Thursday 20 September 2018

The President, **Mr Wilkinson**, took the Chair at 12 p.m. and read Prayers.

NATIONAL REDRESS SCHEME FOR INSTITUTIONAL CHILD SEXUAL ABUSE (COMMONWEALTH POWERS) BILL 2018 (No. 28)

CONSTITUTION AMENDMENT (HOUSE OF ASSEMBLY ELECTORAL BOUNDARIES) BILL 2018 (No. 4)

SURVEILLANCE LEGISLATION AMENDMENTS (PERSONAL POLICE CAMERAS) BILL 2018 (No. 29)

Third Reading

Bills read the third time.

HEALTH COMPLAINTS AMENDMENT (CODE OF CONDUCT) BILL 2018 (No. 26)

Second Reading

[12.05 p.m.]

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

That the bill be now read the second time.

The purpose of this bill is to introduce a code of conduct for healthcare workers who are not nationally registered.

The code has been under consideration for a number of years at the national level.

The Council of Australian Governments - COAG - Health Council agreed jurisdictions would examine local implementation of the code in respect of healthcare workers that extends to those practising in roles not covered by the National Registration and Accreditation Scheme.

This decision followed an extensive national consultation process, including release of a regulatory impact statement in 2013 on options for the regulation of unregistered health professionals. The regulatory impact statement was prepared in accordance with COAG requirements, and found the code was likely to deliver the greatest net public benefit to the community in the most cost-effective manner given the level of risk.

The code will not restrict entry to practice, but will allow action to be taken against an unregistered healthcare worker who fails to comply with proper standards of conduct or practice.

The code will establish a scheme that sets out minimum practice and ethical standards, enhances statutory powers to investigate a complaint and permits new actions to be taken in relation to a complaint where a risk to the public exists. These actions include public warning statements

and orders to prohibit the practice of non-registered health practitioners who have been found in breach of the code.

It allows the vast majority of ethical and competent members of a non-registered health profession and their professional associations to self-regulate. However, it gives an additional level of public protection through national prohibition of health workers found to be in breach of the code where the breach presents a serious risk to public health and safety.

A statutory code of conduct scheme already operates in New South Wales and South Australia, Queensland and Victoria and is in the process of being implemented in other jurisdictions.

The proposed implementation for the code is via amendments to the Health Complaints Act 1995. This will be done by including the code in regulations so any future changes to the code can be made by amendment of regulations.

The national policy framework notes each jurisdiction is responsible for determining the entity or entities empowered to hear matters and issue prohibition orders. In Tasmania, the Health Complaints Commissioner is the appropriate officer for Tasmania.

The act currently contains a relatively broad definition of health service. For the purposes of the code, the current broader definition in the act is retained, but there is flexibility in the bill for the ability to exclude services by regulation from the application of the code. For example, the National Disability Insurance Scheme is currently developing its own similar complaints and quality processes. Service providers in the disability support sector can be excluded from the code of conduct if the sector is adequately covered by the NDIS arrangements.

The application of the code will be to any person who provides or offers to provide a health service who is not a registered health practitioner or student under the National Registration and Accreditation Scheme. It also applies to registered health practitioners or students under the National Registration and Accreditation Scheme who provide health services unrelated to their registration or study.

The bill provides for consistency with the national policy framework for the code of conduct. Some of the key features are as follows.

The bill provides any person is able to make a complaint about a breach of the code, not just service users and their representatives.

The Health Complaints Commissioner administering the code regulation regime has 'own motion' powers to initiate an investigation of a possible breach of the code, with or without a complaint.

The bill provides a period of two years from the date the service was provided (or the health user became aware of the circumstances that gave rise to the complaint) for complaints concerning the code. The commissioner has a limited discretion to accept complaints outside this time frame.

The national policy framework notes each jurisdiction is responsible for determining the grounds for issuing a prohibition order. Following consultation with stakeholders in 2017, the bill provides for the following grounds for issuing a prohibition order -

- a breach of the code

- cancellation of registration, where the practitioner is registered under the National Registration and Accreditation Scheme

- the commission of a 'prescribed offence' whether or not a breach of the code has occurred, with prescribed offences to include certain breaches of Tasmania's Criminal Code or certain other offences under other Tasmanian legislation; and breaches of another jurisdiction's criminal code or other prescribed offences in that jurisdiction.

The bill inserts a new Division 5 in Part 6 of the act to provide for public warnings and prohibition orders for healthcare workers who breach the code or commit prescribed statutory offences. The issue of a public warning or prohibition order is conditional on there being a risk of harm to the community from the practitioner.

Interim orders can be issued in cases where there is a perceived risk of immediate harm to the community, but a full investigation of the matter has not yet been completed.

The bill provides for penalties for breach of a prohibition order to be a maximum of 150 penalty units or imprisonment for one year as an alternative to the financial penalty.

The Health Complaints Commissioner does not currently have a monitoring function under the act. The bill amends the functions of the Health Complaints Commissioner by providing for a monitoring function in relation to prohibition orders. This permits the commissioner to determine what monitoring may be required in relation to prohibition orders.

The bill provides for broad powers to enable the commissioner to publish a prohibition order or make a public warning statement, as appropriate. This will include publication of prohibition orders and public warning statements on a shared national website as required.

Persons affected by decisions to deny or restrict the right to practice have a right of appeal against that decision. The bill provides persons aggrieved by the decision of the commissioner to issue a prohibition order or make a public warning statement have a right of appeal to the Administrative Division of the Magistrates Court.

The bill provides for the sharing of information between health complaints entities and between health complaints entities and other regulators. This will include professional associations responsible for the enforcement of professional codes of conduct for their profession and the National Disability Insurance Scheme Commissioner.

The bill provides for the Health Complaints Commissioner to be able to notify employers or other affected parties a person is under investigation for a breach of the code.

The national policy framework notes there should be mutual recognition of prohibition orders in other jurisdictions. The bill establishes a penalty for breaching a prohibition order made in another jurisdiction.

For the preparation of the bill, Tasmania undertook public and stakeholder consultation on the implementation issues in respect of the scope of professions covered and administrative

arrangements to support the code. There is widespread stakeholder support for the introduction of the code in Tasmania.

As agreed by COAG Health Council, an independent review of the national code regulation regime is to be initiated by health ministers no later than five years after implementation.

