

**Tuesday 21 May 2019**

**ELECTION OF PRESIDENT**

**Ms RATTRAY** (McIntyre) - Mr Clerk of the Council, I propose to the members of this honourable Council as their President the honourable Craig Maxwell Farrell, the member for Derwent. I move -

That the honourable Craig Maxwell Farrell take the Chair of this Council as its President.

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr Clerk of the Council, I second the nomination.

**Mr FARRELL** (Derwent) - Mr Clerk of the Council, I am very much aware of the honour proposed to be conferred upon me and I submit myself to the Council.

**Motion agreed.**

Mr Farrell was conducted to the Chair.

**Mr PRESIDENT** - Mr Clerk of the Council and members of this honourable Chamber, I wish to express my humble acknowledgement and grateful thanks for the high honour the Council has been pleased to confer upon me.

**Members** - Hear, hear.

The President, Mr Farrell, took the Chair at 2.32 pm, acknowledged the Mouheneener people, and read Prayers.

**MEMBERS RETURNED**

The Clerk laid on the Table writs for the return of the following members of the Legislative Council.

Leonie Anne Hiscutt (Montgomery)  
Megan Therese Webb (Nelson)  
Joanna Claire Siejka (Pembroke)

**MEMBERS SWORN**

The member for Montgomery, Mrs Hiscutt, and the member for Pembroke, Ms Siejka, took and made the oath of allegiance and affirmation respectively as required by law earlier this day.

The member for Nelson, Ms Webb, was called, made the appropriate affirmation as required by law and took her place.

## **STATEMENTS BY PRESIDENT**

### **New and Returned Members - Welcome**

[2.35 p.m.]

**Mr PRESIDENT** - Honourable members, I take this opportunity to welcome to this House and to the parliament the newly elected member for Nelson and wish her well in her role representing the people who have duly elected her.

I know I speak on behalf of all members, Chamber officers and staff when I say we are ready to offer any support, advice or assistance that you may require, particularly in the early stages of your elected term. Please do not hesitate to ask. I am sure you will find that your role in parliament at times will be challenging, but know that you can rest assured you will find it satisfying and rewarding as you now get not only the opportunity to assist the people of your Nelson electorate here in the Legislative Council but also to contribute to the improved welfare of the people of Tasmania.

I extend a warm welcome to you.

I also wish to acknowledge and congratulate the members for Pembroke and Montgomery on their return to this Chamber. I know that both honourable members will continue to work extremely hard for the people of their respective electorates and for Tasmania. We look forward to your further contributions in this parliament.

### **Chamber Refurbishment Project**

**Mr PRESIDENT** - Honourable members, it is obvious to all of us that the working environment in the Chamber has undergone modifications since the quorum call of 3 May. The planned stage 2 works were undertaken and completed by principal contractors Vos Construction, the contact mechanical services group and Degree C, which have installed new lighting and other electrical services.

This completes the Chamber refurbishment, with the exception of several ergonomic task chairs which are scheduled for delivery at the end of this month. I have no doubt that the results represent a vast improvement to the environment in which members and our officers have previously had to work.

There is no doubt that the project has had its challenges, given the very sensitive and unique heritage value of the Chamber and the space in which the architect, Mr David Button from Jaws Architects, had to work. I believe he has executed his brief very well, and I congratulate him and his design assistant, Laura Stucken, on their fine work.

I also congratulate and acknowledge all the contractors who have contributed to the end result, including Garrett Leitch from Vos Construction; Brandon Servant, project engineer; Terence Ling, building services engineer from Andrew Sutherland Consulting Engineers; Gary Collins, project manager from Degree C, and his team; Micky Gelormini from Rehab Upholstery; and Stuart Hamilton and Landon Bannister from Southern Lighting.

All have been thoroughly professional in their respective roles.

I will also want to extend thanks to Peter Hancox, Brett Godfrey and Chris Machin from our ICT unit for their input throughout the project. Their technical skill and expertise has been invaluable.

Finally, I want to acknowledge and thank Simon Carter from Vos Construction who worked on this project physically in the Chamber from day one, often from sun up till sun down. The efforts of Simon and his team have gone a long way in enabling the delivery of the refurbishment on time.

I well understand that the new seating and desk arrangements will take a little getting used to; however, I look forward to members and Chamber officers being able to undertake their work in this place in much improved conditions.

## **MOTION**

### **Suspension of Standing Order 16**

[2.41 p.m.]

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

That so much of standing order 16 be suspended as would prevent the Council proceeding to the considered business prior to the Governor being notified of the election of the new President.

**Motion agreed to.**

**Standing order suspended.**

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

That accompanied by a deputation of so many members of the Council as see fit to attend, you notify Her Excellency the Governor of your election at Government House at 4 p.m. this day.

**Motion agreed to.**

## **QUESTIONS**

### **Tasmanian Risk Management Fund**

[2.43 p.m.]

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

With regard to demands on the Tasmanian Risk Management Fund, last year's budget paper 1 stated -

The expected overall increase in contributions for 2018-19 is mainly due to increases in both workers' compensation and medical liability contributions. The significant increase in workers' compensation contributions is primarily as a result of higher claim costs in recent years, higher staff costs and a deterioration in the funding level of this risk category. The contribution for medical liability has increased moderately reflecting higher projected claim costs and incidence rates for both large and small claims in 2018-19.

Projections in the Tasmanian Risk Management Fund show estimated medical liability rising from \$118.5 million in 2018 to \$140.8 million in 2022. There are four questions; I understand there are answers to only three at this stage and the fourth will be provided at a later time.

- (1) Please provide details of claims that fall under this category for the last five years, the number of claims in quantum (by range if appropriate) for these claims.
- (2) What is the expected claim profile for the Tasmanian Risk Management Fund for medical liability claims for the next four years?
- (3) What is the expected claim profile for the Tasmanian Risk Management Fund for workers compensation claims in the next four years?
- (4) What is the likely budget impact of increased sick leave, including 'stress' leave, for staff working in emergency departments around the state?

## **ANSWER**

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

- (1) The following data relates to medical liability as at 30 June 2018 and the payments noted reflect total payments made in each financial year -
  - In 2013-14, 18 claims were reported. A total of 12 incidents were incurred. Total payments for the year were \$2.6 million.
  - In 2014-15, 25 claims were reported. A total of 19 incidents were incurred. Total payments for the year were \$4.3 million.
  - In 2015-16, 20 claims were reported. A total of 18 incidents were incurred. Total payments for the year were \$5.7 million.
  - In 2016-17, 22 claims were reported. A total of nine incidents were incurred. Total payments for the year were \$3.8 million.
  - In 2017-18, 23 claims were reported. A total of two incidents were incurred. Total payments for the year were \$3.8 million.
- (2) The profile for medical liability claim is assessed annually by the Tasmanian Risk Management Fund's actuary when determining the medical liability contributions from agencies for the next financial year.

In estimating the cost of claims, the actuary develops a claims profile for small claims and large claims based on claim numbers and average claim size per year. The actuary also takes into account additional factors such as inflation, discounting, legal expenses, claims administration expenses and GST recoveries when calculating the cost of claims.

The projections for out-years are assessed annually and adjusted in line with the assumptions and methodologies used in determining the contributions for the upcoming financial year. The projections are based on an average of potential outcomes. The actuary includes an allowance for large claims that occur on an infrequent basis resulting in the projections being higher than the actual costs in most years.

Table 7.8 of budget paper 1 will provide projections for medical liabilities in the fund over the next four years. This information will be publicly released when the budget papers are tabled on 23 May 2019.

- (3) The profile for workers compensation claims is assessed annually by the Tasmanian Risk Management Fund's actuary when determining the workers compensation contribution for the upcoming financial year.

In estimating the costs of claims, the actuary develops a claims profile based on claim numbers and average claim size per year. The actuary also takes into account additional factors such as inflation, discounting, under-excess payments, legal expenses, claims administration expenses and GST recoveries when calculating the cost of claims.

The projections for out-years are assessed annually and adjusted in line with the assumptions and methodologies used in determining the contribution for the upcoming financial year. Actual costs maybe materially different from the amounts projected.

Table 7.8 of budget paper 1 will provide projections for workers compensation liabilities in the fund over the next four years.

Member for Murchison, when we have the answer to question (4) we will let you know immediately.

#### **Ochre Health Services - Zeehan**

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

[2.48 p.m.]

With regard to medical and pharmacy services provided in Zeehan -

- (1) Is Ochre Health planning to continue providing services to Zeehan?
- (2) If Ochre Health is not providing ongoing services to Zeehan -
  - (a) what measures are being taken to ensure Zeehan residents and visitors have access to medical care; and

- (b) what measures are being taken to ensure Zeehan residents and visitors have access to pharmacy supplies?
- (3) If Ochre Health is continuing to provide services in Zeehan, what is the length of the contract for this service?

**ANSWER**

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

Ochre Health operates a private general practitioner clinic in Zeehan which does not form part of the north-west rural medical services contract. No state government services are operated out of this clinic.

The Tasmanian Health Service is not aware of any plans by Ochre Health to cease the provision of private general practitioner services in Zeehan.

**Tasmanian Health Service - Maternity Services**

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

[2.49 p.m.]

Regarding the Tasmanian Health Service maternity services provided at North West Regional Hospital and North West Private Hospital under contract -

- (1) Has an ICT solution been implemented to permit direct uploading of the THS obstetrics antenatal record that includes any intrapartum and postnatal plans to the North West Regional Hospital digital medical record infoMedix?
- (a) If so, when did this occur and have any issues or problems been identified with the sharing of these data?
- (b) If not, why not? What is the expected time frame of implementation?

**ANSWER**

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

- (1) The automatic electronic upload of perinatal records to the digital medical record is in the process of being implemented. An interim manual process of printing and scanning is currently in place where North West Private Hospital staff can print and scan documents directly into the digital medical record.
- (2) Automatic electronic upload of perinatal records to the digital medical record is planned for completion by the end of 2019.

## **Arthur-Pieman Conservation Area - Reports**

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

With regard to access to and management of the Arthur-Pieman Conservation Area - APCA - and current assessments required to enable access that are the responsibility of the state -

- (1) What reports currently required by the Commonwealth or any court proceedings regarding environmental assessment and management of the APCA are the responsibility of the state to undertake and provide either to the Commonwealth or the Federal Court?
- (2) Have the tenders to conduct these assessments been granted to undertake the required work? If so, when is it expected the work will be completed? If not, what is the time frame for this process?

### **ANSWER**

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

- (1) The reports required by the Commonwealth to enable an assessment to be undertaken under the Environment Protection and Biodiversity Conservation Act 1999 of the proposal to open tracks in the APCA to off-road vehicle use are described in guidelines issued by the Commonwealth Department of the Environment and Energy to the Director of National Parks and Wildlife.

It is the state's responsibility to prepare those reports and to synthesise them in a public environment report, which will form the basis of the Commonwealth's assessment. Those guidelines have been published and are publicly available on the Department of the Environment and Energy website. There are no requirements arising from any court proceedings for any further reporting.

- (2) The Department of Primary Industries, Parks, Water and Environment sought to engage a principal consultancy through an open tender process to prepare the public environment report. The department has been in ongoing discussions with the Commonwealth Department of the Environment and Energy to gain clarification on a number of technical matters relating the requirements of the assessment.

Until such time as those matters are resolved, a tender cannot be awarded to allow the work required to prepare the public environment report to commence. A specific time frame for the appointment of a consultancy through the tender process is unknown at this stage.

## **Granville Harbour Wind Farm**

[2.53 p.m.]

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

Regarding the Granville Harbour wind farm that is soon to commence construction -

- (1) Did either the state Government or the federal government provide any financial support, either directly or indirectly, to this project?
- (2) If so -
  - (a) How much was provided by each level of government?
  - (b) Were any conditions attached to the financial support regarding employment of Tasmanian workers on the project build?

## ANSWER

Mr President, I thank the member for Murchison for her question. The member has been busy.

- (1) Financial support, if any, provided by the Australian Government is a matter between the Australian Government and the proponents of the Granville Harbour wind farm. The Government directed Hydro Tasmania to enter into a power purchase agreement with WestCoast Wind to facilitate the construction of the Granville Harbour wind farm. In effect the Government has underwritten a portion of the LGCs, which may result in a cost to Hydro Tasmania depending on the future movement of LCG prices. Details of the direction are included in the Hydro Tasmania 2018 annual report.

The power purchase agreement does not take effect until the wind farm is operational. Once the wind farm becomes operational, the financial impact to Hydro Tasmania, if any, will be reported in its future annual reports.

In addition, a number of bridge-strengthening projects along the transport corridor between Burnie and Granville Harbour were undertaken at a total approximate cost of \$2 million, part-funded by the proponent. While the need was primarily due to the Granville Harbour wind farm project, there were also benefits to the state in undertaking the works through an overall increase in transport productivity for the north-west.

A deed of agreement with the proponent was entered into whereby the proponent made a contribution of \$400 000 towards the cost of the works. Australian Government Roads of Strategic Importance funding of \$1.46 million was also utilised towards the cost of the works.

The bridge strengthenings were -

- B4833, Murchison Highway, Farm Creek Bridge
- B2861, Zeehan Highway, Dundas Rivulet Bridge
- B3816, Zeehan Highway, Leslie Station Creek Bridge
- B4681, Zeehan Highway, Leslie Station Creek Bridge
- B5736, Heemskirk TR, Piney Creek Bridge.

- (2) There were conditions in regard to the employment of Tasmanian workers.



## Working Together for 3 Year Olds

[2.56 p.m.]

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

With regard to the Working Together for 3 Year Olds - WT3 - initiative -

- (1) When did the first group of children commence as part of the initiative?
- (2) How many placements are available for each of the pilot sites, listed by site?
- (3) How many children are currently enrolled in the initiative across all pilot sites?
- (4) When does the Government plan to evaluate the initiative?
- (5) Has the integration of the Child Care Subsidy been factored into the pilot and, if so, has it enabled children to attend more days?
- (6) What eligibility criteria is being used for children/families to access care during the pilot?
- (7) Can children currently enrolled in child care be included in the initiative. If currently enrolled children are excluded from the initiative, does the minister believe this limits equitable access to benefits of the initiative?

