

**Wednesday 3 April 2019**

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

**JUSTICE AND RELATED LEGISLATION (MARRIAGE  
AMENDMENTS) BILL 2018 (No. 47)**

**Suspension of Standing Order 155**

[11.02 a.m.]

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

That so much of Standing Order 155 be suspended to enable any member who proposes an amendment to the Justice and Related Legislation (Marriage Amendments) Bill 2018 (No. 47) in the Committee of the Whole Council to speak more than three times in debate on the proposed amendment.

I do not wish to speak to this motion, Mr President. I notified members earlier that because of the large number of amendments we have to this legislation, it may help members with questions to be answered during the debate on particular amendments.

**Motion agreed to.**

**JUSTICE AND RELATED LEGISLATION (MARRIAGE  
AMENDMENTS) BILL 2018 (No. 47)**

**In Committee**

**Mr DEPUTY CHAIR** - Honourable members, this is an unusual bill and therefore we are proceeding slowly with it. Advice from the Clerks is to take it piece by piece so everybody understands what is going on. I will ask for advice at times, so I seek your indulgence if I need to do that on occasion.

I ask two things of members. One, we had a good debate yesterday and it would be appreciated if we can stick to the amendments and not veer off into second reading speeches as we sometimes do. Second, because of the nature of the questions and answers, if you are having a discussion with your colleague next to you, please keep this at a level where it does not detract from the conversation. This will make it much easier for the whole progress of this bill.

**Ms RATTRAY** - In regard to whose amendments go when and where, I do not have a running sheet to give me any idea of who sits where and who comes first and who does not. Will somebody at the Table let us know whose amendment is next in line?

**Mr DEPUTY CHAIR** - Yes, that is correct. The Clerks are aware of that. Because there are so many amendments to amendments, they will let people know ahead of schedule when they will be up, so nobody will miss the call.

**Clause 1 -**  
Short title

**Ms FORREST** - Mr Deputy Chair, I move -

That clause 1 be amended by -

*Leave out 'Marriage'.*

*Insert instead 'Marriage and Gender'.*

I went to the effort of producing clause notes for members, which I circulated with the various versions of amendments, with the intention of making it clearer and maybe helping to get the amendments through this place with a little more explanation up-front rather than waiting until the debate. I hope members have been able to use those notes.

The clause notes relate to this particular amendment and state the obvious. I will comment on why I seek the support of members for this amendment.

As I noted in my second reading contribution, Tasmania needs to comply with Commonwealth law, in this case the Marriage Act 1961, so the so-called 'no forced divorce' provision contained within the current act, and the one in the bill as it stands without amendment, needs to proceed as soon as possible as we have been noncompliant since 10 December last year.

The bill before us contains some other changes relating to gender in addition to the requirement to remove the no forced divorce clause. The removal of that no forced divorce clause is a gender-related matter.

As we are now in the Committee stage, this indicates that the majority of the Chamber supports the principle of the bill, otherwise it would not have got to the Committee stage.

I and other members expressed some concern late last year that access to Office of Parliamentary Counsel - OPC - to draft amendments was not granted prior to the debate not being brought on last year, despite requests made appropriately through the Leader's office. This led to a delay.

However, I thank the Leader for subsequently providing that open and easy access, which is appreciated, to provide the amendments we now have. I acknowledge Robyn Webb for her professionalism, insight, attention to detail and steadfast approach to ensure our laws achieve the policy intent requested by the instructing person and do not create conflict as much as new drafts of legislation can, demonstrating her dedication to the quality of our statutes.

I and other members have worked hard from November until now to consult broadly. I have listened to, and consulted with, a range of people to inform the drafting of these amendments.

Clearly not all parties agree with the amendments, and that is to be expected. Some are of the view that the amendments are more restrictive than they would have liked. Some people think they have gone too far, and other people think they have not gone far enough.

Our job here is to deal with the legislation before us and to seek amendments we see are needed. I have consulted on all the amendments with the Anti-Discrimination Commissioner, the

Commissioner of Police and the Commissioner for Children and Young People; representatives of the Australian Christian Lobby, Women Speak Tasmania and the Catholic Church; members of my community; Transforming Tasmania; parents with transgender and gender-diverse young people; LGBTI community members; former magistrate Don Jones and Chris Gunson from the Tasmanian Bar; and other groups and individuals in support of, and opposed to, these changes.

These amendments have not been drafted from nowhere. These are the people, among others, whom I consulted with in drafting these amendments. I received a great deal of assistance from OPC through Robyn Webb.

It is important to include the term 'gender' in the title of the bill because that will more accurately reflect the policy intent of the bill.

I note there are a number of versions of my amendment and some changes relate only to updating numbering and so on. I circulated some clause notes and the earlier drafting to assist members. The policy in all those drafts did not change. Clause 1 reflects the policy intent of those amendments. The first may have been version 12 through to version 20. We all know a number of amendments were inserted into this bill in another place, directly relating to gender-diverse individuals, by parties other than the Government.

I seek support of this first amendment regardless of whether my subsequent amendments are passed because the bill, as it is, already has a number of gender-related amendments in it. Even though many of them need to change, the policy has not changed. The policy intent is the same. The amendments to clause 1 better reflect the policy intent within the bill as it stands and we will get to other proposed amendments.

**Mrs HISCUTT** - The fact that the term 'gender' is not included in the short title of the bill demonstrates how far outside the scope of the bill the amendments proposed by the House of Assembly and Legislative Council are. I acknowledge the efforts of the member to try to fix the clauses inserted into the bill by Labor and the Greens. The Government does not support the inclusion of this amendment in the bill.

**Mr DEAN** - I am reticent to speak because a few people have had a fair go at me again on Facebook saying that I am filibustering. My position is that of the Liberal Party. What this amendment identifies is the absurdity of what we have seen with this bill. The Liberal Party tabled a new bill in the other place. It came out changed in every respect, with amendments made outside the scope of that bill, sadly. Now we see the amendments to occur here, and we know very well that 30 pages of those amendments will stick. I doubt if any other amendment will. We have had to change the name of this bill.

How much consultation has taken place with the public and all the stakeholders involved in this? We have heard there has been some consultation. What has been the feedback? It is all very well to consult. I have consulted as well but I would like to know what the feedback is and who has been consulted. What consultation process has been conducted toward these amendments, publicly and with whom? I would like a clear answer to this question.

I find it difficult to tolerate and understand what is going on. Around 20 versions of amendments have come from the member for Murchison, and there have been changes. The twentieth version had some significant amendments, particularly clause 28D, which needed a great deal of consultation. I have not been able to consult constantly and obtain all the information

relating to those amendments. I have not been able to keep up with the changes, and it has really frustrated me to hell. I am trying to keep on top of it. This identifies the ludicrous nature of this whole process.

It is something I have never ever seen before. I doubt if I will ever see it again, although some other social bills are likely to come into this place. I could well see it again because of the mix in this place and the support the Labor Party has here.

Why have the people and stakeholders not been appropriately consulted about all of these matters and amendments we are currently seeing? I have tried to consult with as many as I can on my amendments, but I am not sure about these others. I would like some explanation as to exactly what is the situation.

**Ms FORREST** - To respond to that question, I said in my opening comments before moving the amendment that I consulted with the Anti-Discrimination Commissioner. The response from the Anti-Discrimination Commissioner was provided to all members and they are supportive of my amendments.

**Mr Dean** - Well, of course they are going to be supportive of your amendments.

**Mr DEPUTY CHAIR** - Excuse me, member for Windermere, let the member answer your question.

**Ms FORREST** - I also consulted with the police commissioner and while I did not circulate his letter because he requested I not do so, he was supportive. I can come to the children's commissioner further when we get to the relevant amendments, but I am just answering the question directly.

I think every member received a response from the children's commissioner, which was supportive. I will bunch these few together because they tended to present similar arguments. Representatives of the Australian Christian Lobby, Women Speak Tasmania and the Catholic Church were opposed to the principle of the legislation in many respects, but I took on board many of the concerns they raised in drafting the amendments in my instructions to Robyn Webb. This was to ensure as much as possible that I could maintain the policy intent I support and address some of their concerns, particularly with regard to the storage of sex- and gender-related information on the register.

That did not please Transforming Tasmania. You may be aware of that. I consulted with Transforming Tasmania and they understood there needed to be some compromise here to get a piece of legislation that I personally felt happy with if I were moving the amendments and that it would be robust and not potentially a risk undermining the integrity of the registrar when we have a number of national minimum dataset agreements.

The other person I consulted and sent my amendments to was the Registrar of Births, Deaths and Marriages and she came back with one question, which I clarified, and has raised no further concerns.

I have talked with many members of my community. When I had emails from my community members, I generally tried to call them. Some of them were difficult to get hold of, but we have had some communication. Once I explained the intent of my amendments and how they would

actually work, a small number of people were still very concerned about it from their philosophical viewpoint. That is fine, but the majority have been saying, 'That is fine. I understand what you are saying.'

I have spoken to a number of parents of transgender and gender-diverse young people personally and some of them raised concerns about the bill as drafted in its current form. My amendments seek to address those concerns, but they certainly support the policy intent. With LGBTI community members, it was the same situation as with the Transforming Tasmania people, who are part of that community.

I had a long discussion with former magistrate Don Jones. We did not address the Anti-Discrimination Act amendments he had concerns about because I am not proposing any of those. I certainly did not meet his concerns about those, because I was not proposing amendments to them. I listened to his arguments on this, but he acknowledged the amendments I am proposing do address almost all his concerns in regard to the amendments to the births, deaths and marriages legislation. He still has concerns around the term 'best interest of the child', but understood a difference will be introducing will and preference, and we talked about that.

The member for Windermere said yesterday that he commended me on the work I have done. He believed it did make a significant difference and he said that I had done a very good job, which the member for Windermere reiterated.

Chris Gunson from the Tasmanian Bar commented more on the bill as it appears before us and he expressed some concerns. I shared some of those concerns and those amendments and changes are reflected in the amendments that will follow. A number of other individuals and groups and key representative bodies have been consulted. While I will never profess to have spoken to every member of my community, I make myself very available. I have been doorknocking in the new part of my electorate taken from the member for Montgomery to introduce myself. Not once was it raised as an issue. It was not a matter of discussion, and I have been out and about visiting all parts of my electorate recently. I have visited King Island once or twice, and Circular Head and the west coast many times, and when I have explained it to anyone who has asked about it, they have been happy. That is the consultation in answer to the member's question.

I believe it has been a full and frank discussion over this time. I was keen to move on at the end of last year, but we did not have access to the Office of Parliamentary Counsel to enable it in a timely manner. If we had, it would have become apparent that we could not do it quickly and we would end up where we are now, and here we are. I thank the Leader for facilitating access to OPC and the huge amount of work they have done.

**Mr ARMSTRONG** - Mr Deputy Chair, I will not be supporting the amendment. The member for Murchison says she has consulted with many people. I have not seen correspondence from many of the people she is saying she has consulted with. We heard the member had consulted with solicitor Don Jones on other issues. We had two different stories, one coming back from the member from Windermere saying he did not support some of the amendments. I do not think this has been through the right consultation process and I will not be supporting it.

**Ms RATTRAY** - I have a question for the member in regard to the Solicitor-General. Was it named on the consultation list? I am not sure if the Solicitor-General would have a view on the amendment to this clause. Many of us referred to the Solicitor-General in our contributions this

week and his views swayed my position. I am interested in where that sits. Does it wait until it is in another place?

**Ms FORREST** - We do not have access to the Solicitor-General. We cannot consult with the Solicitor-General. An abridged version of the advice received from the Solicitor-General was provided to us by the Attorney-General. None of us in this Chamber, except for the Leader, has access to the Solicitor-General. We have access to some information provided by the Attorney-General from the Solicitor-General and that informed some of my amendments to 28D, which we will speak about later.

On the question of the Solicitor-General and the capacity to look at further amendments that may be needed, as was referred to by the Solicitor-General and the Leader from the Attorney-General: many comments were made about the Tasmania Law Reform Institute referral and the Leader mentioned the terms of reference sent to TLRI. I have done some research on TLRI and how it operates when dealing with policy questions and issues. It has a clear policy that prevents it from commenting or offering advice on any legislation or policy before parliament unless it is based on recommendations previously made by TLRI or related to a research paper previously prepared on the topic by TLRI. TLRI has not produced a document with recommendations with regard to this matter before this House. That rules it out.

With regard to the current situation, the proposed policy changes to the Births, Deaths and Marriages Registration Act, TLRI would only be able to provide advice on matters that are not policy matters. TLRI needs us to do our work here and make the policy intent clear.

The Leader read out four terms of reference that TLRI has started work on. I can tell you what these are as I understand it: First, what steps should be required to register the change of sex and intersex on official documents? Once it receives a clear policy intent from this legislation that a step will be required to indicate what is wanted on those documents, TLRI will work on how to facilitate that process. TLRI cannot do that until it knows the policy intent, which is why we need to deal with this legislation.

Second, what categories of sex and/or gender should be displayed on a birth certificate and other documents? That will be another matter it will look at when the policy intent is made clear through the debate on this legislation.

Third, what if any reforms should be made relating to consent to medical treatment to alter a person's sex or gender? This is not part of this bill. This is a separate policy issue regarding surgery on intersex babies or individuals who may, in some cases, be coerced or forced into having surgery, as has been known to occur on babies. I am sure that is what TLRI is getting on with, because that policy question is not before the Chamber at the moment. TLRI is probably looking at that because it can.

Four, what if any reforms should be made in relation to definitions or use of terms related to sex and/or gender in Tasmanian legislation? That is like the consequential amendments requirement, which TLRI will look at when it knows the policy intent.

In regard to the proposed 28D amendments I changed in relation to the Solicitor-General's advice, they are not strictly necessary in this bill because TLRI will do that in the time between this bill being dealt with and it becoming operational, if it is passed. I put those two amendments in because it requires some cover. It provides some clarity for those key questions around gender in

other legislation. Notionally, TLRI could do that once we have determined the policy position. It may suggest other ways of doing it. There may be amendments to come on that point, but that is TLRI's job and it cannot do that until we finish dealing with this policy in the Chamber.

**Mrs HISCUTT** - Work on the reference has commenced and is continuing regardless of the status of the Justice and Related Legislation (Marriage Amendments) Bill. The Government has informed us that TLRI will report in September.

**Ms ARMITAGE** - Regarding the amendment before us, I accept the title does not adequately describe the bill. Even though I did not support it in the second reading, I believe the amendment is justified because the bill now relates to gender and it relates more to what the bill is about. I will support the amendment.

**Ms RATTRAY** - I appreciate the member for Murchison outlining the terms of reference from TLRI. My question may be directed to the Leader because we have moved from convention because we received this document through this process. We have already moved from what we have known in this place for a long time. What does the Solicitor-General say about the title of this bill and whether that is what we do in this House? The member is entirely right. We do not normally have access to the Solicitor-General and so the way we have been provided with the advice of the Solicitor-General is out of the ordinary.

I recall, through the briefing process, that even though the Solicitor-General has not put his name to that, he indicated at that briefing that it reflected his position accurately. I hope other members will back me up on that. A couple of times in the past few weeks I have heard, 'I seem to have heard something different from other people'. I am trying to recall if that was the fact.

I am not being obstructionist here, but I want to get clear in my mind why we are doing this.

**Mrs HISCUTT** - The Attorney-General was very clear in her letter that waiving privilege will not be a common occurrence. The Solicitor-General will not provide, and has not been asked to provide, a running commentary on the many versions of the amendments being proposed because that is not his role. It is up to individual members or others to seek their own legal advice on the impact of these amendments.

The Solicitor-General has confirmed that the letter from the Attorney-General is an accurate reflection of his advice, as the member stated.

**Ms LOVELL** - Mr Deputy Chair, I am happy to support this amendment.

**Mr Dean** - Surprise, surprise.

**Mr DEPUTY CHAIR** - Excuse me, member, there is no need for that.

**Ms LOVELL** - Perhaps the member for Windermere would like to get it out of his system now because I have a feeling we are going to have a very long day and the interjections are going to get tiresome.

**Mr Dean** - I probably won't get it out of my system.

**Ms LOVELL** - Then keep it inside. I appreciate the work the member for Murchison has put into all her amendments. There has been a number of versions - 20 versions - and I have found it quite easy to keep up with that because the member has been very clear about the changes throughout that process.

I hear what the Leader is saying about this process being unusual. I still do not agree that this is an improper process. This bill has been through a proper process. The Government has had some four-and-a-half months now since the bill was amended in the lower Chamber to get its head around the amendments. It has chosen to introduce this bill to the Legislative Council without doing that; that is its responsibility to do so.

**Mr Armstrong** - It's not their bill.

**Ms LOVELL** - It is their bill. They introduced it.

**Mr Armstrong** - Yes, but it's been amended.

**Ms LOVELL** - It has the Attorney-General's name on it.

**Mr Armstrong** - But they have voted against it.

**Mr DEPUTY CHAIR** - Thank you, members. Excuse me, member for Rumney. When a member is at the stand they have the right to speak uninterrupted in Committee. Please refrain from that. If you cannot, you must leave.

**Ms LOVELL** - Thank you, Mr Deputy Chair. This bill has been introduced to the Legislative Council by the Attorney-General. It has the Attorney-General's name on it. It is an amended bill from the lower Chamber.

The Government may not have had to deal with that process for some time, but that is the situation we have now. What I find most unusual about this process is the level of expectation that members seem to have of other members about circulating amendments, listing consultations - all of the questions that are being asked. This is not a normal process we are going through. The normal process is that amendments are presented on the Floor. Yes, members often make an attempt to circulate those amendments prior to the debate; that is a good process and we should continue to follow that process.

This bill is no different to any other bill in the fact that we are in the Committee stage and we are debating amendments. I am happy to support this amendment. I appreciate the work the member for Murchison has put in and I accept her position.

**Mr VALENTINE** - I support the amendment. I think it simply reflects the content of the bill more accurately than the initial title of the bill. The bill came to us from the lower Chamber. Someone has seen fit to try to change the title of the bill. It is not changing the bill, it is changing the title of the bill - we have to be very clear on that. I support the amendment.

**Mr DEAN** - My first question is to the member for Murchison. Has she spoken to Mr Don Jones since two weeks ago? That is obviously when I spoke to Mr Jones and I spoke to him two or three days after we closed on the Thursday evening. I would like to know when she did. The member will correct me if I am wrong, but she indicated that Mr Jones was reasonably happy with

the amendments under the Births, Deaths and Marriages Act, but had not discussed or was not so happy with those under the Anti-Discrimination Act.

On the advice and position I received from Mr Jones, a former magistrate, eminently qualified lawyer in this state and a long-time magistrate, he said, 'No, we did not fix everything but I did say she had done a good job'. He admits that and has no problem that she has done a good job on some of the amendments put forward -

My view in that regard has not changed.

I am still of the view that what is in the best interest of children is of paramount importance, and the legislation as to the non-inclusion of gender is still in my view fundamentally flawed.

These are areas coming up under the Births, Deaths and Marriages Act -

I will oppose the age of 16 and believe it should be 18.

Also, in that act -

The legislation if passed should be an opting out not opting in, in other words unless parents request that gender be excluded and they are prepared to make a declaration stating it is in the child's best interest, gender should be included.

He goes on to say -

When I was speaking to Ruth she did not wish to discuss the Bill as it currently was but only as to her proposed amendments, which had not been accepted or even debated at that time, I made it clear to her that the concept of what is in the best interests of a child was axiomatic and was part of the UN convention. She made some comment that was to be reviewed, however I have not found any suggestion the Convention is to be altered in this regard.

Whilst I commended her on the work she had done, as was saying it was done by her solely with the assistance of the parliamentary draftsman, I certainly did not agree everything was worked out. My parting word expressed my concern as to what was in the best interest of the child is of paramount importance.

I found that she was set in her mind and clearly nothing was going to change her view, her proposal if accepted may allay some issues but certainly not all, and it should always be an opt-out not an opt-in.