I commend the bill to the House.

[12.15 p.m.]

Ms FORREST (Murchison) - Mr President, this is an important step forward in many respects because a number of healthcare providers are not subject to this review process. A few years ago when we debated the national health practitioner regulation process and adopted the national law, a number of professions, such as medical practitioners, nurses and physiotherapists, were initially put into that lot. Another cohort was then added to that regime. I assume the addition of professions or healthcare workers under that regime is now complete and there are to be no more, and this is why we are moving down this path with the application of a code of conduct to these other healthcare workers not captured under the national scheme. I am seeking clarification that there are not to be any more healthcare workers added, otherwise you could be doubling up.

It is highly appropriate because we have seen some practitioners not operating in a safe way over time - particularly with bloodborne diseases that could be an issue, and also the general hygiene practices of some providers; for instance, some massage therapists and people like that are not captured under the national scheme. For those who may have therapeutic massages at various places, some places are very clean and have great practices but some may be a bit questionable, particularly when you see some practices in other parts of the world. Those instances are very important.

My other question relates to the period of two years from the date the service was provided: does this cover circumstances of a massage therapist, for example, sexually abusing a client? I read an account of a woman - not in Tasmania but in another part of Australia - who was having a massage from a male masseur and she was sexually assaulted but did not report it until some years later because she was so shocked it had happened. It is a bit like these instances of sexual abuse against children that we hear of and circumstances like that where it can take a while for a person to think, 'No, that was not okay and I want to make a complaint.'

I note it says that the commissioner has limited discretion to accept complaints outside this time frame, so in circumstances like that, I assume that would be a case that may be considered. Would that capture that sort of sexual misconduct or sexual abuse of a client, and would these circumstances be ones where lenience may be given to the time frame limitations for making a complaint about it?

The purpose of the bill is also to appoint the Health Complaints Commissioner to oversee this important process of scrutiny and regulation of the healthcare providers, and also to provide a monitoring function in relation to prohibition orders where prohibition orders have been issued. Is the commission adequately resourced for this? I hear from constituents who have made complaints to the Health Complaints Commissioner under the current arrangements - these complaints are usually related to access to hospitals or treatment they received in hospitals - that the time frames are extraordinary at times. They were told the reason is a lack staff to investigate the case or arrange the conciliation meetings, or whatever is determined to be the best way forward.

This will only work if there is resourcing. We are giving a significant extra workload to the Health Complaints Commissioner. They are not only dealing with complaints but also monitoring prohibition orders. Hopefully there will not be too many prohibition orders to monitor. I would like the Leader to indicate the resourcing that will be provided to the Health Complaints Commissioner to facilitate this, otherwise people making complaints will be waiting months to have their cases dealt with.

Another of my questions relates to mutual recognition of prohibition orders in other jurisdictions. If I understand correctly, if you have a prohibition order in another jurisdiction, you would breach it by operating in Tasmania. If the Health Complaints Commissioner issues a prohibition order, are they named and published on a website? I cannot see in the bill where it says specifically. The second reading speech says -

> This will include publication of prohibition orders and public warning statements on a shared national website as required.

That is important for people looking for a practitioner, particularly in an area they do not know. When the commissioner issues a prohibition order or makes a public warning statement, there is a process of appeal through the Administrative Appeals Division of the Magistrates Court. When does that notification go up? Is it after that appeal period is finished? It could destroy someone's career or business if it is published immediately and is then overturned by the court.

Mr Valentine - It is too late then.

Ms FORREST - Yes, potentially the damage is done. I am trying to understand the process. It is important to do it, but the appeal period may be a period where perhaps they are not published. I am trying to understand the plan. The public should be made aware of those who have prohibition orders or public warning statements issued about their practice, but only when it is proven.

Mr Gaffney - It is a catch-22. If they do not suspend them or put them on notice and then they do something wrong and they repeat offend, what do you do there?

Ms FORREST - Yes, you need to protect the public, but you also need to ensure a person is not unfairly targeted.

Mr Valentine - Until you know what you are protecting them from, it is a bit difficult.

Ms FORREST - Yes. I support the bill in principle. It is important to regulate these healthcare workers and to have a complaints process so that poor practices, misconduct and other behaviours can be dealt with. It is also important that the workers are protected as well. There are a few questions for the Leader.

[12.24 p.m.]

Ms ARMITAGE (Launceston) - Mr President, the number of registered health practitioners continues to grow. The Australian Health Practitioner Regulation Agency - AHPRA - and the National Boards released an annual report summary on health practitioner regulation in Tasmania for the year ending 30 June 2017. There were 14 522 registered health practitioners in Tasmania compared with 14 123 in the previous year - an increase of 399 registered health practitioners. Tasmanian practitioners accounted for 2.1 per cent of all registered health practitioners in Australia and 2.4 per cent of all nurses were based in Tasmania.

Three hundred and twenty-nine notifications, complaints or concerns were received about registrants with their principal place of practice in Tasmania - a 36 per cent increase in notifications on the previous year.

Twelve new statutory offence complaints were received, down from 13 on the previous year.

There are 700 000-plus registered health practitioners and over 150 000 registered students nationally.

I am pleased the code will not restrict entry to practice, but will allow action to be taken against any unregistered healthcare worker who fails to comply with proper standards of conduct or practice. The bill provides the right of appeal for affected healthcare workers in relation to actions taken in response to breaches of the code.

I am also pleased, as agreed by the COAG Health Council, that an independent review of the national code regulation regime is to be initiated by health ministers no later than five years after implementation.

For those who are not registered, I welcome the introduction of the code of conduct, which sets minimum standards of conduct and practice and national standards against which disciplinary action can be taken in circumstances where a healthcare worker's continued practice presents a serious risk to public health and safety.

The vast majority of practitioners practice in a competent and ethical manner. For those who do not, the code will provide an additional level of public protection. I support the bill.

[12.26 p.m.]

Mr VALENTINE (Hobart) – Mr President, this is an important bill to protect the public. We all want to know that people in any health service are competent and have the capacity to deliver the service. Looking at the National Registration and Accreditation Scheme, national boards are listed for Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental practice, medicine, medical radiation practice, nursing and midwifery, occupational therapy, optometry, osteopathy, pharmacy, physiotherapy, podiatry and psychology.