### ANSWER

Mr President, I thank the member for Murchison for her question. I advise the member that the answers to questions (2) and (3) consist of a table and the rest is words. Mr President, I seek leave to table the answer and have it incorporated into *Hansard*.

#### Leave granted.

- (1) Enrolments in the WT3 pilot began in March 2019
- (2) There are five pilot locations with a total of 55 places being made available to eligible three-year-olds. The following figures are accurate as at 10 May 2019.

<b>Devonport</b>			
Site/Early Learning Centre	Available Placements	Enrolments	Pipeline
Drew Street - Devonport Child Care Centres	5	5	Full
Devonport Child Care Centres - Malangenna	5	5	Full
1912	5	5	Full
<b>Glenorchy</b>			
Site/Early Learning Centre	Available Placements	Enrolments	Pipeline
Goodstart Claremont	5	5	Full

Discovery Early Learning Centres (Illara Preschool and Dominic)	5	2	2
Glenorchy Council - Glenorchy Child Care Connections - Benjafield	5	4	1
<b>Launceston</b>			
Site/Early Learning Centre	Available Placements	Enrolments	Pipeline
Lady Gowrie Alanvale	10	8	2
<b>Kingborough</b>			
Site/Early Learning Centre	Available Placements	Enrolments	Pipeline
Adventure Patch Mountain View	5	3	TBC
Goodstart Blackmans Bay	5	1	2
<b>Derwent Valley</b>			
Site/Early Learning Centre	Available Placements	Enrolments	Pipeline
Derwent Valley Council - Derwent Valley Children's Centre	5	5	Full

(3) Please see table above.

(4) The WT3 pilot will be evaluated in July-August 2019 by an independent agency, Clear Horizon.

Additionally, a more in-depth evaluation of the families' experience will be undertaken by TasCOSS at the end of 2019 and 2020 with monthly qualitative interviews underway.

(5) The children currently enrolled in the WT3 pilot are not yet accessing the Child Care Subsidy.

The Department of Education is working with Deloitte Access Economics to consider how to best integrate the federal and state funding to achieve optimum outcomes.

(6) The eligibility criteria for the pilot is:

Children who are three years old and -

- whose parents/guardians are Health Care Card holders
- who are Aboriginal and/or Torres Strait Islanders
- who are receiving support or intervention from the Child Safety Service
- meeting at least two criteria from Parents' Evaluation of Developmental Status - PEDS - assessment

- (7) The goal for the 2019 pilot is to engage eligible three-year-olds who have had no opportunity to participate in an early learning preschool experience previously.

As there are only 55 places available this year, prioritisation was based on this goal. The rationale is to test if the approaches being used are successful in engaging families with no prior relationship with an Early Childhood Education and Care - ECEC - provider.

## **SPECIAL INTEREST MATTERS**

### **Old Umbrella Shop, Launceston**

[2.57 p.m.]

**Ms ARMITAGE** (Launceston) - Mr President, the heritage-listed Old Umbrella Shop in George Street, Launceston is a rare glimpse into Tasmania's retail history and heritage. Although not Launceston's oldest shop, it is distinctive not only because it has a well-preserved street frontage, but because it still contains many Victorian-style blackwood shop fittings.

This charming old shop in Launceston is one of the last surviving retail experiences of the early 1900s and is a rare example of an intact early twentieth century store, including the original till. Originally the shop was opened as a grocery store in the 1860s, before being operated by the Shott family between 1921 and 1978. Three generations of the Shott family ran the store, selling their handmade umbrellas and repairing umbrellas. Initially, the Shotts were in the shop next door.

The land on which the shop was built was first granted to surveyor Thomas Scott, and was used as a grocery store during the next decade.

In the 1880s the owner was Daniel Corcoran who operated a business called the White House Grocery.

Robert Walter Shott was born in England in 1858. After living in New Zealand, he emigrated to Melbourne in the late 1880s and established an umbrella shop in St Kilda. He later moved to Tasmania, where he opened another umbrella shop at 64 George Street, Launceston. An advertisement in the *Examiner* in December 1909 gave a vivid description -

For men, twill silk with 18 carat gold-mounted ivory handle for 30s, it was made on the best frame from Hoyland's ribs so it could be covered again and again.

Silver mounted handles have reliable Partridge stems and Fox's Paragon frames and are equally strong and durable, but cheaper than the gold mountings.

Ladies umbrellas are also mounted beautifully in 18 carat gold and sterling silver on ivory or pearl handles with cable chains to slip over the wrist.

The greatest of all novelties is the 'spring opening' where with just a touch, the umbrella simply opens itself, slips into its slot and remains securely open until the spring is touched and it slides down to close. All kinds of beautiful silks in floral panels, striped, checked and patterned silks and satins as well as black and white are in plentiful stock ranging in price from 4 shillings, 6 pence to 12 shillings, 6 pence and upwards.

Shott's specialty umbrella was the 'automatic frame'; it was flexible, easy to adjust but impossible to blow inside out in bad weather. Prices ranged from 6s 6d to two and three guineas. Expensive in those days.

Business flourished and the shop moved to 60 George Street. Shott introduced souvenirs in 70 different timbers - boxes for playing cards, bookends, peppers and salts, desk sets, mirrors, candlesticks and many more. Some of these made suitable presentation gifts. A blackwood walking stick was given to the Prince of Wales when he visited Tasmania.

Robert Walter's son, Robert William Shott, joined the business in the 1920s and built upon his father's reputation for highly skilled workmanship. R Shott & Son began selling and eventually making their own Tasmanian blackwood souvenirs. Many of these were marked with a round paper label on the base and a small silver map of Tasmania on the side.

Robert William's son, John William Robert, joined the family business in the 1940s. John trained in French polishing and became an expert machinist, while his sister Dare provided valuable assistance repairing and sewing decorative motifs onto umbrellas. Every civic guest to Launceston after World War II was said to have been presented with a handmade wood souvenir from Shott & Son.

R Shott & Son Tasmanian souvenirs replaced souvenir ware previously imported from Europe, particularly ceramic wares emblazoned with transfers of local scenes. Shott & Son's affordable range included everyday products such as eggcups, ashtrays and napkin rings and more decorative items such as clocks, walking sticks and presentation boxes.

The present-day shop, now owned and operated by the National Trust, continues to sell a large range of umbrellas and souvenirs, most of which are made on the premises; it also has permanent historical displays in addition to a variety of National Trust and Tasmanian-made products. It is now run by a group of about 85 volunteers, who are full of valuable information.

The front of the building remains a shopfront, as it always has been. The Shott family lived above their shop during their time there, but these days there are legal offices above the Old Umbrella Shop. Most of the original fittings from the site's 1920 opening are still intact. The shop attracts tourists from around the world, with people impressed because it is unique and a step back in time.

Mr President, the volunteers have a wall of brochures in the shop as well as their own local knowledge to share with visitors, focusing predominantly on the north and the Tamar Valley.

### **Tasmanian Emergency Service Personnel - Tribute**

[3.05 p.m.]

**Mr FINCH** (Rosevears) - Mr President, let me first of all welcome the member for Nelson to the Chamber. I look forward to working with her. Mr President, I was also a bit concerned about where my contributions to parliament would be made if I did not retain my seat over here. At least with special interest contributions, I do not have to put up with a certain member who used to sit there and who, every time I got the call, would say 'Thank you, Mr President' - but thank you, Mr President.

I have a rather sad story to tell here today. Tasmania's highly professional emergency service personnel are often taken for granted and not given the recognition they deserve. Not only are they well trained in tackling often complicated situations and rapid decision-making, but they also demonstrate empathy and sensitive communication skills.

I want to tell the House about a situation when most of our emergency services came together for a very delicate bush rescue operation north-east of Launceston, in the member for Windermere's electorate. The incident happened on the afternoon of Saturday, 6 April on a private property near Nunamara; it is owned by my friend Mike Howe, an old fellow Fern Tree boy from years ago who worked with me at the ABC for 14 years.

His 28-year-old son was getting firewood on the family property. It was one of his favourite pursuits. He would take his dog and ute to a favourite area with an abundance of suitable trees. He was a very experienced and thoughtful bush worker. He worked as a plantation harvester during the week on the north-west coast at Smithton. He was a careful and skilful tree feller, but freak accidents in the bush happen, and Rowland Howe received a massive blow to his back from a falling tree under great tension. He was knocked to the ground and trapped face down. His dog Ella, a German shepherd, returned to the homestead and raised the alarm.

A triple zero call to the ambulance service was handled with the pertinent questions and advice. Some serious decisions were made very quickly, including to despatch two ambulances, one of them a four-wheel drive, and, as is the case in most serious bush accidents, the Tasmania Fire Service was alerted.

First on the scene was the local St Patricks River fire captain, who could liaise with approaching ambulances by radio and alert two fire trucks and their crews. A police team also arrived and cooperation between the emergency services was exemplary. In all, 15 emergency service personnel were at the scene.

Rowland was very carefully extricated and stretchered out of the bush with suspected spinal damage. It was decided to call in the helicopter and Rowland was taken straight to Royal Hobart Hospital.

At all times, the paramedics, including a paramedic doctor, kept family members informed and a police evaluation of how the accident happened was communicated to the family.

Rowland's family were with him at the Royal Hobart Hospital where they were briefed several times by doctors.

Unfortunately, although no bones were broken, he had sustained critical internal injuries that resulted in inoperable internal bleeding. He died 26 hours after the accident.

In these cases a painstaking coroner's report is compiled, which invariably makes recommendations to lessen the likelihood of a similar accident in the future.

Equipment such as safety gear and chainsaws are carefully examined and police working with the coroner's office take a number of interviews. These were done with exceptional intelligence and sensitivity.

That is how Tasmania's emergency services work for our community and we are justifiably proud of them. I will be communicating this speech to the Minister for Police, Fire and Emergency Management, to make sure he understands my recognition of the support of the emergency services personnel in this instance.

### **Australian College of Midwives - Workshop**

[3.07 p.m.]

**Ms FORREST** (Murchison) - Mr President, on 12 April this year, I was excited to attend an Australian College of Midwives half-day workshop to hear presentations from some of the amazing midwives in Tasmania about some of the amazing work they are doing.

A southern chapter of the Tasmanian branch of the Australian College of Midwives was also relaunched after a number of years in recess. Our amazing midwives are initiating some excellent programs that will have lasting beneficial impacts.

A team of midwives at Royal Hobart Hospital initiated a carbon monoxide monitoring program that has resulted in a far higher percentage of women who are smokers registering in smoking cessation programs. That will reduce the risk of preterm birth. This program is being showcased around the country.

Another important project has been implementing the Western Australian Preterm Birth Prevention Initiative across Tasmania within public and private systems. I commend the Government and the Minister for Health for supporting and financially backing this great initiative.

I am sure members are aware of the risks associated with preterm birth. Effective measures to reduce the occurrence of preterm birth have lifelong benefits for the child and ultimately reduce the demand, and thus the cost, of services required to care for and support preterm babies.

Preventing one preterm birth earlier than 31 weeks will save the health system \$600 000 in acute care costs and potentially hundreds of thousands of dollars in ongoing health care.

Worldwide, an estimated 15 million babies are born preterm - before 37 weeks gestation - each year. Preterm birth is associated with significant morbidity and mortality and is a leading cause of death in children up to five years of age.

The facts about preterm birth in Australia are sobering. A staggering one in 10 babies in Australia is born premature - approximately 27 000. Of these births, up to 1000 lose their fight for life. Beyond these numbers lies an untold heartache for these families.

In 2005, Tasmania had the lowest preterm birth rate in the country, 6.9 per cent. However, in the past 10 years, the preterm birth rate in Tasmania has continued to rise and has consistently been above the national average. In 2015 and again in 2016, Tasmania had the highest preterm birth rate in the country, 11.3 per cent. surpassing even the Northern Territory. The Whole Nine Months, the Western Australian Preterm Birth Prevention Initiative was launched in November 2014, with a goal of safety and effectively lowering the rate of preterm birth, saving lives and preventing lifelong disability. It was the world's first such program to be applied across an entire population.

Following the implementation of the program during 2015, the rate of preterm birth in single pregnancies in Western Australia fell by 7.6 per cent, 196 fewer preterm births compared with the year before, 2014 - very significant. Preterm births rose in every other Australian state and territory in that same year, so clearly it had an impact. If we were to achieve a similar outcome in Tasmania, based on the Western Australian initiative, reducing the preterm birth rate for up to 31 weeks from 61 by 2 per cent, this would equate to a saving of \$854 000 for this cohort alone. A saving of \$189 000 for the cohort of babies between 32 to 36 weeks, based on the average length of stay of 16 days. Total expected reduction in costs at Royal Hobart Hospital would be \$1.043 million.

Further savings at the Launceston General Hospital and North West Regional Hospital would also be anticipated, as babies remained at LGH from 32 weeks with uncomplicated prematurity and 34 weeks at the North West Regional Private Hospital where they birth.

In June 2018, the Australian Preterm Birth Prevention Alliance, a subcommittee of the Perinatal Society of Australia and New Zealand, was established in an effort to take the program to all states and territories with the singular aim of lowering the rate of preterm birth on a national level. Recognising the significant morbidity and mortality associated with preterm birth and the current situation in the state, it was imperative all steps were taken to safely lower the preterm birth rate in Tasmania.

I will not go into all details of the program as time prevents this, but in broad terms, the initiative encompasses new clinical guidelines, an outreach program for healthcare practitioners, a public health program for women and their families and a new preterm birth prevention clinic. This includes providing appropriate ultrasound services for the accurate measurement and reporting of cervical length at the mid-trimester anatomy scan, plus enabling appropriate treatment and management to assist in preterm birth prevention. This encouragement of smoking cessation, especially in women under the age of 20 who have the highest smoking rates at 1:3, and the provision of a dedicated antenatal clinic in each region will provide surveillance and management for women at risk.