Rest assured I still believe my comments are valid and in the interests of the Community, and from discussions with a number of members of that Community, my comments are in line with their view.

Having said that, I asked the member whether she still believes or agrees Mr Jones was reasonably happy with all the amendments under the BDMA and the bill as it was. He told me he was not and he has put that in writing and made that clear. I am not sure whether the member has been back to him since our discussion on this two weeks ago.

At this point I compliment Robyn Webb from OPC on the wonderful work she has done in trying to bring all of this and the amendments together. She has done a superb job.

**Mr DEPUTY CHAIR** - We would all agree with that, honourable member.

**Mr DEAN** - The member for Rumney has said it is the Government's bill. It is not the Government's bill. A very small part of it initially was, but the Government does not accept it as it now is, and I have made this perfectly plain and clear. It has made it clear it will not defend any of the amendments made by the Labor Party and the Greens in the other place. I suspect they will not support a lot of the Labor amendments.

**Mr DEPUTY CHAIR** - Excuse me, member, please confine your comments to what is happening in front of us now, not to what is happening in the other place. I am giving you a bit of latitude because it is the start and some people need to get some things out of their system.

I take you back to the clause in front of us, if that is okay.

**Mr DEAN** - It has been raised, Mr Deputy Chair. It was raised by the member for Rumney. She raised this very point.

**Mr DEPUTY CHAIR** - That is right.

**Mr DEAN** - If she raises a point, surely, with the greatest respect to you, I can comment on the comment made by the member for Rumney?

**Mr DEPUTY CHAIR** - If it is within what we are talking about here in the amendment, not the Committee stage, that is fine. I am allowing you a bit of latitude, but I would like you to concentrate on what is in front of us.

**Mr DEAN** - I am concentrating on what has been said and trying to put some further meaning to what has been said here by other speakers. Not by me - raised by other speakers.

What did the Commissioner of Police say when he was consulted? I suspect he was consulted on the changes to 28D. I do not know, but I have asked that be identified because I would like to know exactly what he said. I am finding it difficult to accept too much of what is being said, to be frank with you. What independent information, evidence or support for the amendments has the member sought from lawyers? Independent lawyers, not those connected with the anti-discrimination area or the children's commissioner or anywhere else. I want to know about the independent legal advice, who gave it and where it came from to assist the member in this regard.

The member for Rumney also said this bill is no different to any other bill that comes here. I am not sure what I have been looking at for the last umpteen weeks. How can this statement be made when we have already stood aside Standing Orders to allow members moving these amendments to do it differently from normal requirements under Standing Orders? We have already made that change. We are already in a position where those moving amendments are defending those amendments, not the Government, so it is significantly different. It is nothing like any other bill we deal with in this place. I am not sure who can answer this.

**Mr DEPUTY CHAIR** - This is why the Standing Orders process is the way it is, so people can stand up at the beginning and ask that standing order 155 be altered for a specific bill. This is

the process of the parliament. You have mentioned clause 28D and it is appropriate when we reach this to ask those same questions.

**Mr DEAN** - The member for Murchison said she has consulted with all these people. I want to know what she has consulted with them on and what their response was. She raised the issue, not me.

**Mr DEPUTY CHAIR** - I think you will read in *Hansard* that the member answered those questions.

**Mr DEAN** - No. If she told me exactly what the commissioner said, because I did not pick it up if she did.

**Ms Forrest** - I did say.

**Mr DEAN** - Maybe you might want to repeat exactly what the commissioner said. I would appreciate that. There are a number of questions there.

**Ms FORREST** - I have been very frank about the conversation and outcomes I have had, and I made those comments already. I do not intend to give chapter and verse of my conversations with all manner of people I have consulted. It would be highly unprofessional to name individuals whom I have spoken to without their consent. I gave an extensive list of people I have consulted with in response to a previous question. I also did that when I first spoke on this clause. The information is all there and, yes, Don Jones is one person I consulted with. He agreed I had done a really good job with amendments. He did not support everything in its entirety and I said that. We made no comment about the anti-discrimination ones, because I do not have any amendments to that section.

**Ms ARMITAGE** - Member for Murchison, given the amendments have not yet passed with regard to gender, even though we know they are going to because of the numbers, would it be proper procedure to postpone the clause until after the amendments? Then it actually does become a gender bill. At the moment, even though the amendments to the bill, including those relating gender, will pass currently because these are purely amendments, it is not really with regard to gender. Would it be proper procedure to postpone the clauses until after the amendments come and then bring it back?

**Ms Rattray** - Perhaps the member might like to move that it is postponed?

**Ms ARMITAGE** - No, I will let the member for Murchison answer.

**Ms FORREST** - Mr Deputy Chair, I made mention of this in my opening comments to the member for Launceston. Because we are in Committee stage, it is very clear this Chamber supports the principle of the bill before it, which includes all gender-related matters. My suggested amendments subsequent to this amendment do not change that policy intent; they enshrine it in a different way. Regardless of whether the amendments are agreed to or not, if the bill passes as it is, and that will depend on the third reading, it is still a gender-related bill and it reflects that better. I am taking advice from Parliamentary Counsel on this much of the time. This is not me saying that you have to do this, it is after discussions with OPC that the legislation is best prepared. I am taking advice from them on that clause.

**Ms Armitage** - Thank you.

**Mr DEPUTY CHAIR** - The advice from the Clerks is that this is not contingent on any other amendments. We are better off walking through the clauses; also, there is a process of revisiting them at another stage.

**Ms RATTRAY** - I have a feeling it is going to be a very long day, and we are only on clause 1.

My question relates to the police commissioner's advice. I take on board the member has done a lot of work in preparing the amendments and she took the opportunity to make contact with the police commissioner. What did the police commissioner comment on? Will that advice be available to us? Did he decide to release that advice?

**Ms Forrest** - I have asked.

**Ms RATTRAY** - And the answer was no?

**Ms Forrest** - Yes.

**Ms RATTRAY** - That puts us in a bit of an awkward position. If we are able to seek advice from the Solicitor-General and that comes in the form that it arrived in, unprecedented, and yet the police commissioner is referred to as offering support and yet we cannot receive that advice, how does this work?

**Mr DEPUTY CHAIR** - I heard the member say she had consulted with this person, this person and this person. Whether that person allows that conversation to be released is up to the person in charge.

**Ms RATTRAY** - I heard that the member received written advice. I may be corrected there.

**Ms Forrest** - By interjection, I will refer to that advice when we get to the section in the bill that relates to that. The overall advice was supportive of the legislation. As to particular aspects that have any real implications for police, we will deal with at a later time.

**Ms RATTRAY** - We will get to see that advice at a later time?

**Ms Forrest** - No. I have been asked not to release that.

**Ms RATTRAY** - My question comes back to the Leader. Leader, I would respectfully request that all members are entitled to see the advice received from the police commissioner.

**Mrs Hiscutt** - I do not think the Government has received that advice, but I will check on that.

**Ms RATTRAY** - I expect the Government to ask the police commissioner that if he is able to provide that information to one member of this Chamber, why are other members of this place unable to receive the same advice? It appears we are not all being treated the same here, and that is a problem. I respectfully ask that the Leader seek advice so that all members have the same advice. I believe that is fairness and equity, and we have talked a great deal about that in the last couple of days.

**Mrs HISCUTT** - The Government is not aware of this advice but we can certainly ask the relevant minister's office if it is for the public and see what the outcome is. We are not aware of

any advice given. We do not know the details of that advice so we will ask the relevant minister's office what the go is.

**The Committee divided -**

AYES 9

Ms Armitage  
Mr Farrell  
Mr Finch  
Ms Forrest  
Mr Gaffney  
Ms Lovell (Teller)  
Ms Siejka  
Mr Valentine  
Mr Willie

NOES 5

Mr Armstrong  
Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)  
Ms Rattray

**Amendment agreed to.**

**Clause 1, as amended, agreed to.**

**Clause 2 -**

Commencement

**Ms FORREST** - I am going to invite defeat of this clause. To speak briefly as to why I am asking members to defeat it, as the clause notes state -

New Clause A will replace this clause to enable time for the transition arrangements required by the Registrar to be facilitated.

We cannot deal with new clause A until we get through the rest of the bill. For members' information, new clause A will insert a later commencement date for part 4, which is all the amendments relating to the Births, Deaths and Marriages Registration Act, to enable the transition arrangements required by the registrar to be facilitated and give time for those administrative changes.

Assuming this bill is supported in whatever form it is at the end of the day, TLRI can get on and do any work that it may need to do to assist in that process. I ask members to vote against this clause to enable the insertion of a new clause at a later stage.

**Clause 2 negatived.**

**Clauses 3 to 5 agreed to.**

**Clause 6 -**

Section 104 amended (Taking away, &c. adopted child by natural parent)

**Ms ARMITAGE** - Mr Deputy Chair, my proposed amendment is simple, to put 'father and mother' back into the bill. This was an amendment made in the other place and they removed the

reference. It has caused quite a bit of concern in the community and many of the calls and worries I have heard are from people unhappy with taking out 'father and mother'. Mr Deputy Chair, I move -

### **First amendment**

That clause 6(a) be amended by -

*Leave out* the words 'a parent or guardian'.

*Insert instead* 'the father, the mother, a parent or a guardian'.

This was an amendment made by the Government in the other place; however, I consider it should be back in the bill because sometimes the parent is not necessarily the father or the mother. I see no problem with putting it back in. It is still leaving 'parent or guardian', but it is adding the extra safeguard of 'mother and father' in case they are not the current parents.

**Mrs HISCUTT** - The contemporary practice for drafting is to use gender-neutral language in bills. For that reason, the original bill used 'parent' in place of 'father and mother' and 'spouse' in place of 'husband and wife'. The Government has received feedback and understands there will be no legal effect of reinstating 'husband, wife, father or mother' into the bill. The Government is happy to support the member in this instance.

**Mr VALENTINE** - A fundamental question with regard to 'guardian', is the Leader able to answer: can there be more than one guardian and should it be 'the guardian'?

**Mrs HISCUTT** - The answer is simple: yes, there can be more than one guardian.

**Mr DEAN** - Mr Deputy Chair, I support the amendment. A number of people have said to me that it is offensive to remove 'mother and father' in the circumstances. Many of them have said, 'I will always be the mother of my children', and there are fathers who have said, 'I will always be the father of my children', as I will always be the father of my children. I understand what the Leader said and the reasons for it, but I can see no reason why they should not remain in the bill to clearly identify that 'mother and father' are terms we have lived with forever, and I hope we will live with them forever into the future.

**Ms FORREST** - I feel ambivalent about this amendment. I understood it was put in by the Government in the other place, when the bill was first presented, on the advice of Parliamentary Counsel to use gender-neutral terms where possible. This should be a measure we move toward; using gender-neutral terms wherever we can. A parent is the parent, whether they are the mother or father. I am not opposed to it but it is not necessary. During our in camera briefing last year, comment was made that where one word can be used in the place of two, three or four others, we should do that in order for our statutes not to be too long and to remove the gendering of the language we see in much of our legislation.

If you look at the Public Account Act, the secretary is male, the members are male and the chair is always a male. Moving away from that is the current practice. The way the Government introduced it was appropriate. Some people were very critical of that and they were criticising Labor and the Greens when it was a Government amendment on advice from Parliamentary

Counsel, for the proper reason that it is gender-neutral. It is not necessary and could be left as the Government intended.

**Ms ARMITAGE** - I appreciate the member for Murchison's comments, but we do not always agree with the Parliamentary Counsel, such as with some of the terms they have used. I understand we are moving to gender-neutral but sometimes, as the member for Windermere said - and please do not vote against it because the member for Windermere is for it - a parent or a guardian is not necessarily the biological mother or father. They are the mother or father. I ask members to vote to put those in. We have been told it does not have any legal implications but it means a lot to many people in the community.

One of the many concerns people have had is the taking 'mother' and 'father' out of the bill. We are making many changes to this bill. We can leave some things in that give comfort to some people. Using 'father, mother, a parent or guardian' is not changing 'parent or guardian'. The parent might be the parent now but they may not be the biological mother or father. I do not have a problem with 'father, mother, parent or guardian'. I hope members will support this small amendment.

**Amendment agreed to.**

**Ms ARMITAGE** - Mr Deputy Chair, I move -

**Second amendment**

That clause 6(b) be amended by -

*Leave out* the words 'the parent'.

*Insert instead* 'the father, mother or parent'.

**Amendment agreed to.**

**Clause 6, as amended, agreed to.**

**Clause 7 -**

Section 109 amended (Restriction on publication of identity of parties)

**Ms ARMITAGE** - Mr Deputy Chair, I move -

That clause 7(a) be amended by -

*Leave out* the words 'a parent'.

*Insert instead* 'the father, the mother, a parent or a guardian'.

**Mr VALENTINE** - It might be a typo or a convention but paragraph 7(a) does not actually exist. Clause 7 has a paragraph so I am not sure whether that can be amended.

**Ms Armitage** - I guess it is (a) because it is the first one there.

**Mr VALENTINE** - It is the first one, but it does not have (a) and I do not know whether that causes an issue.

**Mr DEPUTY CHAIR** - We will have a look. We will table an amendment there.

**Ms FORREST** - To clarify the member's question there: Are you saying there should be 'the' not 'a'? Is that what I am hearing?

**Mr VALENTINE** - It should be 'a' in brackets.

**Ms Forrest** - Paragraph (a). Sorry, I thought you were talking about a parent.

**Mr DEPUTY CHAIR** - I have been advised by the Clerks that it can be fixed, but the amendment is as it stands. Could the member read it again for us without the paragraph (a) bit? For clarification, thank you, member for Launceston.

**Ms ARMITAGE** - I move -

That clause 7 be amended by -

*Leave out* the words 'a parent'.

*Insert instead* 'the father, the mother, a parent or a guardian'.

**Amendment agreed to.**

**Clause 7, as amended, agreed to.**

**Clause 8 agreed to.**

**Clause 9 -**  
Section 3 amended (Interpretation)

**Mr DEAN** - Mr Deputy Chair, I move -

That clause 9 be amended by -

*Leave out* paragraphs (a) to (i) (inclusive).

*Insert instead* the following paragraphs:

- (a) by inserting the following definition after the definition of *award*;  
**'biological sex'**, in relation to a person, means the male or female sex phenotype of the person, if observable at birth;
- (b) by omitting the definition of *gender identity*;
- (c) by inserting the following definition after the definition of *sexual orientation*:

**'social identity'**, in relation to a person, means the sex-related appearance, or other sex-related characteristics, of the person, whether or not the appearance or characteristics have occurred by way of medical intervention or by virtue of the person's biological sex, and includes transsexualism;

- (d) by omitting the definition of *transgender*;
- (e) by omitting the definition of *transgenderism*; and
- (f) by omitting from the definition of *transsexualism* the word 'gender' (wherever occurring) and substituting 'sex'.

Subclause 9(a) and (b), definition of gender expression to be included in the existing definition of gender identity. The inclusion of gender expression, particularly the inclusion of names and personal reference, has the effect of widening the scope of the protected attribute of gender identity to potentially make it an offence under the act to misgender a transgender person. Human personal interactions may take cues from the appearance and mannerisms of the people involved. People learn from birth to recognise the different presentations of males and females and to associate them with certain personal references like names and pronoun. A transgender person who presents as male, but identifies as female will naturally be referred to using male pronouns. Humans take these basic elements of communication for granted. A law that requires them to check a person's preferred pronoun before speaking to them and to use their preferred pronoun consistently thereafter, despite the automatic cues telling them otherwise, or risk committing an actional offence, could invite any number of possibly vexatious complaints.

Further, the concept of gender expression is found in no other Australian legislation. It is new and completely untested.

Subclauses 9(c) to (i) - these changes to the Anti-Discrimination Act do not serve any logical purpose.

First, the proponents appear to have an issue with the terms 'transgenderism' and 'transsexualism', but their removal from section 3 of the principal act has no obvious effect on this section or its definitions. Perhaps they will be able to explain their problem with these terms. I will be interested to hear it.

Second, the current definition of 'intersex' is adequate, well understood and should not be removed. If it is removed, it will remain in the act in another area, and I will refer to that shortly.

Third, the inclusion of a definition of 'sex characteristics' is unnecessary if the current definition of 'intersex' remains. Once again, the purpose of the definition is not clear.

Fourth, the addition of paragraph (c) to the current definition of 'transgender' under clauses 9(f) and 9(g) is unnecessary. It adds nothing to assist interpretation of the term according to the act.

Amendments to the Anti-Discrimination Act were arguably beyond the scope of the Justice and Related Legislation (Marriage Amendments) Bill, the intention of which was primarily to address the requirement to bring Tasmanian law into line with changes to the Commonwealth Marriage Act that legalised same-sex marriage.

However, since such amendments have been made and passed in the lower Chamber, the following changes to the principal act are proposed, which is the insertion of 'biological sex':

'social identity', in relation to a person, means the sex-related appearance, or other sex-related characteristics, of the person, whether or not the appearance or characteristics have occurred by way of medical intervention or by virtue of the person's biological sex, and includes transsexualism;

Omit the definition of 'transgender', and omit the definition of 'transgenderism'.

The definition of 'transsexual' in the principal act should be changed to substitute 'sex' for 'gender'. It should then read as follows -

'transsexual' means a person who, whether or not intersex, and having been legally assigned one sex at birth -

- (a) assumes the bodily characteristic of the other sex by medical or other means; or
- (b) identifies himself or herself as a member of the other sex; or
- (c) lives, or seeks to live, as a member of the other sex.

First, biological sex is not currently a protected attribute under the Anti-Discrimination Act. Inserting a definition of 'biological sex' in section 3 of the act allows for the introduction of protections based on this attribute.

Second, the term 'social identity' more accurately describes those whose presentation in society is incongruent with their biological sex. The terms 'gender' and 'gender identity' are both inherently imprecise. 'Gender' is a term that originated in the study of linguistics as a means of differentiating sex-related - that is, female or male - nouns and pronouns. Over time, it came to be used colloquially as an alternative to the term 'sex', meaning either male or female. At present the terms 'gender' and 'gender identity' have come to represent a sense of innate femaleness or maleness in an individual, regardless of biological sex. That sense is demonstrated in either case by adopting the stereotypical appearance and other characteristics of the chosen sex, usually one that is opposite to the individual's biological sex. Given the inability of legislators or anyone to satisfactorily define 'gender' or 'gender identity' without reference to the social constructs and stereotypes associated with biological femaleness and maleness, they should be removed from the legislation and replaced with the term 'social identity', which more clearly describes the self-presentation of a biological male as female and vice versa.

Third, the terms 'transsexual' and 'transsexualism' also more accurately describe the process and condition associated with adopting a social identity incongruent with a person's biological sex.

I ask members to support this amendment. It is a matter that has been raised and discussed at great length by many people with concerns in relation to it. I ask members to support the amendment, knowing very well it is going to go down.

**Ms FORREST** - I have a number of questions for the member. First: whom did he consult in regard to the drafting of these amendments, and what was the advice from the groups or individuals

consulted in terms of introducing terms such as biological sex and social identity? I understand they are not terms used in any other anti-discrimination legislation anywhere. No discrimination laws in Australia refer to the relevant protected ground as biological sex and there is no case to support this language being used. Similarly, there is no discrimination law in any comparable country that uses this term to describe a protected attribute. New Zealand, with the existing attribute of sex, has interpreted it to include gender identity.

Who was consulted and what was the advice? Could the member explain more about the term 'biological sex', the definition spelled out there. In order to determine the biological sex as described here, it would require some very invasive tests to be conducted on every baby born. Generally, you can look between a baby's legs. It is the first thing we do at a birth, particularly if we are not expecting a particular sex of the child as some parents make the decision not to find out through scans and blood tests. Without doing some invasive tests, even for a child that appears to be female or appears to male, as we discussed yesterday, sometimes their sexual characteristics become more apparent as they grow.