According to their websites, each of these has a national board with ways to regulate those delivering services. This bill is for those operating outside these services.

I did not see naturopathy on the Commonwealth Health department website list and ask the Leader: is it a registered organisation or one dealt with under this bill? I have no issues with this in general terms and I will listen to the rest of the debate. Is there resourcing to be able to properly monitor this? Yes, the Health Complaints Commissioner is the avenue, but if they are putting out a statement saying service *x* is suspended, they would want to be on very good ground and would need to have done quite a bit of homework. That will be a significant impost on that office and the service, and the resources required will be significant. Can the Leader give us some understanding about consultation with the Health Complaints Commissioner's office and the resources available? That is important to know.

Because the second reading speech says, 'For the preparation of the bill, Tasmania undertook public and stakeholder consultation', I assume professions such as naturopaths would have been

consulted about this bill. I do not see them on the list. If the Leader could confirm that, I would find it interesting.

[12.31 p.m.]

Ms LOVELL (Rumney) - Mr President, I support this bill and I also acknowledge the briefing provided to me in my capacity as shadow minister for Health and preventive health, particularly given that briefing was arranged at quite short notice. However, I make the point that this could have been avoided had there been a little bit more time between the tabling of the bill paper and the bill being debated.

It is important to have a national approach on matters like codes of conduct for health practitioners. It is positive that this is part of a national approach, and that is one reason we are supporting this bill.

I have some questions about the consultation. We raised this during the lower House debate, but I would like to have them clarified one more time. I was advised during the briefing that consultation was undertaken at a local level with 330 stakeholders including peak bodies and groups likely to employ those who would be covered by this legislation. It was disappointing when I contacted two unions, the Community and Public Sector Union and the Health and Community Services Union, to hear that neither of those organisations had any idea about the bill. They were not aware of the bill; they had neither seen the bill nor any draft bill before I contacted them about it.

The minister said they had been included in a mail-out, but I would like that to be confirmed. They were very clear they had no idea about this bill, and there is no reason why they would say that if that were not the case. It may just be a process thing; it might be something that needs to be checked in the minister's office to ensure those communications are going to where they need to be going.

Since the briefing and since the bill was tabled, I have undertaken my own consultation. There is broad support for the bill and the principle of the bill. We have one question with regard to a healthcare professional practitioner about whom a complaint was made and at what point that person would be notified of the complaint. I am unable to find anything in this bill or in the principal act that spells out that process and identifies when people will be made aware that a complaint has been made about them.

I am also interested in the questions raised by the member for Murchison about resourcing. That is an important matter to be considered. We will be interested in hearing the response from the Leader on those questions. Overall, we support the bill and a code of conduct for health practitioners.

[12.35 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, the member for Murchison asked if any more health workers will be added. It is planned that paramedicine will be added in December 2018. There is nothing else on the radar at the moment. Usually only high-risk stuff is included in the national scheme.

Regarding two years from the date of the service, the member for Murchison asked about people who might have been sexually abused. That is a criminal matter as opposed to a health matter. The commissioner can choose to look at that at his or her discretion.

When is the notice published before there is an appeal of the notice given? There is a public warning statement. Advice is given to the practitioner prior to the complaint and nothing goes onto the website until it is proven.

The member for Hobart asked whether naturopathy and its code of conduct are dealt with under this bill. Yes, they are. He also asked about consultation. The National Code of Conduct for health care workers was the subject of an extensive national consultation process that included the release of a regulatory impact statement in 2013 on options for the regulation of unregistered health professionals. The RIS was prepared in accordance with COAG requirements, and found the code of conduct was likely to deliver the greatest net public benefit to the community in the most cost-effective manner given the level of risk.

The Tasmanian Government conducted a public consultation on the implementation of the code of conduct in Tasmania. This included a public notice in the three Tasmanian newspapers on Saturday, 25 February 2017, a notice and dedicated webpage on the Department of Health and Human Services website, and a mail-out to key stakeholders, including health professional associations, employers, community groups and relevant unions.

The mail-out went out on Thursday, 23 February 2017. Additional emails were sent to local government and a few other organisations on Friday, 24 February 2017. The consultations formally closed on 17 March 2017. Short extensions were provided to organisations wanting to make submissions but which needed extra time. There was widespread support for the introduction of the code of conduct in Tasmania as set out in the consultation paper.

Mr Valentine - I was particularly interested in whether any naturopaths where consulted? The second last paragraph of your second reading speech talks about public and stakeholder consultations. Were naturopaths consulted?

Mrs HISCUTT - Whether there was a letter written to them as opposed to the three submissions that were in the newspaper -

Mr Valentine - I just want to know if they were consulted.

Mrs HISCUTT - I am getting the nod that, yes, that did happen - someone did reply.

We talked about resources for the commissioner. Only a small number of code complaints are received, even in large jurisdictions such as New South Wales. I am led to believe there were only 12 in a year. That is a very large state. The department will monitor the resources with the Ombudsman, but we are not expecting a big inundation and we expect to be able to cope.

The member for Rumney asked when people are notified. The answer is that code complaints are dealt with under existing provisions of the Health Complaints Act. For example, the act generally requires the commission to contact health service providers within 45 days if there has been a problem.

Bill read the second time.

HEALTH COMPLAINTS AMENDMENT (CODE OF CONDUCT) BILL 2018 (No. 26)

In Committee

Madam CHAIR - For the members benefit, clause 11 we are calling in separate sections because of the details in that part of the bill. Members may have more than three questions on the whole clause 11 and we will break it down by the subclauses.

Clauses 1 to 10 agreed to.

Clause 11 -
Part 6, Division 5 inserted
Division 5 - Codes of conduct for health care workers
56AAH. Related matters

Ms RATTRAY - Madam Chair, I may have missed proposed new section 56AAA, so I will try my luck on proposed new section 56AAH because it refers to regulations. Where does the regulation-making process sit under this bill? Can I have some detail around that? What progress has been made on the regulations? The regulations refer to 56AAH and 56AAA, which are the codes of conduct. I am interested in the regulation-making process and where they are at this time.

Mrs HISCUTT - The regulations are yet to be worked out; the code of conduct will be part of the regulations. I am happy to table that if it helps the member.

