not applicable
- Ms Sue Maslin, Film Art Media - (1) 18 months; (2) not applicable
- Ms Alicia Rackett, Blue Rocket Productions - (1) 18 months; (2) not applicable
- Ms Chloe Rickard, Jungle Entertainment - (1) 18 months; (2) 18 months.

Intensive Family Engagement Services

The next answer is to a question asked by the member for Elwick about Intensive Family Engagement Services - IFES. The member had a couple of questions about packages and the remainder of the other 39 packages.

Of the 62 packages delivered during the trial, the remaining 23 IFES cases reported on 18 June 2019 as not being closed. That is, they are still being actively delivered by providers or are in the process of being administratively closed following the completion of service delivery.

Closing a package administratively includes completing and uploading the child protection information system of a closure report.

The other part of the member's question was about the 14 families that receive less than 90 per cent of the contracted hours. Care and protection orders were initiated for three of these families.

CRIMINAL CODE AND RELATED LEGISLATION AMENDMENT (CHILD ABUSE) BILL 2018 (No. 63)

Second Reading

Resumed from above.

[2.48 p.m.]

Ms FORREST (Murchison) - Mr President, earlier I was talking about some of the safeguards or protections against prosecution under the amendment to the Criminal Code 1924 which provides a new crime of failing to report the abuse of a child.

I have already mentioned two but I will read them in order again. This new crime of failing to report the sexual abuse of a child or abuse of a child does not apply to information where it is received by a child or by a person from a victim who has attained the age of 18 and who wants the information to remain confidential. The person is not guilty of a new crime if the information relating to the child abuse offence was not provided to a police officer where information is already generally available to members of the public or a person has a reasonable belief the information has been reported or is known to a proper authority or reporting the information may endanger the safety of any person other than the alleged perpetrator.

These are entirely appropriate measures to provide protections for the person who is a child themselves, someone who really wants the matter not to be made public and raised when they have attained the age of 18. The test of reasonable belief is always one that we talk about but it has been tested a number of times. You would have to have some evidence of why you would believe that the police, or whoever, were aware and have already had a report made to them.

The last thing you want to do is potentially endanger the safety of any person other than the alleged perpetrator. When I first read through the second reading speech and the bill itself, that was one thing that jumped out at me. As a member of parliament, if I make a notification that actually puts that family and the victim in more harm, or potentially in the line of harm, there is a real issue there. Obviously, that is a bit of a judgment call at times. We know that particularly where there are issues of family violence and things like that, often it is not easy for women to leave. A notification may need to be made and it goes from then on, and it is going to put someone at risk or potentially at risk. We have to be really careful about those things. The last thing we want to do is see further harm. We know that the most likely time a woman will be killed by an intimate partner is when she makes the decision to leave and as she is leaving. You could blow something up like this that triggers a need to act, so we need to be cautious in those areas.

This new crime gives effect to recommendation 35 of the royal commission's Criminal Justice Report. This bill amends the Criminal Code Act 1924 to extend the Tasmanian grooming offence under section 125D of the Criminal Code to include communicators with third parties with the intent to procure a child for unlawful sexual activity or exposure to child exploitation material. These,

again, are measures being put in place following the royal commission's Criminal Justice Report and recommendation 83.

There are also amendments to the Evidence (Children and Special Witnesses) Act 2001 that will strengthen important protections and assist people to participate in the criminal process. I will not go through all the information the Leader gave about that and the basis of that recommendation from the royal commission.

The final amendment area is the Sentencing Act 1997, which requires sentencing courts to indicate the sentence that would have been imposed for each offence had separate sentences been imposed when setting a sentence in relation to child sexual abuse offences involving multiple discrete episodes of offending and/or when there are multiple victims. That is in line with recommendation 75 of the royal commission's Criminal Justice Report.

That is a really important provision too because it helps the public understand how the decision was made by the sentencing judge. We did see this with Cardinal Pell's sentencing. Each charge was stepped out and it really helped the public to understand the mitigating factors that might be taken into consideration and the reasons a particular sentence was imposed. While there will always be people who say those who abuse children and who are proven to be guilty in a court probably should be locked up and the key thrown away, we do have the courts for a reason. We have the courts to determine the most appropriate sentence. Where there are multiple offences - and this is the case this deals with - I think it is helpful for the public to be able to understand the sentencing and why maybe it is not as much as they thought it should have been. A victim never gets their life back to where it was before.

I want to talk about the opposition to these amendments, particularly removing the sanctity of the confessional, and for a Catholic priest not to be able to fail to report a disclosure of a child sex abuse confession. I will refer to some of the information that Alex Sidhu gave us when he spoke to us yesterday at the briefing. It is important to get some of this on the record.

I have been a member of the Catholic Church; I joined the Catholic Church some years ago. My first husband was a Catholic and I joined the Catholic Church. I went through the whole process and I found it an odd sort of process in many respects but, you know, there were some good parts to it.

I had some really good debates with a priest about a number of things and we had quite robust debates on some things, but eventually I found this to be quite a hypocritical place in many respects. I left that church and I joined another one, the Pentecostal church, and that is where I saw breathtaking hypocrisy such as I had never seen.

I have my Christian values, my beliefs, my Christian way of living, Christ-like - however you want to describe it - where I care for people. I always try to do my best for people and care for my fellow citizens. I stand up for those who are downtrodden; I stand up for those who do not have a voice, and that is what I do in this place.

The hypocrisy I saw in those churches made it impossible to stay in them and live with myself.

After I left them, stories started emerging about the abuse of children in these religious institutions. Not just the Catholic Church - the Anglican Church, the Salvation Army and many other organisations. To me, that is indefensible, totally indefensible.

To hear some of the arguments put by the Catholic Church - and I am talking about the Catholic Church because as far as I am aware, it is the main opposition in terms of removing the sanctity of the confessional - I cannot understand how they can defend that position that they should not be mandatory reporters. I cannot understand that.

I will talk about some of the things we were told. I have been a member of the Catholic Church, so I get it to a certain degree.

The discussion we had yesterday was about how when a person goes in to confess their sins, they do it in a proper format where they make a statement that indicates they are there for confession. In the Catholic tradition your confession is made to the priest, but the priest is just an intermediary. They are actually confessing to God and it is only God who can give them absolution and can forgive them.

The priest may say, 'Well, because of the nature of your sin, you should do this, this and this', but we were told quite clearly that the priest should have no memory of it. I do not know how you forget some of the stuff you might be told, but that is how it is supposed to work.

This is a supernatural forgiveness of sins by God, a divine authority, and the parishioners are subject only to divine authority. There is canon law and there is the seal of the confessional that drives all this. That part of it is the priest not revealing what was confessed and, notionally, not remembering any of it because only God will remember it.

I noticed this in *The Age* yesterday. The Victorian parliament tabled its legislation yesterday and the Melbourne archbishop has said he believes he would not break the seal of the confessional and they can put him in jail.

That is a bit of a challenge to say, 'Come and get me'. I am not sure he understands that if this becomes law, that will be the reality if it can be shown he has covered up or not reported an instance of child sex abuse that has been confessed to.

This is a quote from *The Age*. He said -

'Personally, I would keep the seal,' Archbishop Comensoli said when asked on ABC radio on Wednesday morning if he would report an admission of child sexual abuse made during confession to authorities.

Asked if he was prepared to go to jail in defence of the new law, the Archbishop said: 'I'll say for myself, yes.'

In saying for himself yes, he is saying for every other priest in the Catholic Church - or certainly in his diocese, I do not know how far it works - that they are off to prison too if they do not do it.

I find that is maybe a strong conviction of the man's faith and that is fine, but I cannot see how you can live with yourself knowing these children will continue to be harmed.

Alex Sidhu, on behalf of the Archbishop of Tasmania, talked to us yesterday about the Catholic Professional Standards that have been developed. He just sent me a copy of these standards. I do not know if anyone else received it; I am happy to share my copy with other members. He just sent the copy through so I have had about two minutes to look at it. I will see what some of the

requirements are. To me, this is the sort of information all people working within Catholic organisations should read because they are already mandatory reporters in a lot of circumstances in which they are working, as in their welfare organisations and other aspects.

On ongoing education and training, it says -

Criterion 7.3 -

Personnel receive training and information to enable them to respond effectively to child safeguarding risks, concerns, disclosures and allegations of child abuse.

This is going right to the nub of it. We are talking about disclosures and allegations -

Indicator 7.3.1 says -

The entity provides training to equip relevant personnel to appropriately respond to and support those bringing forward concerns, disclosures and allegations of child abuse [refer to indicator 4.1.2].

Indicator 7.3.2 says -

The entity provides training to ensure personnel are aware of information sharing and record keeping policies and procedures [refer to indicator 1.6.2].

Indicator 1.6.2 is under the heading 'Committed leadership, governance and culture' -

Child safeguarding is embedded in the entity's leadership, governance and culture.

The heading for indicator 1.6.2 says -

Personnel understand their obligations on information sharing and record keeping.

Indicator 1.6.2 says -

The entity's information sharing and record keeping policies and procedures relating to all aspects of child safeguarding, including incidents and complaints, apply the following requirements:

- complete and accurate records are created and maintained for all incidents, complaints, responses and decisions;

I do not know how this sits if they are still with the confessional being this private place. If you have this directive here, maybe canon law may be applied, but it is not -

Mr Willie - It appears in conflict, doesn't it?

Ms FORREST - It does. It seems to be directly contradicting what we are hearing from them, saying that we will abide by the sanctity of the confessional, but we still have to provide accurate records, and create the records.

- records are created at the time of, or as soon as practicable following, an incident, complaint, response or decision;
- records are titled, organised and filed logically;
- a master copy of each record is formally maintained to ensure duplicate records or multiple copies of the same record are kept to a minimum;
- records are maintained and disposed of in accordance with legislative and statutory requirements, or after a period of 50 years [refer to Indicator 6.1.7], whichever is higher;
- information and/or records are treated as confidential and records are appropriately secured;

It goes on with a couple more dot points.

Mr President, to me this shows you have to keep records. If something is disclosed, you have to keep a record. This is one of the problems we found within the churches: records were not kept, and so people would make claims and they could not be substantiated because there were no records. Doing this is a really good step and one would argue they should have been doing it already.