It may be internal organs would indicate a different sex to what they were notionally registered or appeared to be at birth. However, if we are going to use this biological sex, it will be assessed. I am sure no midwife, doctor or parent wants to see ultrasounds, blood tests and invasive procedures to determine what this actually means. These are the questions I would like the member to refer to. I note we received advice from the current Anti-Discrimination Commissioner and Equal Opportunity Tasmania, which made it clear they did not support these amendments. I do not know whether the member consulted them and did not take on board their advice. The advice was very clear in the communication we received - they do not support them. I would like those questions answered first.

**Mrs HISCUTT** - I would like to address the motion as it is. The original clause we have in front of us was put into the bill by the Opposition parties in the other place and the Government does not support the inclusion of this clause in the bill. Therefore, we acknowledge your efforts to try to make it better. I am sorry, we still cannot support your amendment. I find it amazing the member for Murchison is defending the Labor amendments.

**Ms Forrest** - No, I am asking for further consultation.

**Mr DEAN** - I did not consult the Anti-Discrimination Commissioner or the other persons referred to because I did not feel I should waste my time. It was very clear what their position was and nothing I was going to say was going to sway or change their view. The current team is the same team who worked with the previous Anti-Discrimination Commissioner, so clearly they have had a set position on this all the way through and so I did not consult with them.

The member asked me whom I have consulted with. I have consulted with Women Speak Tasmania and I do not hide from that. I have spoken to them at some length in relation to these and most of my amendments, and taken advice from them. Their position is a very strong one in relation to these amendments, saying it makes a much better position. We have talked about invasive procedures. How often does that occur? Is it likely? I do not know and I cannot take that any further. The amendment strengthens the act. I will not continue to argue a position I have no chance of winning, but I wanted to put this forward and on the record.

**Mr VALENTINE** - I want to read, from Equal Opportunity Tasmania, the Anti-Discrimination Commissioner's letter of 1 April. I quote from page 3, 'Removing the attribute "gender" from the Act' as headed -

Removing the attribute 'gender' and replacing it with 'biological sex' would, as far as I am aware, make Tasmania inconsistent with every other anti-discrimination jurisdiction. I am not aware of any jurisdiction that protects the attribute 'biological sex'.

Removing the attribute 'gender' and replacing it with 'biological sex' may also lessen existing protections afforded by the Act. In relation to direct discrimination (as defined in section 14 of the Act) the Anti-Discrimination Tribunal has noted that a complainant must show that the 'true or genuine reason' for the discriminatory treatment was that the complainant had one or more of the prescribed attributes. To give an example, if I received a complaint from a woman who had been denied employment due to her gender, this would be a complaint of direct discrimination. If Mr Dean's amendment were passed, that complainant would need to prove that the true or genuine reason the employer denied her employment was that she had a 'male or female sex phenotype ... observable at birth'. This could be difficult to achieve. If the woman had been in any other jurisdiction, she would not have that burden.

I also note that Mr Dean's amendments seek to change the exceptions in the Act relating to gender (which operate as defences to complaints) to make them apply to 'biological sex'. The proposed amendments would also restrict the application of the exceptions currently in the Act.

Similarly, there is another heading, 'Removing the attribute 'gender identity' from the Act' -

Similarly, removing the attribute 'gender identity' and replacing it with 'social identity' would, as far as I am aware, make Tasmania inconsistent with every other anti-discrimination jurisdiction. I am not aware of any jurisdiction that protects the attribute 'social identity'.

In ordinary English, the term 'social identity' does not have the meaning proposed in Mr Dean's amendments. If this amendment were to pass, it would make the Act less clear and less accessible to Tasmanians.

That is enough to show that I will not be supporting this. Mr Deputy Chair, I seek leave to table the letter.

**Leave granted.**

**Ms LOVELL** - I will not support this amendment. I am sure this comes as no surprise. I find it outrageous the member for Windermere is proposing an amendment that would so significantly change the Anti-Discrimination Act without consulting as to whether the Anti-Discrimination Commissioner supports it. To think the member would not consult when the member has held other members in this place to such a high standard of consultation in dealing with this bill is surprising. I will not be supporting this amendment.

**Mr ARMSTRONG** - I want some clarification about an issue raised recently. If you were at your local club and the president said, 'Ladies and Gentlemen, welcome tonight' - am I on the right clause?

**Mr DEPUTY CHAIR** - No, there is another clause you should raise this in.

**Mr ARMSTRONG** - I thought it might come into this clause and the member's amendment might address it.

**Ms Rattray** - Wait until you come to my amendment, honourable member.

**Ms Forrest** - That might help.

**Mr ARMSTRONG** - That might help? I simply wanted clarification.

**Ms RATTRAY** - Mr Deputy Chair, I have some sympathy for the member for Windermere in his endeavour to represent a part of the community, as we do. As members, we represent parts of the community. I have carefully read the amendment the member put forward and I felt it had gone a step too far with regard to the Anti-Discrimination Act. I circulated an amendment I hope will gain the favour of the Chamber, should this amendment fail. I acknowledge we have all done a lot of work. Some could not put our work out as early as they hoped because they were waiting for the member for Murchison's work to be done, which was entirely appropriate.

**Ms Forrest** - It was initially sent out in February.

**Ms RATTRAY** - Yes. We all appreciated the briefing process; we gained more information and it opened up more ideas and opportunities for others to bring matters forward. I acknowledge the work done, which is a view of a section of our community. They have us as their voice. I will not support the amendment, but I look forward to presenting an alternative amendment at the next opportunity.

**Ms FORREST** - I asked another question of the member for Windermere. He may have overlooked it in his answer. I asked how biological sex would be determined. If this was to be included, it is important to understand the actual intent of it. I have answered every question asked by the member for Windermere and other members in this Chamber.

**Mr Dean** - No, you have not.

**Ms FORREST** - I asked a legitimate question about the actual content of this amendment we are dealing with, and it has been ignored. Is the member unable to explain this? Is that the problem? I would like to know where it comes from. As a midwife, I have a very deep interest in this. When there is a suggestion that may resurface another time, we should include these sorts of terms because it would be good to understand what is intended. I have asked the member in good faith to respond to that legitimate question.

These terms 'biological sex' and 'social identity' were put in the amendment, but I am interested in how you would determine biological sex. This is a constant issue when babies are born - all we do is look between the baby's legs. I can tell you some funny stories about mistakes being made even when we have allegedly looked, but that is for another day. I would like the member to answer that question.

**Mr DEAN** - The member answered some but not all of my questions. Biological sex, in relation to a person, would mean the male or female sex phenotype of a person if observable at birth. That is what it is about and that is what it says. You need to look at all the words, 'if observable at birth'.

**Amendment negatived.**

**Ms RATTRAY** - Mr Deputy Chair, I move -

That clause 9(a) and (b) be amended by -

Leave out the paragraphs.

In speaking to this amendment, as I indicated when I spoke a few minutes ago, we had a number of briefings and the opportunity to listen to many in our community who had views on various parts of this legislation.

We heard from a gentleman by the name of Dan Flynn, the acting Tasmanian director of the Australian Christian Lobby and a legal practitioner. I thought he provided some well-made points during the briefing process, certainly when we spoke in regard to the Anti-Discrimination Act and unintended consequences should the amendments of the act go through.

We also received similar information from Professor Mark Sneddon from the Institute for Civil Society. I want to read the points he made when he presented to the Council, via teleconference if I remember rightly. I thought they were valid concerns and this was an opportunity to seek the will of this place to have a lighter approach to what we are dealing with here. It is going to be possibly a different arena in our society. Clauses 9(a) and (b) will affect every person in Tasmania, not just a few. The amendment is supported in the attached submission by Professor Mark Sneddon.

In summary, Professor Sneddon's points are that the concept of gender expression being included in gender identity as a new basis for unlawful discrimination and for insulting or offending conduct is 'strangely drafted and not used anywhere in Australian anti-discrimination law'.

Being an Australian legal practitioner, he would know that -

... 'gender expression' when added in to 'gender identity' will open the door to new complaints to the Anti-Discrimination Commissioner and lawsuits alleging that the following conduct is prohibited under sections 14, 15 and 17:

- the incorrect use of and the refusal to use gender-neutral pronouns like zie, ze and hir in conversations, meetings, emails and documents in schools, government services, accommodation, commerce and workplaces;
- a failure to provide ... or the refusal to use, gender neutral honorific titles
- ...

There are some examples of what might occur -

- (3) Clause 9(a) and (b) will create opportunities for legal threats and litigation about names and personal references that manifest or express gender or gender identity.
- (4) In some parts of the world where governments have created laws to penalise people who refuse to use specified gender pronouns, many people have refused to comply on the grounds of their free speech rights. If this law is passed, it would very likely be challenged on the same grounds. An applicant could rely on the constitutional implied freedom of political communication, which the High Court recently used to strike down Tasmania's anti-protest laws.

That reference to those laws passed in this place but struck down by the High Court of Australia has been used a couple of times throughout this debate -

There is no requirement in section 17 of the Anti-Discrimination Act that the offence caused by being misgendered be intentional. Complaints on the basis of misgendering may be brought and threatened in many situations in which no offence is intended. Pronouns are numerous and varied especially for those who identify as genders that do not sit anywhere on a male female spectrum. The following problem may occur.

In conversations, people may choose to use a person's name rather than remember the pronoun even though no malice is involved. Someone can take offence at an organisation who has not used their pronoun on a drop-down list in the completion of a standard form. It will be a cause of community disharmony if civil complaints are brought against anyone who fails to comply with the subjective and variable requirements of gender pronouns. If this bill proceeds and clause 9(a) and (b) does not, the current protections already afforded people on the basis of gender identity will not be reduced. By reason of section 17 of the anti-discrimination act trans people already have the right to bring civil proceedings, if they are offended or humiliated, on the basis of gender identity. By section 19 of the anti-discrimination, trans people will have a course of action where there is inciting hatred towards serious contempt for a severe ridicule or on the basis of gender identity. Malicious workplace misgendering will be actioned as inciting hatred or workplace bullying. Involving the anti-discrimination tribunal in cases of mere offence by misgendering will reduce respect for trans people rather than increase it.

Nobody wants to see that. It goes on to say -

I trust this material is helpful and legislating to maintain harmony in Tasmania so again well intentioned.

We do not want to live in fear. In my second reading contribution yesterday, I read from an article in the paper, which said there is concern in the community that we will not be able to go a day without somebody being offended by something said. We do not want to get to that stage. Nobody wants to see that. Certainly not the people I represent. I was compelled to seek an amendment to the member's initial amendment in regard to this clause. This is a lighter approach, as I indicated from the information provided by Professor Sneddon. Current protections are already afforded to people on the basis of gender identity and they will not be reduced by supporting my

amendment. I seek the support of the Chamber and look forward to contributions on this proposed amendment.

**Mrs HISCUTT** - We support the removal of gender expression in clauses 9(a) and (b). This expression was not part of the Government's bill and while we do not support clause 9 in the current bill at all, an amendment removing the reference to gender expression would remove the unconsulted policy change contained in the bill.

**Mr ARMSTRONG** - I want some clarification about whether this will actually help fix a problem. In my local club on Friday night, an older gentleman gets up and says, 'Welcome ladies and gentlemen, I have some announcements to make'. I am told he could then be prosecuted under the Anti-Discrimination Act. Will this amendment help fix that situation? Can I have some clarification? Then I will make up my mind on whether to support the amendment or not. Thank you.

**Ms RATTRAY** - Your dear friend and gentleman certainly does not mean to offend at the club on Friday nights - but if the bill stays as it is, there is an opportunity for action to be taken. You might say that is not going to happen, but there are plenty of times it does. If you do not pull it back and set it where the community feels comfortable going out and doing what they have always done, with no malice or intention for that type of thing to happen, there is no risk the community will be penalised in any way. That is what I believe was the intention of asking for the amendment to be drawn. The member for Windermere had an approach, but I feel this is a lighter approach and may find favour here. I hope that answers your question. I will do my best to answer as many questions as I can.

**Ms LOVELL** - Adding to what the member for McIntyre said in response to the member for Huon's question and to explain why I am not comfortable supporting this amendment, the community can and should feel comfortable. This idea that transgender and gender-diverse people are sitting on the edge of their seat waiting for someone to use the wrong pronoun or the wrong term of something they are uncomfortable with so they can rush off to make a complaint is part of the reason there is so much confusion, fear and stigma around this bill and around gender-diverse people. Nobody is looking to make an unnecessary complaint. People are not seeking to bring that kind of complication into their own lives. Part of our role as politicians and decision-makers in this community is to assure people that is not what the majority of people in the community are seeking to do.

There is nothing to fear from adding these protections and terms to the Anti-Discrimination Act. If somebody wants to make some kind of vexatious complaint, the Anti-Discrimination Act provides the commissioner with the power to reject complaints. The first reasons given in section 64(1) of the Anti-Discrimination Act are -

The Commissioner may reject any complaint if -

- (a) in the opinion of the Commissioner, it is trivial, vexatious, misconceived or lacking in substance; or
- (b) the complaint does not relate to discrimination or prohibited conduct...

It goes on with a number of other reasons, but these two are the most relevant. A person in a club on a Friday night saying 'Ladies and gentleman' is not showing discrimination and prohibited

conduct. Should somebody feel they needed to make a complaint about that, I have no doubt the commissioner would reject that complaint under those two clauses. It is important we send the right message that people have nothing to fear. There is no reason for the community to fear they are going to be held to some new standard of holding transgender people at higher level of respect than they do any other member of the community. I will not support this amendment.

**Mr ARMSTRONG** - I understand what the member for Rumney is saying. However, if you have a 70- or 80-year-old, which is the age of many presidents and so on in these clubs, who comes up against an anti-discrimination complaint that could be dismissed later on, can you imagine the trauma that person would go through for the many months it would take for that case to be dismissed? Those organisations would have trouble finding anybody to put their hand up for office, for secretary, treasurer or president of a club. The trauma that person would go through would be horrendous. It needs to be nipped in the bud and this amendment will do that.

**Ms LOVELL** - To further reassure the member for Huon and other members, and I have received advice on this, it is highly unlikely it would ever reach the point of a complaint being considered and needing to be rejected. Under section 17 of the Anti-Discrimination Act, it simply would not fall under the definition of prohibited conduct -

#### Prohibition of certain conduct and sexual harassment

- (1) A person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute referred to in section 16(e) , (a), (b), (c), (d), (ea), (eb) and (k), (f) , (fa) , (g) , (h) , (i) or (j) in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

The example given by the member for Huon simply would not pass that reasonable person test.

**Mr ARMSTRONG** - I understand what the member for Rumney is saying, but it is still possible it could happen and is highly likely in some instances. The president, or whatever he may be, of an older club is still going to be traumatised because that person is saying they are going to do it. They only have to say they are going to do it and it is in the act. This amendment would clear that up. It is a good amendment and it will not change the intent of the bill in a lot of ways, but it will clarify this area so people in those clubs or whatever organisation - it might be the Country Women's Association - will have certainty that they will probably not be prosecuted. It will clear it up from the first instance. The amendment is good and I will support it.

**Ms RATTRAY** - It might be important to read the bill regarding 'gender expression' -

- (a) by inserting the following definition after the definition of *family responsibilities*:

***gender expression*** means any personal physical expression, appearance (whether by way of medical intervention or not), speech, mannerisms, behavioural patterns, names and personal references that manifest or express gender or gender identity;

That is a very broad scope. Perhaps the scenario the member for Huon used with his friend at the Cygnet club may not eventuate, but there is nothing to say it might not happen somewhere else. He is absolutely right. The thought of going through that process would cause anguish to many people, let alone going through the process. Whether the anti-discrimination commissioner of the day decided it was vexatious and did not have validity, you still have to go through the process. We do not need to do that. We do not need to put our community in that situation. It is a step too far, and why would we need to?

There are so many in our community, whether they are wrong or right, who do not want to be put in that position. People will always say the wrong thing. I have said the wrong thing and I bet everyone in this place has said the wrong thing to somebody at the wrong time. If you can put your hand up and say you never have, you must be the perfect person. There is no way -

**Mr Dean** - Two or three here could, I guess.

**Ms RATTRAY** - There is no way. To think it may come to that - that it may be brought before the Anti-Discrimination Commissioner under this act - I would not want my name to be part of that. I would not want to be responsible for part of that. We need to think long and hard about what we are doing here. We are representing the community - the whole community, not just a small portion of it. Let us look at it as a whole community and how they might accept something like that. I ask members to think about that. I believe this is a lighter touch approach. I am not saying we move all of that, but we want people to be comfortable when they go out and about in their community without having fear they may say or do the wrong thing and end up in a court or in a process that they would be entirely unfamiliar with. I seek members' consideration, very respectfully.

**Ms FORREST** - On the last point raised by the member for McIntyre, I draw her attention to the current definition of 'gender identity', which would remain in the bill even with this amendment. It means -

the gender-related identity, appearance or mannerisms rather than gender-related characteristics of an individual (whether by medical intervention or not), with or without regard to the individual's designated sex at birth, and includes transsexualism and transgenderism;

That will be changed to include being transsexual or transgender.

The change that gender expression brings when the member read it out was the addition of speech, mannerisms, behavioural patterns and names. This is the thing that the churches have raised the concerns about, saying 'Boys and girls', 'Ladies and gentlemen', or whatever. I have been misnamed. You may remember a time when the former member for Derwent, not the gentleman as we have in the room now in that position, used to constantly call me the wrong name. I asked him several times politely not to do so, but he continued to do so. Eventually, I called him out across the table in a briefing and he then realised I was quite serious and he ceased doing it. Would I have run to the Anti-Discrimination Commissioner? No, I might have taken him aside out the back and had a bit of a chat.

**Ms Rattray** - With all due respect, you are not a malicious person, are you? You would not do that, but somebody else might.

**Ms FORREST** - The point here is that there is a reasonable person test. I think if I had gone off to the Anti-Discrimination Commissioner, who probably was Robin Banks at the time, she would have said, 'Don't be so stupid, off you go'. The reasonable person would say, 'Just talk to the man', which I did, quietly in the corridor and things like that and then eventually I called him out in front of other people, which stopped him. In my view, his intent was to reflect on my marital status at the time.

These things happen in society in many settings. Someone getting up and saying, 'Ladies and gentlemen, boys and girls' - we are getting into another part of this bill, but the changing of the definition is what leads to it, obviously, so we are right to discuss it here, but those -

**Ms Rattray** - I am in the right place, am I not?

**Ms FORREST** - Yes, it leads into that. I am just saying it relates to another section of the Anti-Discrimination Act. If a young person or a person who is transgender points out to an 80-year-old man in that organisation, saying, 'I don't fit into the ladies and gentlemen category' or 'I don't identify with whatever you have been calling us and I ask you not to do that, but perhaps say "Good morning, everyone" or something inclusive', and then the person continued repeatedly to do it despite being asked not to, a reasonable person might think that is a bit out of line. But a one-off accidental misgendering - sometimes we see people in our communities who we are not sure whether they are male or female. It does not matter what they are.

I did it accidentally the other day in the street in Queenstown. I said, 'Hello ladies' to a group of people; there was a gentleman standing amongst them - he had long hair and I saw him from the back, and he turned around and I said, 'Oh sorry', and he did not make a fuss. It certainly was not deliberate so we can do those sorts of things. I imagine if he had run off to the Anti-Discrimination Commissioner, it would not have passed the test, as the member for Rumney alluded to.

I would just like to make a couple of comments in relation to this.

Since becoming law in 1999, the Anti-Discrimination Act 1998 of Tasmania has contained prohibition of discrimination because a person is transsexual, which was changed to 'gender identity' in 2014 and was the definition I read out. This includes a prohibition on any conduct that treats a person less favourably because their gender identity is different than other people. This always included conduct in the form of words as well as actions, so it is not anything different.

The clarified protection found in section 17(1), which we are alluding to, with using the incorrect pronouns or identifying names deals with conduct that offends, humiliates, intimidates, insults or ridicules a person, and was extended to include gender identity in 2014. It is already a protected attribute.