Ms Rattray - That would be appreciated.

Mrs HISCUTT - We still have to work out which health professional classes will be included or excluded because it depends on what the NDIS comes up with. A few other codes still have to be worked through. A list of offences for notices still have to be worked out, and there is still some work to do before the regulations are finalised. Madam Chair, I seek leave to table the code of conduct.

Leave granted.

Ms RATTRAY - I would like some clarification of proposed new section 56AAH(2). I do not think I have seen a reference like this in a bill before -

> To avoid doubt, action may not be taken under this Division in relation to conduct that falls within the ambit of Part 7.

Can I have some clarification on that? That means very little to me at this time, but I am sure I will be enlightened shortly.

Mrs HISCUTT - This bill is about the code of conduct. Part 7 deals with national registration board matters so it excludes that - it is excluded from the code of conduct matters.

Clause 11 agreed to.

Clause 12 -
Section 60 amended (Information from registration board and other bodies)

Ms RATTRAY - After 'board' the bill adds 'or any professional body or association that the Commissioner considers relevant'. Is that because some are called associations and some have boards? Is it to capture every organisation or peak body of a service? Is it as simple as that or is there something more for which we need an explanation?

Mrs HISCUTT - It is there to recognise professional associations such as Speech Pathology Australia, which regulates that profession. This is past the national board to the professional association. It is a catch-all.

Ms Rattray - Some have different references for their peak body?

Mrs HISCUTT - Yes, it is just a catch-all.

Clause 12 agreed to.

Clause 13 -
Sections 62C and 62D inserted

Ms RATTRAY - I am after clarification. Clause 13, proposed new sections 62C and 62D relate to sharing information. Is it the case that if a health service has a complaint in one state, all other states are informed? Will every state cooperate in this manner? I want to know that you cannot be under complaint or investigation or inquiry in Tasmania and then set up in Queensland and undertake the same poor choices of service delivery and no-one knows about it.

Mrs HISCUTT - Basically that is right. It is about sharing between jurisdictions so that anything that happens here needs to be shared with others and vice versa. It is to get it onto the national website.

Ms Rattray - All states and territories are to be included?

Mrs HISCUTT - All states will have access to the website. There is just a little bit more advice. Some other states still have to adopt a code. At the moment we are one of the states that has.

Ms Rattray - Who is dragging their feet?

Mrs HISCUTT - I will give you a guess. Four states so far have joined with Tasmania and three states or territories are yet to legislate. I presume they are working on it. The ones that are in are Queensland, New South Wales, South Australia and Victoria. The three that are yet to legislate are Western Australia, Northern Territory and the ACT.

Mr VALENTINE - Just a clarification. Clearly, under proposed section 62C the commissioner can give information to other bodies, and specifically under proposed section 62C(2) with regard to a prohibition order, which means the investigation is completed and there is a fair reason to have it on a website. What concerns me is that proposed section 62C(1) says they can share information, that they -

may give information obtained in the course of administering this Act that is, or may be, the subject of, or relevant to, a complaint, investigation ….

What is to stop an organisation being informed from putting something not decided to be an interim order on its website? It could ruin someone's occupation. It is significant to put something on a website. An interim order can go on a website because the investigation is completed. What protection is there is for an individual who is the subject of an inquiry from having information put on a website for all to see when they have not been proven guilty?

Mrs HISCUTT – Proposed section 62C is about relevant bodies sharing information. If there is an investigation going against a health worker here who moves interstate, information may be shared between the bodies. This is not public information. This is if a complaint is not proven and needs to be traced, found and sorted; this is information sharing between -

Mr Valentine - As part of the investigation?

Mrs HISCUTT - Yes. The part of the investigation you are concerned about is proposed 62C(2), which is if the commissioner makes an interim order et cetera.

Mr Valentine - I was interested in (1).

Mrs HISCUTT - This is before, and then proposed 62C(2) is after it is proven.

Clause 13 agreed to.

Clause 14 agreed to and the bill taken through the remainder of the Committee stage.

LAND TITLES AMENDMENT BILL 2018 (No. 22)

Second Reading

[1.00 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 bill is to amend the Land Titles Act 1980 by repealing section 146(2) of the act.

Section 146(1) of the Land Titles Act 1980 currently provides a mortgagee, encumbrancee or lessor can make an application to the Supreme Court of Tasmania for an order for possession of the premises.

Section 146(2) of the Land Titles Act 1980 provides for a summons used to support the process under section 146(1).

Sitting suspended from 1.01 p.m. to 2.30 p.m.

QUESTIONS

Bob Brown Foundation Event - Permit

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

[2.32 p.m.]

My question is supplementary to questions asked on 30 August 2018 about the Bob Brown Foundation's Big Canopy Campout event on 15 September.

(1) Did Sustainable Timber Tasmania - STT - issue any permit to the Bob Brown Foundation for its Big Canopy Campout event on 15 September for any location in the Tarkine?

(2) If a permit was issued, did the event take place at the location advised in the permit? If not, at what time did STT learn that the event had been moved to another location?

(3) Did STT take any action to remove the Bob Brown Foundation from coupe SU55C? If so, what actions were taken and when?

(4) Did STT take any actions under section 22 of the Forest Management Act, 'Powers to remove'? If not, why not?

(5) Does STT have a duty of care in knowingly allowing dangerous activities, including adults and children sleeping in treetop canopies in dangerous weather forecast periods, to occur on PTPZ land?

(6) In relation to the Bob Brown Foundation issue, what information did STT pass on to the Government regarding its powers to take action in that case?

(7) Was the information provided in the first instance correct?

(8) What was the information STT provided to a resident of Launceston regarding the issuing of permits and powers to act?

(9) Was the information provided correct? If not, an explanation is required.

ANSWER

Mr President, I thank the member for Windermere for his questions. I note our visitors in the back of the Chamber witnessing question time. This is as good as it gets. The answers to the member's questions are -

(1) A forest activity permit was not issued for the Big Canopy Campout.

(2) Given that a forest activity permit was not issued for the Big Canopy Campout, there was no discovery by STT of a change of venue.

(3) STT did not take actions to remove participants in the Big Canopy Campout from forestry coupe SU55C. There is not a forest practices plan in place for a forestry coupe in the locality of SU55C.