When you look at the other comments Mr Sidhu made, he said the purpose of the confession is about helping an individual to stop committing harm to themselves or to others - that is the purpose of it: to help them stop. The person seeking confession is expected to change their life. He said that before they are given absolution by the priest, on behalf of God, they must first give clear indication of the desire to stop doing what they are doing, and that absolution was condition on a person being sorrowful and committed to changing their life.

I am sure most people, when they confess the nasty, horrible things they might have done, are probably sorrowful. We hope they are. What we saw happen, and as reported in the royal commission, was that the priest would hear confessions from other priests time and time and time again. I assume each time they were asked: Were they sorrowful? Were they committed to changing their life? They probably said yes. I do not know. But what happened then? They moved the priest to another diocese and on it went. More children damaged, more children harmed, and on and on and on it went. I do not think their confession system is very effective from the evidence alone.

I ask myself, what would Jesus do? We are talking about children. We are talking about how we should care for children because they are some of the most vulnerable in our communities. I take you to Mark, chapter 10, verses 13 to 16.

People were bringing little children to Jesus for him to place his hands on them, but the disciples rebuked them. When Jesus saw this, he was indignant. He said to them, 'Let the little children come to me, and do not hinder them, for the kingdom of God belongs to such as these. Truly I tell you, anyone who will not

receive the kingdom of God like a little child will never enter it.' And he took the children in his arms, placed his hands on them and blessed them.

Mr President, Jesus had a real love for children and wanted to protect them, and not have people saying, 'No, don't let them near me'. We need to protect these people. We need to love these people. Further, in Matthew 18, in verse 6, it says -

If anyone causes one of these little ones - those who believe in me - to stumble -

This is not just children, it is his children, the followers of Jesus -

... it would be better for them to have a large millstone hung around their neck and to be drowned in the depths of the sea.

That is how Jesus felt about it, as I read it. I have read the whole Bible a couple of times. I know what is in there. Anyway, it is not too hard to find references to the way Jesus viewed children.

We also had information from Steve Fisher, on behalf of Beyond Abuse. I am not going to go through it; other members may wish to.

Clearly, the harms are significant and large. I want to read some of the information referred to in our briefing yesterday. I will go to the royal commission's comments on the abrogation of the seal of the confessional, because I do not really understand fully how it works. I do not understand entirely all the arguments for and against, but the royal commissioners did, and do. They spent a lot of time and energy looking at this and researching it. I hold a lot of weight in what the royal commission has to say about this. This is out of the final report, volume 7, page 62. It said -

Many of the religious institutions we examined in our case studies had institutional cultures that discouraged reporting of child sexual abuse. These cultures were often based in traditions and practices that acted as institution-wide barriers to reporting child sex abuse to an external authority - for example, the inviolability of the confessional seal in the Catholic Church.

On page 99 of the same volume -

In our case studies, we heard that religious confession has been used as a forum to disclose child sexual abuse, both by children subject to abuse and by perpetrators of abuse.

It was being used in that way. Same volume, also on page 99 -

In a civil society, it is important that the right of a person to freely practise their religion in accordance with their beliefs is upheld. However, that right is not absolute.

I know other debates are going on in the federal parliament about religious freedoms, but it is the right to practise your religious beliefs - but it is not an absolute right. It went on -

This is recognised in Article 18 of the United Nations International Covenant on Child and Political Rights regarding freedom of religion, which provides that the freedom to manifest one's religion or beliefs may be limited by law, where necessary to protect public safety, order, health or morals, or to ensure the fundamental rights and freedoms of others.

I think the rights and freedoms of children here were grossly ignored and abused. The right to freedom of religious expression is not an absolute right and the use of the sanctity of the confessional should not be seen to be a way to perpetrate that.

Further on page 99 -

Although it is important that civil society recognise the right of a person to practise a religion in accordance with their own beliefs, that right cannot prevail over the safety of children. The right to practise one's religious beliefs must accommodate civil society's obligation to provide for the safety of all individuals. Institutions directed to caring for and providing services for children, including religious institutions, must provide an environment where children are safe from sexual abuse.

In the final report, volume 16, book 1, page 23, it said -

We heard about priests misusing the practice of religious confession to facilitate child sexual abuse or to silence victims.

Just let me read that again -

We heard about priests misusing the practice of religious confession to facilitate child sexual abuse or to silence victims. Survivors told us about experiencing sexual abuse as children in the confessional at their church.

How can it be a safe place? Further, in the Criminal Justice Report executive summary on page 52 -

We are satisfied that, where the elements of the reporting obligations are met, there should be no exemption, excuse, protection or privilege from the offence granted to clergy for failing to report information disclosed in or in connection with a religious confession.

We understand the significance of religious confession - in particular the inviolability of the confessional seal to people of some faiths, particularly the Catholic faith. However, we heard evidence of a number of instances where disclosures of child sexual abuse were made in religious confession, by both victims and perpetrators. We are satisfied that confession is a forum where Catholic children have disclosed their sexual abuse and where clergy have disclosed their abusive behaviour in order to deal with their own guilt.

From the Criminal Justice Report, parts III to VI, page 202 -

We also heard evidence of individuals disclosing their own offending during confession. For example, in Case Study 35 in relation to the Catholic Archdiocese of Melbourne, a priest had an offending priest attend on him and go into 'confessional mode' making a confession of child sexual abuse. The priest who heard the confession gave evidence that because of the confessional situation he 'couldn't speak to anyone' and he 'felt totally entrapped by that situation'.

You have to remove that. We have to remove that. We discussed this in the briefing yesterday. If a parishioner speaks to their priest about their marriage difficulties, or whatever, and during the course of that conversation they say they have been sexually abusing their child, or their partner has, but makes a disclosure of sexual abuse, because that is not under the confessional seal used in the circumstance I just cited, the priest is a mandatory reporter. The priest has to report at that point. But saying the magic words at the beginning, 'Forgive me, Father, for I have sinned', you do not have to report it.

From the Criminal Justice Report, on page 203 of the same volume I referred to earlier -

We received a précis of evidence from Dr Marie Keenan. Dr Keenan is a psychologist and researcher who conducted a study of Irish Catholic Church clergy offenders.

The results of Dr Keenan's study are published in *Child Sexual Abuse and the Catholic Church: Gender, power and organizational culture*.

Dr Keenan wrote in her précis that:

The men in my research used the sacrament of reconciliation to seek forgiveness, resolve never to do this bad thing again and in some cases to ease their conscience.

In Dr Keenan's study, eight out of nine clergy the subject of the study disclosed their acts of child sexual abuse in religious confession. According to Dr Keenan, the confessional was the main place of respite and support from emotional conflicts and loneliness for those clergy, and it became an important forum for ultimately disclosing their sexual abusing. They used the secrecy of the confessional to 'externalise' the issue of their abusing in safety.

Mr President, I asked yesterday why a priest would not encourage - or maybe they do; we do not really know what they do in the confessional - the person to turn themselves into the police if they declare they are the perpetrator of abuse.

This whole thing that the only person who forgives them is God - well, if they are really worried about their mortal soul, one would think they would go and confess their sins to God through the priest and then turn themselves in to prevent them doing it again.

If they happen to go to the police first and confess their sin, as we know, the priest can come to them and they can do their confession now and get God's forgiveness if that is what they need, but our criminal justice system must be able to deal with this in a way that protects our children. We have to protect our children.

Mr President, a couple more quotes, and I will not be saying much more beyond that.

Again on page 203, Dr Keenan continued -

The very process of confession itself might therefore be seen as having enabled the abuse to continue, not only in how the men used the secrecy and safety of the confessional space to resolve the issues of guilt, but also in the fact that within the walls of confession, the problem of sexual abuse of children was contained.

We cannot allow it be contained.

Even if these guidelines are put in place, they will not stop that unless we make priests and clergy mandatory reporters wherever they are, including during the sacrament of confession.

Same volume, page 216 -

Reporting child sexual abuse to the police can lead to the prevention of further abuse. In relation to the Sacrament of Confession, we heard evidence that perpetrators who confessed to sexually abusing children went on to re-abuse and seek forgiveness again.

In this context, we have concluded that the importance of protecting children from sexual abuse means that there should be no exemption or privilege from the failure to report offence for clergy who receive information during religious confession that an adult associated with the institution is sexually abusing or has sexually abused a child.

On page 222 -

However, in our work we have learned that perpetrators of child sexual offences are often repeat offenders and that the intervention of civil authorities is required to prevent their offending.

We accept and acknowledge that religious confession serves a fundamentally important purpose for those who practise it. However, we do not accept that the guidance or encouragement to self-report that may be offered by confessors during religious confession is sufficient to protect children from the risk of harm presented by child sexual abusers seeking absolution for their actions.

Mr President, Mr Sidhu argued yesterday that this will prevent people coming forward and making confessions generally. It appears not to be a huge number of Catholics who actually do that; we did not get accurate numbers on that. However, if people do not come and confess we are no worse off, but the evidence showed they confess, absolve themselves and feel better about themselves, and then they go back and do it again. It is not me saying that - that is what the evidence showed. The evidence showed they went back, again and again, and the Catholic Church moved the priests around.

I heard what Mr Sidhu said on behalf of the Archbishop. I understand this is a fundamental linchpin of the Catholic faith, doctrine and practice. All big capital Cs, but I cannot accept we should allow the seal of the confessional to override the safety and welfare of our children.

I commend the Government. I am sure it was not easy and I am sure it had enormous pushback. I commend the Government for being strong and courageous enough to say no. It should not be that strong and courageous, but I know it has, in the face of opposition, put the real interests of our children first, because if we do not, who will?

Mr President, I support the bill and am pleased to see we are here debating it.

[3.21 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I really appreciate the briefings that were organised. I also appreciated the letter from the honourable Elise Archer last year with regard to the draft copy of the Criminal Code bill. This was very useful to have so we could comment on it. I ask the Leader to pass on my appreciation to Elise Archer for that.

Like other people, we were all shocked and horrified by the revelations from the Royal Commission into Institutional Responses to Child Sexual Abuse and I am sure, like many others, we all know someone or have friends involved.