As well as the positive impact on future Tasmanians, we would save the health system hundreds of thousands of dollars. At a time when we are hearing so much about the challenges associated with our health services, it is great to see the Government responding positively to a program that will create real benefits for mothers, babies and their families in Tasmania, will have a positive impact on the health and wellbeing of our babies and will give them a much better start in life.

### **Smibert Art Gallery**

[3.13 p.m.]

**Ms RATTRAY** (McIntyre) - Mr President, first I congratulate you on your election today as our President, a sincere thank you and congratulations. I also extend my congratulations and best wishes to the member for Nelson. I bet the waiting was pretty difficult, but now you know you are here and we are certainly here to support you. I also welcome back the member for Pembroke and the Leader, the member for Montgomery. I have a new seat partner, so she has a different view of the Chamber now.

Today I am going to talk about the Smibert Studio Gallery. Honourable members who attended the McIntyre electorate tour in the middle of February this year will recall our visit to the Smibert studio where we were not only wonderfully hosted by Tony Smibert and his wife, Carmel Burns,

but were also treated to a very special experience on that morning in the studio located on the Mole Creek Road, just outside the Deloraine township. Tony is a painter, writer and educator whose exceptional work reflects eastern and western traditions. That was certainly evident as Tony shared an array of artwork and also shared with our group some of the finer points of his works.

Our introduction to the Tao Sublime acrylic canvas works in the outbuilding adjacent to the studio was indeed interesting. Tony told us about the process for these incredible works. He worked on a piece for hours on end until the piece was completed, at which time he was completely exhausted and, I expect, experienced a genuine sense of relief and artist satisfaction.

Tony Smibert trained at the National Gallery Art School in Victoria. He graduated from the Melbourne State College as a specialist art teacher and then taught for 10 years before making Tasmania home to paint full-time. Now more than three decades and more than 50 solo exhibitions later, Tony is an internationally renowned painter, teaching around the world. He is a visiting artist researcher at the Tate Britain Gallery, London, where he delivers master classes, as well as at other leading art museums. This internationally acclaimed artist is the author and co-author of numerous publications and is a leading expert in the painting techniques of JMW Turner.

The *Australian Art Review* has concluded that although techniques in Tony's work are highly influenced by Turner, Smibert's style is uniquely his own. Mr President, I am sure you would agree we were privileged to be shown a collection of these works during our visit.

When visiting the studio, stepping outside the gallery and when walking across from the outbuilding studio, I was much struck by the magnificent view of the Western Tiers. I feel sure they would be a wonderful source of inspiration for Tony's work. I made this observation because I recently read that the new gallery curator, Louise Reid Davies of the University of Tasmania, when commenting on Smibert's style said that the paintings are abstract but based on features of landscape observed in Turner's inspired works. How very fortunate that Tony, Carmel and family chose this area of our state to make their home and follow their passion for art.

An important aspect of our visit, which needs our focus, was discussion about support for emerging artists, particularly young artists, who really struggle to get started in the industry and secure the necessary support while building a reputation in their chosen field of art. Tony and Carmel spoke passionately about this issue to members. They very generously offered to provide their valuable time and assist in developing a support initiative between government and the arts community, an initiative that would allow those in our arts community to concentrate on their craft with the aim of fully developing their artistry and achieving the very best outcome possible.

Given the high esteem in which Tony and Carmel are regarded in the art world, this offer to be involved is one we should embrace and do what we can to show our support. On the day, I felt that there was a supportive vibe among members as we listened to what was being presented.

Our sincere thanks to Tony and Carmel for their generous hospitality and for sharing so much detail of their wonderful and quite fascinating artworks in the most picturesque setting that the Smiberts call home.



## MOTION

### Consideration and Noting - Government Administration Committee A - Special Report on Failure to Provide Documents

[3.17 p.m.]

**Ms FORREST** (Murchison) - Mr President, I move -

That the special report of Government Administration Committee A into the failure of the Minister for Health to provide documents requested through proper processes during the committee inquiry into acute health services in Tasmania be considered and noted.

Before my contribution on this order of the day and noting of this special report, I congratulate the honourable Leader on her return to this place with a resounding election result. It was very clear that she has the strong support of her community. I commend her for that and for the work she has done and will no doubt continue to do. The same for the member for Pembroke - again, another outstanding result after having only 18 months in this place to consolidate her position. It goes to show, if you are working hard in the community, people recognise that. Congratulations to both members.

To you, Mr President, on your elevation to the big chair: I am sure you will serve us well, and I note the honour with which you recognise that being. To our newest member, the member for Nelson, welcome to our Chamber. I hope you find your time here interesting and exciting and that you can actually make the difference. I am sure that is one of the reasons you stood.

It was an interesting battle with 10 candidates standing. It is fantastic for democracy to have such a choice of candidates. I spent time down in the south during that time, but I heard about the amount of work that went on. Being overshadowed a bit by the federal election must have been a challenge all members faced. Congratulations. It is a remarkable achievement. The overall result from the distribution of preferences shows a very strong body of support for you. I wish you well.

In speaking to this motion regarding the minister's failure to produce documents requested through proper processes during the course of the Government Administration Committee A inquiry into acute health services in Tasmania, I do not intend to speak at great length at this time because the special report speaks for itself. I note - as the report also does - that this is not the first time such barriers have been put in place by governments past and present to deny the right of an appropriately constituted parliamentary committee access to relevant and necessary information to assist with its deliberations.

I am also sure it will not be the last unless some resolution or solution is found. A proposed solution is a matter for a subsequent motion; again, the establishment of a select committee to consider this matter, so I will not be going into that aspect now. However, I will make some comments regarding the special report, and other members may wish to add further comments and perspectives. The members of Government Administration Committee A and members of other committees may have had similar experiences on other committees.

As members would be aware, from information included in the two previously issued interim reports of the subcommittee on acute health services, significant concerns were raised regarding access to acute health care, planning for, and coping with, demand. I am also sure all members are

very aware of the dire state of our health services at the current time. We are hearing about the flu season just starting, and it being a particularly bad season again, so you can only imagine that it will add to the pressures currently existing.

The subcommittee under its Chair, the member for Hobart, heard from many well-informed witnesses on the stresses the system is under, how that is affecting people and the reality of adverse patient outcomes, including avoidable deaths that can occur and have unfortunately occurred when the system is under such pressure.

I am sure we can all recall the recent sad death of a patient in the waiting room of Royal Hobart Hospital. To better understand demand for these services, the subcommittee continued to pursue a copy of a KPMG report commissioned by the former Tasmanian Health Service, since the minister appeared before the subcommittee on 22 October 2018. This report was - and I believe still is - relevant to the work of the subcommittee. The special report clearly outlines the appropriate steps taken by the subcommittee and its Chair seeking to be provided with a copy of this KPMG report. Many possible options were explored, including receiving a copy in camera. These requests were all to no avail. The minister finally responded to a number of questions on notice provided to the minister by the subcommittee on 30 October and 28 November 2018, with a letter to the Chair on 12 April 2019.

I repeat: the minister was provided with questions on notice on 30 October and 28 November 2018 and no answer provided until 12 April 2019. That is unacceptable.

Then there are complaints the committee has not completed its final report. Four-and-a-half months and we received a three-page letter. That is what we were given, along with an attachment of seven pages to support one of the answers.

These responses still do not provide even the information requested - we are still missing questions that were not answered - nor did it contain the KPMG report as requested.

The majority of the third page of the letter was taken up with the minister calling into question the integrity of the Chair, noting the tabling of this special report. He may wish to speak to that at a later time. I reckon he will. That letter either has been published on our website - we did resolve to do that -

**Mr Valentine** - We certainly resolved to do that.

**Ms FORREST** - If it is not there, it will be very soon. I am going to quote from that letter because I think it is relevant.

The letter says -

I also take this opportunity to acknowledge the Special Report tabled by your Sub-Committee last week, dated 21 February 2019, and dispute the findings made.

The finding that the Government has not provided a valid claim for not providing a copy of the KPMG report, in camera or otherwise, is without basis and simply dismisses the two reasons I have consistently cited.

The second finding is simply an expanded claim of the first finding and neither finding substantiates the basis of the claims that my reasoning is both invalid and incorrect.

I note the chair's recollection of our conversation on 7 December and place on the record that my recollection differs. I do not recall providing such an assurance and my written response on 17 December is consistent with the Government's long-standing position on this matter. I have not changed my position at any stage in relation to the multiple request from your Sub-Committee for the report, despite my openness to give consideration and seek advice.

The committee was somewhat stunned by that because it was an attack on the integrity of our Chair. I am sure he will speak for himself on that.

When you read that and listen to what was said, it is almost like the Alan Bond defence of 'I do not recall'. He does not recall the conversation.

As I mentioned, and it is noted in the special report, evidence received by the subcommittee regarding the KPMG report indicated the information contained within this report was relevant and important to the work of the subcommittee.

A number of requests were subsequently made by the subcommittee to receive the KPMG report. These are outlined in the special report. Requests included different approaches that could be taken by the minister to provide a copy of that report in camera, in the custody of the Clerk or other measures.

The subcommittee sent a letter to the Minister for Health dated 22 October 2018 formally requesting that the KPMG report be provided to the subcommittee by close of business on 29 October 2018. No response was received. The subcommittee was ignored.

The subcommittee sent a letter to the Minister for Health dated 30 October 2018 expressing disappointment that no response had been received to the letter dated 22 October 2018 and requesting that the KPMG report be provided by Thursday, 1 November 2018, or reasons be given why the previous requests had not been met.

Members would be aware of and appreciate that there is a demonstrable claim of immunity with regard to documents that are Cabinet-in-confidence documents. This claim does carry some weight, particularly for documents requested under the right to information process. However, legal advice was obtained by the Public Accounts Committee when, being a member on that committee, we faced similar challenges. We received some advice from Mr Leigh Sealy SC, the former solicitor-general. I will read some of his advice, which was read into *Hansard* during a noting of a report from the Public Accounts Committee.

In a footnote to the advice relating to claims that the right to information assessment effectively applies to parliamentary committees, an argument relied on by the Treasurer in the Public Accounts Committee process and again by the Minister for Health with our acute health services committee inquiry, Mr Sealy noted -

The provisions of the Right to Information Act 2009 confer certain entitlements upon a person to obtain information held by the executive government and other

instrumentalities (see section 7), but even if one were to take the view that the Committee or the Parliament (or even one or other House of the Parliament) was a person, the Act has no application to the production of documents to the Parliament or to committees of the Parliament which is provided for by the Parliamentary Privilege Act 1858 (generally and, in the case of the Committee, more particularly, by section 7 of the Public Accounts Committee Act 1970.

Mr Sealy's advice also referred to situations where claims of immunities such as public interest immunity or Cabinet-in-confidence immunity were made. I note neither of these claims were made by the Minister for Health. He did not claim Cabinet-in-confidence and he did not claim a public interest immunity. He claimed that it had been assessed by the right to information process. I use Mr Sealy's advice again to illustrate the committee's right to seek documents. Mr Sealy stated in his advice -

In my opinion it is unquestionably the case that the Committee is entitled to call for the production of any document held by the executive government (or indeed any person) irrespective of whether any claim of privilege or immunity is, or may be, made.

You have the right to call for it, but whether we get it or not is another matter.

I will refer further to Mr Sealy's advice and other relevant documents when we debate the motion to follow this motion regarding the establishment of a select committee because it relates more particularly to that.

Mr Sealy went on to discuss claims of Cabinet-in-confidence and public interest immunity. Again, those matters are more relevant to another debate.

As I said, Mr President, neither a claim of public interest immunity nor a claim of Cabinet-in-confidence were made by the Minister for Health. Rather as noted in finding (2) of the special report, the Minister for Health incorrectly relied upon the provisions of the Right to Information Act 2009 as being relevant to the question of to what extent he is required to comply with the request from the subcommittee for the production of documents. The minister also stated that he relied on the principle of the need for frank and fearless advice to support his refusal. The minister continues to defend these two reasons, which the committee rejects for the non-production of the requested document.

Mr President, I will comment more on this matter in the forthcoming debate. When the subcommittee wrote to the minister repeating the request for the KPMG report, we noted in this correspondence that no claim of Cabinet-in-confidence had been made relating to the report requested, and requested reasons for his refusal. The minister continued to rely on a previously conducted right to information request.

Mr President I refer to the special report to highlight further attempts by the subcommittee to obtain a copy of the KPMG report. Following the letter to the minister on 13 October 2018, the minister responded in a letter dated 2 November 2018 as follows -

With regard to the KPMG report, I have previously addressed this matter with you in person. I am advised that it was already subject to a Right to Information request in August, with a response provided to the applicant the following month.

Under the assessment, a delegated Right to Information officer of the Department of Health, appointed by an instrument of delegation in accordance with section 24 of the Right to Information Act 2009, determined that the information was exempt from release. That is an independent assessment, at arm's length from Executive Government. Noting that assessment, the report will not be released. I would note that it is very important that Government can receive frank and fearless advice and this is a cornerstone of our system of government.

However, I note the subcommittee's interest in health funding in Tasmania and you will note my continued effort to be constructive with your Inquiry, including multiple attendances at the subcommittee table as well as several responses to letters and multiple submissions. To further support that, in place of providing confidential advice for government, I am prepared to authorise an in-camera briefing session from Departmental officers to inform the subcommittee on these matters.

If this is acceptable to the subcommittee this will be more informative, as the KPMG report only covers the period up to 2015-16, data which are now two years old, with a briefing able to provide more contemporary data and forward projections as we discussed in my recent presentation.

As the special report notes, the subcommittee sent a letter to the Minister for Health dated 6 November 2018 rejecting the claim of RTI processes applying to parliamentary proceedings. The subcommittee also accepted the offer to provide an in camera briefing to the subcommittee on the content of the KPMG report, including the provision of more contemporary data and forward projections. This hearing was held and we asked the minister to review the transcript of the hearing because we believe nothing of a confidential nature was expressed during that hearing, and certainly no forward projections of any note.