(4) Section 22 of the Forest Management Act 2013 states -

> (3) … if the authorised officer is of the opinion that the entry or presence of that person, or the activity conducted, or the conduct engaged in, by that person on the land or road is preventing, has prevented or is about to prevent the Forest Manager from effectively or efficiently performing its functions…

As there were no active forest coupes in the vicinity of Sumac 55C at the time, STT's opinion was that the Big Canopy Campout would not prevent the effective or efficient performance of its functions as forest manager.

(5) STT did not knowingly allow dangerous activities to occur. STT did not give approval for the event to occur. When STT became aware of the event, the organisers were contacted and requested to apply for a forest activity permit; however, an application for a forest activity permit was not lodged.

(6) On 11 September 2018, STT advised the Government that the Big Canopy Campout may take place somewhere on Permanent Timber Production Zone land on 15 September 2018 and that the Bob Brown Foundation had been contacted with a request that a forest activity permit be applied for prior to the commencement of the event. Further information was not provided to the Government regarding STT's powers to take action in relation to this case.

(7) The information was correct and remains so.

(8) On 14 September 2018, a Launceston-based individual contacted STT regarding the permit status of the Big Canopy Campout. The individual was advised that a forestry activity permit was not applied for or issued for this purpose.

(9) The information was correct and remains so.

New Leases - Housing Tasmania and Community Housing

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

[2.38 p.m.]

I would like to think my colleagues from the other place are here to listen to me ask this very important question, but I very much doubt it.

(1) Can the Leader provide the number of leases signed to public housing tenants in the past 12 months?

(2) Can the Leader provide the number of new leases signed to community housing providers in the past 12 months?

ANSWER

Mr President, I thank the member for Elwick for his question. It should be noted these figures cannot be taken to represent all households assisted by Housing; for example, households assisted into a home by private rental assistance would not be captured in this data.

(1) In the 2017-18 financial year, 942 applicants were housed in public housing.
(2) In the 2017-18 financial year, 370 applicants were housed in community housing.

LAND TITLES AMENDMENT BILL 2018 (No. 22)

Second Reading

Resumed from above.

[2.38 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I began the second reading of this bill before the adjournment.

The summons is directed to the defaulting party to attend the Supreme Court of Tasmania and provide reasons why the court should not give possession of the premises to the applicant.

In the opinion of the former and current Chief Justice of the Supreme Court of Tasmania, issuing a summons as part of the section 146 process is unnecessary and in practice is disregarded by the person on whom it is served. This is because the application process provides sufficient opportunity for a defaulting party to be heard in the court, and to consider all supporting affidavits and evidence. No unfairness will result if the subsection is omitted.

It will not be possible for mortgagees to obtain orders for possession unless they have filed an application with supporting affidavits, obtained a hearing date and served the documents on the mortgagor, giving adequate notice of the hearing.

The previous Chief Justice, the Honourable Ewan Crawford, requested the change, and the current Chief Justice, the Honourable Alan Blow, also has requested this amendment.

This minor change to Supreme Court procedure will reduce red tape by removing the requirement for a summons to be issued by that court.

Removing the red tape will result in a reduction of legal costs that are imposed by solicitors on their clients, including costs to the defaulting party.

Another benefit will be the reduction in the time required of the court's registry staff and use of the court itself.

No other jurisdiction in Australia has a statutory provision similar to Tasmania's.

There will not be any negative impact arising from the proposed amendments to the act. Rather, this amendment is expected to be met with positive reaction from members of the Supreme Court of Tasmania and the Law Society of Tasmania and within the legal profession.

The amendments involve the repeal of subsection 2 of section 146, with further consequential amendments made to that section to accommodate the repeal.

The Government fully supports the introduction of this bill.

I commend this bill to the House.

Bill read the second time.

LAND TITLES AMENDMENT BILL 2018 (No. 22)

In Committee

Clauses 1 to 3 agreed to.

Clause 4 -
Section 146 amended (Mortgagee, encumbrancee or lessor may obtain possession in certain cases)

Ms RATTRAY – I seek a point of clarification on this particular clause. When the Chief Justice and the previous Chief Justice ask for something, it must be a fairly reasonable approach. Could the Leader clarify clause 4(c) which says -

> by omitting from subsection (3) 'of an order referred to in subsection (1)' and substituting ', on a lessee, mortgagor or encumbrancer …'

It was suggested in the second reading speech that we were removing 'red tape', so may I have some plain English on what the clause means? I want to make sure we are removing red tape and not adding more indirectly.

Mrs HISCUTT - It is only for clarification of whom the order refers to. That is all it is.

Clause 4 agreed to.

Clauses 5 and 6 agreed to and bill taken through the remainder of the Committee stage.

ANZAC DAY OBSERVANCE AMENDMENT BILL 2018 (No. 23)

Second Reading

[2.46 p.m.]
Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Mr President, I move -

> That the bill be now read the second time.

In 2015, as part of the Tasmanian Government's red tape reduction policy, the Treasurer requested WorkSafe Tasmania, the agency responsible for the Shop Trading Hours Act 1984, to undertake a review of the Anzac Day trading restrictions.

The Shop Trading Hours Act regulates shop trading hours including on Anzac Day.

The Anzac Day Observance Act 1929 provides for how Anzac Day is observed. It particularly provides for those activities that cannot be undertaken before 12.30 p.m. on Anzac Day.

The act restricts a range of activities, including sporting events, race meetings, entertainment, agricultural shows, markets and fairs, from being undertaken before 12.30 p.m. on Anzac Day.

The purpose of the restrictions is to recognise the significance of Anzac Day and to enable people who would otherwise be required to work or participate in certain events to attend dawn services and other commemorative services later in the day.

The act is, however, silent regarding shop trading on Anzac Day.

The review undertaken by WorkSafe Tasmania identified the need for an exemption to be requested by some shop traders to enable them to trade on Anzac Day. These shops could include those that deliver essential services in regional areas, like the local grocer that sells bread and milk.

The review also found that there was benefit in including shop trading provisions for Anzac Day in the Anzac Day Observance Act. This would enable all legislative provisions relating to how Anzac Day is observed to be in the one piece of legislation.

Prior to the review, shop traders had reported that it can be confusing and frustrating for them to have to refer to two acts, the provisions of which can appear contradictory.