I have a friend who gave evidence. Of the two people I know who are involved in this, one is in their 60s and the other is in their 70s and they have never been able to get over it. It is forever part of their life regardless of moving on. In one case they got married, divorced, married, divorced - it is still part of them. The first thing one particular person does when they meet you is to tell you about their situation. It is still affecting their lives even though they have been through counselling and many other aspects of trying to heal themselves.

Broadly speaking, the royal commission's recommendations were to prevent abuse or at the very least identify it, improve the way perpetrators are investigated, prosecuted and sentenced, and improve survivors' access to justice and ongoing support.

I will briefly go on about the Church, because the member for Murchison went on for a considerable time. I note the inclusion of people in the religious ministry as mandatory reporters or notifiers and admit I was concerned people might not seek counselling. That was a concern of mine. I listened to the hearings yesterday and wondered whether making priests mandatory reporters would stop people getting help or counselling.

I have always believed that if a priest reported to another priest, they certainly should have been reported to the archbishop. However, having read many documents, including the one sent to us, the Criminal Code and Related Legislation Amendment (Child Abuse) Bill, I now have no problem with priests being mandatory reporters. This is what comes from briefings. You ask questions, receive evidence and it can change your mind.

Mrs Hiscutt - Are you referring to the document from Steve Fisher from Beyond Abuse? They are not all from the Criminal Code and Related Legislation Amendment (Child Abuse) Bill 2018 briefing?

Ms ARMITAGE - Yes.

Mrs Hiscutt - That came from Beyond Abuse.

Ms ARMITAGE - Thank you. It did not have any name on it, but it was among my documents and I found it very useful. Page 4 states the Anglican Church has already done this. It has ruled at its national synod that the confidentiality of the confessional does not apply to reported child abuse.

In January 2014 the Doctrine Commission of the Anglican Church of Australia produced its report to the Standing Committee on Confidentiality and Confessions updated and reinforced in 2017.

I found other comments in the report useful, as well as some of the other things mentioned by those briefing us. For example, evidence before the royal commission is that offenders have confessed to abusing children and their confessions have formed part of the cycle of repeat offending, absolving the offenders of feelings of guilt, remorse and responsibility so they then go on to reoffend.

With evidence like that, I certainly have no problem with priests being mandatory reporters. I do not know how they will actually do it. I think it could be difficult in the confessional. I too went to a Catholic school and I can remember saying, 'Bless me Father, for I have sinned'. It was just something you had to do when you went to church, once a fortnight. I must admit I have not been to Confession for about 30 or 40 years. My husband tells me, 'You Catholics can do what you like when you go to church. You say you are sorry, and you get absolved and do it again'. He is a Quaker, so it is different to my being a Catholic, but he finds it quite amusing we can actually do that - we can be absolved of whatever sin we have committed and can start afresh.

Mr Finch - I had a Catholic upbringing too.

Ms ARMITAGE - I might be due to go to church and maybe will get absolved of a few sins I have. I am not going to disclose anything at the lectern.

Any argument against mandatory reporting based on the alleged impedance of the Catholic Church's ability to counsel offenders falls over when the evidence of the Church's actual history of counselling offenders is examined and did come from that document. Thank you for pointing out its origins.

After talking to the member for Windermere, I came to an understanding about mandatory reporting. There are so many documents; I found it easier not to write a speech because there are so many different issues. Mandatory reporting is really a personal issue. If a parent is aware one of their children is being abused by the other parent - obviously it can go either way - because of the Evidence Act, if, for example, a mother is abusing a child, the father may not want to report it because they may try to keep the family together, so they hope it stops and try to help the other parent. Once it is reported, the family obviously is totally dissolved. This was not mentioned.

When we are talking about people reporting abuse, a parent would know more than anyone else a child is being abused. How does this affect the Evidence Act with parents giving evidence, or a husband and wife giving evidence against each other? I would hate to see a mother or father have a charge against them for not reporting the reasons that might be behind it, but the child is paramount.

The other area is grooming. It is a shame the member for Windermere is not here - he is probably listening. When we were on the Launceston City Council, a gentleman in Launceston was grooming young children, male and female. I am not sure whether the member for Rosevears was

aware of this, but a lot of people were. This man used to invite children to his home. It was quite a substantial home; he was quite a wealthy man. He lived in Brisbane Street, not far from my home. The police were well aware. The police had said to me, 'Can you bring it up in council?' because they could not raise it. They knew the background but they could not divulge it.

I am pleased the issue of grooming has been raised because it is more prevalent than we realise. The member for Windermere might like to mention the gentleman in Launceston in relation to grooming. You will recall, member for Windermere, when we were both on council a number of young children and teenagers were given alcohol at this gentleman's house. It turned out it was a grooming situation. I am pleased to see grooming is in the legislation because it is a difficult situation that is difficult to prove.

We all know people who have been abused. Some of the evidence in the royal commission reports made me quite upset. Realistically, it is terrible and hard to imagine how they can ever get over it - knowing a couple of people in that situation, I know they have not.

I am not going to go on for long because the Leader covered this well in her speech. The fact sheet was very informative and useful. I certainly will support the bill in its entirety and I thank the Leader for bringing it forward.

[3.30 p.m.]

Ms RATTRAY (McIntyre) - Mr President, the legislation before the Council today is very important.

It has certainly generated debate, not only in this Chamber and in the other place when it went through there, but also in the community. The member for Murchison referred to the Victorian media yesterday. I notice on my Facebook posts this morning there was quite a bit of feedback from Tasmanian people in regard to the position put forward.

Ms Forrest - Daniel Andrews posted about the legislation his government is bringing in. There was a lot of comment on that, which also then brought it back to ours.

Ms RATTRAY - Yes, and posts regarding the Archbishop of Victoria. There has been quite a bit of feedback.

From what I read, there is not a great deal of support for the Catholic Church's position when it comes to the protection of vulnerable children, which is what we are talking about in regard to child abuse.

When I first received the draft of this bill in October last year - I thank the Attorney-General at the time for sending through the draft and asking for comment - I took the opportunity to read through the draft at the time and sent the Attorney-General my thoughts in regard to a couple of clauses I felt needed defining. Certainly, I would like some clarification of Schedule 1. Luckily, I kept my marked-up copy.

In relation to reporting of crimes, I was concerned about how the initial reporting and disclosure of information to a police officer under this clause would work. I am pleased to say those were not only my concerns, but they were shared by others who saw what was reasonable for the bill. That provision has changed. The new copy has some changes in regard to some of those matters. For instance, one of them talked about a person fearing on reasonable grounds that disclosing

information would endanger the safety of persons. The member for Murchison talked about that. I asked about how safety is defined and I am now quite clear about that.

My second concern was the definition of intimidation and harassment. They were particularly concerning areas but they have been addressed in the recent draft of the bill. I appreciate that my comments on the original draft and requests for clarification were taken on board and we now have the amended draft before us. It is pleasing to see how this bill has arrived at the House.

I do not intend to spend much time going over what other members have said. It is clear to me there is pretty much full support of the Government's proposed legislation from members of this House. I also commend the Government on what it has put forward following the royal commission and the terrible stories that come out of that process. I think most of us were horrified as we heard them, and they just kept coming. I cannot imagine what it would have been like to live through something like that.

I appreciated the opportunity to hear from the Catholic Church, which has been talked about by other members. We acknowledge the Church has concerns about what it believes is its right under its faith, but my thoughts keep coming back to the fact that we are obliged, if we can, to protect the rights of children, particularly in the area of child abuse. We have to do what we can, not only as legislators but as members of our communities. I feel I have that obligation. I am willing to have that discussion with anyone from the Catholic faith if they want to come forward and challenge my decision to support this legislation. I am happy to have that discussion, but if they said, 'We have our faith, these are our practices, we believe that it is not appropriate', I would say back to them, 'If it were your child or your grandchild, or somebody you know, wouldn't you want somebody to stand up for them?' Perhaps they would see it a little differently if it were something they had to deal with as a family, or as someone connected to their family.

Mr President, I will definitely support the bill. I thank the department's officers for their work on the legislation. None of these things happens without a lot of work because we have to take into consideration what is presented by the community. Again, it was really good to receive the draft bill, and I appreciated the opportunity to have input into those areas I thought perhaps needed some more clarification. I support the bill.

[3.38 p.m.]

Ms WEBB (Nelson) - Mr President, I thank the Government for bringing this amendment bill forward and all the work that went into preparing it.

I regard the protection of children in our community as a shared responsibility of the highest importance for all citizens, most especially for those of us here who have the opportunity to create the most robust legislative protections and access to justice for our children and, in fact, all members of our community.

The royal commission has provided us with recommendations on how we might legislate not only to help protect our children and prevent abuse, but also to improve the investigation, prosecution and sentencing of perpetrators, and with respect and acknowledgement of all victims of child abuse, improve their access to justice and support.

I am pleased to see solid consensus on progressing this in Tasmania, across politicians from all parties and in both places. Today I add my support to this bill. First, I note that the amendments are not primarily designed to act as a prosecutorial tool, as we have been told, but to be protective

of vulnerable children and to heighten protection, both for children who have already been victimised and also to avert abuse from the beginning.

In making these amendments, we are aiming to prevent abuse from occurring. That is really important, but it is also highly important to be able to act as quickly as possible to curtail abuse once it has occurred.

I will briefly mention some of the changes and additions I want to speak in support of, before talking in more detail about others. The creation of the new crime of failure to report, I believe, creates a more robust assurance that appropriate action will be taken when a disclosure is made. It better indicates the gravity with which we regard such a failure to be - its gravity and the expectation that it should never occur. Disclosure is made and a report is made and acted on. The main purpose of this new crime of failure to report is to protect children and to stop abuse continuing in the spirit of all these amendments.

The fact there is a reasonable belief requirement means it is not going to be taken lightly. I note there are other appropriate protections: in not applying to children who receive information; in not applying if the report is made by a victim who is now an adult and does not wish that disclosure to be made public; and in the fact that it must be actioned only under the Director of Public Prosecutions and requires a fairly high bar to be acted on. I support the creation of that new crime of failure to report.

The extension of grooming offences better catches those situations we know to exist in relation to grooming behaviour, and is an excellent addition. The targeting of family members as an avenue to obtaining access to a child is well documented and known, and being able to better capture that under the grooming offences is an excellent addition.