The public release of this transcript in full was approved by the minister on 12 April 2019 and subsequently it will be published, if it is not already, on our committee website.

As noted in the special report, the subcommittee expressed its view that the Right to Information Act 2009 does not apply to parliamentary proceedings and therefore requested reasons be given by the minister and the secretary of the department in an open hearing prior to proceeding to the in camera evidence about the KPMG report as to why it would not be released to the subcommittee.

Again, other than a reference to the right to information assessment regarding the release of the KPMG report, a reference to the principle that government needs frank and fearless advice, no further reasons have been given by the minister in his refusal to provide the report to the subcommittee.

Mr President, I have a few more comments to make in regard to this but I know we have another commitment at Government House. At this point I will seek to move that the debate stand adjourned so we can resume at a later time.

**Debate adjourned.**

## **SUSPENSION OF SITTING**

[3.36 p.m.]

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

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

This is to allow members to attend Government House.

**Sitting suspended from 3.36 p.m. to 4.55 p.m.**

## **ELECTION OF PRESIDENT**

**Mr PRESIDENT** - Honourable members, I wish to report to the Council that, in accordance with standing order 16, in the company of other honourable members I presented myself to Her Excellency the Governor this afternoon and informed her that the Council had done me the honour of electing me President. Her Excellency has sent the following message -

To the President and members of the Legislative Council

I congratulate honourable members of the Legislative Council on their choice of A President.

It is signed Kate Warner, Governor.

## **MOTION**

### **Consideration and Noting - Government Administration Committee A - Special Report on Failure to Provide Documents**

**Resumed from above.**

[4.56 p.m.]

**Ms FORREST** (Murchison) - Mr President, before we suspended to visit Government House, I was talking about the measures the committee has taken in seeking to obtain a copy of the KPMG report it requested.

When the subcommittee questioned the minister about reliance on the RTI assessment and release of documents used to provide evidence to Government, he stated -

I am under no obligation to provide a report that has been solicited by government to help it prepare for budget preparation.

I respect the House of the Legislative Council; I respect its interest in this matter. But I am not prepared to release a report, even though there are things about that report that I am not offended or troubled by. There is a principle I am adhering

to here. I want to protect the ability of government to obtain advice and ensure that advice is frank and fearless.

The reference to the RTI is relevant insofar as it helps explain why there is not a public interest served under the independent assessment of it ...

Again, we keep going around in circles about the RTI process being relevant to deny a parliamentary committee access to a document it is legitimately entitled to seek. This was the same argument used in the Public Accounts Committee, when we sought a letter written by the Treasurer to the Minister for Energy.

The subcommittee subsequently sent a letter to the Minister for Health dated 3 December 2018 requesting it again - that a copy of the KPMG report be provided to the subcommittee in camera. Initially, he was asked to provide it as an open document the committee could publish should it see fit, but this time it was in camera. We asked for this to be provided by 10 December 2018. As you can see these dates were getting close to Christmas.

The minister provided verbal assurance to the Chair. On 7 December 2018 we were advised that the KPMG report would be provided to the subcommittee in camera. The subcommittee Chair, the member for Hobart, Rob Valentine, subsequently informed the secretariat and the subcommittees by email of this commitment. I must say, Mr President, we were pleasantly surprised as the member for Hobart will no doubt attest. I have absolutely no doubt in my mind that he would not have sent that email had he not had the conversation. There was no point.

On 17 December, 10 days later following this conversation, we still had not received anything and a question on notice response was then received on 17 December 2018, by the minister to the subcommittee declining to provide the KPMG report to the subcommittee. Again, we were confused because it seemed to be going back on what the Chair had been informed in the verbal conversation.

The committee resolved that its secretary should contact the minister's office to seek clarification in relation to his change of position about the release of the document. No response was received from the minister's office, despite a subsequent follow-up by the secretary into the letter I referred to a little while ago and quoted from, which was received on 12 April 2019.

You can see this is a long drawn-out process and Christmas got in the way in terms of continuing the process. When the letter was received on 17 December 2018, the subcommittee was surprised by the response, given the verbal undertaking to the Chair it would be provided in camera.

What surprised me even more was that the 12 April 2019 letter provides some answers to the questions we had asked many months prior, when he also commented on this special report.

I, and I am sure other honourable members of the subcommittee, who will no doubt speak for themselves, were very disappointed by the minister's comments with regard to this telephone conversation with our Chair, in which he challenged, in my view, the integrity of the member for Hobart, the subcommittee Chair.

Mr President, refusal of a minister to provide documents to committees of the parliament that are integral to the work of the committee is not new. It has been an issue in this parliament previously, as well as in other parliaments around Australia. I believe it will continue to be a source

of frustration and debate unless an alternative process of resolution can be agreed. As I said, this is a matter for a subsequent debate.

As noted in the special report, the subcommittee was concerned that a similar situation had again arisen to that which had occurred during the 2017 Public Accounts Committee inquiry into the financial position and performance of government-owned energy entities in Tasmania. I referred earlier to the two quotes from Mr Leigh Sealy SC. As a member of the PAC at that time, I am also well versed in the occurrences and arguments put forward at that time. The Treasurer's response to the request of the document relating to the Tamar Valley Power Station of 14 September 2016 stated -

This letter has been released under a Right to Information Request and appropriate Report information has been withheld based on the assessment under the Right to Information Act 2009.

A redacted copy of the letter was attached to the response.

On that occasion, the PAC sought advice from the Clerk of the Legislative Council. Following advice from the Clerk of the Council, the committee forwarded a request dated 10 November 2016 to the Treasurer seeking that the letter be released into the safe custody of the Clerk of the Council to enable the committee to view the letter. The Treasurer - in the PAC inquiry and included in our special report - responded on 9 December, stating -

As requested by the Committee, I have again considered your request in the context of established precedent and convention; however, I do not see it appropriate to release the whole Tamar Valley Letter to the Committee, for similar public interest grounds to the RTI decision; that is, that the Tamar Valley letter includes cabinet information -

not Cabinet-in-confidence -

and the Departmental advice attached to that letter is a working document including internal deliberative information, both of which require confidentiality to be maintained.

In his response on 27 February 2017, the Treasurer again refused to release the full letter. The PAC sought advice from Mr Sealy regarding claims of Cabinet-in-confidence and the use of the term, in this particular case, of Cabinet information and reference to the letter being a working document, as these claims were specific to the document in question. I will read more of Mr Sealy's advice with regard to that matter.

Mr Sealy advised -

The question presently under consideration refers to the terms 'cabinet in confidence' and 'working documents'. I am unable to attribute any precise meaning to the phrase 'cabinet in confidence' and, in any case, the Treasurer does not appear to me to have used the phrase. It may be that some form of State Service shorthand adapted from the phrase 'commercial in confidence', and intended to indicate that a particular document has some association with Cabinet such that its contents should be kept confidential. It is perhaps another example



of the elasticity of the language used for the purpose of seeking to spread the cloak of public interest immunity as widely as possible.

For the reasons given above, the mere fact that the document may have some association with Cabinet does not, in my opinion, mean that it attracts immunity. Where a claim of immunity is made it is probably necessary, in every case, to look at the contents of the document in order to determine whether the claim of immunity can be supported. Of course, that is impossible to do unless the holder of the document produces it for that limited purpose. This typically results in the stand-off that presently exists between the Minister and the Committee.

These matters have been debated before in this place when we debated motions related to the PAC inquiry. Now, in this special report, we have a similar stand-off and no agreed manner with which to resolve it. I will leave further exploration of the process to deal with that for a later time.

Mr President, to conclude the noting of this special report, I reiterate the committee made two findings -

- (1) That the Minister for Health has not made a valid claim in relation to the decision to refuse to provide a copy of the KPMG Report to the Sub-Committee in accordance with its numerous requests.
- (2) That the Minister for Health incorrectly relied upon provisions of the Right to Information Act 2009 as being relevant to the question of whether, or to what extent, he is required to comply with a request from the Sub-Committee for the production of documents. The Minister also relied on the principle of the need for frank and fearless advice to support his refusal.

On the basis of these findings, the subcommittee made one recommendation: that the subcommittee recommend that the Legislative Council consider an effective mechanism to deal with the issue of ongoing disputes arising between the Government and committees of the Parliament of Tasmania in relation to the production of documents and records.

It has been very frustrating and difficult for the subcommittee to undertake its work effectively and efficiently. We have not acted hastily or been unreasonable in our requests. I believe we here in Tasmania need to look for options to break such deadlocks and maintain the integrity of the parliament, and also ensure open and transparent government.

This will be the subject of the subsequent debate. I move the noting of the special report of Government Administration Committee A and look forward to other members' contributions.

[5.06 p.m.]

**Mr VALENTINE** (Hobart) - Mr President, I congratulate you for taking on that role. You will make sure we are frank and fearless in this Chamber and no doubt you will keep us under control. I wish you well in this part of your career.

Before I provide an offering on this matter I also acknowledge the member for Nelson, who no doubt ran a hard race with nine other candidates vying for the same position. I think I might have had only six. It is never easy at the doors helping people to understand exactly what this Chamber

does while at the same time trying to explain the passion you have for various things. It is an interesting line that we tread. Congratulations and I am sure you will enjoy the role.

I also congratulate the member for Montgomery, our Leader in the House, and the member for Pembroke for getting across the line. Well done and I look forward to working with you both over the next few years that I am here.

I also thank the Chamber for the condolences expressed on the passing of my father on 29 April. It was touching to receive those condolences.

To the matter at hand - the Government Administration Committee A Special Report on Failure to Provide Documents. The member for Murchison has covered a fair bit of ground on this matter and I thank her, given she is the Chair of the committee, for bringing this matter on. It is an important matter that we are dealing with here today.

It is important to have the debate given the nature of it, but the subsequent work on this matter is even more important to find some resolutions to the issues that exist. Getting effective and good information during the inquiry helps the committee to come out with the findings it needs to and the recommendations that follow.

This House needs to be able to fulfil its parliamentary role on behalf of the people of Tasmania. In undertaking that role, I believe there is moral duty for this House to be able to do so properly, to scrutinise all aspects of government activity that impacts upon the people of this state. In the acute health services inquiry that we were undertaking, for the part that I was involved in, it certainly is important. It is important that we be able to analyse information in light of all the available information that we have at our disposal to come out with good recommendations that we can put forward and that one would hope the Government then takes notice of and moves to address the issues that exist.

The Government's reasoning that it was important that the KPMG report not be released as it would fetter the opportunity for the Government to receive frank and fearless advice, to my mind, is not right. I will go to page 11 item 13 in the report, where on 16 November, I said to the minister -

We would really like a copy of that report. It is of interest to the committee, as you can appreciate. Are you saying you are not prepared to release that report?

In response Mr Ferguson stated -

I am saying that. That is nothing new, with respect, Chair. I am not prepared to provide you with a report I am not empowered to give to you.

That is an interesting interpretation - 'I am not empowered to give to you'. It is as if the minister is saying, 'No, there is something else that prevents me from doing so'.

The KPMG report was commissioned. As I think the member for Murchison may have already stated, it was commissioned by the Tasmanian Health Service or DHHS. We do not have the report, so we do not fully know how that came about. It certainly was not commissioned by Cabinet as far as I am aware.

It would seem that the minister is relying on Cabinet telling him not to release it, yet it was not Cabinet that commissioned the report, so I think that is something that we have to understand. He says -

It is internal budget management advice. Obtaining external advice that has been longstanding practice in Health and other agencies for decades. It is the case in the private sector. Somebody became aware of the report and attempted to RTI it, but it was assessed under RTI as not for disclosure.

The member for Murchison has gone through that. Quite clearly, RTI does not apply to this House; it may to the general public, but it does not to this House. We are part of the parliament. We are not a member of the public requesting a document or information. Part of the duties of this House is to act as a House of review. I think that needs to be stressed.

We cannot fulfil our parliamentary role if we do not have access to the information we believe will indeed assist us in our duty. He goes on to say -

As I explained at my previous hearing in providing evidence, governments need to be able to take advice.

I am sure that members of the Legislative Council would want to think that government does take advice; so when you seek advice, you need to know it is going to be proper advice - frank and fearless. When you start releasing advice you have been provided with, it actually compromises your ability to get advice in future. It will change the behaviour of the person providing advice if they think, 'this might be released; I might not be quite so frank and fearless'.

I just want to take members to the State Service Act, Part 2, section 7, State Service Principles. I believe these principles are very relevant -

(1) The State Service Principles are as follows:

(a) the State Service is apolitical, performing its functions in an impartial, ethical and professional manner;

This is the State Service. This is not executive government we are dealing with. Under (d) it states -

the State Service is accountable for its actions and performance, within the framework of Ministerial responsibility, to the Government, the Parliament and the community.

If we look at that within the framework of ministerial responsibility, a minister is not allowed to mislead parliament, so it is obvious those working within State Service departments under ministerial control have similar strictures placed upon them.

I will read a couple of other parts of these principles -

- (e) the State Service is responsive to the Government in providing honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
- (f) the State Service delivers services fairly and impartially to the community;

We represent the community here. We are here because we were chosen by the community to undertake the review processes we have here, and we are the community in that sense.

Section (9) about the State Service Code of Conduct -

- (1) An employee must behave honestly and with integrity in the course of State Service employment.
- (2) An employee must act with care and diligence in the course of State Service employment.
- (10) An employee must not knowingly provide false or misleading information in connection with the employee's State Service employment.
- (13) An employee when acting in the course of State Service employment must behave in a way that upholds the State Service Principles.

Telling half the story to a direct question is not really an option for a state servant and one extrapolates from that, if that is the case for a state servant, a minister must behave in a similar fashion. To those working for you, you cannot say, 'You need to have these strictures applied and make sure you provide frank and fearless advice' and then have the minister not following through and providing the same advice to this Chamber, Parliament.