The Shop Trading Hours Act, for example, does not apply to activities like regattas, race meetings, sports meetings, agricultural shows, markets and so on. A reading of the relevant section of the Shop Trading Hours Act may lead shop owners to believe that they may trade at a regatta, race meeting, sports meeting, agricultural show or markets on the morning of Anzac Day.

On the other hand, the Anzac Day Observance Act identifies these activities as not being able to be held before 12.30 p.m. on Anzac Day.

The Anzac Day Observance Amendment Bill 2018 seeks to transfer the provisions of the Shop Trading Hours Act that relate to Anzac Day to the Anzac Day Observance Act.

The Returned and Services League Tasmania Branch supports the amendments, as do the Tasmanian Independent Retailers.

The effect of the provisions will not change as a result of these amendments.

The existing powers and function of WorkSafe Tasmania inspectors as they relate to shop trading on Anzac Day will continue.

I note to the Council that the only change that will be made as a result of the amendment is that exemptions to the provisions will be made by notice rather than order.

Under the current provisions of the Shop Trading Hours Act, exemptions are made by order. This requires drafting of the order by the Office of Parliamentary Counsel, ministerial approval and gazetting between the date the applications close - usually the end of March - and Anzac Day. This

can be challenging in any year but particularly so when Anzac Day falls within the Easter period. Approving exemptions through notice has the same effect and approval process but a shorter time line.

I commend the bill to the House.

[2.50 p.m.]

Ms RATTRAY (McIntyre) - Mr President, I understand the rationale behind moving two acts into one and making it less confusing for traders who are working under two acts. Being a small business owner in a previous life who used to sell milk and bread, I wonder how many small traders open before 12.30 p.m. on Anzac Day? In all the communities I have visited over the past 14 years, I do not recall seeing any that were open early. Everyone has the highest respect for Anzac Day and the Dawn Service.

Ms Forrest - They need to provide food to RSL members for their breakfast.

Ms RATTRAY - They get that the day before. They are cooking breakfast at 6 o'clock. Anyway, that is my question. It was supported by the Tasmanian Independent Retailers and they look after the small end of town, a very important end of town when it comes to grocery stores around the state. I acknowledge that. The larger ones are not allowed to open before 12.30 p.m. They have no ability to and possibly do not want to, given their respect for Anzac Day and what it means to the broader Tasmanian community.

How many small independent grocers want to open before 12.30 p.m.? I thought it was noon before I read this. As for shop trading hours not applying to activities like regattas, race meetings, sports meetings, agricultural shows and markets, I have never heard of any of those events happening on Anzac Day.

Mr Gaffney - There used to be the Anzac Day sports.

Ms RATTRAY - That was on a Saturday. Was that not on the Saturday?

Mr Gaffney - Not when I ran it a couple of years ago, it was not.

Ms Forrest - Let us not go there.

Ms RATTRAY - When I was a girl - and that was quite some time ago - we had the Anzac Day sports, but they were held on the Saturday around Anzac Day, whether the Saturday before or the Saturday after. We had a whole day. At Winnaleah, it was the best sports day. We used to compete against the other schools in the area like Branxholm and Ringarooma. It was fantastic.

Ms Forrest - You were a fine athlete until you did your knee.

Ms RATTRAY - Actually I did my knee a long time after that. I was not a fine athlete, I can assure you. I actually could run, in my younger days. I was always very proud of that. The fastest girl in the school, Christina Green, always beat me, and I always ran second.

Mr PRESIDENT - And you have got over that?

Ms RATTRAY - I still see her regularly and I know why she was the fastest runner - she still looks like an athlete.

As for these exemptions or 'does not apply' to these other activities, I find that interesting because I do not know of any communities that hold any of these on Anzac Day. I expect they would not get anyone to go because everyone is committed to observing Anzac Day and what it brings to our community with respect.

I have no objection to reducing red tape - none whatsoever - but I would like some clarification of that. I hope it is not an opportunity for traders to start opening and not be respectful of the Anzac Day commemoration. Unfortunately, some in our community expect shops to be open almost 24/7, which amazes me. Sometimes when you drive through Launceston very late coming home from this place, you see all the people heading into the supermarket and you think, 'What?' That is the time they choose to shop. That is my question about that. I want to clarify we are not potentially opening a floodgate for smaller grocery stores to be open at that time.

It then says you must always offer your employees the opportunity to attend services, but if they say, 'I want to go to the Anzac Day service', and the owner says, 'No, we are opening on Anzac Day morning; you have to be here at 7 o'clock' -

Ms Forrest - The sun is up by 7 o'clock.

Ms RATTRAY - A dawn service can be a very short service. At a few of my places at different times, I have even offered to speak so at least it extends it out a little bit longer than five minutes. The Dawn Service, to me, is the service that means a lot just standing there in the dark waiting for the sun to come up and listening to the *Last Post* and reflecting - that is, the one that should take half an hour at least, not 10 minutes as they sometimes do, but that is another debate and probably not one for here.

I am not unsupportive of the bill, honourable Leader; I just need some clarification of that aspect.

[2.58 p.m.]

Ms FORREST (Murchison) - Mr President, I do not share the concerns and the need for clarification to the same extent the member for McIntyre does. That is fine; we see things differently. I think it makes perfect sense to put all the legislative requirements around Anzac Day into one legislation.

Ms Rattray - I supported that.

Ms FORREST - That is what this does. It puts it into one bill so it is easy for shop owners and traders to see what they can and cannot do. They cannot trade before 12.30 p.m. on Anzac Day unless they get an exemption. The only ones that will be issued with an exemption are the ones that provide essential services and would need to be open. They have to make the case.

I read this legislation when it first hit the deck - I thought we might have dealt with it a couple of weeks ago - and the area that did not concern me, but I just need to better understand, is a matter the Leader referred to at the end of her speech: approving exemptions through notice rather than order, so it has the same effect and the approval process is the same essentially, but takes a shorter time.

I can understand why that is a bit of a challenge when Easter falls around a time close to Anzac Day. I asked the Leader's office for a briefing to fully understand the different processes. I appreciate that was provided two or three weeks ago when we were last here and thought we might be dealing with it. I am satisfied it does not diminish that process at all; it just provides perhaps a more efficient way of doing it. It is not a statutory rule and neither was the previous order.