Likewise, the change made by strengthening evidence-giving measures, with pre-recorded audiovisual evidence to be used as a tool in all child sexual abuse trials, is highly sensible and compassionate, as a measure to minimise the trauma of multiple trials and multiple instances of having to give evidence. I think that is an excellent addition.

I am very pleased to see the inclusion of members of parliament as mandatory reporters. I see this as entirely appropriate. As a very new member, I have not yet been in a position to have to enact that sort of action, but my understanding from colleagues is that there may well be times when as members we are made aware of or encounter situations where child abuse may be occurring, and it is very important that we are included as mandatory reporters. With this new requirement I look forward to all of us in this Chamber being provided with guidance on the appropriate actions and process to undertake in those circumstances. I hope we can have that guidance provided.

I take comfort from the fact that the changes made in this amendment bill mean that Tasmania will have one of the most extensive lists of occupations requiring mandatory reporting in the country. That is an excellent point of progress for us. I note, interestingly, that the Northern Territory simply requires all adults to report, and I think there is merit in that approach also.

The point of more discussion on this issue in the public domain and here today is the inclusion of members of religious ministry as mandatory reporters, and in doing so, removing the seal of the confessional. I understand the sensitivity of this matter for some members of the Catholic Church - and indeed I too was raised in the Catholic Church, so I have an intimate understanding of it from my very earliest times. Even understanding that sensitivity, I believe fundamentally it is not

incumbent on us, as secular legislators, to prioritise the preservation of a religious practice above our responsibility to act in the best interests of our community, especially in the best interests of vulnerable children.

I note there are a range of objections from the Catholic Church, nationally and also locally, including through the Tasmanian Catholic Archbishop. I note he has claimed the legislation could lead to disharmony between state and federal laws in the future. Clearly that is not the case. We know that many states and territories are already acting on this in a concerted way to legislate mandatory reporting laws and remove religious exemptions. We know the ACT has moved in that direction, as have Western Australia and Victoria, so we are one among many. In fact what we are doing is bringing ourselves into harmony with a concerted national approach and consensus.

However, it would be my assertion that even were other states not yet moving on this, I would wholeheartedly be in support of Tasmania taking the lead and acting on it as promptly as possible. There should not be an impediment to doing the right thing as early as possible when it comes to protecting vulnerable children by saying we do not want to be first. The sooner we act, the more opportunity we will have to offer better protection to our children.

Another objection raised by the Catholic Church is that these measures impinge upon religious freedom and the sanctity of the confessional. Despite national rhetoric around religious freedom at the moment, it has been pleasing to see both sides of the political divide and many independents in Tasmania join together to acknowledge that the protection of children is paramount. There are no exceptions to mandatory reporting, religious or otherwise.

Freedom of religion has been raised; there has been discussion from the member for Murchison and others of the sections of the Tasmanian Constitution and our national laws that relate to that. I believe that the matter of religious freedom has been well prosecuted and has been shown to be not an argument to defend the secrecy of the confessional. I fully recognise the thorough coverage given to this by the Attorney-General in her summing up of the debate in the other place as to why this argument holds no water. I am not repeating that here other than to add my support to those arguments.

Something we may bear in mind is that the intent of these amendments in this bill are not primarily designed to act as a prosecutorial tool, but to protect vulnerable children. My understanding is that the evidence from the royal commission indicates that historically the secrecy of the confessional, rather than providing an avenue to curtail sexual abuse of children, has served to enable its continuation, in many cases for decades. That is, despite multiple instances of the perpetrators receiving the sacrament of confession, their abuse of children continued and in many cases was enabled because of the comfort provided by the sacrament of confession. This is highly relevant in my mind on whether this is a defensible position to claim the continuance of secrecy when it comes to the confessional.

A range of other points were raised by the Catholic Church on this matter. They have talked about, and the member for Murchison went into some detail on this, the Catholic Church taking its own measures in regard to safeguarding and coming out with guidelines. That is good, but it is not good enough. There is nothing satisfactory for us as secular legislators in our own justice system; there is nothing satisfactory about internal measures being taken and safeguards being taken within the Catholic Church. It was not good enough in times past; it is not good enough now and it holds no water for our arguments here.

Another point put forward is that confidentiality is essential for the sanctity of the sacrament of confession. This is entirely immaterial for our purposes as legislators in a secular society. It is not for us as legislators to maintain any aspect of any religious practice in this country.

It has also been said that confidentiality within the confessional process is comparable to other professions that have a client confidentiality arrangement. The example put forward is lawyers. That is certainly the one that has been put to us in the briefings and the situations I have attended.

We could quite rightly note that doctors are not used as an example here because we know that the patient-doctor confidentiality is absolutely trumped by mandatory reporting. Doctors are mandatory reporters. They cannot claim confidentiality as a reason not to report. The church cannot use doctors as an example, and it does not. They use lawyers instead. However, the lawyer-client confidentiality is not absolute either. It has clear parameters. It extends as far as information received for the purposes of obtaining legal advice and does not extend beyond that. There is no comfort there for the Church to try to compare itself to lawyers or other professions. Also, quite frankly, lawyers operate within a secular system we have set up to enable a justice system that operates to enforce the laws of our community. It is entirely a secular process. It is not comparable to a religion that has set up its own practices and applies to a small group of people in a voluntary manner.

Another matter raised with us by the Catholic Church relates to the fact that the purpose of confession is, on its assertion, to get a person to change their behaviour. I would state categorically it is immaterial for our purposes here as legislators as to the intent of confession as a practice - entirely irrelevant. It is immaterial for our purposes as legislators whether the act of confession is successful or otherwise in its stated intent.

We have had significant questions raised for us through the royal commission process and otherwise as to whether the level of success in confession in getting people to change their behaviour is even worth discussing but for us it is actually immaterial. It is immaterial for our purposes as legislators whether people would be deterred from engaging in confession by removing the seal of secrecy, which has been put to us as a reason not to do it. We should not remove that seal of secrecy because then people might not come to confession and, by their logic, not have an avenue to change. It is immaterial to our purposes. Our focus is on secular laws relating to the prioritisation of vulnerable children and their protection and nothing to do with a religious practice trumps that, or should be put above that.

A further objection raised by the Archbishop of Tasmania was that priests cannot comply with the law as it would require them to violate their vows to a higher authority. We have also heard that this week from Victoria and the archbishop there.

Again, and let me state quite clearly, it is our role to make appropriate laws in the best interests of our community and it is not required that we make these laws in alignment with, or support of, any particular religious belief or practice.

I would be interested to hear from the Leader what implementation strategies, if any, could help us ensure priests do not ignore these laws. That could be helpful to consider going forward but neither the argument that priests may not comply nor the argument that this will provide a barrier to people accessing the sacrament of confession offer compelling reasons for us to give a continued exemption from mandatory reporting to the situation of the confessional.

Let me just repeat: while I understand the sensitivity of this for people of the Catholic faith who see this as a sacrament in their faith, I believe fundamentally it is not incumbent on us as secular legislators to prioritise the preservation of their religious practice above our responsibility to act in the best interests of our community and especially in the best interests of vulnerable children.

For all those reasons and because I believe it is excellent progress in that protection of vulnerable children, I support this bill and thank the Government for bringing it to us.

[3.53 p.m.]

Mr VALENTINE (Hobart) - Mr President, let me first congratulate the Government for bringing this on.

Whatever we can do to protect the vulnerable in our community, we need to do. That is what this place is for. It is for moving laws that the community expect us to have in place to protect people from circumstances that indeed they may have no control over themselves.

The content of this bill has been well and truly spelt out, and I do not intend to go over much of the ground others have already gone over. I will go to the point of the confessional because that is one of the greatest points of interest in this bill that may cause some in the community some angst, but we have to weight it up.

I was raised in a fundamentalist church that spelt out most definitely that faith is between the person and God, not through someone else. It is not a priest or a minister who has the power to forgive; it is God. Some manmade process has no special power in that regard; however, that is all irrelevant to my mind.

This is the Legislative Council and we try to ensure we do what we can to make good law. Yes, there are many religions and if we tried to make laws that satisfied every religion in the community, we would have a tough time.

Of course, there is always the saying we should not mix religion and politics.

Some would say our legal system is based on the Christian faith. Yes, indeed, it may be, but we are in a changing world and while it is important people have religious freedom, they have that freedom only to the point where it does not harm others, and that is what we are dealing with here today. We have to make sure we do our best to make laws that protect, right from the start, our most vulnerable.

I read the submission from Mr Steve Fisher of Beyond Abuse, as I am sure most members have. It has been referred to by one or two of us. Mr Fisher showed us how he disagrees with a number of things stated, particularly by the Catholic Church. I will read a couple of paragraphs -

As Members would be aware, the Royal Commission into Institutional Responses to Child Sexual Abuse has recommended national Mandatory Reporting legislation (referred to as 'Failure to Report' and 'Failure to Protect' in the *Criminal Justice Report* released on 14 August 2017, Chapters 16 and 17).

Some senior leaders of the Catholic Church (including the President of the Council of Bishops and some Archbishops) have made various public statements to the effect that:

1. Mandatory Reporting legislation is in conflict with the doctrine of the confessional.
2. The ritual of confessional or the concept of confession being *secret* has biblical origins.
3. The doctrine of the confessional is unable to be changed by the Church.
4. Mandatory reporting/doctrine of confession is a 'religious freedom' issue.
5. Mandatory Reporting applying to clergy including the confessional will not enhance child protection because offenders do not use the confessional to confess abuse.
6. Mandatory Reporting will remove the opportunity to use confessional to 'counsel' offenders.

These statements are untrue and have the potential effect of creating unnecessary and unhelpful conflict.

As this briefing paper will detail with evidence, the reality in relation to these statements is:

1. Mandatory Reporting is not necessarily in conflict with the doctrine of confession, if the doctrine of confession is properly interpreted. Mandatory Reporting in the Catholic doctrine of confession *can* work together if the doctrine is properly interpreted.

This is because the wording of the Catholic doctrine of confession states that the seal of confession only applies to the penitent. Therefore a person who refuses to admit the truth of their abusive actions to the police or the victim's parents, could easily be interpreted by the existing doctrine as not being truly 'penitent'. In other words, a proper 'confession' has not occurred and the information exchanged does not attract protection of secrecy. The Anglican Church have interpreted their confession doctrine in exactly this way, and even amended the doctrine to strengthen and reinforce this.