There is nothing in the current bill that changes that protection. Clause 9 seeks to ensure gender expression - the way in which we personally express our identity through our clothes, our physical appearance, the way we speak, our mannerisms and so on - is understood to be within the scope of protection in relation to our gender identity.

It is that now. That is the way it is now. In parts of Canada, discrimination law protections cover gender identity or expression. It is used there. In Australia, criminal protections in federal or in other states and territories include various definitions to include gender identity. This is not consistent across the country but this is the term used in relevant laws at the federal level and in

South Australia, ACT, Queensland and Victoria, with 'transgender' used in New South Wales, 'transsexuality' used in the Northern Territory and 'gender history' in Western Australia.

This is not earth-shatteringly changing a definition. There is not much difference in the definition of gender identity in the act; it is protected and will still have to go through the process that it was intended to humiliate, offend or insult, as a reasonable person would also accept before it even goes past first base. We are jumping at shadows and the fact one person might do it. If they do and make a claim and it is not kicked out at first base, it will go through the process. You will have to prove no other reasonable action had been taken to prevent it. I do not expect to be called up before the Anti-discrimination Commission by misgendering of a person in Queenstown.

**Ms LOVELL** - One further point to make in relation to the member for Huon's example. This example, while quite specific, covers a range of scenarios where people have expressed concern about unintentionally offending somebody.

At the point that section 17 of the act applies and the complaint is not taken any further in circumstances in which a reasonable person, having regard to all the circumstances, would not have anticipated the other person would be offended, humiliated, intimidated, insulted or ridiculed. At that point, the person against which the complaint is made is not made aware. If a complaint is made against a person, particularly if it was unintentional, it would be very traumatic and a horrible process to go through to think you had unintentionally caused harm to somebody. At that point the person would never be made aware that complaint had been made, so there is no trauma involved.

**Ms Rattray** - With all due respect, we live in Tasmania, honourable member. Everybody knows everything.

**Ms LOVELL** - With all due respect, that does not mean we should be legislating special circumstances because we live in a small town. This is about treating people with respect. This is about providing provisions and putting protections in place for our community to another group of people.

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

## QUESTIONS

### **Conveyance Allowance Air Travel - Students - Bass Strait Islands**

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

[2.32 p.m.]

With regard to the Conveyance Allowance Air Travel available to students living on a Bass Strait island and attending an educationally appropriate school on mainland Tasmania or Australia -

- (1) What is the current policy?
- (2) Has the policy changed in the last five years and, if so, what changes have been made?

- (3) Is this allowance currently only available to year 11 and 12 students?
- (4) Was the allowance previously available to year 10 students?
- (5) Can the allowance be accessed by students attending independent schools and, if so, what is required for the independent school to be recognised by the Department of Education?
- (6) What other considerations, such as availability of extended family support for Bass Strait island students who study at mainland Australian schools, are taken into account?

**ANSWER**

Mr President, I thank the member for Murchison for her question. The answers are -

- (1) Under the currently policy a student who lives on a Bass Strait island is eligible for conveyance allowance if -
  - (a) the student is enrolled in a school recognised by the Department of Education; and
  - (b) the student is -
    - (i) in grade 11 or 12; or
    - (ii) needs to attend an educationally appropriate school that is not available on the Bass Strait islands.
- (2) The current policy has not changed. However, the applicant for conveyance allowance is required to prove evidence (from third parties) that the student meets each eligibility criterion. This requirement was introduced in 2018. This evidence includes -
  - (a) to establish that the student is enrolled in a school recognised by the Department of Education, a letter from the school of enrolment confirming that the student (including date of birth and residential address) is enrolled;
  - (b) to establish -
    - (i) that the student is in grade 11 or 12, the above letter of enrolment confirms the student is enrolled in grade 11 or 12; or
    - (ii) that the student must attend an educationally appropriate school that is not available on the Bass Strait islands, then such evidence as -
      - written advice from the Department of Education that the available school on the island does not meet the student's educational needs and the school of enrolment is appropriate to the child's needs; and
      - a medical report from a medical specialist that the student has a disability which impacts on their educational needs; or

- where attendance is required at a school aligned with the religious or faith practice of the student's family, a letter from a church leader such as a parish priest confirming that the student is a member of the congregation together with a religious certificate, such as baptism or confirmation of the student, which reflects the same denomination as the school that the student is attending on mainland Tasmania.
- (3) The answer is no. Conveyance allowance is also available to a student living on a Bass Strait island who is able to demonstrate they must leave the island to attend an appropriate school to meet their educational needs and that need is not able to be met on the island.
  - (4) The conveyance allowance may have been paid to some grade 10 students in previous years. A grade 10 student may continue to be paid conveyance allowance in 2019 if they can demonstrate by providing evidence supported by third parties, such as the Department of Education, that the schools on King Island or Flinders Island do not meet their education needs.
  - (5) The conveyance allowance may be paid for a student to attend an independent school where the applicant provides sufficient evidence supported by third parties, as set out previously in (2)(b), to establish they meet the eligibility criteria to be paid the conveyance allowance.

For a grade 11 or 12 student, if they are required to leave a Bass Strait island to attend a college, the enrolment in the college is relevant, not whether it is a government or non-government school. A school is taken to be recognised if it is registered as a non-government school and provides the relevant grade of education for the student.

- (6) When the applicant is able to provide evidence that the student is required to leave a Bass Strait island because they are in grade 11 or 12 or to meet their specific educational needs, the conveyance allowance may be paid to attend a mainland Australian school.

For enrolment other than in grade 11 or 12, this would depend on the applicant being able to demonstrate the mainland Australian school is the most appropriate school.

### **kunanyi/Mount Wellington - Cable Car Project - Conflicts of Interest**

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

[2.36 p.m.]

In relation to the Government's management of any conflicts of interest associated with the present kunanyi/Mount Wellington cable car project and in the interests of transparency, are there any conflicts of interest that currently exist, or have existed, between any individual or corporate party to the development and their involvement on relevant government bodies and/or boards, either dealing or peripherally associated with the project, such as the Wellington Park Management Trust, Tourism Tasmania Board, Tasmanian Heritage Council, Tourism Tasmania, the Department of State Growth and so on?

If there are, or have been, such conflicts of interest, will the Government provide details of each event, together with the parties involved and the action taken to address each event?

## ANSWER

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

The management and disclosure of interests by State Service employees, statutory authorities and government boards and committees are guided by prescribed processes and, where appropriate, supporting policies.

With regard to the examples cited -

- The Wellington Park Management Trust - Schedule 3, section 4 of the Wellington Park Act 1993 provides a process to declare and manage those interests.
- The Tasmanian Development Board has a published conflict of interest policy that is informed by the requirements of section 42 of the Tasmanian Development Act 1983 and its supporting regulations.
- Section 6, Schedule 2 of the Historic Cultural Heritage Act 1995 provides guidance on the management and disclosure of interest with regard to the Tasmanian Heritage Council.
- Section 9 of the State Service Act 2000 prescribes the State Service Code of Conduct. It notes an employee must disclose and take reasonable steps to avoid any conflict of interest in connection with the employee's State Service employment.
- Section 7, Schedule 2 of the Tourism Tasmania Act 1996 clearly sets out the requirements with regard to the management and disclosure of interest.
- The obligation to declare and manage any conflicts of interest is on the individual and the management of any declarations of those are to be in accordance with the guiding legislation and policies.
- The minister is not aware of any instances where these requirements have not been met in relation to the Mount Wellington Cableway Company's proposal to develop a cable car in Wellington Park.

---

### Recognition of Visitors

**Mr PRESIDENT** - Honourable members, I welcome St Mary's College years 10 to 12 legal studies students to this Chamber and hope you enjoy it. If you look to the front, you will see the Deputy Clerk, Ms Vickers. She is an alma mater of St Mary's, as is the member for Rumney. You can see that girls from St Mary's often finish up in the Legislative Council. We wish you well and hopefully in years to come you will be sitting in these seats as opposed to at the back or at the side.

**Members** - Hear, hear.

**Mr Valentine** - So do old Clarence High boys, Mr President.

---

## **kunanyi/Mount Wellington - Cable Car Project - Conflicts of Interest**

### **Mr VALENTINE question to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Ms HISCUTT**

[2.40 p.m.]

I thank the Leader for the information provided, but it does not answer the question, with respect. The question was for the events to be outlined and to specifically state what has happened in each of the cases. The minister may well say he is not aware, but that is not information coming directly from each of those boards. I am not confining it to those. I would really like the Leader to have the question answered in full, if possible.

**Mrs Hiscutt** - Would the member mind being more specific in a particular case that we could address?

**Mr VALENTINE** - It is not a matter of a particular case; it is a matter of whether it has ever occurred, what the nature of it was and what happened as a result. It might be that a conflict of interest has been declared.

**Mrs Hiscutt** - The minister has said he is not aware of any instances where these requirements have not been met.

**Mr VALENTINE** - The minister may not be aware, but they may have occurred. I would really appreciate some investigation with each of those bodies, plus others if they have a peripheral interest, and being told that an investigation has occurred and that, 'No, there have not been' - that is what I would appreciate.

**Mrs Hiscutt** - I will follow that up with the member afterwards for clarification.

## **Sorell High School Suspensions**

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

[2.42 p.m.]

On 14 March, the *Mercury* revealed that Sorell High School had enforced a behaviour management policy that resulted in students more than five minutes late to class being suspended for the day.

Students also faced suspensions for leaving class without a pass and failing to follow a reasonable request or instruction after one reminder. In the face of public backlash, the Department of Education said the school had been supported to review the suspensions to ensure its behaviour management policy approach aligns with broader department policies.

- (1) What specific supports are being provided to the school to realign its behaviour management policy?

- (2) Have any new measures been adopted by the school in its behaviour management policy to address the challenges outlined above?
- (3) Have any new changes to the school behaviour management policy been consulted with the School Association and/or the Student Representative Council?
- (4) What specific supports have been provided to the school principal?
- (5) What specific supports have been provided to the teaching staff?

**ANSWER**

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

- (1) Learning Services Southern Region - LSSR - and the school are working together to update Sorell School's respectful student behaviour policy in alignment with the Department of Education's expectations.

Staff from LSSR and a school improvement leader is currently providing intensive support to Sorell School. This includes providing support to the principal, the school leadership team and staff.

- (2) The Department of Education's respectful student behaviour policy does not support the sanctions of suspensions for late arrivals or early departures.

Students at Sorell School will not be externally suspended for late arrival at or early departure from class.

- (3) Student Representative Council will be consulted on the draft policy and the School Association will be actively involved in this work.

The principal is also working closely with the chair of the School Association to look at ways to strengthen relationships with the broader school community.

- (4) The school improvement leader and the principal are working closely to review school governance structures, systems and processes, and policies and procedures.

- (5) The school improvement leader and principal are also meeting with staff to identify any individual supports that are required.

**Honourable Vanessa Goodwin - Comments by Member for Murchison**

[2.45 p.m.]

**Mr DEAN question to MEMBER for MURCHISON, Ms FORREST**

- (1) You made a statement during your second reading contribution in relation to the gender matter we are dealing with. You said -

The honourable Vanessa Goodwin was in support of a number of these changes. Unfortunately, she was unable to proceed with them. Let us show her some respect.

- (i) What changes were being supported by the late honourable Vanessa Goodwin, as you know?
  - (ii) Were any of those changes supported by her coming from the amendments put forward by the Labor Party and the Greens in the House of Assembly?
  - (iii) If so, what were they?
- (2) The member also spoke of being verballed during contributions. Could the member reveal who verballed whom?

**Mr PRESIDENT** - Honourable members, I notice a couple of puzzled faces. There are no problems as far as asking questions to other members. It happened to me a number of occasions years ago, but it has to be within the knowledge of the person answering those questions. There is nothing unusual in what has occurred. It depends upon whether it is within the knowledge of the person to answer the question.

#### **ANSWER**

Mr President, I thank the member for Windermere for his question. Had I been given time to be informed of this question, as we give the government of the day the opportunity of a little notice, I would have the papers in front of me now. I have the papers here somewhere, so the member will have to bear with me.

**Mr PRESIDENT** - You can ask that the question be put on notice if you need time to look for that information.

**Ms FORREST** - Mr President, maybe that would be a better idea. I am happy to answer the question but it is hard to find the paperwork among all of my notes and provide the information that clearly shows it.

In a broad response, when the honourable Vanessa Goodwin was attorney-general and a member of this Chamber, she sought advice from the former anti-discrimination commissioner in looking at amendments to give effect to some of this. I do not have the wording here so I do not want to take it out of context, which my comment in that speech may have been. The late member asked for guidance on how to achieve some of the reforms we see here today. I do not suggest she would have supported the bill before us because she was never able to see it or any part of this legislation. I understand from the request made to the anti-discrimination commissioner that she indicated she wanted work done to achieve an outcome with regard to removing the requirement for sexual reassignment surgery to change a gender. That is what I was referring to.

It is unfortunate the member for Windermere would use this process to suggest I said anything but that. Unfortunately, no legislation was drafted because Vanessa became sick and died very prematurely, and what a great loss to this state that was. She was never able to proceed with recommending any legislative change, but she asked for some advice and support to give effect to

that change. There was another point, but I would have to check somewhere in my notes. If the member wants to, he may put the question on notice.

**Mr DEAN** - Mr President, I have no issues with the member taking my question on notice because it is an important matter. No answers were given on this issue at the end of the second reading debate yesterday. This is the only opportunity I have to raise some of these issues. The Leader normally answers our questions, but that was not the case.

**Mr PRESIDENT** - That is as a point of explanation.

**Mr DEAN** - That is a point of explanation, Mr President, and it hinges on the words, 'Let us show her some respect'. That is the reason I asked this question.

### **Mr Rodney Croome - Comments on Statewide**

[2.50 p.m.]

**Mr DEAN question to MEMBER for RUMNEY, Ms LOVELL**

On the ABC morning program *Statewide* on 30 November 2018 - and I referred to this yesterday - Mr Croome made a statement which I referred to yesterday -

The government arranged for a three-hour session between the Legislative Councillors and the parliamentary drafters who usually work on legislation. That session was in camera, no-one else was allowed to be there, and Legislative Councillors were not allowed to take notes for some bizarre reason. I have never known that to happen before. But some Legislative Councillors did. They bucked what they were told and they took notes, and we saw those notes.

As it currently stands, it could be seen Mr Croome has made this up. I do not want that to be the case. My questions for the member for Rumney are -

- (1) Did you, or anybody you are aware of, make a statement to Mr Croome that we were told we could not take notes in the session we had with the Solicitor-General, the Chief Parliamentary Counsel - OPC - and the Registrar of Births, Deaths and Marriages?
- (2) Did you, or anybody in your hearing, make that statement to Mr Croome? If it was not you, I need to go to other members. I need to find this out for the benefit of Mr Croome.

### **ANSWER**

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

I did not, nor did anyone within my hearing, tell Mr Croome that members were not allowed to make notes. I recall a discussion members had in the briefing room after that closed briefing. I was quite open - as were other members, I will add - about the fact a number of us sought advice from people we had been consulting with on the advice we were given in that briefing. There was a general agreement at the time that members were quite comfortable with that in order to progress the bill.

I make the point I do not understand what the member is getting at. I do not understand how this is in the interests of Mr Croome. The member should be careful about what he says about members of the public who have made statements to the media, and who are not here and are unable to respond to these questions in the Chamber in the way we are able to - and in the way you are able to ask us.

**Mr DEAN** - Mr President, on a point of order. I need an explanation on this point. For goodness sake, Mr Croome has made a very clear statement that Legislative Councillors were not allowed to take notes for 'some bizarre reason'. He has made that public statement on an ABC morning program. Has Mr Croome simply made this up, for whatever reason, or was he given that information? It is very clearly for the protection of Mr Croome.

**Mr PRESIDENT** - That is the point of explanation.

**Mr DEAN** - If the member for Rumney did not, perhaps I could ask the member for Murchison whether she is aware of any similar statement being made to Mr Croome in relation to it?

**Ms Forrest** - Why would I know?

**Mr DEAN** - Did you speak to Mr Croome? I do not know.

**Ms Lovell** - Perhaps you should ask Mr Croome.

**Mr PRESIDENT** - My advice is this is going beyond the business of Council, so I will not allow the question.

**Mr DEAN** - Thank you, Mr President.

## **JUSTICE AND RELATED LEGISLATION (MARRIAGE AMENDMENTS) BILL 2018 (No. 47)**

### **In Committee**

**Resumed from above.**

**Clause 9 -**  
Section 3 amended (Interpretation)

**Ms LOVELL** - I will summarise a couple of points. I understand the concerns raised by the members for McIntyre and Huon and other members of the community. While I understand it would be very traumatic for somebody to go through the process of defending themselves against a complaint under the Anti-Discrimination Act when that complaint was made about something unintentional, there are strong protections in the act to protect against that happening. The person against whom the complaint was made would not be made aware. I appreciate what the member for McIntyre is trying to achieve with these amendments, but it is more important for us as leaders in our community and as decision-makers in this place to assure members of the community concerned about these provisions that the people covered by these terms will be no more likely to make vexatious complaints than any other person in the community. If people concerned about this

go about their life without attempting to knowingly discriminate against others or incite hatred, knowingly offend, humiliate, intimidate, insult or ridicule another person, they have nothing to fear.

**Ms RATTRAY** - I appreciate every contribution made toward the debate. I have been listening to responses from the members for Rumney and Murchison. The member for Murchison said these things are already covered. If they are already covered -

**Ms Forrest** - Not all of them. I said -

**Ms RATTRAY** - Why do we need this clause in regard to gender expression if it is already covered? That is what I am grappling with. Why do we need it at all? Can someone clarify the difference, perhaps the member for Murchison? I appreciate what has been presented in the opposing argument. I am able to speak again today because we supported the suspension of standing order 155 this morning.

**Mr VALENTINE** - This is a definition and we have to understand what the definition is about. Gender expression, as it says, means -

any personal physical expression, appearance (whether by way of medical intervention or not), speech mannerisms, behavioural patterns, names and personal references that manifest or express gender or gender identity;

It is about them. It is not about what other people call them. It is about how they express themselves. Where gender expression is used in the bill might be the area that needs more critical analysis or comment from this Chamber. Gender expression is not about what you call someone, it is about how they see themselves and how they manifest or express their gender or gender identity.

**Ms RATTRAY** - In regard to assessing a complaint, my understanding is the Anti-Discrimination Commissioner has a very low bar. This will be used to decide whether any of these attributes have been misused. That is my understanding from information I have received and what we heard in the briefing process. That is why the amendment was suggested here and not elsewhere in the bill. We sent our suggested amendments to OPC, which I thank the Leader for facilitating. Mine came back as an amendment to clause 9 (a) and (b).

If I have it in the wrong place, perhaps I have been misled. My understanding is that if the Anti-Discrimination Commissioner receives a complaint, this is where it will be assessed and on that very low bar, under which anyone can put their complaint. I am looking to protect all the community. Somebody might like to let me know whether they believe the same low bar used previously will be used again if this legislation passes this place. We need clarification. I am not sure who we would ask these days. In recent times, we asked the Leader. Perhaps someone will offer an answer.

**Mrs HISCUTT** - This clause was put in the other place as part of a Labor-Greens amendment. I do not know whether any of the Labor members here might be able to answer your question. I will seek some information on what we were talking about earlier.

Gender expression would be included under sections 17 and 19 of the Anti-Discrimination Act, under the sections of prohibition of conduct and inciting hatred.

**Ms FORREST** - I will answer the question the member for McIntyre asked a moment ago. I was talking about your indication of concern about terms such as personal physical expression, appearance, mannerisms and so on, which is already in aspects of gender identity. That is not a new approach to gender identity. What gender expression is about, as the member for Hobart was referring to, alludes to how you express yourself. We all express ourselves differently. There are some stereotypical expressions of gender, if you like, but some women never wear a skirt. Wearing a skirt is seen more as an expression of female gender, unless you are Scottish.

That is what we are talking about and the point I was making. When you go to the current Anti-Discrimination Act, which the bill before us is amending, it is inserting a new definition of gender expression and then inserting in the definition of gender identity reference to gender expression.