We need to understand it is beholden on the minister, as a person chosen by the members of the public to represent them, that he too in this case, any minister really, needs to make sure they are providing the advice the parliament needs to be able to make judgments on things.

We need a public service that is always frank and fearless. The State Service Code of Conduct is encompassed in the State Service Act and public servants are well aware of these things. They are, and there are significant penalties for breaching the code. The penalties are mentioned under section (10) -

The Minister may impose one or more of the following sanctions on an employee who is found, under procedures established under Subsection (3), to have breached the Code of Conduct - counselling; a reprimand; deductions from salary by way of fine not exceeding 20 penalty units; reduction in salary within the range of salary applicable to the employee; reassignment of duties; reduction in classification; termination of employment in accordance with section 44 or 45.

It is significant. If public servants are expected to do this, it is really important we find a way through this impasse we have hit for ministers and members of Government providing advice to committees like this inquiry. It is really important they too follow those same principles. It is not 'do as I say, not as I do'.

As for the email in which we requested access to the report - and the member for Murchison indeed mentioned this in her offering - I rang the minister on that particular day, 7 December 2018, to discuss the release in camera of the KPMG report -

**Ms Forrest** - At the request of the subcommittee.

**Mr VALENTINE** - Yes, that is right, at the request of the subcommittee. I was following my duty, but he said he would provide it under those circumstances. As such, I asked for his commitment to that be provided in writing.

Why would I have written to the committee if I thought the minister was not going to produce the report? Why would I bother writing the email? Why would I want to fabricate that? What was it that I heard that led me to believe the report was to be produced in camera?

More to the point, what was it the minister misheard, that he was saying he would not produce it? And why would I ask the minister to confirm it in writing, and why would I agree to an extension so he could do that? It really does not make sense. Obviously, I cannot speak for the minister as to what happened. I am not in his mind to know exactly what happened on that day, whether there was some other pressure that was on him when he was told to turn it around or whatever. To be quite honest, there is not much point in chasing too hard down that line. That is not necessarily going to get us the outcome that we want, which is the report.

I think it is important we follow this up in the manner that is going to be brought before us after the debate on noting this report. It is important we follow through with this. We know it also has happened with the Public Accounts Committee and the Treasurer, as is in fact mentioned in the report.

This House has to be allowed to do its job. If we cannot expect information to come forward that is not Cabinet-in-confidence for a start, but is merely, as the minister points out, for managing budgets that in itself, if you look at the terms of reference that exist for the inquiry we have undertaken, budgetary information -

- (1) Current and projected state demand for acute health services;

The report could have had something to do with demand.

- (2) Factors impacting on the capacity of each hospital meet the current and projected demand in the provision of acute health services;

It could have had something to do with that -

- (3) The adequacy and efficacy of current state and commonwealth funding arrangements;

It could have had something to do with that -

- (4) The level of engagement with the private sector and the delivery of acute health services;

Maybe, not so much that -

- (5) The impact, extent of and factors contributing to adverse patient outcomes in the delivery of acute health services;

If you do not have the budget to do certain things, it could have had something to do with that.

There is no question in my mind that the report was quite fundamental to the terms of reference we were undertaking, given that the minister himself in his response to us said that it was for budgetary advice/management advice. Clearly, it was all about budgets.

I ask honourable members to support the next motion to come forward. To do that is to really improve our lot going forward for any inquiry we undertake and ensure we get the right information to be able to make the right findings or make the right recommendations at the end of the day.

While I am a little confused as to why the minister continued to deny us access to the report, I thank the minister for attending the inquiry - a lot of ministers do not take the time and effort as this minister did. His particular view on life when it comes to the production of reports certainly differs from our view. I ask you to support further work in this space so that we can go forward with a knowledge that we will get all the information we need to do our work.

In the final recommendation in the report, the subcommittee recommends that -

the Legislative Council consider an effective mechanism to deal with the issue of ongoing disputes arising between the Government and Committees of the Parliament of Tasmania in relation to the production of papers and records.

It is simple really. Let us hope a mechanism can be agreed to. I look forward to seeing the outcome of such a committee. I know that in other places things have been tried. Different models have been put in place. There is a way through this, but the job of this Chamber relies on access to those sorts of documents to be able to do its job properly. Otherwise, why have a Chamber like this to review the actions and workings of government and yet not obtain the documents to do so?

[5.25 p.m.]

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, congratulations on your election. I am going to have to become used to the honourable member for Nelson. We have not said that for six years. The member for Nelson on the Floor, congratulations and the member for Pembroke - welcome back again.

The Hodgman Liberal Government has consistently shown we are prepared to respond to extra demand, by putting in the resources our health system needs. Health is a top priority for the Government, which is why we have increased health spending each and every year and have devoted a record portion of the budget to health.

Since the 2014 election, we have added 800 FTEs in additional staff and opened over 130 new hospital beds. You simply cannot do that without funding. It is only due to a strong budget and a firm commitment to delivering the best possible health services.

Every year, we have budgeted more for health and every year we flex up our spending to meet any additional demand. This financial year, we have done it again with \$105 million of new funding, following the last budget in which we put in \$465 million of additional health funding.

This all means we are now spending almost \$2 billion more on health than in 2013-14, five short years ago. Our strong plan for health will build a better health system with near 300 new beds, over 1000 new health staff and new health services.

Through this time the state Government has chosen to engage constructively with the committee inquiry into acute health services in Tasmania, since it was established in 2017, prior to the state election. This has included two comprehensive submissions, three appearances at hearings and many answers to questions on notice with accompanying detailed data, information and analysis.

I acknowledge the substantive matter of discussion today is the subcommittee's request to the Minister for Health for a copy of the report prepared by KPMG, for the Tasmanian Health Service. As the minister has made clear to the subcommittee, the report is an internal document for the Government and should not be provided to the subcommittee nor outside executive government, which requires frank and fearless advice.

This position is consistent with the principle the government should be able to commission professional expert, apolitical and objective advice in assisting to make robust decisions. Should professional or expert consultants engaged by the state government become aware their advice is likely to be made public, this could inhibit or unduly shape the advice provided.

Further commissioning of expert advice by government in order to make informed decisions should be encouraged.

Further, a right to information request was assessed by a delegated RTI officer of the Department of Health in 2018 and it was independently determined the information was exempt from release.

Nonetheless, the Government has been keen to work productively with the subcommittee and provide what information it can. This was on the understanding the subcommittee might approach this inquiry in a fair and reasonable manner. However, this special report, and the findings it contains, frankly raises the obvious question around the motivations and intent of the subcommittee.

In the spirit of cooperation, the Government made available the secretary of the Department of Health, to provide the subcommittee with an in camera briefing on the content of the KPMG report in late 2018.

While the KPMG report has not been released to the subcommittee, members of parliament have had numerous opportunities through 2017 and 2018 and again this year to scrutinise the Health budget, such as during debates on the appropriation bills and the state budget Estimates proceedings.

Furthermore, the annual THS service plan is tabled in parliament each year, providing insight and information about the functions and management of the THS. No other department or statutory authority is required to table what is essentially its work plan for that financial year. The level of information and data being provided to the Government from the Health portfolio is unprecedented and unmatched by any other public body. In turning to the special report of the subcommittee, I need to make brief comment on the two findings made by members and included in this report.

The first finding relates to the minister's reasoning in not providing the report with the subcommittee claiming -

... the Minister for Health has not made a valid claim in relation to the decision to refuse to provide a copy of the KPMG Report to the Sub-Committee in accordance with its numerous requests.

Unfortunately, the subcommittee provides no rationale for this finding nor explains the basis for this conclusion. This finding is without basis and dismisses the reasoning the Government has consistently relied upon on not releasing the report. This report remains an internal document for the Government and it is important governments are able to commission frank and fearless advice in making robust decisions. Simply disagreeing with the rationale provided is not grounds for determining the minister's reasoning is invalid. It is incumbent on the subcommittee to explain to the Legislative Council the basis for this finding and the precedence or protocol it has relied upon in making this finding.

The second finding also relates to the minister's reasoning for not providing the report, claiming -

... the Minister for Health incorrectly relied upon the provisions of the Right to Information Act 2009 as being relevant to the question of whether, or to what extent, he is required to comply with a request from the Sub-Committee for the production of documents. The Minister also relied on the principle of the need for frank and fearless advice to support his refusal.

Mr President, this finding is simply an expanded claim on the first finding and is not materially an additional finding. The minister has repeatedly explained the rationale for his decision and the reasonable need for such advice to remain internal to government. Again, it is incumbent on the members of the subcommittee to explain to the members of the Legislative Council the basis for this finding and the precedence, protocol and powers it has relied upon in making this finding.

In summary, neither of the reported findings substantiate the rationale or the basis of the claims the Government's reasoning is invalid or incorrect. Neither finding has given cause for the Government to reconsider the subcommittee's request and the Government stands by the reasoning faithfully provided to date.

The minister has also asked I reflect on the claims made in the report about alleged undertakings between the Chair and the minister. The minister notes the Chair's recollection of their conversation on 7 December and wishes to place on the record that his recollections differ. I am advised that the minister does not recall providing such an assurance, and his written response to the subcommittee on 17 December was consistent with the Government's longstanding position on this matter. The Government did not change its position at any stage in relation to the multiple requests from the subcommittee for the report.

**Mr Valentine** - The minister is calling me a liar.

**Mrs HISCUTT** - I would not have thought that, member for Hobart. I continue: I note the final and sole recommendation of the subcommittee that -

... the Legislative Council consider an effective mechanism to deal with the issue of ongoing disputes arising between the Government and Committees of the Parliament of Tasmania in relation to the production of papers and records (documents).



I reserve my comments on this recommendation until the debate of notice of motion (1) relating to establishing a select committee for this very purpose. Although I will make clear the Government does not accept the situation as being a dispute. Rather, the Government believes the subcommittee set up prior to the 2018 election has continued far longer than was first mooted. At the outset, the inquiry was sold as a short, sharp exercise that would report by the end of 2017. Instead, we have seen it produce three interim or special reports, seen it twice re-established after the election and prorogation, and have seen it increasingly act in a political and partisan manner.

In turning to the interim report produced by the subcommittee to date, the issues identified in three reports are well known to the Government. That is why, since being elected in 2014, we have embarked on a system-wide program of health reform. In addition to long-term reform, the Government is also committed to ensuring that the immediate healthcare needs of Tasmanians are being met through a range of measures to address short-term demand issues.

Upon being returned to office last year, the Government immediately commenced implementing the health policies endorsed at the election, with the first four years of the additional \$757 million to Health included in last year's Budget. This funding will be used to open nearly 300 more beds, employ additional frontline staff and increase health services across the state.

In addition, the Government has invested an extra \$105 million this financial year in our hospitals to meet increasing demand. The mental health of Tasmanians is a particular focus of the Government, with an additional \$104 million being committed over six years for mental health care. Key initiatives include providing 27 community-based mental health beds and opening new adolescent mental health units in Launceston and Hobart.

To ensure that Tasmania has the right health workforce in place to support the 300 new beds and other health services being brought online over the next six years, the department of Health has established a health workforce planning unit. An immediate priority of this unit is to develop a 20-year future health workforce plan, Health Workforce 2040.

The Government has shown time and again that it is open to the input of other professionals and experts in the health services and policy field, and will of course consider any recommendations that the subcommittee produces if and when the inquiry is ever complete.

The Government is committed to the highest standards of public disclosure, transparency and accountability. We have introduced a range of measures to make government more open, including the amendments delivered last year to broaden the parliamentary disclosures act, publishing all right to information disclosures within 48 hours and being the first-ever Tasmanian government to proactively release information on government spending.

In conclusion, since its inception in June 2017, the Government has cooperated fully with the subcommittee and its inquiry and stands by all representations made over this time. The minister has appeared before the subcommittee three times, provided two comprehensive written submissions and answered dozens of questions on notice arising from deliberations as well as a range of other correspondence. All of this despite the open question on the intentions of the subcommittee.

Mr President, the Government and the Cabinet remain committed to longstanding practices around receiving frank and fearless advice as well as Cabinet confidential conventions.

[5.38 p.m.]

**Ms FORREST** (Murchison) - Mr President, I am not going to say a whole heap in my summing up. I need to address some of the comments made by the Leader. I do not want to be too repetitive because we are going to talk about some of this information again in the next motion, but there are a few things that need to be commented on.

I, like the member for Hobart, note the cooperation of the Government and the minister in presenting information to the subcommittee. However, to be fair, there was a prorogation of parliament, which we could not do anything about. That is completely outside our control, and it takes a while for things to get back on track. Because of the nature of the time between the prorogation and when we re-established the committee - because we cannot do that without sitting - it was necessary to give all stakeholders who put in submissions the opportunity to update their submissions because of the passage of time. We know that health and the delivery of health services are a movable feast, so for the Government to criticise the committee for taking so long is a bit of poor form. I read out the dates so I am not going to go back through the dates again. The time taken to get answers to questions has been months and months. We do not have any control over that. The minister is trying to sit us out and thinks if he does not respond to these questions we will finish the report anyway. One of the beauties of this Chamber is that we do not have to set report dates. The other place does when it establishes committees. We do not, and for that reason you cannot always tell how long it is going to take to complete such an inquiry. Everyone does their best to get the information in and to put it back out.

The reason there have been two interim reports is that, first, we knew the election was looming and there were some urgent and critical issues relating to the acute mental health services and the redevelopment of the K Block at Royal Hobart Hospital. That was a predominant focus of the first interim report. Much of the other evidence was put on hold. Then, when we continued to be stymied in getting access to the KPMG report, we decided it was important to put out another interim report while we were waiting for that information to be provided.

**Mr Valentine** - We would have had a final report if it had been provided.

**Ms FORREST** - There could have been, but the information dates all the time. They are two things. To say the KPMG was an internal document and therefore should not be provided, the Leader and her advisors, or the minister's advisors and those in the Chamber, can take the *Hansard* and look at what I have said and what the member for Hobart has said. It was clear from previous work done through the Public Accounts Committee and advice sought at that time that the right to information defence is not appropriate for parliamentary committees.