He then says -

2. The ritual of confession is not Biblical in origin. It was invented by a committee in the Thirteenth Century. Biblical references to confession refer to the confession being a *public* act, not *secret*.

He goes on to make a number of other points. What I am trying to point out is that there is another opinion when it comes to those sorts of things.

If it becomes law that they have to mandatorily report, people will not attend confession for child abuse matters, for sure. If it does not become law, they may. But, as we all know, it will not

be reported. If the previous outcomes are anything to go by with confession, it is going to be a negative outcome either way for the victims because it is not going to be reported. If we bring this in, it is will be reported but they will not go to confession because they know the full force of the law will be on them if the priest does the right thing and reports it.

To my mind, it is negative both ways, but the overriding thing for me is that the royal commission recommended this. The member for Nelson touched on it. I do not know whether she actually read recommendations 7.3 and 7.4 in her offering, but I will read them into *Hansard* so it is well and truly understood what the royal commission had to say with regard to what they recommended.

Recommendation 7.3 -

State and territory governments should amend laws concerning mandatory reporting to child protection authorities to achieve national consistency in reporter groups. At a minimum, state and territory governments should also include the following groups of individuals as mandatory reporters in every jurisdiction:

- a. out-of-home care workers (excluding foster and kinship/relative carers)
- b. youth justice workers
- c. early childhood workers
- d. registered psychologists and school counsellors
- e. people in religious ministry.

Recommendation 7.4 says -

Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession.

There you have it, Mr President. If bringing it in is not going to mean that more events are reported because people simply will not go to confession, or not bringing it in means it still remains under the veil of secrecy, and given the royal commission had that huge amount of information and evidence which brought them to the point of putting in two recommendations specifically dealing with this, to my mind it would be recalcitrant of us as a parliament not to see those recommendations put into our law. That is my earnest and firm opinion.

The other aspect of this is that some might say that those who confess feel contrition, but also may feel absolved, then go and commit the offence of sexual abuse again. Because they confessed it, they feel they have done the right thing but, 'Oh dear, I have been tempted again', and then they go and confess it again. The guilt trip gets less and less and less, as they then start to see it as a weakness of theirs which they really cannot help, and they no longer feel the guilt. They have to live with that; we all know that, but so does the person who is being abused, the victim.

We must do what we need to do in this place to protect children because they cannot protect themselves. To my mind, those who have faith ultimately have a relationship with God, not the priest, and they can deal with that in their particular faith paradigm. But for me, at this time, we are setting laws of the land here. We need not be concerned about the processes and procedures of

faiths in the community and make up the fabric of our community in some ways. We need to make sure that we have laws, that we can sleep at night knowing that we have done what we can do to protect children.

I have said in this place before, I have experienced abuse, and I am not going to go through that again. We need to make sure that we do what we can so that young children do not experience abuse.

[4.05 p.m.]

Mr WILLIE (Elwick) - Mr President, this afternoon we are discussing a very dark, sick and insidious side to humanity. It is quite unfortunate we have to discuss this and legislate against that side of humanity. There have been so many tragic cases that have led to this point. Of course this process started with the courage of former prime minister Julia Gillard to establish a royal commission into child sexual abuse in institutional settings, so I admire her for that. I also commend the Liberal governments that have followed in implementing the recommendations, both at a federal level and at a state level.

We know that this will never replace the childhoods or make up for the lifelong trauma or in some instances, people who lost their lives - who tragically were exposed to these things when they were vulnerable. We know there were courageous people who participated in the royal commission. Some 7000 people participated in private sessions, as well as the 57 public hearings around the country.

Parliaments across Australia have condemned the perpetrators and also the people who knew and remained silent. I think that is the crux of what we are dealing with today. I will not go over the same ground that many in this House have. I might focus on the mandatory reporting side, given I have had some experience of that as a teacher as a mandatory reporter. Also, being the shadow spokesperson for child safety in this state parliament, I have had to report instances of child abuse.

I will not go into the details because I do not want to identify people, but I am aware that some of the claims I reported were substantiated. It is quite traumatic to be in that situation, to pick up the phone and make sure you are documenting the details to cover yourself because you never know how these things will play out. I have always taken a cautionary approach because tragic things do occur, Mr President.

The first question I have - and we talked about this a bit in the briefing - is about making members of parliament mandatory reporters. Are we the first state to do that or have other states already decided to go down that path?

The other question I had in the briefing was about the child protection reforms. There has been an adoption of what you would call a 'public health' model, where child protection is not just the responsibility of government; it is the responsibility of the community and institutions to protect children. As mandatory reporters, we are in a different situation in parliament. We are not teachers, we might not know the families directly and we are not health professionals. Part of that public health model is that these frontline mandatory reporters are ringing child protection earlier for advice and working with families. That early intervention is a key focus. We are not able to do that in many instances. When people come to us, they are at their wits' end, and they want us to be an advocate and to make things happen.

I have had people try to report to child protection who have not been listened to, so then they have come to me to make a report myself, and I know that then it has been listened to. In the briefing, I was interested to know whether a special protocol will be developed for members of parliament to report. To date, in my three years in parliament, it has been a great frustration dealing with the intake line - and that is nothing against the child safety officers. They are doing the best they can, with the resources they have. They are overworked and overstretched, and they do one of the most courageous jobs probably in government. It would be incredibly difficult. At the same time, we need to know that if we ring, our concerns will be listened to, will be documented and will be acted upon.

I could list many examples where that process has not been as smooth as it could be. Hopefully, following the discussion in the briefing yesterday, if this has not been developed, there is a way we can move forward with this. When I ring the line, I identify myself as a member of parliament. That can have varying degrees of success or not.

Ms Rattray - Have you gone through the minister's office?

Mr WILLIE - I have had some panicked responses and then been transferred to more senior people. It would be good if we could understand the process more.

As the member for Murchison said, if you are going to make all members mandatory reporters, they need training. They need to understand their responsibilities. As a frontline worker you understand your responsibilities, you have support around you. As a teacher when I was dealing with child safety, you had a principal, who was your line manager. They were well drilled in what to do as well, so you had that support. But members of parliament might not, particularly if you are independent, and you do not have the resources of government, or advisers who have been in government, to give you advice.

There are two aspects to this. We are obviously different to other mandatory reporters and the reforms do not really fit with posting the problem, which is what we will need to do, and the training that will need to occur.

This reform also allows for our identities to be passed on to law enforcement agencies. I am comfortable with that, as long as that is respected. Without going into too many details, I - and my office staff - have been in situations where law enforcement agencies have wanted to use our documents to administer an aspect of the law, and at times we have not been comfortable to do that. There was one occasion in particular where our wishes were not really respected. That exposes the member of parliament to any backlash to that, and also our staff. It is not fair on our staff to have to deal with that. They are not making these decisions. They are under our supervision, and the Legislative Council's supervision. They are particularly exposed because they are working in offices on their own.

Being the shadow spokesperson for child safety, I worry about my executive assistant at times because these are particularly complex situations. You are dealing with neglect in some instances, abuse and family violence. I am trying to say that the reform is okay as long as agencies of government respect the wishes of members of parliament. If it is going to be used in a court of law or anything further, our identities may remain anonymous if that is what we wish.

Ms Rattray - When they say, 'We will get someone to get back to you', you do not mean in a week's time?

Mr WILLIE - You are talking about making the initial report. Yes, a member of the other place, one of my colleagues, had that scenario play out not too long ago. For two days he tried to make a notification and was deeply concerned that he could not get through or be listened to. I have had circumstances like that, too. As I said, it is not the child safety officers' fault. Part of the advice and referral line, the new reform, is that they work through a process. They have a script they follow, and sometimes you are being subjected to that when you just want to get through and make the notification.

I will be interested in those answers. You have had a day's notice, so hopefully they are forthcoming.

I will touch on one more thing - the matter of interest that the member for Hobart was discussing, making members of the church mandatory reporters. I am not a person of faith; I would probably be best described as agnostic. That is not from not being exposed to the teachings of the church - I was baptised, went to a Christian faith school - it is not something that has enveloped my life and given purpose to it. That said, I do not know. I completely respect people of faith and their wish to preserve religious practices but in this instance the evidence is clear.

We had a royal commission with 7000 people who appeared in private sessions as well as the 57 public hearings. Those recommendations were to address failings of the church and we need to implement those today.

I was interested yesterday listening in the briefing to the process of the confessional and the sacrament of the confession. Not being well drilled in that, not coming from a Catholic background, I would have thought this law reform would complement that. The belief, as we were told, is that God is a higher power than the law and the confessional is between the individual and God. To participate in that process, you need to show remorse; if you genuinely show remorse, you will be prepared to meet the law and your responsibilities under the law for the atrocious acts you have committed.

This complements that process. There are concerns people will not go and confess. It was mentioned people would go straight to the police, but they might not. They might talk to God, make their confession, show remorse and accept it will be reported and they would have to meet the full force of the law as a part of the confession, which has not happened in the past. It is a sickness that was allowed to recur over and over again. This puts those protections in to protect the sanctity of childhood. Every child deserves the right to be loved, cared for, to feel safe and grow up in a nurturing environment so they can reach their full potential. Sadly, through this process we have heard too many stories where young people were not allowed to reach their full potential, lived a life of trauma or ended their lives.

Those are some of my thoughts. I am interested in the Government's response, particularly to the mandatory sentencing - I mean reporting. We have had a lot of discussion around mandatory sentencing in this place -

Ms Rattray - Do you want to sort that?

Mr WILLIE - It is being dealt with in the other place before it comes here.

Mr President, in conclusion I commend the Government for bringing this forward. Parliaments across Australia are implementing these reforms. It will not right the wrongs of the past, but it may go some way to protecting children in the future.

[4.18 p.m.]

Mr GAFFNEY (Mersey) - Mr President, I wish to put something on record which will give people who have not spoken a chance to refute some of the comments we heard yesterday in the briefing.

I am not a person of faith, so I have no affiliation with any church. I thank the members for the exceptionally well-researched information they have provided. Personally, I am along the same line of thinking. I have stood up here before and have affirmed that every person in our community is important, whether it is to do with a gender issue, same-sex marriage, abortion or any other topic.