It does broaden it out. There is not a lot new in that. There are behavioural patterns, names and personal references, but that is how the person expresses themselves, as opposed to how the world sees them.

On the other comment the member for McIntyre made with regard to the Anti-Discrimination Commission having a very low bar, I am not sure how you assess where the bar is, but the current Anti-Discrimination Commissioner has always had the power to reject what seemed to be frivolous or claims of no substance and that sort of thing. It is also a higher bar than taking civil action, where you can go straight off to court and drag someone through the court.

It depends on what sort of bar you are talking about. You do not have to have any test met to trot off to court and that can be quite expensive and harrowing for people. At least the Anti-Discrimination Commissioner can say 'No, sorry' or 'Why don't you go back and have a talk to that person first', as I did with the former member for Derwent. I did not go to the Anti-Discrimination Commissioner, but I talked to him and said, 'I have had enough of this. You are behaving badly and inappropriately, so stop it'. He did eventually.

**Ms Rattray** - My understanding is the bar is quite low and that is why the Anti-Discrimination Commission has so many issues in its inbox. Do you expect the same low bar will be used?

**Ms FORREST** - I expect the same measure will be used. The reasonable person test we have gone through in previous contributions. It is not an action done accidentally - it is conduct that offends, humiliates, intimidates, insults or ridicules. This is not inciting hatred of another person on the basis of that attribute. It has to be directly related to the attribute. It has to be done in a way a reasonable person would know, or would expect, would offend, humiliate, insult them. It is not a ridiculously low bar, particularly, when the commissioner can say 'No, you should go and talk to this person'. The bar is adequate, because it is a much lower bar to go to court.

**Ms RATTRAY** - I am pursuing this is because it is important for the broader community to be taken along on this journey and so far they have not. This may be one way of helping the journey process.

Everyone has more things to do, but it is an important part of what we are changing here. If it is already covered, why do we need it? Why do we still need this? I still do not understand why we need to have more of these opportunities where people, not by intention, may cause harm to somebody, such as verbal harm, and here we are allowing another opportunity for this. If it is

already in the Anti-Discrimination Act, I do not see why we need another level of it when there are people in the community who feel it is going to disadvantage the community more broadly.

I am asking people to consider: Is this really, in their view, a die-in-the-ditch matter for them? Could they not give a little bit of ground for the broader community? Would that be too much to ask through this debate? The member for Rumney says it is; I say it is not. What about some other members? I can see the member for Hobart waiting to spring to his feet and make another contribution. I am interested in what some members who have not said much throughout this debate might have because they all represent their communities as well. For some reason or other I feel that I am holding the flag for the rest of the community. I would be interested in how they see the community accepting this broader approach.

**Mr VALENTINE** - I suppose the point is that even if it covers what is already there, it will not mean it will be easier to commit that offence and therefore be taken to the Anti-Discrimination Commission.

I am led to believe that the purpose of the amendments in 9(a) and (b) is to ensure the current meaning of 'gender identity' is clear on the face of the act, rather than having the legal knowledge to find existing interpretations. It clarifies that rather than having to search through.

**Ms Rattray** - Can I clarify this with the member? You said that this is more about what people express about themselves. That is not the way it is being read. It is more about what people - the other way around.

**Mr VALENTINE** - I do not think that is true. I think it is talking about people themselves and how they express themselves. It is not about what others necessarily say about them. That is where I think this is all coming unstuck a bit. At the moment, if you deliberately go out of your way to offend me and you do it time and time again, I could take that to the Anti-Discrimination Commissioner. The reasonable person test would say you are doing the wrong thing - you know that they disapprove of it, they have told you, and you need to stop that. We are looking at this in a slightly different way. It is a clarification about the gender expressions. It is about making sure gender identity is clear, so that you do not have to go to various parts of the act to find that definition.

**Ms RATTRAY** - Again, that brings me back to the fact that I cannot ask the person who is responsible for this amendment. That person is not here, unless the member for Rumney is that person.

**Mrs Hiscutt** - There are four Labor members here.

**Ms RATTRAY** - Well, whoever is doing the Labor-Greens part of this bill - that is all.

**Mr FARRELL** - Mr Deputy Chair, a point of order. This 'Labor-Greens part of the bill' is a misnomer. It is not a Labor-Greens thing. There are amendments moved by the Labor Party.

**Mr DEPUTY CHAIR** - A point of order?

**Mr FARRELL** - Yes, a point of order, to correct the member's term 'Labor-Greens'. The amendments were not Labor-Greens amendments. In the lower Chamber some amendments were made by the Labor Party and some were made by the Greens. Those amendments were made in that Chamber. The amendments came up like any other bill that members can research. We have

been very deliberate here not to politicise the whole debate by having one speaker, but if we need to explain on points of order like this, we are more than happy to.

**Mr DEPUTY CHAIR** - There is no point of order. We will take it as a personal explanation, thank you.

**Ms RATTRAY** - Thank you, Mr Deputy Chair. I am happy to withdraw that particular comment in regard to the Labor-Greens amendment because I do not know whose amendment it was. My apologies for not checking the *Hansard* to see whose actual amendment it is. My understanding was it came from the other place and was not a government amendment. Am I correct?

**Ms Forrest** - There are other amendments put in by the Opposition downstairs supported by the Government that are still commissioned amendments.

**Ms RATTRAY** - Can I get some clarification, Mr Deputy Chair, on whose amendment this belongs to?

**Mr DEPUTY CHAIR** - Do you want it from me?

**Ms RATTRAY** - I do not mind who gives it to me.

**Mr DEPUTY CHAIR** - You need to go through the *Hansard* and look at the research. It has been there for a long time. With all due respect, you are asking a question you could find out using your own resources during this debate.

**Ms RATTRAY** - It has been suggested, Mr Deputy Chair, that I and the people who made presentations to me have it wrong. I have the wrong concept and need some clarification because I do not know. I cannot ask anybody because I do not know who to ask. This is foreign to me in this place.

I usually ask the Leader of the Government so, in light of that, I will move the debate stand adjourned, so I can seek the information I need.

**Ms Forrest** - You will have to withdraw your amendment to do that.

**Mr DEPUTY CHAIR** - You will need to withdraw the amendment because we have a question at the moment. Is that what you would like to do?

You need to seek leave to be able to do that, if that is the path you want to go down.

**Ms RATTRAY** - We cannot report progress without withdrawing the amendment.

**Mr DEPUTY CHAIR** - That is correct.

**Ms RATTRAY** - I know the member for Windermere is looking to contribute. I do not want to go back right to the start again.

**Mr DEPUTY CHAIR** - Even if you withdraw this, who are you going to get your information from anyway because the lower House is not sitting?

**Ms RATTRAY** - You told me to go and read the *Hansard*, Mr Deputy Chair.

**Mr DEPUTY CHAIR** - You can check the *Hansard* if that is what you mean.

**Ms RATTRAY** - I will read the *Hansard* while I give opportunity to someone else. Thank you for the advice.

**Mr DEAN** - The statement made by the member for Hobart is the very reason we have been saying this matter should have gone out for proper consultation so people could understand exactly what all these amendments are about. That has been a clear failing of this whole thing. Things would have been adequately explained through the process as to what this means, what it is all about and where it fits in and why.

That was a strong argument in the debate we put forward that should have occurred. The public do not know. Concerned people raised a number of questions to me on this area and that is the reason I put up my previous amendments.

Talk about frivolous, vexatious matters, complaints being made and those matters not being proceeded with, but those decisions are for the Anti-Discrimination Commissioner.

A position was brought to my attention of a private school in Hobart, where the teacher said, 'Boys over here, girls over here', Discussion suggested you can no longer really make that sort of statement, particularly in a training environment and school environment. It was even suggested she would need to go through 'Bill, Bob, Jack, Harry, Tom, Henry, all over here', and 'Myrtle, Wilma, Tania and everybody else', the girls on that side, identifying them by name. She was correct, and I believe it was a female teacher, but they are the sort of things that are currently happening.

The member for McIntyre has put forward a very strong argument. She has put forward a very good position as to why these sections or parts ought to be deleted from the bill. We hear comments made that this will not happen and that type of complaint will not be made. Let me be real with you people. It does happen. With my previous background I know of many examples of complaints made of a vexatious or frivolous nature and it takes time to investigate them. In the meantime, as the member for McIntyre rightly said, the person against whom the complaint is made is on the hook and is left in a difficult position. It frightens them - they are often older people. We have people being put to a lot of expense whilst these matters are being determined. We had the previous religious matter, with the expense the archbishop was put to in defending a matter that was satisfied and did not proceed to -

**Mr Valentine** - It was pulled.

**Mr DEAN** - That is right, but in the meantime we were told there was quite a huge expense on the part of the alleged offender in that instance. We need to be fair.

There was a report in the press some time ago. A number of people were concerned with what is in the Anti-Discrimination Act and sections like this. Australians have that larrikinism about them - 'ockers', as some are known. Many Australians call a spade a spade and that is how they have lived and will continue to. They make statements they do not mean offence by but they really are offensive and that could be because of our nature, our attitude, our backgrounds and so on. It may have been in the *Examiner* and I suspect in others as well.

I feel concerned when people say it cannot happen. I will support the amendment as put forward. I urge other members to consider it. If it is already covered, what do you need it for? Is that a fact? Let us be realistic and reasonable. People want to know what is going on in this area because they are the people who may be subject to these complaints.

**Ms RATTRAY** - I am not a speed-reader, but I have done my best. The member from the other place who moved the amendment was Ms Haddad,. I am not able to ask Ms Haddad what is behind it. While I was reflecting on what has been presented, I wondered how you can be offended if it is talking about yourself? How does it relate to this? I do not know. It has become very confusing. If it does not relate to how another person sees somebody, how can they be offended? If it is how they feel about themselves, how can they be offended about how they feel about themselves? I do not think we need it. If it is covered in another section and it is a step too far - and it is not about how people see themselves, according to how I read it; it is about how other people see them - they could not be possibly be offended by themselves. Does that make sense to anyone else but me?

**Mr Valentine** - It was clarification.

**Ms RATTRAY** - We agreed to a standing order this morning, with all due respect.

**Mr DEPUTY CHAIR** - We did, as long as we stick to what is in there.

**Ms RATTRAY** - What is the time frame? There is not any here.

**Mr DEPUTY CHAIR** - I did not say a time frame. I said as long as you stick to the point and do not keep bringing up new points about it.

**Ms RATTRAY** - I am sticking to the point. I am asking a question, but there is nobody to answer me.

**Mr DEPUTY CHAIR** - That is fine, but the answer to your question will be in the *Hansard* when it was introduced in the other place, where you should have read it.

**Ms RATTRAY** - It is not actually in the *Hansard* as such. How does this relate to how a person feels about themselves? Or is it how somebody else feels about that person and reflects that? That is what has been suggested: that I have got it wrong, that it is not about how somebody else sees a person but how they see themselves - gender expression.

**Mr DEPUTY CHAIR** - Yes, it is how they express themselves, that is correct.

**Ms RATTRAY** - I hark back to the same point. I cannot ask anyone for clarification because the person who put forward the amendment is not here.

**Ms Lovell** - This amendment has been in the bill for four-and-a-half months. There has been plenty of opportunity to ask questions.

**Ms RATTRAY** - I put forward this amendment about two weeks ago. We had additional briefings when we came back after the break. I felt there was compelling argument at that time, and I looked carefully at the member for Windermere's amendments and felt that they went too far. With all due respect to the member, I did not think they would see any favour in this place. I

proceeded to ask for amendments to be drawn because I thought reasonable arguments had been put forward in regard to that. To say that I have had four-and-a-half months, yes, it has been in the bill that we had before us, but we did not have those briefings until a couple of weeks ago when more evidence was brought forward to the members of this place and I felt the arguments were compelling.

**Mr Dean** - We will have the same argument in 28D.

**Ms RATTRAY** - That is why we are exploring this through this Committee process, which is what the parliament agreed to; the other committee process was voted down. I am doing what I would do through a Committee process. We would ask these questions, we would receive information that would be fed into that Committee process, which we have all agreed has been very good for this House and very valuable. Here we are, a full Committee of the Legislative Council, doing exactly what we would do through a Committee process. If it takes three days or four days, I do not care now because we need to get this right, or as right as we possibly can.

I come back to the same point: how do we get the answers to our questions, if there is nobody here to answer them? I find I cannot do my job properly.

**Mr DEPUTY CHAIR** - The answer in this place is you have proposed amendments and the Committee process is you need to convince people in the Chamber about your amendments.

**Ms RATTRAY** - How am I going?

**Mr DEPUTY CHAIR** - You need to test it. Unless you have some more information you want to add, I suggest we test the question, or the amendments, on the Floor. That is how the process works.

**Ms RATTRAY** - I will test the will of the Chamber in regard to this because it is such an important part of this bill. As with all parts of the bill, it is important we get it right. I need some clarification. I feel sure other members do, because we see things quite differently. The member for Hobart and I see it quite differently. I will test the will of the Chamber and seek leave to withdraw the amendment at this time. I can bring the amendment back. It is not lost. It will possibly allow some time for some clarification. The member for the other place who proposed the amendment may be available to provide some explanation. I thank the members. I put the question.

**Mr DEPUTY CHAIR** - Is leave granted? The member for Murchison.

**Ms FORREST** - Regarding whether leave is granted, the *Hansard* has been available since last year and with all due respect this section has not changed - except in more recent times when the member for Windermere brought forward some proposed amendments, which have been defeated at the moment, and then we have an amendment from the member for McIntyre. Has she actually consulted with the Anti-Discrimination Commissioner about her amendments? Because this is amending the Anti-Discrimination Act. There has been ample time to talk to the member who moved the motion amendment downstairs.

If it was a Labor member, the member for Rumney has spoken on, and explained this, two or three times already. I do not know how else you can receive anymore. There has been opportunity in this lead-up to talk to the person. I am disinclined to do it. We need to go to a vote on this

because we have heard pretty much all we need to hear on the debate. It has been around for some time now.

**Mr FARRELL** - This is an interesting discussion. I have been thinking of other bills. Some members have said this is a very different bill, but I remember back to a previous government where a lot of legislation from a minority government came from the lower Chamber, and this place amended considerable legislation and sent it back to the other place. When it goes back, the other place does not have the opportunity to question the people in this Chamber who made amendments. They do not say, 'Can the member please come down and explain why we are making this amendment, because it is carried by the Government?'

Even though the Government has said it does not like this amended bill, it has brought it to this Chamber for members to have their say, propose amendments, as we have done with several other bills, and then send it back to the lower Chamber. We should remember we are dealing with issues created in the lower Chamber and probably not handled well by the Government. It has been sent to the Legislative Council for us to try to sort out.

I remember quite clearly that the Tasmanian Forests Agreement Bill was quite a different bill to what the government had sent up. It then became the government's responsibility to look at those amendments, advise members of the amendments' strengths or weaknesses so they could make their decisions based on those amendments.

That is the way the parliament operates. We do not get to quiz people. I am sure briefings can be arranged privately, and that is something that could have taken place since last year when amendments were made. That is how we handle every bill that comes to this place. We look at it. The only difference is that this bill has come from more of an Opposition position than the Government, but the people are the same; it is only that the process has changed slightly.

I suggest we need to work through this the way we have worked through other bills: put things to the vote - what gets up gets up, and what does not get up does not get up.

**Mrs HISCUTT** - It is a reasonable question. There are four Labor members in this room and people very capable of answering those questions. It would be good to see a Labor member stand up and answer.

**Mr DEAN** - We had briefings on Thursday a week ago when, despite what the member for Murchison said, a lot of new information came forward. As a result of that new information coming forward, the member saw fit to look at an amendment to this area, as the member for Murchison did to another area.

I am still struggling to get the information on the 28D amendments. I am still doing work on that and I am not sure where I will be when that comes up.

It is all very well to say there has been plenty of time to do this. It is only through those briefings the week before last that much of this stuff has come back up. For goodness sake, things have been changing here left, right and centre ever since we adjourned this matter in November last year. It has not stopped.

My other point here is: the member has put forward a good and strong reason as to why she wants this matter deferred. It is not a delaying tactic or filibustering, as some might say and as I have been accused of by a number of people. It is not that at all. It is about getting this right. It is

about satisfying people who have raised these issues and who have a real concern with them. If we cannot do that, we are not doing our job.

It is not an unreasonable request. How is this going to unduly delay the debate on this bill? We have many matters to work through now. The member is not asking that the rest of this bill be delayed or deferred while she does that. It is only this clause that will be deferred.

How many times have we done this previously in this place, where a member, for good and legitimate reasons, has asked for a matter to be stood aside whilst they got the further information they required and talked to people they had wanted to talk to? I cannot see this as a delaying tactic at all. A very proper position has been put forward by the member in this instance.

I appeal to all members for some fairness in this instance. It is not going to unduly delay debate. If that were the case, I might have some other thoughts about it, but it cannot do that.

I will support the motion before the Chair and urge other members to put aside the many other issues you are considering. I ask you to forget the position I hold here and support the motion before the Table.

**Leave granted.**

**Amendment withdrawn.**

**Progress reported; Committee to sit again.**

#### **SUSPENSION OF SITTING**

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

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

It will probably be about 10 or 15 minutes.

**Motion agreed to.**

**Sitting suspended from 3.44 p.m. to 4.02 p.m.**

#### **JUSTICE AND RELATED LEGISLATION (MARRIAGE AMENDMENTS) BILL 2018 (No. 47)**

##### **In Committee**

**Resumed from above.**

**Clause 9 -**

Section 3 amended (Interpretation)

**Ms RATTRAY** - Mr Deputy Chair, I move -

That clause 9(a) and (b) be amended -

*Leave out* the paragraphs.

First, I thank members for the opportunity to speak to Ms Haddad. I am grateful for that opportunity. I also apologise for raising my voice earlier, but I was frustrated with the process. I am pleased we were able to find a way to work through it.

We have said a great deal about this. I have had the conversation, and I was right to suggest that it is about how people feel about themselves. It is physical expression only. That has been clarified. It is physical expression. It is how other people see the person. Does everyone understand that? It is how other people see them.

The member for Hobart said it was how they see themselves, but it is how people see them. It is the physical expression we see when we look at somebody. That is clear. I did get a clarification on whether it limits the expression or behaviour of the general community. At first, we thought it was not the case, but I have been informed it does limit the expression or behaviour of the general community.

There were a few conversations going on after the one outside the other Chamber, but I am not convinced we need it. A section in the Anti-Discrimination Act covers these things. I am not going to procrastinate any more. We have had enough discussion. That is my decision, nobody else's.

I will not be bullied or pushed into going on with something I am not happy with. If members think long and hard, they will know we have to look after the entire community. I mentioned earlier that we need to take the community with us, when we make changes in this place. This might be one small concession members might agree will help the community with this. I encourage members to support the amendment. If for some reason we need to come back to this place and make an amendment, we can. That has been mentioned a number of times.

In this case, please support my amendment. The community will be very appreciative of the fact they have been listened to through this debate.

**Ms LOVELL** - I have a question for the member for McIntyre: from whom, rather than where, did you get the advice that this clause as it stands would limit the behaviour of the general community?

**Ms Rattray** - There was conversation as we came through the door for some clarification by the member who was offering some clarification. They said, 'Yes, it will limit people's opportunity because you will have to look at someone's physical attributes. You cannot say anything about them that would make them feel intimidated or any of those things listed under the Anti-Discrimination Act.'

**Ms LOVELL** - Are you saying that advice came from the member for Clark, Ms Haddad?

**Ms Rattray** - It was from somebody sitting behind the member.

**Ms LOVELL** - I will not support the amendment for all of the reasons I articulated earlier. The best way to bring the entire community along with us and protect the best interests of the entire community is to assure the community there is nothing to fear from this bill. Provided they are not going about their life knowingly and intentionally attempting to offend, insult or intimidate somebody based on any attribute, any of those already covered by the Anti-Discrimination Act and any of these as proposed in the bill, the community has nothing to fear.