I am not going to go back through that again - I would be repeating myself - but I want to refer to that in the subsequent motion. I am sure other members will, too.

Members here take every opportunity to scrutinise the Health budget. We do it through questions on notice, questions without notice; we do it through budget Estimates and we take every opportunity to do that.

**Mr Valentine** - It is not admitted evidence in the inquiry though, is it?

**Ms FORREST** - No, not to this inquiry. The point I am going to make here is that what we were seeking was a document that I will speculate about now because we could not get a copy of it. Clearly, it was a planning document, as the minister said himself. It would have contained

information about projected demand. That is what planning is about: planning for the health service, and it provides information about projected demand. My speculation is that demand predictions contained in that were much as what we are seeing now and the Government undercooked those.

We have seen a system underfunded because the demand was not believed. I could be wrong on that, but the RDME report pointed to that and the RDME report was referencing the KPMG report. I do not want to go back over that whole debate. I am just saying that the report was relevant and possibly still is. Historically, if that was the demand projected in 2015-16 - and I do not know how far forward it would have projected - and if we are now looking at projections that are even in excess of what they were projecting, you need to spend more money. Too right you do and we need to budget more than what was spent the previous year. That was in our second interim report, which talked about how the Government planned to spend more money in Health every year and yes, they do and yes, they have had another supplementary appropriation to top it up again, as we do every year because what is budgeted each year is less than what was spent the following year, so you are playing catch-up all the time.

The other thing I need to speak about before moving on to the next thing is this constant suggestion that there was anything but a credible motivation behind the committee members. I do not think you need to be particularly special or bright to realise there is a real problem in accessing health services in our public hospitals at the moment.

We hear about a patient dying in the emergency waiting room. Not in a cubicle, in the waiting room. We hear about all ambulances being ramped. We hear about a whole range of challenges facing the health system. The members of the Tasmanian community expect us to look at those things. It is not political, despite the claims of the Government. It is about a genuine need to understand what is going on, to understand what the budgetary requirements of health are and where the problems are. Maybe there is enough money in there, it is maybe not being spent in the right way. These are the reasons we conduct inquiries in this place, independently. The member for Hobart deliberately chose non-party members for this inquiry. He did not ask a Liberal Party member or a Labor Party member to be on the committee for that reason - to try to move away from political notion.

Looking at all the *Hansard*, I challenge anyone to show me a political motivation there - it is not there because it was not politically motivated. It was motivated to try to find out the answer. We all want good health services for Tasmanians. We want people to access the care when and where they need it, and the way to do that is to find out what is really going on inside. You cannot do that fully through budget Estimates. When we do health Estimates, it takes a whole day - yes, we have nine hours, but it is a huge portfolio and you have answers to some questions across the table and you scrutinise the budget. It has to be limited pretty much to the budget and then if other things do come up, you cannot drill down into them and go back for more information, which is why a committee operates. For the Government to suggest it is politically motivated is a disgrace.

I note the report.

**Report noted.**

## MOTION

### Appointment of Select Committee

[5.47 p.m.]

**Ms FORREST** (Murchison) - Mr President, before I start my contribution, I flag that after moving this motion, I want to move an amendment to add an amendment, so we can debate the motion as it stands, rather than have two motions, if that is all right with you.

Mr President, I move -

That a Select Committee be appointed, with power to send for persons and papers, with leave to sit during any adjournment of the Council, and with leave to adjourn from place to place, to inquire into and report upon the options for an agreed process to resolve disputes that arise regarding the production of papers, documents and records between the Government and the Legislative Council and its Committees including Joint Committees where Members of the Legislative Council have membership -

And that -

Mr Dean;  
Mr Gaffney;  
Ms Howlett;  
Mr Willie;  
and the Mover be of the Committee.

I move -

That the motion be amended by deleting the words 'Mr Willie; and the Mover be of the Committee' and inserting instead the following words -

'Ms Webb;  
Mr Willie;  
and the Mover be of the Committee.'

I propose this amendment because this is a great opportunity for a new member to be involved in a select committee. We have all had our experiences and frustrations. It is helpful sometimes to have fresh eyes and for that person, perhaps, to bring a different perspective.

#### **Amendment to motion agreed to.**

**Ms FORREST** - Mr President, in many ways, this motion should be considered in light of the previous motion we just debated - noting the special report of Government Administration Committee A regarding the failure of the minister to produce documents to the subcommittee inquiry into acute health services.

The special report focused on two recent examples of ministers refusing to provide copies of documents appropriately requested by parliamentary committees.

As I said previously, this issue is not new and not confined to the Tasmanian Parliament. To my knowledge, only New South Wales currently has a dispute resolution process in place for such circumstances. This may have been an appropriate model to consider; however, the select committee will be able to consider any option suggested in submissions and other examples in place in other jurisdiction during the course of such an inquiry.

The process in place in New South Wales followed a High Court decision, most notably *Egan v Willis 1998* (Cwlth) and *Egan v Chadwick 1999* (Cwlth). Notably, two recent examples to refuse to provide documents in Tasmania relate to the Standing Joint House Committee of Public Accounts and the Legislative Council Government Administration A Subcommittee on Acute Health Services; I am a member of both these committees and so I have a particular insight into them.

Both these committees had experienced ministers refusing to provide relevant documents for reasons including a reliance on an assessment done by a right to information officer to a request from a member of public or media. Clear evidence of this reliance can be found in the GAA committee's special report relating to the production of documents. As noted in this report, the minister was questioned about his reliance on the RTI assessment and release of documents used to provide advice to the government. From *Hansard*, he stated -

... I am under no obligation to provide a report that has been solicited by government to help it prepare for budget preparation. I respect the House of the Legislative Council; I respect its interest in this matter. But I am not prepared to release a report even though there are things about that report that I am not offended or troubled by. There is a principle I am adhering to here. I want to protect the ability of government to obtain advice and ensure that advice is frank and fearless. The reference to the RTI is relevant insofar as it helps explain why there is not a public interest served under the independent assessment of it ...

It was the view of both committees, PAC and the acute health services committee that the RTI process does not apply to parliamentary committees when assessment of public interest is being assessed. The PAC sought and obtained legal advice on this and the other question based on the production of documents to parliamentary committees from former solicitor-general Mr Leigh Sealy SC. I will refer to some of his advice again.

When providing advice regarding the process under the Right to Information Act 2009, he included in a footnote related to this the following comments -

The provisions of the Right to Information Act 2009 confer certain entitlements upon a person to obtain information held by the executive government and other instrumentalities (see section 7), but even if one were to take the view that the Committee or the Parliament (or even one or other House of the Parliament) was a person, the Act has no application to the production of documents to the Parliament or to committees of the Parliament, which is provided for by the Parliamentary Privilege Act 1858 generally and, in the case of the Committee [the PAC in this case] more particularly by section 7 of the Public Accounts Committee Act 1970.

Mr Sealy makes it very clear that the RTI process is a separate process; it is about members of the public, media or us as individuals potentially putting in a right to information request on a particular matter. It does not refer to parliamentary committees; the Parliamentary Privilege Act

deals with that. It is disappointing that this claim continues to be made by ministers and a matter that needs further explanation and advice through a select committee.

Members would be aware and appreciate that there is a demonstrable claim of immunity in regard to documents that are Cabinet-in-confidence. This does carry some weight, particularly for documents requested under the right to information process, whether this is done for a member of the public, media or other individual.

However, as I said legal advice provided Mr Leigh Sealy SC referring to situations where claims of immunity such as public interest immunity or Cabinet-in-confidence immunity were noted. I will quote from the majority of his advice to avoid taking it out of context. He said -

In my opinion, it is unquestionably the case that the Committee is entitled to call for the production of any document held by the executive government (or indeed any person) irrespective of whether any claim of privilege or immunity is or may be made.

He makes it very clear that the committee has every right to request a document -

The real question is how should the Committee proceed when such a claim is made or, in the event that the Committee concludes that a claim is unfounded but the person requested to produce the document nevertheless continues to refuse to do so?

That is his point. The question is: what do you do when they refuse? He goes on -

However, whilst either House of the Parliament (and their committees) is entitled to demand the production of any document in the fulfillment of its function of securing the accountability of government, the Houses have historically been prepared to accept that there are some documents or classes of documents which may be immune from production.

It goes on to acknowledge there are some documents that are immune -

In this regard, probably the least contentious class of documents are those which disclose the deliberations of Cabinet.

Honourable members should remember this - they 'disclose the deliberations of Cabinet' -

But properly understood, that class of documents is rather narrower than governments often contend.

In case of the health committee circumstances, the minister never once said it revealed the deliberations of Cabinet nor claimed it was a Cabinet-in-confidence document. Neither did the Treasurer in the PAC inquiry. He did say it was Cabinet information. We will get to Mr Sealy's advice on that in a moment.

Mr Sealy goes on -

The reasons why courts have accepted claims of public interest immunity in relation to documents which reveal the deliberations of Cabinet is reasonably clear. The system of Cabinet government requires that once the Cabinet has resolved on a particular policy position every member of the Cabinet is therefore bound to support that policy position, even if it were the case that he or she strenuously opposed the policy during Cabinet deliberations.

The old Cabinet solidarity, if you like. He goes on -

If a member is unable to support the final Cabinet position, then, by convention, he or she should resign from the Cabinet.

It is obviously taken very seriously. Mr Sealy goes on -

The courts have readily accepted and common sense dictates that the system of Cabinet government would be critically undermined if, by the disclosure of Cabinet deliberations, it were to become knowledge that one or more ministers had not supported what has ultimately become government policy.

This is especially so where the policy in question is the subject of popular debate or is otherwise contentious. In addition, the potential for such deliberations to become public would be likely to discourage robust debate within the Cabinet and so detrimentally affect decision-making.

Nevertheless, there is in my view a very great difference between the disclosure of deliberations of the Cabinet, in the sense just described, and the disclosure of the mere fact that the Cabinet has made a particular decision or has seen or considered a particular report or recommendation. Indeed, very many Cabinet decisions are announced publicly, sometimes with great fanfare, as being the government's newly established policy on a particular matter.

Accordingly, whilst it is relatively easy to understand the need for immunity from the disclosure of the deliberations of Cabinet, it is more difficult to understand why (one might even say how) it is contrary to the public interest for the elected representatives of the people to know what decisions the Cabinet has made and the information upon which those decisions were based.

I think it is pretty clear what Mr Sealy is saying there.

In the case mentioned during the GAA subcommittee, a kind of public interest immunity or immunity based on Cabinet-in-confidence documents was not made. Rather, the Minister for Health incorrectly, in the view of both the subcommittee and the whole committee, and considering Mr Sealy's advice to the PAC, inappropriately relied in part on the provisions of the Right to Information Act 2009 as being relevant to the question of whether or to what extent he is required to comply with a request from the subcommittee for the production of documents.

Mr Sealy went on to provide advice regarding the seeking of immunity stating -

For the reasons given above the mere fact that a document may have some association with Cabinet does not in my opinion mean that it attracts immunity.

Where a claim of immunity is made it is probably necessary, in every case, to look at the contents of the document in order to determine whether a claim of immunity can be supported. Of course, that is impossible to do unless the holder of the document produces it for that limited purposes. This typically results in the stand-off that presently exists between the Minister and the Committee.

This is where we were up to with both the PAC and the GAA subcommittee. It would be appropriate and sensible to consider a process whereby an agreed process could be implemented to deal with such a stand-off.

Mr Sealy noted further in his advice -

So far as I am aware the only House of Parliament in Australia that has so far devised a response to this problem is the Legislative Council of the Parliament of New South Wales. The solution involves an acceptance by the government of New South Wales that it must produce any document requested of it, but may claim public interest immunity in respect of any document so produced. All claims of immunity, together with the relevant documents, are then submitted to an independent arbiter, who will either uphold or dismiss the claim.

That is how they deal with it in the Legislative Council in New South Wales. It is obviously one way, and it appears to be working, but I cannot speak without more in-depth discussion with the New South Wales Parliament or Legislative Council about this. But there may be other models. That is one. Maybe there are other ways it can be dealt with.

Members may recall the 2017 Public Accounts Committee inquiry into the financial position and performance of the government-owned energy entities - and, again, I refer to the advice from Mr Sealy relating to that. The Treasury response to the request for the document related to the Tamar Valley Power Station on 14 September 2016 stated -

This letter has been released under a Right to Information Request, and appropriate Report information has been withheld based on an assessment under the Right to Information Act of 2009.

Then he provided a redacted copy of the letter. At this time, when we got that redacted copy, the PAC sought advice from the Clerk of the Legislative Council. Following receipt of the advice from the Clerk of the Council, the committee forwarded a request dated 10 November 2016 to the Treasurer seeking the letter be released in safe custody to the Clerk to enable the community to view the letter.

Mr President, there was a precedent for that. In a previous PAC inquiry, looking into the federal deed around the building of the property on the east coast at Coles Bay.

**Ms Rattray** - Saffire?

**Ms FORREST** - It turned out to be Saffire. It started off as something different. It was an inquiry we had into that. At that time, there was a bit of argy-bargy about a lot of documents related to the inquiry, and the decision was made by the then Treasurer to provide the documents to the Clerk. It was the Clerk of the House of Assembly at that time, because the PAC was administered by the House of Assembly - this is going back a little while - so the members of the community



could then sign into the room and look at documents. You could not take your phone, or take photographs or anything like that, and then you had to sign out. The documents were there, but what happened with that one, we got snowed, absolutely snowed with documents. There were boxes of them. I am sure somewhere amongst them there was probably something really interesting, but I do not think any of us had time to dig right through and find it. There is swings and roundabouts with that. There are a number of examples here.