We heard yesterday from Alex Sidhu that there are probably 90 000 people in Tasmania in the Catholic Church or who align themselves with the Catholic Church, and of those about 5000 might attend a service on a Sunday. If you look at that, there are 500 000-plus Tasmanians, so about 1 per cent of the people in my community are of the Catholic faith and go to church. In light of that, I am going to read some information we received yesterday to do with religious freedom, particularly about the referendum. It is important for the record to understand why the Catholic Church does not want the confessional to be broken, what we are trying to do here, and the reason they have it.

We also heard from members after Alex Sidhu spoke yesterday about their possible misinterpretation of religious freedom, but I will leave that to other people to highlight. I am going to stick to the script now -

4. Religious Freedom

Requiring priests to break the seal of the confessional would, we believe, clearly violate religious freedom, both in principle and in terms of the protection provided in the Tasmanian Constitution Act. As it states

46. Religious freedom

- (1) Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

It is clear that the Sacrament of Confession constitutes a particular religious practice of the Catholic faith and as such is protection by section 46 of the Tasmanian Constitution Act. For the last 80 years or so this section of the Act has represented a powerful and enduring statement by the Parliament (expressed as guarantee) about what most people would agree is a fundamental human right. There is a very good argument that such things should not be lightly interfered with, even if this is possible.

Any attempt to limit or lessen the protection of religious freedom goes against the spirit and the intended purpose of the Act and constitutes an attack on what is regarded universally as a fundamental human right.

The state does clearly have an important obligation to do all that is reasonable to protect children from harm, but seeking to remove legal protections for the seal of the confessional will not have effect of better protecting children, rather it will simply mean that individuals will no longer seek confession and the opportunity of the priest to try and work with the person committing acts of harm to change

their ways will be lost, arguably leaving the offender in a position where they are much more likely to continue to commit acts of harm in the community.

Further, in seeking to break the seal on confession the government, would fundamentally breach the principle of separation of power between state and the Church. This would be a most worrying development and dangerous precedent.

Conclusion

We would therefore strongly recommend to the members of the Legislative Council that the proposed amendment removing protection from the seal of confession be rejected.

Such a law would not advance child safety as it would just act against any one perpetrator or not ever approaching Sacrament. Further, requiring that priests to break the seal of the confessional would clearly violate the most basic right of religious freedom, as expressed in section 46 of the Tasmanian Constitution Act.

It was in light of these types of reasons that the 2012 'Protecting Victoria's Vulnerable Children' Inquiry, chaired by the Honourable Philip Cummins after reviewing all the argument for and against removing the legal protection concluded that an exemption should continue to be granted to ministers of religion.

That is the close of the document we received from Alex Sidhu. For the record, when we received it in the briefing, it had 'Confidential, not for further distribution' on it, but when Alex was asked in that briefing whether we could refer to the document, he said yes and that is why I have read it into *Hansard* for those in my electorate and other members' electorates who are members of the Catholic Church and may go to church on a Sunday.

[4.24 p.m.]

Mr DEAN (Windermere) - Mr President, I will try not to traverse too much of the ground already covered. It is difficult when you go well down the list to avoid that.

There is no doubt this is a very important bill, brought on after decades of child sexual abuse. As we know, much of it occurred in children's homes, and many of the crimes were committed by clergy using churches as a front to cover their criminal activity. It rocked Australia, did it not?

When this started coming out, some of the stories were unbelievable and we were shocked at the people involved and how long it went on for. You try to comprehend it, but it is so difficult. In fact, at one stage, it had tentacles reaching into the Vatican. It was horrific; absolutely unbelievable. It is fair to say all rational people and 99.9 per cent of the country now want to ensure we never again allow an environment to exist that enables these horrific things to recur.

Unfortunately, it is a shocking part of our history. We cannot remove it but, as the member for Elwick said, we can put things into place that ensure we can never, ever have a situation like this again. This bill is the beginning of ensuring that.

This is a good bill and I support it. I thank the Leader for yesterday's briefings, and the members of the Government and department officers for the way they provided those briefings, answered our questions and brought out salient points. I thank you very much for all of that.

As I said yesterday, it seems we have gone soft in some of this legislation, we have provided too many escape avenues for those people who have information about child abuse. I find that difficult and my view is we should be harder in that regard.

For instance, I would refer to the victim, where the victim is now 18 or older, and the person receiving the information believes on reasonable grounds - they do not have to know; they only have to believe - through the exclusion of belief the victim does not want it reported to police. There could be many positions that could lead that person to reasonably believe the victim, who is now 18, does not want previous offences reported to police. It would be difficult, in my view, for a court to disprove that. It would be very difficult.

Ms Forrest - I do not think the reasonable belief section applies to that, does it? It is the other matters.

Mr DEAN - Sorry?

Ms Forrest - I do not think the reasonable belief applies to that exemption.

Mr DEAN - Let me go to it. Thank you for raising that. I will get this right -

... if ... the alleged victim of the offence to which the information relates had attained the age of 18 years at the time the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to a police officer.

Ms Forrest - Sorry, it does, too. It was the other ones as well then. Go on.

Mr DEAN - That applies. I have some issues with that. We then go on further and it says it is a reasonable excuse not to report the information if the person fears on reasonable grounds that to go to police would endanger the safety of the victim and/or indeed could be their family, or indeed it could be anybody else.

It could be anybody else - not only the safety of the victim. It could be someone closely associated with that victim. It could be a parent, a sibling, a friend; it could be somebody closely related to that person. The Leader will tell me if I am wrong in her summing up of the second reading.

If that is right, I have some difficulties there. This is wide open. Some of the people involved in these crimes are high fliers, high-profile people - people in powerful positions who become involved -

Ms Forrest - You are talking about the perpetrators?

Mr DEAN - Sorry, yes, perpetrators. We know there are cases where acts of violence have been committed to prevent people going to the law, to prevent matters coming out in the open. In

actual fact, there are cases where a victim has been paid off with large sums of money to keep their matter quiet and to go away. I have some issues there.

As a police officer, I investigated a number of these cases and crimes committed on young people. I can tell you that trying to retain your composure while you are dealing with crimes like this is extremely difficult. I can well understand why some police officers get themselves into trouble by taking the law into their own hands to some extent. This is particularly the case when you have young children of your own, and at the time I had three young children. You are dealing with these crimes. It is a horrific situation when you get there and you understand just what is going on.

Ms Forrest - In your experience as a police officer in that frame, you are talking about these exemptions you are concerned about. Did you see examples of coercion? That is what you are talking about, is it not? Did you see that?

Mr DEAN - You do. Certainly, that is there. You see examples of that and you see examples of everything that is bad, everything that is there to try to cover up. It just all comes out and people will go to extreme lengths to protect their identities, to protect their power and to ensure their good name is not impacted detrimentally in any way. I say you have to understand, but I think most of you do understand. I am just trying to point this out, to understand that many of these people come from incredible situations.

I want to make a couple of other comments as well. Child abuse, sexual abuse in particular, is beyond the comprehension of most people. It is a crime equal to the worst. In my view, jail with no way home is the right penalty for child abuse.

I am a Christian. I am not a strong Christian by any means, but I live by Christian beliefs. When you stop to think about it, the priest taking your church service; it could have been for those who have been to church. As a young kid I was given sixpence or a shilling, a bob it was called, to walk 2 kilometres or a mile at that stage, a mile-and-a-half there and a mile-and-a-half back, to go to church. At times, yes, I admit that we would rob the plate.

Mr Finch - It is all coming out now.

Mr DEAN - I mean we would pretend to put in our sixpence but rattle the bowl and keep the money. We would not take money that did not belong to us.

Ms Rattray - I think that might be why the church collection has gone to a bag and not a plate now.

Mr DEAN - We would be challenged every time. To think that those people, those priests, are preaching to you - identifying as the pillars of society - and then a short time later, out the back, committing some of these most atrocious crimes. It is just beyond your comprehension and to work with it, really it is.

I wanted to read a couple of issues that identify what was going on. You have all heard of Ridsdale and some of his crimes and atrocious behaviours. I will just read this -

One of Ridsdale's victims was a girl whose father woke her up on two occasions to see the priest who then sexually assaulted her. The court heard on Tuesday her

father carried her to the confessional booth and took her clothes off her, then carried her to the altar and laid her down, Crown Prosecutor Jeremy McWilliams said of the second occasion in 1974, as quoted by the Australian Associated Press. According to the Prosecutor, Ridsdale indecently assaulted her then told her 'Jesus died for our sins so we could be forgiven and if I confess to this sin I might be forgiven', before kissing her on the cheek. The survivor is still suffering from the abuse experiencing crippling flashbacks. 'I feel like a piece of meat, handed around for anyone to take a bite of me,' she said in a statement read to the court by the Prosecutor, as quoted in local media.

McWilliams also recounted the story of a nine-year-old altar boy who was told 'God will forgive all of your sins' as Ridsdale raped him.

The former priest has been in jail since 1994 after being convicted for sexually abusing 53 children over three decades, although he admitted the true number of victims could be in the hundreds. It is just beyond you.

There is another one. I think this was in 2002 and this is how long ago this happened. This was George Pell and a statement he made. I can still remember this statement, in actual fact, at the time it was made. I remember things about it. I cannot specifically remember all of the detail. This is six years earlier at Toronto's World Youth Day, where Pell was addressing a group of delegates on a range of issues.

Canada's *Globe and Mail* newspaper reported that a Kentucky youth minister had asked Pell how Catholics should react when faced with questions about the sexual abuse crisis that even then was enveloping the church. Pell replied that abortion was a worse moral scandal than priests sexually abusing young people. When asked to clarify his position, Pell dug in by saying, 'because abortion is always the destruction of human life'.

Ms Forrest - And this is not?

Mr DEAN - What is abuse of children? It is just unbelievable.

Ms Forrest - It is the destruction of their life.

Mr DEAN - It is horrific. You get upset. It is easy to get upset about Pell, it really is.

I commend the Government for bringing this bill forward. We have to move forward. I would like to have seen a stronger bill, but we need to move forward as quickly as we can on this to put in place anything we can to ensure we never get an environment that allows this to happen again.

I will certainly be supporting the bill.

[4.39 p.m.]