**Ms RATTRAY** - I may not have explained myself very well. I believe I was clear about there being no limit to the expression or behaviour of the general community with this amendment. There was a conversation at the back, which I was partly listening to while reading a message as well. I asked if there will be a limit to the expression or behaviour of the general community and there was a nod. Whether I misunderstood that, that in itself again shows it is not entirely clear how this will affect the general community. Let us not do this if we are not entirely sure of how it is going to affect the community. I ask members to support the amendment so the community can be assured that, if they unintentionally say or do something that is going to offend somebody, this will not end up in the Anti-Discrimination Commissioner's arena.

**Mr VALENTINE** - I will have to agree to disagree. I still firmly believe that what I said still applies in it being about the person as opposed to how someone refers to them. I also believe this will not make any difference to what is achievable under the current Anti-Discrimination Act, according to the information I have received. We are all entitled to our opinion, we are not lawyers, but I have this on good authority from the previous anti-discrimination commissioner. That should have been a pretty good indication.

**Ms Rattray** - I wrote down on top of my notes that this is not about how you feel about yourself.

**Mr VALENTINE** - We are going to have to agree to disagree on that.

**The Committee divided -**

AYES 6

Ms Armitage  
Mr Armstrong  
Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)  
Ms Rattray

NOES 8

Mr Farrell  
Mr Finch  
Ms Forrest  
Mr Gaffney  
Ms Lovell  
Ms Siejka  
Mr Valentine (Teller)  
Mr Willie

**Amendment negatived.**

**Clause 9 agreed to.**

**Clause 10 -**

Section 16 amended (Discrimination on ground of attribute)

**Mr DEAN** - Mr Deputy Chair, I move an amendment to clause 10 -

Invite defeat.

Section 16 of the principal act amended discrimination on the ground of attribute. This amendment seeks to change section 16(eb) of the principal act from '(eb) intersex' to '(eb) intersex variations of sex characteristics'. The change is quite pointless, in my opinion.

First, the amendments as passed in the lower Chamber removed the definition of 'intersex' from section 3 of the principal act. Now the term is used to describe variations of sex characteristics.

Second, 'sex characteristics' is defined in the amendments but not 'variations of sex characteristics'. I hope members are following my comments.

Why not retain the definition of 'intersex' rather than confusing the concept in this way? 'Intersex' is well defined in the act and its ordinary meaning is readily understood. As I understand it, 'intersex' will remain in the Anti-Discrimination Act, under clause 16 of the bill, as an attribute. I am not sure why we are going down this path with this amendment.

**Mr DEPUTY CHAIR** - The question is that the clause as read stand part of the bill.

**The Committee divided -**

AYES 7

Mr Farrell  
Mr Finch  
Ms Forrest (Teller)  
Ms Lovell  
Ms Siejka  
Mr Valentine  
Mr Willie

NOES 6

Ms Armitage  
Mr Armstrong  
Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)  
Ms Rattray

**Resolved in the affirmative.**

**Clause 10 agreed to.**

**Clause 11 -**

Section 19 amended (Inciting hatred)

**Mr DEAN** - Mr Deputy Chair, I move -

**First amendment -**

That clause 11(b) be amended by -

*Leave out* 'following paragraph'.

*Insert instead* 'following paragraphs'.

**Second amendment -**

That clause 11(b) be amended by -

Leave out proposed new paragraph (e).

Insert instead the following proposed new paragraphs:

- (e) the biological sex of the person or any member of the group; or
- (ea) the social identity of the person or member of the group; or
- (eb) any intersex characteristics of the person or member of the group;  
or

The last amendment has made it perfectly plain to me that it does not matter how good my amendments are, none will be supported. The previous was a straightforward amendment, no issues with it, and it made common sense. I had another part in this amendment. The reason I withdrew the other part of it is that I did not want to fall into the same position they did downstairs. I was advised by the Clerk, and I thank the Clerk, that it was well outside the scope of this bill. I took the Clerk's advice and I saw fit to withdraw it. I might move that by way of a private member's bill at a later stage, which is the right process.

This amendment expands the grounds upon which inciting hatred against a personal group by public act is prohibited under the act. It included gender identity and intersex variations of sex characteristics as additional grounds. Given the issues with defining gender identity and intersex variations of sex characteristics and our previous amendments to clause 9 of the bill removing the definition of gender identity from section 3 of the principal act - and that was defeated - instead, the grounds under section 19 of the principal act are expanded to include social identity, biological sex, political belief or affiliation, or political activity and intersex characteristics. These additions more fully represent the range of personal characteristics and activities that are the subject of public attempts to incite hatred toward, serious contempt for or severe ridicule of, a person or groups. This is all I intend to say in relation to these matters. It is pointless to proceed with many of these matters, but I intend to move forward with some brief discussion in relation to my remaining amendments, which will all go down.

**Mrs HISCUTT** - The original clause 11 was put into the bill by Opposition parties in the other place. The Government does not support the inclusion of this clause in the bill. I thank the member for his efforts to try to fix this, but our position remains that it needs to be properly considered by TLRI.

**Ms FORREST** - I am concerned that the member has moved this when the definitions of biological sex and social identity have been defined. You would be putting in a clause that puts in terms not defined, another reason it should not be supported.

**Mr DEPUTY CHAIR** - The question is that the clause as read stand part of the bill.

**The Committee divided -**

AYES 9

Mr Farrell  
Mr Finch  
Ms Forrest (Teller)  
Mr Gaffney  
Ms Lovell  
Ms Rattray  
Ms Siejka

NOES 5

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

Mr Valentine  
Mr Willie

**Resolved in the affirmative.**

**Clause 11 agreed to.**

**Clause 12 -**  
Principal Act

**Ms RATTRAY** - Earlier today we changed the title of the bill to Justice and Related Legislation (Marriage and Gender Amendments). To be consistent, should that go in this clause, 'the Births, Deaths and Marriages and Gender Registrations Act 1999 is referred to as the Principal Act'? Does this need to be changed for consistency or is that not required? I am not sure again who might answer.

**Ms FORREST** - As I mentioned in my contribution on clause 1, the OPC advised that the title be changed. That was not a consideration with this one so OPC was being very thorough. I assume they did not believe it was necessary, otherwise they would have said.

**Clause 12 agreed to.**

**Clause 13 -**  
Section 3 amended (Interpretation)

**Ms FORREST** - Mr Deputy Chair, I move -

**First amendment**

That clause 13(a) be amended by -

*Leave out* the paragraph.

*Insert instead* the following paragraphs:

(a) by inserting the following definitions after the definition of *funeral director*:

**'gender'** - see section 3A;

**'gender amendments day'** means the day on which Part 4 of the *Justice and Related Legislation (Marriage and Gender Amendments) Act 2019* commences;

**'gender declaration'** means a statutory declaration in which the declarant declares that the declarant identifies as being of the gender specified in the declaration and lives, or seeks to live, as a person of that gender;

(ba) by inserting the following definitions after the definition of midwife:

**'previous registered gender'**, in relation to a person, means a gender that was the registered gender in relation to the person before section 28C(7) applied in relation to the registered gender;

**'previous registered sex'**, in relation to a person means a sex that was the registered sex in relation to the person before section 28C(7) applied in relation to the registered sex;

In speaking to this amendment I probably need to refer somewhat to the following amendments. It might be helpful if I broadly cover the intent of the amendments, because when you are inserting definitions, on their own they do not mean a lot. With regard to the first amendment, this amendment deletes, amends and/or adds definitions of terms used in the bill and amendments that will follow, including deleting the definition of 'gender', which will be new clause (b) that will be debated at a later stage.

**Mr DEAN** - Point of order, Mr Deputy Chair. I have an amendment here to delete clause 13, so I wonder whether my amendment should have been heard first and if defeated, whether that was the proper way to do it. I am taking advice on that.

**Mr DEPUTY CHAIR** - Effectively, honourable member, because your amendment is not really an amendment but a motion to defeat the clause, we are better off dealing with this one - you can still vote against it and then bring yours forward.

**Ms FORREST** - The first amendment to clause 13 deletes, amends and/or adds definitions and terms used in the bill and amendments including -

- Deleting the definition of 'gender', which will be reinserted at a later time under new clause (b).
- Adding the definition of 'gender amendments day' to refer to the commencement of part 4 of this amendment bill, which is all the amendments relating to the Births, Deaths and Marriages Registration Act.
- Replacing the definition of 'gender affirmation declaration' with 'gender declaration' - because it is difficult to clarify what an affirmation actually is here, this simplifies and clarifies that a gender declaration is just a declaration that says this person identifies as this gender.
- Amending the definition of 'recognition certificate' to include recognition certificates issued in states or territories that, consistent with this bill, do not require surgery before the registration of a change of sex, which is important. It was actually included in the bill presented in another place. It is important to include it so that certificates issued in other states that have already done this can be recognised here.
- Adding definitions of 'previous registered gender' and 'previous registered sex', which will be used in new clause 16(3), one of the new clauses we will debate at a later time.

This clause will insert these new definitions. I am sure members are aware that the reason definitions are inserted into legislation is so that every time you use that definition, you do not have to spell out the whole meaning every time. Definitions do not stand alone as such, they inform the other provisions in the bill. I urge members to support those amendments.

**Mrs HISCUTT** - This clause we are amending was put into the bill by the Opposition parties in the other place. Members of the Labor Party might be able to answer any questions and speak on the policy intent. The Government does not support the inclusion of this clause in the bill. I acknowledge the efforts of members to fix the clauses inserted by Labor into the bill, but our position remains the same if they need to be properly considered by the Tasmania Law Reform Institute. Specifically the Government is concerned that the definition of 'gender declaration' only requires a person to identify what gender they personally identify as at the time of the declaration. It does not require any intention to permanently live as the changed gender and there are no limits on the number of times a person can change their gender.

**Mr DEAN** - Changing the definition of 'gender', removing the definition of 'gender affirmation declaration' and adding definitions for 'gender declaration', 'gender amendments day', 'previous registered gender' and 'previous registered sex'. The definition of 'gender' -

- (a) the apparent sex of an infant specified by the parent; or
- (b) the gender identity of the person as specified on a **gender affirmation declaration**;

is removed and replaced with a new section 3A to be inserted into the principal act after section 3. Section 3A, Meaning of, and designation of, gender, reads as follows -

- (1) In this Act - 'gender' means (a) male; or (b) female; or (c) indeterminate gender; or (d) non-binary; or (e) a word or a phrase that is used to indicate a person's perception of the person's self as being neither entirely male nor entirely female and that is prescribed; (f) a word or phrase that is used to indicate a person's perception of the person's self as being neither entirely male nor entirely female.
- (2) For the purpose of definition of gender in subsection 1 - (a) a reference in paragraph (a) of the definition to 'male' is to be taken to be a reference to the male gender; and (b) a reference in paragraph (b) of that definition to 'female' is to be taken to be a reference to the female gender.
- (3) Without limiting the grounds on which the Registrar may refuse to register a gender in relation to a person, the Registrar may refuse to register ... a gender ... if the registrar is of the opinion that the word or phrase is not within paragraph (f) of the definition of gender in subsection (1).

Some of the issues: first, as I see it male and female are not defined, nor are male gender and female gender.

- (1) Do they refer to biological sex or self-determined gender?

- (2) How will details of a newborn be registered?
- (3) Will there be an infinite variety of genders recorded on the register? Options 1(e) and 1(f) indicate this will be the case.
- (4) Who will prescribe words or phrases that can be used to describe gender? Will it be the registrar? Is the registrar going to have to do that, or not?
- (5) How is the registrar to determine if words and phrases used to describe gender are not in a class that indicates a person's perception of the person's self as being neither entirely male nor entirely female?

The definition of 'gender affirmation declaration' is removed from the bill and replaced with 'gender declaration'. There are slight differences in terminology in the new definition of 'gender declaration' but no practical difference in application. Both definitions refer to statutory declarations sworn and executed to support a person's application to change their registered sex or gender.

How is the registrar to determine if a person is competent to make a gender declaration?

These are important issues -

- Definition of previous registered gender. It says -  
  
... 'previous registered gender', in relation to a person means a gender that was the registered gender in relation for the person before section 28C(7) applied in relation to the registered gender.
- Definition of previous registered sex. It says -  
  
in relation to a person, means that a sex that was the registered sex in relation to the person before section 28C(7) applied in relation to the registered sex'.

There is a change in the definition of previous registered sex and tidies up the language, that is about all it does.

The issues are that the definitions of previous registered gender and previous registered sex reinforce the notion that sex and gender can be altered on the register by a process of application under clause 21 of the bill, new part 4A of the principal act.

There are a number of issues concerning how all of this is going to operate and what is going to happen. If I could be given some explanation as to the issues raised, I would appreciate it.

**Ms FORREST** - A number of questions were raised. It is important to reiterate these amendments as a whole, I have tried to limit myself to these, as you have advised. Anyway, I will have to respond more broadly to answer the question.

With the birth of a baby, and the subsequent registration of a baby, absolutely nothing will change with my amendments. When read in entirety, nothing will change.

Sorry, there is one change. The parents of a child with an indeterminate sex will be given 120 days to register the birth of that child. It should have been a baby with indeterminate sex. That is the only change, otherwise everything will be exactly the same. The form from the hospital will be completed by the midwife or doctor and sent in; it will be lodged with the registrar; the parents will complete the register of birth form, which will be exactly the same form in exactly the same manner; and the registrar will register the birth in exactly the same way. Nothing changes.

The amendment remains clear on other definitions. Effectively the gender declaration is the statutory declaration. People sign statutory declarations all the time and everyone understands the nature, the legality of a statutory declaration and the importance of not signing an accurate statutory declaration. That is what it is and that is the weight this declaration would have.

The previous registered sex is listed because people may have had a sex change under our current act. They might have had the sexual reassignment surgery and changed their sex on the register. This provides that we do not miss anybody. The OPC has been very thorough in this to make sure we do not miss any of the changes that need to be made. With all due respect to the amendments made by other parties downstairs, they did not have access to OPC. There were problems as a result of that. I and other members have worked closely with OPC to address these and this is the result.

I acknowledge the Leader still does not intend to support it and that is okay. I do not have a problem with that. I respect her position and views on this. This is putting in place a framework that does not change the register and the way it currently operates. All information currently being put on the register will continue to be listed. Any changes made to the register, whether it be a change of name or change of sex, will continue to be recorded on the register.

When a change is made, that detail will remain, and only the current registered gender will be put onto a certificate when a certificate is applied for. That is a fraud prevention measure. The person can ask for a notation of the previously registered sex or gender, depending on what they have had in the past and when that was registered, and that can be provided. There may be times when a person needs that information. That birth certificate will be equally legitimate because they will both have the name, date of birth, place of birth and parents' details on it to clarify it is the same person. If someone has a qualification in a previous name and they need to prove to an employer, the university or other organisation that is their qualification even though the name is different, the gender does not normally appear on the qualification but the name does and they need to be able to prove identity. That is why we need to have those provisions.

**Mr DEAN** - With the greatest respect to the member, I have not received answers to a number of other questions. I will need to go back to *Hansard* to check. Unfortunately, my advisers could not be here today. They have picked up on things said here that have not been accurate, as I have referred to. We will be looking closely at what has been said today. That puts me, and perhaps other members, at a disadvantage in this matter. Is the member assuring us that nothing changes other than the 120 days? The 120-day claim is a furphy because under certain circumstances that can be drawn out over many more days in certain circumstances, provided all those conditions apply.

Who will prescribe words or phrases that can be used to describe gender? Will it be the registrar? We know there are an infinite variety of genders, something like 70-plus genders in America and some of those other places. I have a list and could read through them all for you. It

is mind-boggling. When I was given that information, I said, 'Well, I can't believe that', until I did some background research to establish it was fact.

I am not sure whether the member is able to answer all my questions. The issues of male/female are not defined, neither are male gender and female gender - I do not think that was answered. Do they refer to biological sex or self-determined gender? The details of a newborn have been covered. The infinite number of genders and how will this be recorded were not. Who will prescribe words or phrases used to describe gender? Will it be the register or will it be taken from historical records? I do not know. How is the register determined, if words and phrases used to describe gender are not in a class that indicates a person's perception of the person's self as being neither entirely male or entirely female?

I am not sure whether the member is able to answer any more of those questions. I am not wanting to be disrespectful to the member. It is difficult at times with questions being asked to get information and evidence to answer; I accept and understand that. Hence I had some difficulties initially, but if the member is not able to, I accept that.

**Ms FORREST** - I will answer questions, Mr Deputy Chair. Many relate to later amendments, but I will talk about them now and hopefully we will not have to go back over it at a later time.

It is disappointing, however, that since February, when I had sent out my first amendments, the principles have not changed. Mostly it has been tidy-ups and additions in other areas made, but certainly since these amendments, they have not substantially changed at all. A few numbering issues need to be corrected. I offered all members, repeatedly, the opportunity for me to sit down and go through these amendments with them.

Some members took that up. The member for Windermere did not. We could have talked about many of these matters. He chose not to do that. He chose to wait until we are here and take the time on the Floor, when perhaps he could have had some civil conversations before. I continued to offer that and it was not taken up.

In terms of who prescribes the genders, the decision was made after much discussion. Perhaps it was not to the entire delight of Transforming Tasmania, I might add, to define gender in this way. But male and female do not need defining because they are in the dictionary and OPC was very clear on this - very clear - when you have a dictionary definition that is quite clear, you do not redefine it.

The definition of gender in the dictionary is completely useless - those were the words used in meetings I had with Parliamentary Counsel - and does not help when we are talking about gender in this sense. Various dictionaries have various definitions for it. I cannot remember which one the OPC had to rely on, but someone may know.

It did need defining -

**Mr Valentine** - Under *Macquarie*?

**Ms FORREST** - I think it was the *Macquarie*, but stand to be corrected if not.

In terms of the gender, obviously male and female are genders, non-binary is a world-recognised gender and indeterminate is another recognised condition some people are born with, as we discussed at length.

A number of other genders are recognised around the world, so who would prescribe that list? The registrar would work with stakeholders and with the government because regulations are prepared by the government. So, if there is a regulation-making power in the legislation and the person who is using that legislation determines there needs to be regulation to give effect to some of those aspects of it, that will occur through the government in consultation with the relevant stakeholders, as we do with all legislation. Then it will come to the Subordinate Legislation Committee and be scrutinised there, and any member of this place can bring in a disallowance motion should they wish to do so.

A provision that was supported when I discussed this with Parliamentary Counsel was how best to address this. Terms for a range of things change over time and there needs to be some flexibility to give the registrar that discretion. The registrar has every right to refuse to register a name or gender. Sometimes registrars refuse to register names because they are completely stupid. I say that as a midwife - sometimes parents want to give their children really odd names. We do not have any say in that. We can only think, 'Is that the best thing to do?' The parents lodge their form with this name and sometimes, if it is deemed by the registrar to be inappropriate, the registrar may refuse to register the name, give reasons why, offer them a chance to try again or suggest a name for the child. That is how it works.

**Mr Willie** - You cannot do much about the last name.

**Ms FORREST** - No, that is right. You can blame your parents for that one. It is a bit unfortunate. You can change that. There is a process for changing that. The registrar having the power as an independent statutory officer who would take advice and be sensible was deemed an appropriate measure. If we do not trust our registrar to do this appropriately, what are we saying about that position, as much as about the individual who holds it at any one time?

There was a question about the biological sex not being determined. We do not determine the biological sex at birth, ever. I talked about this before. We look between the legs and we say that looks like a boy or that looks like a girl, tick male, tick female, whichever. We do not determine biological sex. That would require a whole heap of invasive tests, which we do not do.

**Ms RATTRAY** - I will share my thoughts about why we need to discuss these questions. The member said we could have spoken with the member and not had such a long debate. It is important -

**Ms Forrest** - They don't dispute that, but it is a bit like having a briefing. Anyone could have talked to me and we could have continued it here, but no-one did.

**Ms RATTRAY** - I understand that but this legislation needs as much information on the public record as we possibly can muster. You sent out a new iteration of amendments with a note saying you were happy to discuss it.