I am happy with that and believe all Australians, and certainly Tasmanians who I mix with on Anzac Day, are deeply respectful of the day. I was talking to the member for Derwent about the picturesque war memorial on the edge of the Derwent River. I normally go to the Dawn Service at Wynyard because I can walk there. Walking along in the dark with little light is fraught without a headlamp or torch.

What is incredibly beautiful about the Anzac Day service is the respect shown by everyone arriving rugged up in the dark quietly gathering around the Cenotaph. Then the respect of the speakers - and I would like to mention former Wynyard RSL president, Trevor Duniam. While resigned now, he is an amazing man. Another great ex-service man, Gavin Pearce, has taken over from Trevor, who has been the speaker at the Dawn Service for the last few years and speaks for more than a couple of minutes. Trevor always provides a very provocative, meaningful and challenging address to those who have gathered; it is worth going just to listen to him.

It is part of our Australian identity. A humble man - who is probably embarrassed I have mentioned him - Trevor is a great contributor to the Wynyard community and has been for a long time. I thank Trevor for his service, his commitment to the RSL and the work he has done in the past. I am sure he will still contribute in other ways to the Wynyard RSL.

Then there is the dispersal of people from the service and going to the breakfast at the RSL. The Wynyard RSL is absolutely rocking for breakfast – it is a wonderful occasion with the Wynyard Football Club serving the veterans. After this, back for the 11 o'clock; it is an Anzac observance, member for Mersey - you have your turn if you wish to.

I foreshadow an amendment to this bill on the gazettal and publication in at least one newspaper circulating generally in Tasmania because these are very local exemptions. It is appropriate it is the paper that circulates locally in the municipality. It could be the Circular Head business granted the exemption, but technically it was published in the *Mercury*.

We need legislation that makes this clear, and that is what this bill is seeking to do. We need to move into this current age, where the information is also published on a relevant website and is easy to find. I was speaking about this to the Premier's chief of staff this morning. We should start using these systems, because it is the way most people now access their information.

Mr Valentine - As I said last night.

Ms FORREST - I sent this request to the Leader on the 19 August, saying I would like this amendment prepared well before we dealt with another bill. We actually fiddled around with this actual question for some time. I drew attention to another bill - the building act amendment bill – which has a provision for notifying some aspects of the legislation on the internet. The Office of Parliamentary Counsel - OPC - is saying to include it, but it is not a consistent approach. We should be looking at this and see adding it in as a natural part of any publication of a notice or order gazetted and then notified in the newspapers. Many people do not buy the hard copy of the newspaper anymore because they get their mainstream media and other information online. I will speak to that

more fully at a later time, but I support this bill. I think it is really sensible to put it into one act, and to make it clear. There is then no confusion with trying to look at two acts to determine what your responsibilities are. People do not want to break the law; shop owners do not want to break the law. This legislation will help them.

[3.05 p.m.]

Mr VALENTINE (Hobart) - Mr President, members were talking about the Anzac Day sports. I remember them very well - at the age of three-and-a-half or four, or whatever it was, I was leading the race and the sash I was wearing went down around my legs and tripped me up and I came last. I have fond memories of Anzac Day sports.

When I was reading through this bill -

Ms Rattray - Were you an athlete, too?

Mr VALENTINE - Yes, definitely - it just was not very long-lived.

It was interesting to see in clause 6(4)(e) of the bill, under inclusions and exclusions, what a shop is. It is interesting to see that you can have an auction on the morning of Anzac Day and sell a shop if you want, but you cannot open some types of shops. It is fascinating. You can have car yards and bottle shops open - I can understand bottle shops being open. You can have restaurants and cafes open because they have to provide service to people on Anzac morning. Also, there is not much point in not having service stations open because people cannot travel if they need fuel.

The question I have to the Leader is: has there ever been a challenge to this in terms of discrimination? I know it is the law.

Mrs Hiscutt - Just for clarity, do you mean from one sort of shop to another shop?

Mr VALENTINE - Yes. If, say, I run a shop in a shopping centre and the corner store can remain open on Anzac Day morning but the shopping centre shop cannot if it is a grocery. It is an interesting one. I would be interested to know whether it has ever been challenged in the past. It seems quite sensible to put it in one act so that people do not have to go two acts to find out how they need to comply with the law. I understand that is a benefit. Perhaps I can have an answer to that question, out of curiosity.

While we are talking about dawn services, I remember with affection one Nat Sonners, who used to run the Dawn Service. Nat was blind. Everyone would come to the service and there would not be a light anywhere. Nat would read the service because he used to read braille, and there was not a torch or a light in sight. It is a little bit different these days when they bring in the Army bands and the like - it takes a fair bit of that ambience away.

I think people generally respect Anzac Day; some would say some people in some communities respect it more than Christmas Day. Everyone likes to remember the fallen and show respect to them. Nevertheless, it is an interesting thing that some shops can remain open and others cannot before 12.30 p.m.

[3.09 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I have a couple of answers to members' inquiries; another one is coming.

The member for McIntyre asked about applications for exemptions received and whether that would open the floodgates. In 2014, nine applications were received and two did not require exemptions; in 2015, six were received, one of which did not require exemption; in 2016, seven were received and one did not require an exemption; in 2017, there were zero applications; and in 2018, there was one application. So we do not anticipate a flood.

Ms Rattray - I expect there are many respectful people in our state.

Mrs HISCUTT - There are. To find the data will require a business survey of every business. It would be a huge undertaking. From the figures we have received, they do not anticipate a flood. The member for Hobart asked about a challenge between shops as to who could open. As far as I know there have been no challenges. After seeking some more advice on that, I can confirm there have been no particular challenges, in answer to your request. There may be exemptions that are not given if another shop is closer that has the same sorts of essential services. Generally speaking, there have been no fracases like that.

Bill read the second time.

ANZAC DAY OBSERVANCE AMENDMENT BILL 2018 (No. 23)

In Committee

Clauses 1 and 5 agreed to.