As I said, we received advice from the Clerk, and the committee forwarded a request to the Treasurer seeking the letter be released into his safe custody. The Treasurer responded to this request on 9 December 2016 stating -

As requested by the Committee, I have again considered your request in the context of established precedent and convention. However, I do not consider it appropriate to release the whole Tamar Valley Letter to the Committee for similar public interest grounds to the RTI decision - that is, the Tamar Valley Letter includes cabinet information, and the Departmental advice attached to that letter is a working document, including internal deliberative information, both of which require confidentiality to be maintained.

It is interesting here that there seems to be this mixing up of words - Cabinet information rather than Cabinet-in-confidence, deliberative information rather than Cabinet deliberations. I am not sure who they were trying to fool in this letter, but I do not think the Chair, the member for Windermere, was fooled. I do not think the rest of the committee were, at this time.

In his response of 27 February 2017, the Treasurer again refused to release the full letter. That is when the PAC had sought advice from Mr Sealy regarding the claims of Cabinet-in-confidence, the use of the term 'Cabinet information' and reference to the letter in question being a working document.

Mr Sealy's advice on that question was -

The question presently under consideration refers to the terms 'cabinet in confidence' and 'working documents'. I am unable to attribute any precise meaning to the phrase 'cabinet in confidence' and in any case the Treasurer does not appear to have used that phrase. It may be some form of State Service shorthand adapted from the phrase 'commercial in confidence' and intended to indicate that a particular document has some association with Cabinet such that its contents should be kept confidential. It is perhaps another example of the elasticity of the language used for the purpose of seeking to spread the cloak of public interest immunity as widely as possible.

In the last contribution the Leader talked about this open, transparent government, but Mr Sealy is clearly saying here that they are trying to spread the cloak pretty wide and make it difficult to access information.

These matters have been debated before in this place in motions relating to the PAC inquiry and a short time ago noting the Government Administration Committee A's special report.

As mentioned previously, we have had a similar stand-off and no agreed manner in which to resolve it. When facing the challenges of the PAC and the GAA subcommittee's experience in

considering this motion I sought advice from a constitutional law expert, who directed me to relevant documents, some of which Mr Sealy also referred to.

In an article titled 'Evading scrutiny: orders for papers and access to Cabinet information in the New South Wales Legislative Council', published in the *Public Law Review* journal by authors Sharon Ohnesorge and Beverly Duffy, the abstract of the article notes -

The Egan cases confirmed the power of the New South Wales Legislative Council to order the production of state papers, with the exception of documents revealing the actual deliberations of cabinet - true cabinet documents. At present, the Council remains largely unaware of how many documents are being withheld by the Executive on this basis, let alone whether the documents withheld are true cabinet documents. With this scrutiny gap in mind, this article examines the manner in which courts and tribunals deal with cabinet documents in the context of public interest immunity claims, before making a case, on constitutional grounds, for the Council to have access to all cabinet documents. Finally, while acknowledging that there is no easy solution, the article proposes some potential options for reform, such as a role for the independent legal arbiter, to ensure that the Council is able to exercise fully its constitutional role holding the Executive to account. Recent controversies regarding cabinet documents in other Australian jurisdictions, as well as the publication of 'The Cabinet Files' by the ABC in February 2018, make this discussion particularly relevant.

This is an interesting paper and, if supported, I suggest all members of the select committee read it.

I also read a submission written in 2014 by Mr David Blunt, Clerk of the New South Wales Legislative Council, to the Senate Legal and Constitutional Affairs References Committee Inquiry into a claim of public interest immunity raised over documents. Again, this is a very informative submission.

In his submission, he described the process established in New South Wales to manage these claims. Mr Blunt's submission is another interesting and enlightening paper in this area and would assist the select committee in understanding the challenges.

I want to read a couple of quotes out of his submission. He talks about the *Egan* decisions -

The power of the Legislative Council to order the production of state papers is derived from the common law principle of reasonable necessity. This principle finds expression in a series of 19th century cases decided by the Judicial Committee of the Privy Council between 1842 and 1886, in which it was held that while colonial legislature did not possess all the privileges of the Houses of the British Parliament, they were entitled by law to such privileges as were reasonably necessary for the proper exercise of their functions. More extensive privileges could be acquired by legislation.

...

The power of the New South Wales Legislative Council to order the production of state papers was routinely exercised between 1856 and the early 1900s. However, orders for state papers ceased to be a common feature of the operation

of the Council during the second decade of the 20th century, with the occasional exception up until as late as 1948.

It was during the 1990s that the power of the Legislative Council to order papers was revived, precipitating the Egan cases.

The Egan cases were generated by the refusal of the former Treasurer and Leader of the Government in the New South Wales Legislative Council, the honourable Michael Egan, to produce certain state papers ordered by the Council. This occurred on a number of occasions, precipitating legal proceedings in the courts.

In November 1996 *Egan v Willis and Cahill* in the New South Wales Court of Appeal unanimously held that a power to order the production of state papers is reasonably necessary for the proper exercise by the Legislative Council of its functions.

In the subsequent decision in the High Court, in *Egan v Willis* in November 1998, the majority (Aldrin, Gummow and Hayne JJ) confirmed that it is reasonably necessary for the Council to have the power to order one of its members to produce certain papers. As the majority judgment noted, 'it has been said that of contemporary position in Australia that whilst the primary role of Parliament is to pass laws, it also has important functions to question and criticise government on behalf of the people and that to secure accountability of the government activity is the very essence of responsible government'.

I could read the whole submission in, but I am not going to do that. It provides much useful information, which, if the motion is supported, will be important to consider in the work of the committee. The Senate Legal and Constitutional Affairs References Committee subsequently reported, and that was the submission to that inquiry from the Clerk of the New South Wales Legislative Council. They made two recommendations. There was one dissenting report from Coalition members who primarily dissented on recommendation (1). Recommendation (2) is relevant here -

The committee recommends that the Senate refer the following matter to the Procedure Committee for inquiry and report as a matter of urgency: the process for independent arbitration in the NSW Legislative Council, including that House's standing order 52; the applicability of the NSW Legislative Council's model of independent arbitration to the Senate; any adaptations or amendments needed to the NSW Legislative Council's model in order to implement a similar model of independent arbitration in the Senate; any amendments to Senate practise and procedure are required to implement a model of independent arbitration; suitable candidates for and/or qualifications required of an independent arbiter; in respect of accessing and inspecting documents subject to a disputed claim for public interest immunity, the proposal in the 52nd Report of the Committee of Privileges, whereby disputes documents are provided directly to an independent arbiter for evaluation; and in respect of any such inquiry, the Procedure Committee have power to send for persons and documents and move from place to place and to meet and transact business in public or private session.

I found that it was interesting that the Senate was looking at the New South Wales option as an option for them. I looked at the recommendation as considered by the Senate Procedure Committee, which was where it went next in 2015. The report from that committee stated -

The committee is no doubt that there remains considerable scope for improvement in responsiveness to orders and requests to information. This includes improvements in responsiveness to committees, as well as to orders of the Senate. The question for the committee is whether a NSW-style of standing arrangement for arbitration would best serve the Senate's interests.

They are asking the same question I think this committee would ask. It goes on -

Senate practice demonstrates that resort to third party arbitration or assessment is but one option, out of many, to address executive refusals to provide evidence or documents. The most appropriate option will depend on the circumstances of a particular case. The appeal of third party arbitration is evident and the experience in NSW suggests that it serves the needs of the Legislative Council. Several parliamentary clerks have commended it to previous inquiries but it is equally clear that the availability of such a process as a general remedy, without the type of backing that the Egan decisions provide in NSW, is only possible if all players consent to adopt it.

The better view is that the independent arbitration or assessment might be appropriate in particular circumstances but that it should be considered as only one possibility out of numerous options available for any specific set of circumstances ... The committee does not reject the possibility of third party arbitration or assessment in the right circumstances, but does not agree that the NSW Legislative Council's procedures could successfully be adapted to suit the Senate's requirements.

...

The committee proposes to monitor responses to orders for the production of documents over the next 12 months, and to report to the Senate thereafter.

The Senate Procedure Committee decided they could not just pick up the New South Wales model and drop it into the Senate. They were going to monitor it for 12 months. The matter was then reviewed as proposed in the 2015 Senate Procedure Committee report. In 2017, the report noted there had been some improvement in adherence to guidance in the committee's second report of 2015 about the practice which should be followed when making public interest immunity claims. However, the committee also noted rates of compliance with orders were reasonably low, and it considered there may be scope for compliance efforts to be sharpened by an order of continuing effect requiring governments to report to the Senate every six months on orders that remain on the Notice Paper.

Recommendation (2) said -

Accordingly, the committee recommends that the Senate adopt an order of continuing effect in the following terms: Report on outstanding orders for documents

- (1) That they be laid on the table by the Leader of the Government in the Senate, no later than 2 calendar months after the last day of each financial year and calendar year, a list showing details of all orders for the production of documents made during the current Parliament which have not been complied with in full, together with a statement indicating whether resistance to them is maintained and why, and detailing any change in circumstances that might allow reconsideration of earlier refusals.
- (2) The order is of continuing effect.

Mr President, I am not sure that this is a really satisfactory outcome from the Senate's point of view. It will be interesting to find out. That is from its last report in 2017; no report for 2019 was available when I looked.

It is obviously a matter affecting other parliaments around the country. In the briefing prepared by Dr Gareth Griffith from the NSW Parliamentary Library considering the High Court decision on *Egan v Willis & Cahill*, the questions about responsible government and powers of the NSW Legislative Council and Australian Senate were comprehensively discussed. Again, this is another really informative paper for members.

In conclusion, Dr Griffith states -

It has been said that this was an important appeal and there is no doubt that its outcome has significant implications for establishing the powers of the Upper Houses of the Australian Parliaments, as well as for understanding the way responsible government can be combined with a bicameral legislature in an Australian context. It is perhaps the closest the High Court has come to specifying whether or not the Executive is to be considered to be responsible to both Houses of Parliament or only to the Lower House. Yet, the answer to that question remains, of necessity, partial in nature.

These are very legalistic things, Mr President -

Nonetheless, in deciding that by a combination of the Council's legislative and scrutiny functions, the Upper House in New South Wales has a power to order the production of State papers, together with the power to counter obstruction where it occurs, the High Court has defined one aspect of responsible government in a way which is consistent with the 'liberal' understanding of the role of Parliament in a polity founded on representative government. In doing so, it has confirmed the vital part an Upper House may play in ensuring the accountability of the Executive, especially where, as in the case in New South Wales and the Senate at present, there is a different balance of political power to that found in the Lower House. It is a legal conclusion replete with political implications.

Mr President, there is clearly a view that upper Houses have the power and right to seek documents. There are, however, differing views on what documents should be made available to parliamentarians, as noted in the article I referred to earlier entitled 'Evading Scrutiny'.

That paper stated -

While *Egan v Chadwick* is the current state of law, Mason and Walker present a compelling case on constitutional grounds for the Council to have access to all cabinet documents.

Think about that!

It is, however, also important to acknowledge that this is an issue on which reasonable minds differ. There will be many, particularly outside the institution of Parliament, who believe that cabinet confidentiality as an application of the principle of collective responsibility should prevail over Parliament's role scrutinising the Executive.

For this issue to be resolved either politically or through litigation, it would need to be pursued by a majority of members who feel their ability to scrutinise the Executive is being compromised by the withholding of a cabinet document.

To this end, the Council should consistently assert its position regarding cabinet documents which should be able to go as far as those articulated by Priestly JA.

...

The Council should continue to assert that the arbitration process under standing Order 52 encompasses cabinet documents.

And standing order 52 is standing order 52 of the NSW Legislative Council.

Alternatively, the Council could consider implementing a procedure where in the first instance only the arbiter receives cabinet documents. Whatever approach the Council adopts, it should press the Executive to provide an index of all documents subject to a claim of privilege with sufficient detail to enable an assessment of whether the government's claim that a document in question is a true cabinet document is valid.

There is a lot written about this, Mr President. I think there is a way to find an answer that would work for this place. Clearly, there are differing views on this matter. It would be important for the committee to explore the alternative views on this issue. That is why I went to the trouble of putting out a few different thoughts on it already. I do not wish to pre-empt any findings or recommendations of the committee, if established. There is likely to be more than one option to address the very real challenges some of our parliamentary committees have faced. That is clear from the evidence I have responded to, court rulings and other research into and documentation related to this issue. The circumstances we are facing here are not unique. The difference is that one jurisdiction, NSW, has established a mechanism to deal with this issue.

The process used by NSW may not be the most effective or the only way to address this matter. Investigations or options that would be appropriate and suitable for the Tasmanian jurisdiction is what the committee, if established, would rightly inquire into.

In Tasmania, we need to look at options to break such deadlocks, but maintain the integrity of the parliament and also ensure open and transparent government.

In the absence of a structured and defined process, whether by way of Standing Orders or other appropriate mechanisms, will be a matter for the committee to consider.

Members will recall the former President, the honourable Jim Wilkinson MLC, supported the establishment of this committee in his final comments in this place on 11 April 2019. I quote our former President's words in his valedictory comments -

I am also happy to see a motion to appoint a select committee to inquire into a process to resolve disputes that arise regarding the production of papers, documents and records between the Government and Legislative Council and its committees is to be debated and I wish that well.

I am sure our former colleague will watch the progress of this motion, probably not this bit but hopefully the establishment of the committee, with great interest. He may even consider putting in a submission himself.

I seek members' support for the establishment of the select committee and look forward to their contributions and participation in this important body of work.

[6.21 p.m.]

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I thank the member for Murchison for raising this motion.

The Tasmanian Government acknowledges the Legislative Council's function as a House of review and the inherent value of an objective and balanced assessment of government performance.

We also acknowledge that committee activities are an important means by which the parliament achieves accountability of executive government action. Tasmania's parliamentary committee system has long been underpinned by broad powers under the Parliamentary Privilege Act 1858. In the Legislative Council, this is further supported by the procedures and other guidance provided by the Council's Standing Orders.

This framework invests considerable power in the Council to exercise its review functions and it is a matter for the Council to delegate these powers to its committees accordingly and where appropriate.