**Ms Forrest** - There were clause notes as well.

**Ms RATTRAY** - I have been referring to the clause notes during the day. I have a mind to support the amendments because I was persuaded by concerns about imposters using two lots of identification and what that might do to Medicare cards and the like. If this amendment is going to make sure we do not have that, it is appropriate toward crafting good legislation.

**Ms Forrest** - It doesn't mean identity fraud will not happen. Identity fraud happens now. It won't be because of this that identity fraud happens, it will be exactly the same.

**Ms RATTRAY** - You said this will stop any duplication. Was that not what I heard? It was quite persuasive at the time. I will wait for the member to respond but I am leaning toward doing the best we can to make sure it addresses as many issues as possible that have been raised with us during this process.

**Ms FORREST** - On the point of identity fraud, which I think is what you are referring to -

**Ms Rattray** - You said something about people using something twice.

**Ms FORREST** - Under all these amendments, not only this, when a person applies for a birth certificate for themselves or a child, there is limitation about who could apply, as there is now. It is the same thing. When a birth certificate is issued, it will only have the currently registered name and the currently registered gender on the certificate. It will not have former names unless it is requested. Identity fraud happens in a variety of ways. There is also an offence provision. If someone uses a previously issued birth certificate for a change of name or change of gender with the intent to mislead or deceive, that is an offence.

When a certificate is applied for and issued from the registrar, the registrar has to search the register - as they do now in compliance with the current act - and find whether there is any information related to you. If there is no information or if you were not registered in Tasmania, they cannot issue one. If there is information, the registrar will retrieve that information sought for the birth certificate - the name, date of birth, place of birth, parents - and you will be given the option of having no gender or gender included. If you needed a former name and/or gender, it can also be included. A person can have a birth certificate with their former name if they wish, but that is not standard. The standard is the current registered name and the current registered gender. Does that make it clear?

**Mr DEAN** - The member for Murchison raised the issue of offering to discuss amendments. We all make amendments in this place and it is not very often we conduct the debate outside this Chamber. I understand this situation was different in many respects and we have been through that.

My position was that the member for Murchison was carrying everything for the Labor Party in this, and maybe for the Greens as well, in relation to some of the amendments. We left one briefing during which I raised many issues in this bill that needed straightening up - the change of words, phrases and so on throughout this whole bill was a mess. It might have been the member for Derwent who said they would address many of those issues. I thought Labor would be doing that and I waited but none came through. I then worked out that the member for Murchison was carrying the Labor position and the member, with the greatest respect to her, is very set in her position. There is probably nothing wrong with that. One only has to look at what Mr Don Jones said, she was very strong in her ways and he was not able to do a lot with some of the issues he wanted raise, so I did not need to do that.

Things were changing daily. Amendments were changing quickly. In the first instance, I was having trouble keeping up. I was feeling very frustrated and my secretaries were feeling upset with what was happening - the reprints - and they kept saying to me that we would need a whole forest to keep up with the papers we keep changing. It went on and on. I raise the issues now and I have

done that quite properly. I do not see anything wrong with that, but it is not always a reason to debate all matters outside this Chamber. I have brought them here to do exactly that.

**Ms FORREST** - I make it very clear that I did not have any meetings with any Labor Party members or any Greens members to discuss how they got to their amendments. I had access to *Hansard*, as every other member did.

I did not read it in complete depth, I read aspects of it. I did this work on my own with OPC. There were challenges with the way it was drafted, particularly with regard to the register, potentially the integrity of the register and the nationally agreed datasets, particularly after talking to the registrar about that.

I appreciate the honourable Leader facilitating a meeting with the registrar. That was very helpful and appreciated.

It is churlish and misleading of the member to suggest I had meetings with Labor members or the Greens. I did not meet with any of them. The first they saw of any amendments was on the same day as you did.

**Mr Dean** - I didn't say you met with them.

**Ms FORREST** - No, but you said I was communicating with them. I will check *Hansard* later on. I did this work on my own. I forgot to send them to the member for Clark on the first couple of instances because she did most of them. I did not send them to the Greens until I thought I had better send it to them as well because they had amendments I was effectively amending, for their information.

I did not have any discussions with them after that. They did not come back to me. I thought the Labor members would deal through their own Labor members here and the Greens do not have anyone here, so bad luck.

I make that very clear. I did this work with OPC, from the concerns I had. I consulted with those people - I told you I did.

**Mr FARRELL** - That is a reasonable explanation. I support the member for Murchison in that comment. There was no collusion between the Labor Party and the member for Murchison on the amendments. The amendments Labor made were in the bill when it came to this place.

The member for Murchison acted independently on the Labor amendments. Labor's position was that if independents had made amendments to the bill that were along the lines of what Labor supported, Labor would support them, otherwise Labor would not support them.

**The Committee divided -**

AYES 10

Ms Armitage (Teller)  
Mr Farrell  
Mr Finch  
Ms Forrest

NOES 4

Mr Armstrong  
Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)

Mr Gaffney  
Ms Lovell  
Ms Rattray  
Ms Siejka  
Mr Valentine  
Mr Willie

**Amendment agreed to.**

**Ms FORREST** - Mr Deputy Chair, I move -

**Second amendment -**

That clause 13 be amended after paragraph (b) by inserting the following paragraph:

(ca) by inserting the following definitions after the definition of *Register*

**'registered gender'**, in relation to a person means the registered gender in relation to the person that is registered under section 28C(1) and that has not ceased in accordance with section 28C(7) to be the registered gender in relation to the person;

**'registered sex'**, in relation to a person means -

- (a) the sex that is registered under section 16(3) or (4) in relation to the person;  
or
- (b) the sex of the person that was last registered under this Act in relation to the person before the gender amendments day -

if that sex has not ceased in accordance with section 28C(7) to be the registered sex in relation to the person;

I touched on this previously, so will reiterate that the registered gender is the gender registered under section 28C(1) and the registered sex being the registered sex of birth or the sex registered prior to the commencement of this bill. It is to cover people who might have had a change of sex prior to this bill commencing and to make clear what we are talking about in terms of the registered gender and how that is defined.

**Mrs HISCUTT** - The Government does not support the inclusion of this clause in the bill. I acknowledge the member's efforts to try to fix the clauses inserted in the other place into the bill, but our position still remains the same. It should have gone to TLRI, but in particular and specifically, the Government is concerned the definition of gender declaration only requires a person to identify what gender they personally identify as at the time of the declaration. It does not require any intention to permanently live as the changed gender and there are no limits on the number of times a person can change their gender.

**Mr DEAN** - Clause 13, second amendment, definitions of registered gender and registered sex as follows: 'registered gender', in relation to a person means the registered gender in relation to the person that is registered under section 28C(1) and that has not ceased in accordance with 28C(7) to be the registered gender in relation to the person.

This definition is necessary to the interpretation of the member for Murchison's new part 4A.

'registered sex', in relation to a person means -

- (a) the sex that is registered under section 16(3) or (4) in relation to the person;  
or
- (b) the sex of the person that was last registered under this Act in relation to the person before the gender amendments day -

if that sex has not ceased in accordance with section 28C(7) to be the registered sex in relation to the person;

This is one of the issues - this provision clearly allows for the sex registered under clause 16(3) to cease to be the registered sex in relation to the person in section 28C(7). What happens to the record of registered sex at birth? Is it retained, deleted, kept separate from the register or what? Will the register be required to register both sex and gender - sex according to the birth registration statement and gender according to applications made under section 28A and 28C?

Further, the member's new part 4A is titled 'Gender identity' and proposed section 28A is titled 'Registration of gender identity', but proposed section 28B is titled 'Approval by magistrate of registration of gender', and section 28C is titled 'Registration of gender'. 'Gender identity' is not defined in the Births, Death and Marriages Registration Act but is defined in the Anti-Discrimination Act.

The definition in the Anti-Discrimination Act would be used as a reference and after amendments to the Justice and Related Legislation (Marriage Amendments) Bill will read as follows -

'Gender identity' means a gender-related identity, appearance, or mannerisms, or other gender-related characteristics of an individual, including gender expression, (whether by way of medical intervention or not) with or without regard to the individual's designated sex at birth, and may include being transgender or transsexual.

This is quite different from the definition of 'gender' proposed by the member above in new section 3A.

I am saying that consistent use of language would be most helpful. I thought that is what these amendments were about - to get consistency of phraseology and words in this bill.

**Ms FORREST** - Again, it was hard to get all those questions, but I did answer some of them earlier on. The key question, as I understood from what the member was saying, related to concern about when a registered gender or registered sex ceases. It ceases because there is a newly registered gender and so you cannot have two registered genders. That would create all sorts of problems.

As I said earlier, when a person applies for a certificate, they have the currently registered gender. If they have changed their gender, the previous one remains on the register - exactly as it would now if you changed your name - and the newly registered gender would also appear there. When the registrar issues the birth certificate, the currently registered gender or name would appear

on the certificate and only with your former registered name, gender or sex under the current act if you requested it because you needed it.

I hope that answers the member's questions.

**The Committee divided -**

AYES 10

Ms Armitage  
Mr Farrell  
Mr Finch  
Ms Forrest (Teller)  
Mr Gaffney  
Ms Lovell  
Ms Rattray  
Ms Siejka  
Mr Valentine  
Mr Willie

NOES 4

Mr Armstrong  
Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)

**Amendment agreed to.**

**The Committee divided -**

AYES 10

Mrs Armitage  
Mr Farrell  
Mr Finch  
Ms Forrest  
Mr Gaffney  
Ms Lovell  
Ms Rattray  
Ms Siejka  
Mr Valentine (Teller)  
Mr Willie

NOES 4

Mr Armstrong  
Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)

**Clause 13, as amended, agreed to.**

**Clause 14 -**

Section 11 amended (Notification of births)

**Ms FORREST** - Mr Deputy Chair, for clause 14, I -

Invite defeat.

This clause extends the period for which the person responsible for the notification of birth has to notify of the birth. This is effectively the hospital staff or the midwife, if it is a homebirth or a birth outside of a hospital or birth centre. Currently, the notice is a form. I circulated this form to all members some time ago when I circulated the original set of amendments.

The notice of birth form has not changed for a number of years. It is exactly the same form I used to fill out as midwife. This form will stay exactly the same: the top of the form has the sex of the child, female or male, and that is simply with us having a look between the legs and saying that looks like boy, looks like a girl, and ticking the appropriate box; the date of birth; the name and address of the hospital or the private home where the child was born; yes or no as to whether the child was stillborn or a live birth; the birth weight; the gestation; the mother's name; the details of the person giving notice, which is the hospital or the midwife; and then a signature. Normally the doctors are required to sign it so the midwife fills out the form, leaving them in a stack for the doctor to sign - they sign it and the forms are sent to the registrar.

In the case of a live birth, the current act provides 21 days for that to be completed, but, in practice, most of the form is completed while the woman is in labour. Things you cannot complete such as the weight and the sex of the baby, even the date - if it is close to midnight, you would not fill that in until the baby is born, and then the rest of it is completed and the form is lodged. It is usually much quicker than 21 days. If it is a stillbirth, there is a requirement to complete it within 48 hours. That is so forms are not lost and are lodged in an appropriate time. The registrar records them and waits for the parents to lodge the notification of birth form, which has a lot more information on it - all this information and further information, including the name of the father, if they name a father. We never check that it is the father. The registrar does not do any test to be sure it is the father. Sometimes we find that he is not the father, but that is only through subsequent invasive tests.

The reason I suggest we do not support this clause is that, in practice and reality, the hospital does not need 120 days. If it is an indeterminate sex, there will be some discussions at the time of the birth. There is provision with a stillbirth, as the registrar informed us, that if a baby is born very prematurely but still classified as a stillborn baby and you cannot tell the sex of the baby, you can make a notation on the form and the registrar will accept that. With a full-term birth, the hospital - the caregiver, usually the doctor at this point, and if it is not clear, the obstetrician or paediatrician will be involved in the care of that child and family, and the decision will be made as to whether it is a male or a female and it can be changed. This is only a notification form. It is not the registration form, so it can be lodged. If the hospital ticks female and the parents lodged a form saying male, particularly if they lodged it close to 120 days, which the next provision allows for, the registrar has the capacity to clarify that. They have the contact details of the hospital. They would call and discuss the difference in details from the original notification, and that could be changed without having to go through a process. It is eminently sensible and reasonable.

While there was some discussion about this, I noticed that in her report, the Anti-Discrimination Commissioner reviewed this aspect and recommended that the 120 days be granted to parents as the registers of the birth providing the registration forms. That is entirely sensible in cases where the sex is indeterminate.

I encourage members to vote against this clause and leave the situation as it is. The hospitals still have 21 days. It gives them plenty of time, ideally, not to lose the forms. Most of the time the forms are lodged online, so they are often done within an hour of the birth.

**Mr Valentine** - What about a homebirth?

**Ms FORREST** - You would probably use a paper form for a homebirth. Some hospitals still use paper forms. We do not have integrated records between public and private hospitals.

**Mrs HISCUTT** - This clause was put into the bill by the opposition parties in the other place. The Government does not support the inclusion of the clause in the bill, therefore we will support the member's invitation and thank her for her hard work on this bill.

**Mr VALENTINE** - With respect to a homebirth, is that form filled out if a midwife were not present? Does the family lodge that as well as a registration? Perhaps you could explain that.

**Ms FORREST** - I say thankfully, as a midwife, that we do not see many of what we call free births in this state. Unfortunately, we are starting to see a few more women who are birthing without the care of a qualified care provider. They will not have this form. Hopefully, they will remember to get a registration of birth form and register the birth. Occasionally, babies are not registered. The very reason this form was introduced, and I do not know which year it was but it is going back a while, was because it used to be the parents' responsibility to register the birth. Occasionally, parents became busy - babies are demanding, parents are tired - and they forgot to register the birth. They are given the form in the hospital and they have all this other paperwork, Centrelink forms and so on, and they do not remember to complete them. If the registrar had received one of these from the hospital or the homebirth midwife and they had not received a form from the parent within the 60 days, they would contact the mother whose details are there.

Where it is a free birth, they are choosing not to engage with professional care providers so they would not have this form lodged and they would not have access to a registration of birth form unless they sought it. Those babies can miss being registered until they apply for a birth certificate when they need it for some purpose and find they are not registered. The registrar has provision under the current act to register a late registration. That is why we have this double-checking of forms - to make sure the babies were not missed and everyone was registered.

**Mr VALENTINE** - If this had to be fulfilled and it was a homebirth without a midwife present and the family did not fill that in, do they still have 120 days -

**Ms Forrest** - Sixty days, unless it is indeterminate -

**Mr VALENTINE** - Okay, 60 days. Thank you.

**Ms LOVELL** - The purpose behind this clause amending the original bill in the lower Chamber came from consultation with parents of intersex children and Intersex Human Rights Australia. The intent was to allow parents more time to register the birth of a child, an intersex baby or a baby with indeterminate characteristics. I have a question for the member for Murchison. I understand that defeating this clause will mean the hospital still has to complete the notification of birth within 21 days. What time frame will parents have to register the birth?

**Ms Forrest** - That is the next clause, which I am not suggesting we amend. I am suggesting we leave that at it was inserted in the other place.

**Ms LOVELL** - They would still have 120 days. Thank you.

**Clause 14 negatived.**

**Clause 15 -**

Section 15 amended (Obligation to have birth registered)

**Ms FORREST** - Mr Deputy Chair, I move -

That clause 15(1)(b) be amended by -

*Leave out 'gender'.*

*Insert instead 'sex'.*

The person responsible for having the birth of the child registered, the parent or parents, must ensure the birth registration statement is lodged with the registrar. We go to 15(1)(b) -

in the case of a live birth where variations of sex characteristics do not allow for an easy assignment of gender, within 120 days of birth.

What we are noting at the birth is the apparent sex of the baby. We look between the baby's legs and whether it looks like a boy or a girl.

There has been some discussion with the transgender community about this. They would prefer the term 'gender' left in. What we are talking about here is the apparent sex of the child because that is how the baby appears at birth. The gender becomes how you live. You can have a female gender or a male gender, as has already been discussed, but that is more accurate in keeping with the intent of the legislation in terms of registering the sex of the baby at birth.

**Mrs HISCUTT** - This clause was put into the bill by opposition parties in the other place. We cannot speak to the policy of it. I appreciate the member's efforts to get things right. Our position remains that these issues need to be properly considered by TLRI, and therefore the Government will vote against this amendment.

**Mr DEAN** - 'Sex' is substituted for 'gender' in clause 15(1)(b) of the bill. I have some issues with this.

First, 'sex' is not defined in the Births, Deaths and Marriages Registration Act. Presumably it refers to either male or female, as provided in proposed section 16(3) of the act. You will see in the notes on clause 16 that 'male' and 'female' are not defined in the member's amendments. Do they refer to biological sex?

Second, the amendments are intended to allow more time to notify and register the birth of an infant with ambiguous genitalia. The time is extended to 120 days in both cases. These amendments are unnecessary. The act already provides for late registration in section 15(2) and the registrar could instead accept the birth notification and birth registration statement for such infants without a nominated sex, supported by documentation indicating the biological sex of the infant as undetermined.

It is not necessary. When we are substituting 'sex' for 'gender' and other moves, one would have thought that it ought to be defined in this place. I do not see where it is. Maybe the member is able to explain why it is not.

**Ms FORREST** - Mr Deputy Chair, I did explain why it has changed. The change from 'gender' to 'sex' is all I have done. The member raised why that is the case. 'Sex' is defined in the dictionary quite clearly. On OPC's advice, it was important to put 'sex' in place of 'gender' in that case because we are registering the sex of the baby.

**Mr DEAN** - Sorry, I do not want to be disrespectful, but the member was mumbling and I did not hear what she said. If I could be given an explanation for what was said, I would appreciate it. I could not pick it up.

**Ms FORREST** - I have answered it twice now. We are registering the sex of the baby at birth. It was OPC's advice that this be changed. When a baby is born, you are looking between the legs and saying this is what they look like, a boy or a girl, which is the sex of the child at the time. That is why we changed it.

**Mr DEAN** - Thank you. We are referring to 'sex' here and that is one of the changes, but it is not defined. There is no definition of what is meant by 'sex'. Presumably it refers to either male or female as provided in the proposed new subsection, but it is not clear.

Once we knew exactly what sex was - male or female - but today, with the position we have and where we are going, there ought to be some consideration given to some definition or defining of what it actually means in the circumstances.

**Ms FORREST** - I am happy to help the member further. I did send him this information along with all the other information which has been sent.

The birth registration statement says, 'sex, male/female'. I do not know how much more difficult it can be to understand and the notification of birth, sex of child, female/male - other way around, a bit of trap there. So, it is self-explanatory.

**Mr Dean** - I am talking about the bill. There is nothing in the bill to define it.

**Ms RATTRAY** - We have 'sex' in clause 16 referred to as 'any sex other than male or female' so would it be useful to have clarification in clause 15 as well and have 'sex' -

**Ms Forrest** - You cannot do it in the bill before us.

**Ms RATTRAY** - No, the amendment we are dealing with now, where the member has proposed assignment of sex for assignment of gender, that is the change.

**Ms Forrest** - Yes, clause 15.

**Ms RATTRAY** - Yes, clause 15, 'proposed new subsection 1, paragraph (b)', it says -

... in the case of a live birth where variations of sex characteristics do not allow for an easy assignment of ...

The proposal is to change 'gender' to 'sex'?

**Ms Forrest** - That is what is registered at birth - the sex.

**Ms RATTRAY** - Yes, my question was there to assist the member in having it clear because it is identified in clause 16 that sex is 'other than male or female'. So that means sex is male or female. My thought was if we could define 'sex' as male or female in this particular clause, it might alleviate the concerns of the member for Windermere.

I am asking: is this something the member who has put forward the amendment might consider? Then there is the definition, if you like.

**Mr DEAN** - If it was defined at the beginning of the act, where it ought to be but, you are right, it would cover it there also. I am not sure how many other places 'sex' is used in the bill or in the act.