Mr ARMSTRONG - Mr President, I also commend the Government on this bill which seeks to implement some of the recommendations of the Royal Commission into the Institutional Responses to Child Sexual Abuse, a royal commission that rocked each and every one of us, I am sure.

A lot of discussion on this bill has been around the inclusion of people in religious ministry as mandatory reporters or notifiers. While I appreciate the significance of the church's concerns, as

we heard yesterday, the protection of children cannot be compromised under any circumstances. This bill extends the responsibility of people in positions of authority, entrusted to do all they can to keep Tasmanian children safe. We as a community need to do all we can to ensure that no child should go through the horrors of abuse reported in the royal commission.

The new crime of failing to report child abuse contained in the bill makes that absolutely clear. All the amendments in this bill move to better protect our children from abuse, and it is fully supported. I also add that the Government has acknowledged there is more work to be done in the legislative support to the recommendations of the royal commission. I look forward to reviewing all those future changes. I support this legislation.

[4.41 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, the member for Windermere must have suffered some fairly harrowing situations.

Moving on from that, I am not going to declare whether I am religious or not like everybody else has. I will settle straight into the answers. Some of these answers cut across the contributions made by many members. This one is for the members for Elwick, Murchison and Nelson, about state parliamentarians and mandatory reporting guidelines.

Noting members' particular circumstances, the Department of Communities Tasmania has committed to developing a mandatory reporting guideline for Tasmanian parliamentarians. This will be done in consultation with members and with briefings on the mandatory reporting obligations. The consultations will include the protections for members of parliament raised by the member for Elwick and the member for Nelson.

A question was asked about the implementation strategies the Government has for priests in the future. The Department of Communities Tasmania is currently undertaking work on mandatory reporting guidelines. In particular, it is working on guidelines for mandatory reporters in non-government settings. These reforms, if passed, will be incorporated into that work.

More for the member for Elwick: are we the first state to make parliamentarians mandatory reporters? No, some states define 'government workers' in such a way as to include members of parliament.

The member for McIntyre, with regards to the changes to schedule 1, though your changes were mentioned by others, your comments reinforced the matter.

Member for Hobart, in the briefings, and the member for Murchison talking about protections for mandatory reporters: section 16 of the Children, Young Persons and Their Families Act states -

Confidentiality of person informing of knowledge, belief or suspicion of abuse or neglect or certain behaviour

(1) In this section -

notifier means a person who provides the Secretary or a Community-Based Intake Service with a risk notification.

- (2) Subject to this section, a person who receives a risk notification from a notifier, or who otherwise becomes aware of the identity of a notifier because he or she is engaged in the administration of this Act, must not disclose the identity of the notifier to any other person unless the disclosure -
 - (a) is made in the course of official duties under this Act to another person acting in the course of official duties; or
 - (b) is made with the consent of the notifier; or
 - (c) is made by way of evidence adduced with leave granted by a court under subsection (3).

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (3) Evidence as to the identity of a notifier, or from which the identity of the notifier could be deduced, must not be adduced in proceedings before any court without leave of that court.
- (4) Unless a court grants leave under subsection (3), a party or witness in the proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier.
- (5) A court cannot grant leave under subsection (3) unless -
 - (a) that court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or
 - (b) the notifier consents to the admission of the evidence in the proceedings.
- (6) An application to a court for leave to adduce evidence under subsection (3) -
 - (a) must not, except as authorised by that court, be heard and determined in public; and
 - (b) must be conducted in a manner which protects, as far as may be practicable, the identity of the notifier pending the determination of the application.
- (7) The Right to Information Act 2009 does not apply to the identity of the notifier or any information contained in or relating to a risk notification that may lead to the identification of the notifier.

Then we talk about protections from civil liability and defamation.

Section 101A, Legal and professional immunity for disclosures, &c., made in good faith, states -

- (1) This section applies if a person -
 - (a) answers a question or provides a report or information as required -
 - (i) by an assessment order; or
 - (ii) by an interim assessment order; or
 - (iii) by the Secretary under the authority of an assessment order or interim assessment order; or
 - (iv) otherwise under this Act; or
 - (b) provides a voluntary risk notification.
- (2) In so far as the person answers the question or provides the report, information or voluntary risk notification in good faith -
 - (a) the person does not thereby incur any civil or criminal liability; and
 - (b) the person cannot be held to have thereby breached any code of the professional etiquette or ethics, or to have departed from any accepted standard of professional conduct or to have contravened any Act.
- (3) In this section -

voluntary risk notification means a notification referred to in paragraph (a) of the definition on *risk notification* in section 3(1).

I should imagine, if members want to study that more when it comes out in *Hansard*, that shows you how you are protected.

The member for Launceston had questions about the scope for mandatory reporters. Parents are not mandatory reporters under the Children, Young Persons and Their Families Act 1997, but parents are subject to the new crime in section 105A. The DPP would consider whether it is in the public interest to prosecute the parent.

This situation obviously involves very complex considerations, including the family environment - that is, whether there is a family violence issue.

The member for Windermere asked a number of questions about the scope of the exceptions to the new crime. The member for Windermere also queried the reasonable belief that if the information was reported, it might endanger the safety of any person other than the alleged offender, suggesting that this exception is too broad.

This exception exists in the equivalent New South Wales and Victorian provisions, and requires the defendant to demonstrate reasonable grounds for the basis of that belief. The provision, among other things, importantly provides protections to people who may be in very complex circumstances, such as those that arise in a family violence context.

Also, the member for Windermere's concerns have been noted, but the Government does respectfully disagree with some. The exceptions in the new crime have been the subject of careful consideration during drafting, and the final version was developed in consultation with the DPP, in context with the new crime and how it will operate. In fact, a number of the exceptions were requested by the DPP to avoid injustices while maintaining protections for vulnerable children.

The DPP says -

In my view, any crime for failing to report should only apply to adults who have obtained information as an adult and the non-exhaustive list of matters that may constitute a reasonable excuse for the purpose of subsection (2) must be expanded to include, at a minimum, the following:

- (a) Where the alleged victim was an adult at the time that the information was obtained and the person believes on reasonable grounds that the alleged victim does not wish the information to be reported;
- (b) Where the information was obtained by the person when they were under the age of 17 years;
- (c) Where the information is obtained through the public domain.

It is also important to note this bill has been the subject of further outside scrutiny. In developing its laws, the ACT government commissioned a retired federal court judge to prepare an analysis of the recommendations of the royal commission. In providing drafting instructions for a new crime for the consideration of the ACT government, the retired judge made the following observations at pages 86 and 87 of her report. I quote -

The offence described in the drafting instructions [in the report] is modelled largely upon the proposed Tasmanian offence to be inserted into the Tasmanian Criminal Code. In our view, that offence is simply drafted, easily understood, and imposes an obligation to report in appropriate circumstances.

I think that has answered all the questions that came forward. I thank members for their participation and contribution. It is not an easy thing to discuss - a bit harder for some who have experienced, had it reported to them or seen it, in the case of the member for Windermere. I thank you for your contributions.

Debate adjourned.

SUSPENSION OF SITTING

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

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

This is for a housekeeping matter. I ask Committee A to go to the Antechamber and Committee B to go to the President's Suite. Members, we do not have much time; perhaps we will

ring the bells at about 10 past or quarter-past. If you could take care of your business, that would be wonderful.

Sitting suspended from 4.53 p.m. to 5.16 p.m.

**CRIMINAL CODE AND RELATED LEGISLATION AMENDMENT
(CHILD ABUSE) BILL 2018 (No. 63)**

Second Reading

Resumed from above.

Bill read the second time.

**CRIMINAL CODE AND RELATED LEGISLATION AMENDMENT (CHILD
ABUSE) BILL 2018 (No. 63)**

In Committee

Clauses 1 to 3 agreed to.

Clause 4 -

Section 14 amended (Informing of concern about abuse or neglect or certain behaviour)

Ms WEBB - A question about 4(a)(jb) where it says -

a member of the Parliament of this State ...

Guidelines on being mandatory reporters may help us arrive at the process for how this happens. Under the legislation, the scenario we have heard about but which I have not experienced yet, where our electorate officers may be the ones who are made aware of a situation of abuse through a constituent matter and then potentially would talk to us as the member about it, what situation are our electorate officers in under the mandatory reporting requirement, given they are our extension? That is, if it is not passed on to us for some reason or there is a period when they have the information and we do not know, how are they left legally?

Mrs HISCUTT - Your executive officer is not a mandatory reporter. The member of parliament is, so the EO will deliver the message directly to the MP, who is then a mandatory reporter. It is your EO's responsibility to put all these things to the MP, to either make an appointment, pass a message on or whatever, and it is the MP who is the mandatory reporter.

Ms WEBB - To be really clear, the offence of failure to report is on us as members and our electorate officers would not be liable?

Mrs HISCUTT - That is absolutely correct.

For clarification, under the Criminal Code, it is everybody's responsibility to report if they believe there has been a crime committed against a child but when it comes to the mandatory reporting part of it, the MP is the mandatory reporter, not the EO.

Mr WILLIE - Madam Chair, I am interested in this scenario. The EO becomes aware of a matter. For some reason, administratively it is not dealt with, say, for two days. In the meantime, something happens. Are we liable as mandatory reporters for also being in control of the office?

Mrs Hiscutt - While the member is on his feet, I am advised that 'no' is the answer there.

Mr WILLIE - That is when we become aware of it ourselves?

Mrs Hiscutt - Yes, because it is when you hold the belief.

Mr WILLIE - So it is when we become aware of it ourselves. For example, I have not been in my office for three days and it may have gotten caught.

Mr DEAN - I want to be perfectly clear on what you said, Leader, in relation to this matter.

Under the Criminal Code, it says that a person is guilty of the crime if the person has information that leads et cetera. I see it as incumbent on that person to report the matter. If they do not, they will have committed the crime of failing to report the abuse of a child. That is a very serious matter. It does not matter the way I see it, tell me if I am wrong, whether it is an executive assistant or somebody else who happens to be in the office at the time who it gets that information.

Mr Willie - It is not if the crime has been committed in the scenario we are talking about. It is if they are at risk of something happening.

Mr DEAN - Yes, that is right.

Mr Willie - But no crime has been committed.

Mr DEAN - It says clearly in clause 7(2) that a person is guilty of a crime if the person has information that leads et cetera. The EO is a good example here.