Furthermore, this framework has existing procedures for inquiry and options to resolve disputes between committees and ministers or other members of the government in relation to the production of documents and what will ultimately serve the public interest.

While the work of committees is significant, it must also be recognised that it is one of the several powerful parliamentary mechanisms to scrutinise the actions of the executive, ministers and the public sector generally.

The government may be held to account through question time, independent statutory officers such as the ombudsman, general debate, judicial review, the Integrity Commission and laws that contain legislative review mechanisms.

The committee system is clearly the backbone of the Council and its key mechanisms for review. However, it should be recognised there are longstanding parliamentary privileges which dictate there are exceptions to the production of documents in appropriate circumstances.

To potentially undermine established principles of parliamentary privilege may raise questions concerning parliamentary overreach, whereby committees inadvertently or otherwise assume the roles and functions of the executive. So, for the reasons stated above and given the resources of the Council are not infinite, the Government does not support this motion. The Government is, nevertheless, committed to increasing accountability across all departments, as evidenced by our ongoing reforms to improve transparency and expand routine disclosures of information.

[6.23 p.m.]

**Mr WILLIE** (Elwick) - Mr President, congratulations on your election to the Chair. I am sure you will serve the Council well in that role. I also welcome back the member for Montgomery - it was a strong result - and also the member for Pembroke, who is not in the Chamber with us, but another strong result. I also welcome the new member for Nelson. I am sure you will enjoy your time here and no doubt you have a lot to contribute, so I look forward to that.

Unlike the Government, the Labor Party will support this inquiry. We acknowledge there is no existing formal process to resolve disputes for the production of documents and there is no established precedent in this place.

There is value in looking at a whole range of options to resolve those disputes, particularly looking at other jurisdictions. I do not think there is any appetite in this place from members to go down the path of some of the other mechanisms available - that has not been talked about. In some of the examples given by the member for Murchison, some of those documents could have been requested through the Leader of Government Business and if there was a failure to produce those documents there could have been other recourse the House could have taken.

That is a hardline approach and there is a sensible way through here and I thank the member for Murchison for initiating this inquiry. We will participate in it through the membership of myself, in goodwill, and look forward to the exploration of resolving these sorts of disputes, whilst protecting the integrity of the Parliament and the Legislative Council, which is of the utmost importance.

[6.26 p.m.]

**Mr DEAN** (Windermere) - Mr President, congratulations to you on your position. I am very confident you will do this place proud, as our other presidents have done. Also, to our new member for Nelson, as the member for Montgomery said, it is the first time we have had a member on the Floor for Nelson for six years. It is wonderful to see you here. I look forward to your involvement and knowledge you bring into this Chamber. Also, to the Leader, on once again coming back into this Chamber and also for our member for Pembroke on her achievement.

Mr President, I will certainly support this motion. It is not only unique to this state. It is a problem occurring throughout many other states and indeed countries in the Westminster system. That has been borne out by the CAPAC committee on a conference I attended recently. But also it is not only the current Government that has caused this committee to be formed, at the present time. There was a previous Labor government, where a document would not be produced to a committee and there was quite a lot to say about that. It applies across all governments we might see in this



place and it is good to see the member for Elwick supporting this committee on behalf of the Labor Party. It will impact on them also, if anything happens.

What is likely to happen? This inquiry should be supported in my view; the committee will make findings and I would think the committee will make recommendations. What happens as a result? The document would be tabled and may be debated in the other place here, but what occurs from there I do not know. We are also talking about joint house committees, so, there is a big involvement for the other place here. I am not quite sure what the process would be at the end.

**Ms Forrest** - Joint House committees where there is membership from this House, which is all of them at this point.

**Mr DEAN** - Yes, so I have accepted a position on the committee and have thanked the member for Murchison for asking me if I would be part of it. Having gone through the process we did - the Public Accounts Committee did - as has been referred to in relation to the energy inquiry, that created many concerns for the committee at the time. I am not going to go into detail on that because it has already been done. Suffice it to say the committee sought a document at that time because it was seen to be a critical document for the committee. While the document was received, it was heavily redacted. It was the redacted information in that document that concerned the committee. It was a very significant document because there was much discussion at that time around the sale of the Tamar Valley Power Station. It involved the position of the committee having received evidence to the effect that the Government had not made any decision to sell that power station, and no doubt this document made a heavy comment or statement in relation to the future of that power station. This was following - I think I am right in saying this - a media statement made by the minister that in fact the power station was going to be sold. That media statement -

**Ms Forrest** - That media statement was taken off the website.

**Mr DEAN** - That media statement was later withdrawn. The committee was given evidence to the effect that it was done in error. It was a very significant document at the time and the committee was not able to get it.

I attended the Commonwealth Association of Public Accounts Committees Regional Workshop Series in Suva, Fiji on 19 and 21 February this year. During that conference I referred to this case of the energy inquiry. I was asked to speak on it and did. There was much discussion during that conference, and many questions were asked. It is a problem common to other areas as well. This matter has now been taken up as a case study by the Commonwealth Parliamentary Association of the United Kingdom. They have asked for my approval for that to occur and I have given it. It will be interesting to see what comes of that. It is generating a lot of interest.

During that conference we were also given a document that each area was asked to fill in, in relation to certain things about public accounts committees and some of the issues and problems, and what they were experiencing at the present time. In that document at point 6 it refers to -

A PAC shall have access to all records in whatever form to be able to scrutinise the Executive and perform the necessary oversight of public spending.

We were asked to rate ourselves against that criterion. The ratings were -

No plans to be compliant, rarely compliant, plans to be compliant, mostly compliant and fully compliant.

That was the criterion on which we had to judge that statement. Another statement at point 7 was -

A PAC should have the power to summon person, papers and records. This power shall extend to witnesses and evidence from the Executive branch, including officials.

Once again, we did not rate too highly there on my ratings.

I look forward to the inquiry. I think we need it. We need to have a clear position. It is going to arise again, we know that, it is just a matter of time and we should not have to go through this charade all the time of bashing our heads against a brick wall. We need to know where we stand. I hope the inquiry can come up with some good findings and recommendations. I will be supporting it.

[6.34 p.m.]

**Mr VALENTINE** (Hobart) - Mr President, I support the motion. As I said in my previous offering, it is important we find a way through these issues. It can, in some cases, quite seriously affect how well we can perform our duty.

I rise to make a point or two. If we cannot scrutinise documents that a government relies on to set its course, then there is not much review about it, is there? The Legislative Council has equal power under the Constitution Act and, in my view, must be allowed to exercise that power. The other place has a power but we also have an equal power. That means that we are not subservient to what the other place may decide should be information that we are asking for. It is fair and reasonable that we have available all the information they have available to them in setting their line of attack on an issue that they wish to resolve. We must not forget that we are not subservient; we are of equal power. That is important to understand.

While I say that, if a government releases a document to us, that does not necessarily mean it would automatically become an open document. Whichever committee is receiving information from the government also has a responsibility to ensure that due respect and consideration is given to the need for confidentiality. It is not something that if a government provides a document, it automatically becomes an open document. It is for the committee dealing with it to decide whether it becomes an open document or if there is information that might be detrimental if released to an individual or company.

The government has to trust that the Legislative Council will deal with information that is given in a due and proper process. That is important and it is sometimes missed. A government probably decides not to release a report because it would become public and that would hurt us as a party.

**Mr Dean** - You are saying it could be produced in confidence?

**Mr VALENTINE** - It could be produced in confidence; they can request that it is held in confidence. It is up to the committee to decide. The content has to be dealt with appropriately. We have the same need to deal with such information in a right and proper manner as the government has.

**Mr Dean** - If it is produced publicly, it does not provide much opportunity to keep it in confidence.

**Mr VALENTINE** - We are Houses of equal power; if information is provided to us, we have a right to that information. The member for Murchison read from a report dated 6 August 2018 about 'Orders for papers - Cabinet in confidence' in *The House in Review*, produced by the New South Wales Parliament -

The motion asserted that the House had the power to require Cabinet documents and that the test to determine whether a Cabinet document is captured by an order of the House is, at a minimum, that articulated by Spigelman, CJ in *Eagan v Chadwick*. Spigelman CJ found that only those documents which reveal the internal deliberations of Cabinet are beyond the reach of the Legislative Council ...

They have differentiated between true Cabinet documents and those that have been shown to Cabinet at some point. They are drawing a differentiation: that those that reveal internal guidance of Cabinet, be rightly held back. Simply because a document has been shown to Cabinet does not mean it is considered a Cabinet document and therefore not able to be released. If it is released, if it comes to this House and a committee, then that committee has the responsibility to make sure that it deals with that information properly and fairly.

There could be ramifications if information is released. We cannot be lackadaisical; we have to recognise our responsibility. When it comes to this, it will be interesting to see what the committee comes up with. No doubt the committee will be canvassing all the different ways in which documents are dealt with across the Westminster system. There will be some very interesting information that comes forward.

I look forward to hearing that and reading some of the options that might be available. I look forward to the recommendations of the committee. I hope we can go forward as a parliament understanding that whatever we do has to be for the good of Tasmania. Let us understand we are here for the people of Tasmania so we have to make sure that whatever process is put forward is reasonable and leads to some good outcomes for the people of Tasmania.

[6.41 p.m.]

**Ms FORREST** (Murchison) - Mr President, I appreciate members' support for the inquiry, with the exception of the Government.

I find it quite astounding in some respects that the Government does not recognise the value of such a committee and uses the excuse that we do not have unlimited resources. We do not have unlimited resources, sure, but we have inquired into a whole manner of things over the years that the Government has supported and never raised a concern about.

This is a clearly a matter of great importance. It is clearly a matter that does not only affect us. We have seen New South Wales go through a process and implement a process that is in their Standing Orders. That is one way of addressing it and maybe it is an appropriate mechanism. We have the Senate looking at the different options and monitoring, particularly in the first instance. The Senate continues to invest resources in it - every two years it is doing a review and maybe this 2019 review, when completed, will provide a different way of thinking.

It is an important issue. It is important that there can be some clarity around this so that not only the members of parliament in this place, particularly in the Legislative Council, but the members of the community who rely on the Legislative Council to do its work, can have some confidence that we are able to get access to the information we need.

As the member for Hobart said, and being in this place for 14 years now, there have been a number of occasions where we have received information in camera from the government of the day and from individuals.

I remember once in this room we had budget Estimates when Graeme Sturges was the minister for infrastructure. He had been there for five minutes. The President was on the committee at the time. The first item up was railways, so the now President was in his element. This is when there was the sale of Pacific National and the question was asked about the price. It was considered commercial-in-confidence at the time. It might have been a first for an Estimates committee that it went in camera. Estimates processes should be open and public, but because of the nature of that information we were about to receive, the committee went in camera. It was very unusual for an Estimates committee; the whole room was cleared, cameras off. Actually, the cameras might not have been here then, it was a bit before the cameras. Recording by the squawk boxes had to be disconnected before we could have that discussion. That information did not leak. It did not come out because members recognised that when you receive confidential information under a particular framework, that is what it is.

We do that all the time and sometimes in committee processes members would be aware of, you will receive a submission, and even though the person has not requested confidentiality, because it contains personal sensitive information or names of other people that could create a problem or commercially sensitive information, the committee makes a determination to make that one confidential and not publish it.

**Mr Dean** - The sad situation is, though, it does get leaked from time to time. In our committee where they refused to provide that document, there were three other leaks from our committee of confidential information - or two other leaks, this was a third leak.

**Ms FORREST** - No, it was not confidential information. It was committee deliberations, wasn't it?

**Mr Dean** - Some other confidential information of things we were doing.

**Ms FORREST** - It is incumbent on the members to ensure that does not happen. That is an issue now, it will be an issue in the future. It is about ensuring members understand their obligations. There is a process for that: the parliamentary Privileges Committee can look at those sorts of instances, should they occur. I accept they should not occur.

I acknowledge the Government has said we have other options for scrutiny, sure we do: questions without notice, questions on notice, and Estimates. The parliamentary committee work is a really important part, whether it be our Estimates committees, our GBE committees, our select committees or our standing committees, and government administration committees, all have an equally important role to play. It is vital committees can have access to the information they need.

It would be a very good opportunity for this whole question about what should be a protected document and is a Cabinet in-confidence document subject to immunity, whether it only be one

such that reveals the deliberations of the Cabinet, or it should be broader. There is the other view I quoted, that all Cabinet documents should be accessible. This would probably be a bridge too far for most people.

It was interesting when I read that. I thought, 'Wow, I do not think even the Opposition want to do that'.

**Mr Willie** - That is the important thing, too, isn't it, to protect the integrity of Cabinet?

**Ms FORREST** - It is important to shine a light on all. It will help the whole Parliament of Tasmania to understand the process better. It is a good thing to understand what is covered under the Parliamentary Privilege Act, what is covered in Standing Orders and other measures. It may also indicate our Standing Orders are a little bit deficient in some areas, too, and that we should strengthen in this whole process.

I am disappointed the Government is not going to support this. I am grateful to the other members and to the Opposition members for supporting it, because it will be a valuable piece of work. It will provide a lot of useful information for the whole House. As the member for Windermere alluded to, it is not just the current Government that has done this, it is the previous government too. In fact, the current Treasurer produced a letter from the former premier, Lara Giddings, that she had written to me as Chair of the Government Administration Committee when they refused to produce documents. It is not new. We have been going through this for a long time. Sometimes you keep fighting on because it seems you have an argument and other times, well, most times it is best to give up and simply speculate. That is not good. It is much better to be able to make accurate comments and determinations. I thank the members for their contributions and support for the motion.

**Motion, as amended, agreed to.**

## **WORKERS REHABILITATION AND COMPENSATION AMENDMENT BILL 2019 (No. 20)**

### **First Reading**

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

### **ADJOURNMENT**

[6.49 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 11 a.m. on Wednesday 22 May 2019.

**Motion agreed to.**

**The Council adjourned at 6.50 p.m.**