Clause 6 -
Sections 5A, 5B and 5C inserted

Ms FORREST - Madam Deputy Chair, I move -

> That clause 6, proposed new section 5A, subsection (6), paragraph (a) be amended by leaving out that paragraph and inserting instead the following paragraph:
>
> (a) is to be published, before the notice is to have effect -
>
> (i) in the *Gazette*; and
>
> (ii) in at least one daily newspaper generally circulating in each municipal area where a shop, to which the notice relates, operates; and
>
> (iii) on a website that is accessible by the public; and

Briefly, Madam Deputy Chair, it is important that legislation is clear, contemporary and relevant. The bill was drafted to just require the publication of a notice in at least one newspaper circulating generally in Tasmania. Clearly these are local specific exemptions that are granted because, as you said, it is not the big supermarkets we are talking about, it is smaller shops that provide essential services.

It is important to make sure the information is where local people can see it, or are likely to see it. Most people go to the internet for their information these days. You can just ask Siri. If it is on the website, Siri will find it. I hope we see this sort of thing included in future provisions. I ask members to support the amendment because it makes it clearer and contemporises the legislation.

Mrs HISCUTT - The Government has no problem with this amendment. It adds more clarity. We are in favour of that.

Amendment agreed to.

Mr DEAN - I just want to refer to clause 6(d) -

> is not part of a shopping centre, plaza or mall and the number of persons engaged at the shop as employees or otherwise in the conduct of the business of the shop on any day in the immediately preceding March did not exceed 10;

Does that relate to the building? Some people own a number of pharmacies, for instance, within close proximity to one another. I take it we are referring to the 10 persons in the one building, not across the two or three pharmacies that could be operating in that similar area.

It is great to see Samantha Davis in the Chamber today. Her name was mentioned many times on Tuesday.

I have a number of other questions here and I do not want to sit down. I will probably need to go through them all. Another question on the same area is that a number of businesses are now open 24 hours a day, so when we refer to the 10 people working in those premises, does that relate to 10 across the whole 24-hour period, or does it relate to 10 on any one particular shift? We are normally talking about an eight-hour shift.

I have a couple of others as well -

Madam DEPUTY CHAIR - The Leader is obviously writing down your questions.

Mr DEAN - I do not want the same nonsense as the other day. That is why I am raising the issues.

Madam DEPUTY CHAIR - I suggest you ask all your questions and then resume your seat and the Leader can respond.

Mr DEAN - That is what I thought might be a good situation. The next one relates to page 9. If we go to proposed new section 5B, 'Person not to be required to work in certain circumstances', this again relates to 24-hour businesses. Where a person is rostered, say, to work from 6 p.m. the night before Anzac Day until 2 a.m. on the morning of Anzac Day, does that require the notice in writing to be signed off? Proposed new section 5B(2) reads -

> A person, whether an employer or not, must not require a person to work before 12.30 p.m. on Anzac Day as an employee in a shop to which this section applies unless the employee agrees, in writing, to that work on that day.

If the shift is 6.00 p.m. to 2.00 a.m., there are only two hours on Anzac Day morning. Are they required to sign a document to the effect they agree to work for those extra two hours on Anzac Day morning?

Mrs HISCUTT - With regards to your first question, it is the single business, not the whole chain.

Mr Dean - It relates to the one building, the one business, yes.

Mrs HISCUTT - For the 10 people on the shift, the total number is across a day, a 24-hour period.

Mr Dean - It is 10 across the 24 hours, yes.

Mrs HISCUTT - He works until 2.00 in the morning. He probably would not need an exemption, because the idea of the bill on Anzac Day is so people can attend the Anzac Day services, which happen from dawn until 12.30. They can be looked at on a case-by-case basis, so if that particular person knocks off at 2.00 in the morning, you would presume the person has time to attend an Anzac Day dawn service. They would not be restricted.

Mr DEAN - That raises an issue because proposed section 5B is clear and says the person is not to be required to work in certain circumstances; if you go to 5B(2), a person, whether an employer or not, 'must not require a person'. There are no ifs, buts or anything else here - 'must not require a person to work before 12.30 p.m. on Anzac Day'. It does not say if that is sufficient time to attend the Dawn Service at all – it is 12.30 Anzac Day 'as an employee in a shop to which this section applies, unless the employee agrees, in writing, to work on that day'.

It is absolutely clear to me. That is the reason I raise it. It is the way the section is written - any person working after midnight the day before and into Anzac Day would be required to sign a document to the effect they are happy to work that period.

If I can take my argument further, you are saying 2.00 a.m. is okay; it does not need to be signed off and would be contrary to the way the section is written, very clearly. What happens if the employee is required to work until 3.00 or 4.00 a.m. on Anzac Day morning, which some are when they work an 8.00 p.m. to 4.00 a.m. shift? Where is the stop period, if what I have been told is accurate or correct?

Mrs HISCUTT - Further advice indicates that if that person were to work later, they would have to agree in writing to work later, and then that would come back to no more than 10 people working at a time.

The advice from before was not quite right. If the person were asked to work, they would have to agree to work in writing - be asked and agree to do it - and then it would come back to the point of whether the company or the business had 10 employees there at the time, and the 10 only applies if it is relevant.

Mr Dean - While you are standing, rather than my using my third call, if a person works any time after midnight prior to Anzac Day, if they are required to work to 1.00 a.m. on Anzac Day morning, they have to ask and it has to be signed off. What you said in the first place was not right?

Any time on Anzac Day morning, they are required to get the employee to sign off in writing. I am happy with that.

I was trying to get absolute clarity on this proposed section. Today we have many businesses operating 24 hours a day and we have many shifts finishing at all hours. If you go to some of these businesses, some finish at 10 p.m., some finish at midnight, some finish at 2 a.m., 4 a.m. - across a whole spectrum.

Madam DEPUTY CHAIR - Some, such as bakers, start at 2 a.m.

Mr Dean - You are right. We should ensure we have this right because there will be businesses - and I know of a number of businesses in Launceston - that will be required to get that signature from their employee or employees to be able to work at any time on Anzac Day morning, provided it fits all the other criteria, and I am aware of those.

I am satisfied with that explanation.

Mrs HISCUTT - I think we are on the same page now.

Clause 6, as amended, agreed to.

Clauses 7 to 11 agreed to and bill taken through the remainder of the Committee stage.

ADJOURNMENT

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

That at its rising the Council adjourn until 9.30 a.m. Friday 21 September 2018.

Motion agreed to.

The Council adjourned at 3.30 p.m.