Mrs HISCUTT - Everybody, including an EO, under the Criminal Code Act 1924 is responsible where they hold a belief, and the crime requires a person to have a reasonable belief that a child abuse offence has been committed.

When it comes to the crime of a mandatory reporter or a notifier, that is where they hold a belief or a suspicion on reasonable grounds that a child is at risk of abuse or neglect. Under the mandatory reporting part, the EO is not responsible because the MP is - this is under the bill we are looking at now. Under the Criminal Code Act 1924, everybody is if they suspect a serious case of child abuse offence has been committed. It is not only our EOs, it is everybody.

Mr DEAN - I heard what you said, but I again raise the issue as articulated here. It is very clear the way I read it where it says -

A person is guilty of a crime if the person ... has information that leads the person to form a reasonable belief that an abuse offence has been committed against another person who was a child at the time of alleged offence; and

not or -

... fails without reasonable excuse to disclose that information to a police officer ...

Madam CHAIR - I just suggest, member for Windermere, that you are actually in the Criminal Code amendments. We are dealing with clause 4 which deals with the changes to the Children, Young Persons and Their Families Act. I know where you are coming from, but they are probably questions asked better in that clause. This one is about who is a mandatory reporter; the other one is about the criminal offence.

Mr DEAN - Okay, I am out of place, thank you for that.

Clause 4 agreed to.

Clauses 5 and 6 agreed to.

Clause 7 -
Schedule 1 amended (Criminal Code)

Mr DEAN - Madam Chair, under the Criminal Code, if an EO were to receive that information as has been suggested, they are required to report that matter - if all of these other things fit - to a police officer, not to wait two days for the MP to come back, or what have you.

Mrs Hiscutt - Whilst the member is on his feet, yes. Under the Criminal Code, everybody, not only the EO.

Ms WEBB - Just to further clarify that, in relation to the distinction between the failure to report offence and the mandatory reporting requirement, the failure to report is when you have reasonable belief that a crime has occurred. The mandatory reporting is incumbent upon us when we believe the child is at risk. That is what applies to us but not our EO, correct?

Mrs Hiscutt - I put on the *Hansard* that is correct.

Ms WEBB - Thank you. I am looking at Part 3, clause 7(3) -

(3) A person is not guilty of an offence under subsection (2) if -

(a) the information was obtained by that person when he or she was a child ...

If you have obtained the information when you are a child, you cannot be then considered to have failed to report. Once you reach adulthood and you are still in possession of that information obtained when you were a child - the victim who had reported it to you when you were a child is either still a child or potentially themselves has also reached adulthood - is it incumbent on you once you have reached adulthood to report this to not be subject to the crime of failure to report?

Mrs HISCUTT - The information is that if on your eighteenth birthday, your friend who may be 16, 17, 15, whatever, and you are an adult and you still maintain that information, and you reasonably believe that something is going on, yes, you should report that. If, however, you are 18 and your friend has just turned 19, or is an adult as well, clause 7(3)(b) kicks in -

- (b) the alleged victim of the offence to which the information relates had attained the age of 18 years at the time the information was obtained by the person and the person believes on reasonable grounds that the alleged victim does not wish for the information to be reported to a police officer.

You may have a conversation and your friend may not wish to expose themselves.

Ms WEBB - We may have covered this in the briefing, but I wanted to clarify it in this place. It would apply either in the scenario we were discussing under that previous one, where you obtained the information when you were a child and carried it through into adulthood and then on your eighteenth birthday it is incumbent on you if you still have reasonable grounds to believe that to report or whether you are an adult. The victim has now become an adult. They may have explicitly told you they do not wish it to be reported as an adult, or they may not have explicitly told you that; you may have grounds to think it, you may not. What is the requirement? That you should seek out their wishes or their instructions or intention around whether you disclose or not. To what extent are you expected to do that?

Mrs HISCUTT - Once that person has reached 18, that is their decision to make. It is not incumbent on anyone to report it at that stage when that person is 18. It is not incumbent on a person to make inquiries or find out if it is an adult. Once the person has turned 18 they are adult. It is not incumbent upon the person who may know the ghastly secret to place information or seek information because that person is an adult. They can make their own claims if they wish.

Mr GAFFNEY - I might be a little bit confused now with what has happened. Going back to that EO or EA, a person comes in and we are not in the office and says to my EA, 'I have reason to suspect my child was violated last night by so-and-so', tells the EA and my EA tells me, I have to report because it is a mandatory thing. However, in this one, if that person has information that leads a person to reasonably believe an abuse offence has been committed - so if the person tells the EA, 'my child was violated last night', that means the EA has to go to a police officer, otherwise she is subject to subclause 2(b) - 'fails without reasonable excuse to disclose that information to a police officer as soon as practicable'.

On one hand, if he or she has been told something has happened they tell us but by this clause, under the Criminal Code, if they believe that has happened they have to tell the police as well. Do we both have to then report it?

Mrs HISCUTT - That is absolutely right. If they hold a reasonable belief about the truth of that statement that it is a serious crime, yes, something should be done straightaway.

Mr GAFFNEY - In light of that, my instruction to my EA will possibly be if anybody comes in and speaks to you about anything like this that you have a belief and I may not be there - I might be out of the state or somewhere - that they would go straight to the police. How are they to judge whether something has occurred? When you think about that, unless we get approached directly, whenever our EA comes in, they are not allowed to be the judge and jury of whether an offence has occurred. They have to report straight to the police.

Telling us makes no difference and we have to instruct them to go straight to the police. That is what it says under the Criminal Code. I want to get that clear. I do not want to go to my EA and say, 'You tell me and I have to report it', because I am going to say to her, 'If you get something you suspect, you have to report it anyway'.

Mrs HISCUTT - If it is of a serious nature, that is probably very good advice to give to your EO.

Mr GAFFNEY - It does not matter if it is of a serious nature because it is not the EO who has to determine whether it is serious or not. As soon as it is reported, if the EO does not report it, regardless of the circumstance it is not up to them to try to work out if it is serious or not serious. If they do not report it and it is serious, then they get into trouble for not reporting it because they might have misinterpreted what has happened.

You cannot sit on the fence. It does not matter how serious it is with children, it is an offence. I need to be clear on the instructions I am giving to someone who is in my office.

Mrs HISCUTT - What you are saying is probably right. It is always best to err on the side of caution. It is not up to the EO to judge the seriousness of the situation and best to err on the side of caution when those reports come around when you are not in the office, to do that.

We will ask Communities Tasmania to cover this issue during the briefing.

Mr Gaffney - While you are on your feet, because it says 'to a police officer' - as soon as they do that, it is up to the police officer to contact the Department of Human Services. They have reported it to the police and that is all they have to do. It is up to the police then to follow through with it.

Mrs HISCUTT - Yes.

Mr VALENTINE - I suggest this would be a good topic for the EOs when they come together for their 12-monthly meeting.

Madam CHAIR - But also in terms of the guidelines.

Ms WEBB - On page 10 at (4)(b):

- (b) subject to subsection (5), reporting the information would disclose information in respect of which there is a lawful claim or right of privilege;

For my understanding, I would like an example of what that might be. With the amendments we are making and the situations we are discussing, are there any implications from recent court decisions or the #LetHerSpeak movement that looked to change laws about disclosing details of people impacted by these crimes?

Mrs HISCUTT - In answer to the first part of your question, legal privilege operates fully if a person charged with child abuse crimes provides information to a lawyer or she has engaged to act on that particular matter.

The lawyer does not have to report the information to police but they do not have lawful claim of privilege if the lawyer is acting on an unrelated matter. So, the right of privilege is on the one

incident that the person is being convicted of and the lawyer is trying to help with that incident. On the other hand, if that perpetrator divulges something totally unrelated to the incident that they have been charged with, there is no right of privilege there.

The other answer will be here in a moment.

Madam CHAIR - I understand this one does fall under the Evidence Act so is it preferable to answer it then? Perhaps check with your advisers.

Mrs HISCUTT - No, is the answer to your question.

Madam CHAIR - Answer it now then?

Mrs HISCUTT - Yes. Is there a link to #LetHerSpeak? The themes are similar but there is no direct link. #Let Her Speak relates to section 194K of the Evidence Act, which relates to publishing of details of court proceedings where a victim of a certain crime will be identified. The amendment relates to the Criminal Code and when information of certain crimes is to be reported.

Clause 7 agreed to.

Clauses 8 to 21 agreed to.

Clause 22

Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)

Mr DEAN - I believe I raised this in the briefing as well; clause 22 seems to be a clause that has a bit of a shot at the judges where it says:

- (3) In determining the appropriate sentence for an offender convicted of a child sexual offence, the court is to take into account the sentencing patterns and practices at the time of sentencing.

That is something the courts do not only with this crime, but with any and every crime they handle. In sentencing, they look at the patterns and what sentence has been imposed. My question from that is, why was there a need to put that in here? Is there some other reason for wanting it in there? Judges do that, it is a requirement. If they fail to do that it is almost an appellable point for when they are appealing. They will use it if it is not in alignment with other penalties imposed for a similar crime. Why it is there?

Mrs HISCUTT - There is High Court authority that gives relevance to sentencing patterns at the time the offence was committed. It reflects historical attitudes to offences that are not relevant for modern times. It was a royal commission recommendation for that reason, for clarity.

Clause 22 agreed to.

Clause 23 -

Repeal of Act

Mr VALENTINE - I wanted to ask the question, before the repeal of this act, is it possible that we might revisit some of the headings in the other acts: 'Viewing of video-taped evidence' in proposed section 7D, and 'Possession or dealing in video-taped evidence', in proposed section 15.

Others have 'audiovisual' recordings. I am drawing that to attention. It is not something I can talk too much about.

Mrs HISCUTT - We have gone from virtual acts in our last bill to this and yes, your comments have been noted.

Clause 23 agreed to and bill taken through the remainder of the Committee stage.

SUSPENSION OF SITTING

[5.52 p.m.]

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

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

Sitting suspended from 5.52 p.m. to 6.24 p.m.

ADJOURNMENT

[6.24 p.m.]

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

That at its rising the Council adjourn until 9 a.m. Friday 6 September 2019.

Motion agreed to.

The Council adjourned at 6.25 p.m.