**Ms RATTRAY** - When I was looking forward, it is defined in clause 16 somewhat because it says 'as any sex other than male or female.' That means 'sex' is male or female, so perhaps it could be also done in clause 15.

**Mr DEAN** - It does not matter how well it might be defined in other documents, it is not in the act. It is the act that is the principal position here identifying the situation, not other documents and so on. The act is where it should be clarified and made clear.

**Ms RATTRAY** - Then I support the member for Murchison in having 'sex' rather than 'gender' and we cannot define the other at birth.

**Mr Dean** - 'Sex' needs defining.

**Ms RATTRAY** - I am purely suggesting, Deputy Chair, that the member for Murchison who put forward the amendment might consider that might alleviate the concern the member for Windermere has around defining 'sex' in clause 15 rather than waiting until clause 16 when we refer to 'sex'.

**Mr DEPUTY CHAIR** - While you are on your feet, the Clerks have pointed out that the interpretation was actually in clause 13. It would mean we would have to go back to clause 13 to put in the interpretation of the word 'sex'. As we have just heard, it is defined on the certificates as 'male' or 'female'. I am letting people know this might be the situation.

**Ms RATTRAY** - Thank you for the advice from the clerks.

**Mr DEPUTY CHAIR** - You can always recommit if you want to, but that would have to be the process. It would have to go back to the interpretation.

**Ms RATTRAY** - So go back. It would be worth defining, in the interests of making it totally clear. By the sound of it, that will alleviate some of the concerns the member for Windermere has with that. If we finish this one we can then recommit - that is my understanding. We can recommit that one at the end.

**Ms FORREST** - This is something I discussed at length with OPC. It was very clear. Robyn Webb said that you do not define 'sex', it is clearly defined. You do not do that. It is unnecessary, it is inappropriate to do so. I will vote against an amendment to do that because I had hours of discussion with her about this very topic. When we get to the new clause B that defines 'gender', that took hours and hours of discussion to finalise. When we get onto clause 16 - I will not do that now because we would have to repeat it if I did so - it will become apparent why you do not need to. The form clearly identifies the sex. That is what is being registered; that is what is being lodged by the parents or the person notifying the birth - same thing on the forms. My advice from OPC was that it is not necessary and we do not need to do it.

**Ms Rattray** - I was trying to address a number of concerns by the member for Windermere. It was my suggestion.

**The Committee divided -**

AYES 11

NOES 3

Ms Armitage  
Mr Armstrong  
Mr Farrell  
Mr Finch  
Ms Forrest  
Mr Gaffney  
Ms Lovell (Teller)  
Ms Rattray  
Ms Siejka  
Mr Valentine  
Mr Willie

Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)

**Amendment agreed to.**

**Clause 15, as amended, agreed to.**

**Clause 16 -**

Section 16 amended (Registration)

**Ms FORREST** - Mr Deputy Chair, I move -

Clause 16, proposed new subsection (3), be amended by -

Leave out the proposed new subsection.

Insert instead the following new subsections:

- (3) The Registrar, in registering the birth of a person, is to register the sex of the person as being either male or female.
- (4) The Registrar may not change from male to female or from female to male, the registered sex in relation to a person, except if it is necessary to correct an error made before or at the time the person's sex was first registered, in relation to the person.
- (5) The Registrar may only register the sex of a person under subsection (3) or (4) and must not register the sex of a person as any sex other than male or female.
- (6) Nothing in subsection (3), (4) or (5) is to be taken-
  - (a) to prevent a gender being registered under section 28C (1) in relation to a person; or

- (b) to prevent a registered sex in relation to a person ceasing, in accordance with section 28C(7), to be the registered sex in relation to the person; or
- (c) to invalidate the registration of a previous registered sex that occurred before gender amendments day.

**Mr DEPUTY CHAIR** - Before you go on, (4), should read 'the Registrar'.

**Ms FORREST** - Yes, I did say 'Registrar'.

**Mr DEPUTY CHAIR** - You are happy with that? So everybody is aware; we will make a change to that.

**Ms FORREST** - That is fine. Clause 16 amendments replace the existing amendment that allows information about sex or gender to be collected under section 50 with amendments that require the registrar to register the sex of the baby as either male or female.

It ensures the registrar has the statutory power to correct errors made in determining the sex of the baby and prevents future changes of registered sex, instead allowing amendments in clause 21, proposed Part 4A. It enables that a subsequent registration of a gender or a change of gender or any registered change of sex made before this bill comes into effect remains valid as to the registered sex of that person.

It provides those transitional provisions. It means - and I know Transforming Tasmania was not particularly happy about this - currently the act is silent on the registering of the sex. Sorry, no, I apologise. It was putting it onto the birth certificate. It was about what was on the birth certificate. This clarifies that sex is registered on the register. But, yes, the intent in the other place was to store gender or sex-related information off the register in section 50.

As I said in my opening comments - which I will not repeat now - I felt some concern about the importance of maintaining the integrity of the registrar and keeping that information on the register, particularly after speaking to the registrar who talked about the national minimum datasets we agree to.

It is possible, and it may well happen in the future, that we will have unique databases where you could store some information in a different place and is easily accessible. I also understand some work is being done on a national front and around the world of taking gender markers off this registered information and storing it separately.

It is not an agreed position. Talking to the registrar, it is not an agreed position at this stage. It may well be in the future, but at this stage it was important to maintain the integrity of the data on the register. It was a matter of concern for a number of members. The member for McIntyre raised a number of concerns in our briefings. This maintains the register in the way it currently operates.

**Mrs HISCUTT** - The Government does not support the inclusion of this clause in the bill, as the clause was put in the bill by opposition parties. Clause 16 removes power for a person to change their sex and only allows a person to change their gender. As a result of this clause, if an individual has sexual reassignment surgery, they will not be able to change their sex.

**Ms FORREST** - On that point made by the Leader, sexual reassignment surgery can take many forms. You do not change your chromosomal make-up for sexual reassignment surgery. If a female has sexual reassignment surgery - she may have a double mastectomy, she may have a hysterectomy - she is not required to. The visible signs of femininity associated with most women are breasts, which are apparent to most of us. That is one aspect you could do, but it would not change the fact that the innate sex you are born with is female. When you have a sex change, the correct language is about gender because you are now identifying as a male if you have transitioned to a male. It is appropriate to use the word gender, not sex, under those circumstances.

**Ms ARMITAGE** - I have a question for the member for Murchison with regard to clause 16(6)(c) -

to invalidate the registration of a previous registered sex that occurred before the gender amendments day

I understand that when someone changes their gender, the original gender is always registered so that there is a record. Could you also confirm that the register, not necessarily the certificate, will include be the original birth registered and the change, so that there is a record?

**Ms FORREST** - This is more to clarify those circumstances where someone has had sexual reassignment now. Under the current act, they are changing their sex even though they are only changing the outward features of the sex they are born with. It is to make sure those are not invalidated. The registered change of sex is validated and not lost. Any historical changes will continue to be historical changes. Nothing is removed from the register but if that person applies for a birth certificate, it will be the currently sex or gender because theirs could be a registered sex, if they have had sexual reassignment surgery under the current act.

**Ms Armitage** - The original will still be entered?

**Ms FORREST** - Yes, that is right, that would also be there.

**Mr DEAN** - Clause 16(3) appears to address the registration of sex being either the male or female for a newborn. Existing subsection 16(3) reads as follows -

The Registrar may only collect information about sex or gender under section 50 of this Act, except as otherwise allowed under part 4A.

The member's amendment in version 11 of her amendments removed this subsection and replaced it with -

(3) As soon as practicable after a birth registration statement in relation to a person is received by the Registrar, the Registrar is to register the sex of a person as being either male or female.

In the member's latest amendments, this was changed to (3) -

The Registrar, in registering the birth of a person, is to register the sex of the person as being either male or female.

This change removes the reference to a birth registration statement. The reason for this is unclear. Perhaps we could be given an explanation. I understand this already happens -

The Registrar may only register the sex of a person under subsection (3) or (4) and must not register the sex of a person as any sex other than male or female.

In the member's amendments, (4) is -

The Register may not change from male to female, or from female to male, the registered sex in relation to a person, except if it is necessary to correct an error made before or at the time the person's sex was first registered in relation to the person.

This is apparently intended to maintain the integrity of the register as a record of a person's biological sex at birth. In version 11, section 16(4) and 16(5) are transposed and section 16(5) is altered accordingly. Again, this change has no practical effect -

- (6) Nothing in subsection (3), (4) or (5) is to be taken -
  - (a) to prevent a gender being registered under section 28C(1) in relation to a person; or
  - (b) to prevent a registered sex in relation to a person ceasing, in accordance with section 28C(7), to be the registered sex in relation to the person; or
  - (c) to invalidate the registration of a previous registered sex that occurred before the gender amendments day.

The member's new section 28C, Registration of gender -

- (1) The Registrar, after receiving an application made under section 28A(1), (3) or (4) for a gender to be registered in relation to a person -
  - (a) must -
    - (i) register the gender as the registered gender in relation to the person by making an entry in the Register specifying the gender to be the registered gender in relation to the person; and
    - (ii) make any other changes to the Register that are necessary to indicate that each previous registered sex, and each previous registered gender, of the person is no longer the registered sex or registered gender in relation to the person; or
  - (b) must refuse to register the gender as the registered gender in relation to the person.

**Mr DEAN** - I defy anybody to understand what is going on with these. The new section 28C(7) says -

**Ms Forrest** - We are moving into the other amendments at this stage, Mr Deputy Chair.

**Mr DEAN** - The problem is that it runs into my explanation. That is the issue I am confronting.

**Mr DEPUTY CHAIR** - I suppose if you read it in now, you will not have to repeat it when we reach section 28(7).

**Mr DEAN** - Perhaps that is the situation.

**Mr DEPUTY CHAIR** - If that is the case, I will allow you to continue but if you are going to repeat it, that would not be wise.

**Mr DEAN** - The new section 28C(7) says -

If a gender is registered as the registered gender in relation to a person under subsection (1) -

- (a) any registered sex that was previously registered in relation to the person ceases to be the registered sex in relation to the person; and
- (b) any registered gender that was previously registered in relation to the person ceases to be the registered gender in relation to the person.

I have identified that the combination of new sections 16(4), 16(5) and 16(6) and new sections 28C(1) and 28C(7) create an internal inconsistency. This is the reason I am raising it. New section 16(4), now new section 16(5), provides that the registrar can only register a sex for a person as being either male or female at birth or to correct an error in the registration of a person's sex at birth, presumably for incorrectly registered intersex infants. New section 16(6) makes that provision subject to new sections 28C(1) and 28C(7), which clearly provide for the register to be changed to indicate that a previously registered sex or gender is no longer the sex or gender for a person. How can this be done other than by deleting any reference to a previous sex or gender, including the sex recorded at birth from the registrar?

New section 16(6)(c) provides that a previous registered sex is not invalidated by the registration of a gender under proposed new part 4A of the principal act. What is the meaning of new section 16(6)(c)? Is it intended to preserve the historical record of birth sex on the register, regardless of provisions in the new part 4A requiring that a previous registered sex or gender must cease to be the registered sex or gender for a person once an application to register a gender is accepted by the registrar? If this is the case, it should be a separate provision and more clearly worded. Is not invalidated the same as retained on the register in the circumstances under which it appears? Or is it intended to allow previous changes to the registered sex of a person under the principal act to remain even though the new registered sex differs from the person's birth sex?

This seems the more correct interpretation of the member's amendment as written, but it is not her intention according to the explanatory notes provided. How is the registrar to interpret this subsection?

**Mr DEPUTY CHAIR** - Just before the member finishes, we intend to finalise this amendment one way or the other and then we will pause for dinner.

**Ms FORREST** - I answered the question the member just asked when the member for McIntyre asked a question only a moment ago about new section 16(6)(c), so you could read the *Hansard* on that because I have answered that. The provision enables the registrar to correct mistakes or errors when registering the sex of a person, which is when the birth registration form is received and the registrar is required to register the sex. New section 16 then goes on to say the requirement to register the sex at birth does not mean you cannot subsequently register a gender when someone seeks to change their gender. That has to happen, but it does not prevent a subsequent application to register a gender.

I explained this earlier too, that in relation to a person ceasing in accordance with section 28C(7) to be their registered sex - which the member read out and verified his own question - this means when you register a gender, or change a gender and then seek to register it, the current registered sex that you may have - or gender, if you have registered gender previously - ceases to be the registered gender. It does not cease from the record, it does not disappear; it ceases to be the registered gender. When you apply for a birth certificate, if you request gender on it, the current registered gender will appear on it, because the other one has ceased to be the current registered gender.

**Mr Valentine** - It does not disappear from the register

**Ms FORREST** - No, it just ceases to be the current registered gender, so that it is clear to the registrar what she is supposed to print on it.

**Amendment agreed to.**

**The Committee divided -**

AYES 10

Ms Armitage  
Mr Farrell  
Mr Finch  
Ms Forrest  
Mr Gaffney  
Ms Lovell  
Ms Rattray  
Ms Siejka  
Mr Valentine  
Mr Willie (Teller)

NOES 4

Mr Armstrong (Teller)  
Mr Dean  
Mrs Hiscutt  
Ms Howlett

**Clause 16, as amended, agreed to.**

**Progress reported; Committee to sit again.**

## **SUSPENSION OF SITTING**

[6.20 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 for the purpose of a dinner break, probably no more than an hour.

[6.20 p.m.]

**Mr DEAN** (Windermere) - Mr President, I know this question was raised previously about coming back and sitting in relation to this bill. We are up to page 5 of a 30-page amendment document, plus other amendments. With the greatest respect, it is unreasonable to expect us to sit here until the wee hours of the morning. That is the progress we are making and there is much to be said. I have indicated my position and I am making quite a few statements. I would have thought, in the circumstances that we could deal with the Electoral Amendment Bill when we come back and then move back into this gender bill. We have tomorrow for that as well. That it is reasonable. We were here fairly late last night. By the time you get home and get back out again, it really is expecting too much, in my view. I ask we give consideration to coming back and doing the Electoral Amendment Bill when we resume after dinner.

**Mrs Hiscutt** - That would be the Government's preference, too. The Electoral Amendment Bill is very short and it went through downstairs without any problems, or members have not indicated any. I would prefer to come back after dinner, deal with that bill straightaway, get rid of it and then settle back into this again. That way we will have ticked off the things we need to do and we can continue with this bill until it is finished.

[6.22 p.m.]

**Ms RATTRAY** (McIntyre) - Mr President, earlier in the day we discussed some advice that had been provided to the member for Murchison by the Commissioner of Police, and I asked that all members receive a copy of that. I have not seen it in my inbox as yet. I was hoping we could have that over the dinner break so that I could have a look at that information. I am interested where that request is.

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I am led to believe - and I am looking at my advisers - that the letter does not belong to us and is not ours to release. However, if the person to whom it was addressed, the member for Murchison, is of a mind, that is up to her to do, but it is not the Government's letter. It is not addressed to us so we do not feel it is our information to release. It is up to the member for Murchison.

[6.23 p.m.]

**Mr ARMSTRONG** (Huon) - Mr President, I would like some clarification about sitting tonight. Last night it was nearly midnight when I got home. I have further to travel than any member here, apart from the member for Derwent. We have all day tomorrow to finish this bill off. Until what time are we likely to be sitting tonight? I have a long way to travel.

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, it is very hard to define. If the Government can get the Electoral Amendment Bill through straight after the dinner break, which would take -

**Ms Forrest** - You cannot guarantee it is not going to take an hour or two to do that.

**Mrs HISCUTT** - I cannot guarantee it; however, there were no issues with the bill in the other place. We could keep sitting until members were of a mind to. I am quite happy to sit to whatever time tonight, and then we have all day tomorrow to do that.

**Mr PRESIDENT** - The Leader has to remember that it is government day today and tomorrow, so the Leader is in charge of what proceeds in the House if you are in government.

**Mrs HISCUTT** - It would really suit the Government if we could get the Electoral Amendment Bill out of the way after dinner and then just plough on.

[6.24 p.m.]

**Mr VALENTINE** (Hobart) - Mr President, my only issue is that we are assuming the electoral bill will just float through and there are questions and issues. We all have our minds on this bill. I know it is the Leader's choice, but it would seem counterproductive to then go into another bill and then come back and try to get ourselves back into this space. No doubt if we do not, we could be sitting late tomorrow night depending on how this goes. We would be sitting late doing the electoral bill tomorrow and the Government would still get it through this week. Rather than interrupting the thought processes and everything associated with this bill, it would be far more productive to actually continue with this bill until it is finished and then do the electoral legislation. This might mean sitting late, but I understand it is your call.

[6.26 p.m.]

**Ms LOVELL** (Rumney) - Mr President, prefacing this with the understanding it is government business day and that it is up to the Government what business it brings on, a very clear commitment was given to members in the last sitting week when this bill was delayed yet again, that it would be brought on as a matter of priority and be dealt with as a matter of priority.

It was also a discussion among members more than a week ago that there was an expectation we would all be prepared to sit late to get this bill done. This has been delayed time and time again.

The Government has decided to divide at every opportunity, which has delayed things further, which is their prerogative, but we have business at hand to get through. A commitment was made - a very clear commitment in writing - and I hope the Government will see fit to honour it..

**Mr FARRELL** (Derwent) - Mr President, I understand it is the Government's business to do what they do in this Chamber. It seems to me that there does not seem to be any great rush to get this back to the other place - at every step we make a little progress and then the goalposts are moved. If that is the intent, we should be told honestly there is no wish to get this back downstairs.

**Mr FINCH** (Rosevears) - Mr President, I hear what the member for Huon says - we have to be cognisant of occupational health and safety and the safety of people who have to travel at night.

I thought last night's finishing at about 10 o'clock was elegant sufficiency as far as the day was concerned. It was reasonably productive and that might be some sort of suitable time to adjourn, but I am also of a mind to accommodate the Leader with her request about this electoral bill. We need to be as considerate as we possibly can be in respect of the efficacy in the way we go about our business here. I would like to see us deal with that bill straight after dinner break. Then it behoves others to move as efficiently as we can through the next stage of our amendments to ensure we are able to conclude tomorrow. By the same token, I am prepared to continue on into the evening tomorrow to make sure we conclude this process.

**Mr GAFFNEY** (Mersey) - Mr President, I hear what the Leader is saying. I would like to continue with the marriage bill we have before us. We had a briefing this morning on the electoral bill and now we are supposed to deal with that bill on the same day we have had a briefing because it has to be done by tomorrow. That is bad planning. Who would ever expect we would have to deal with a bill in one day, have the briefing, get it done so the Government can meet their deadlines by tomorrow? That is not how this place should work. I would be more than happy to continue with the marriage bill, then tomorrow, once we finish that bill, we can deal with the electoral bill and if there is an issue there.

We were told the marriage bill had to be done by 9 December 2018 - had to be finished by then - and then we had an extension to when we returned on 19 March 2019, so I would be happy to continue. I take on board the point raised by the member for Huon, but I would be more than happy to finish the marriage bill and sit late tomorrow, if we have to finish the electoral bill. There is no way in this place that we should have a briefing and then have to deal with the bill on the same day. That is not cricket.

[6.30 p.m.]

**Ms FORREST** (Murchison) - Mr President, the member for McIntyre asked about the letter I received from the police commissioner. I am not of a mind to put the police commissioner in a very difficult position. I received the letter and directly contacted him. I did not share it without checking because I do not think I should. I sought his advice about that and he said he would prefer I not share it because it was a communication between him and me. He was happy for me to refer to the content, as I have and will do further when we get further on in the bill.

I also contacted him again today after your request, and I was basically informed that it was in the hands of the Government. The Government was sent a copy of it. I do not believe the police commissioner would tell me something that is not true.

He is the Commissioner for Police. I cannot direct him to do something. I asked him, he said he would prefer I did not and I respect his right. It is not my right to do that when the police commissioner has asked me not to.

I will contact him again over the dinner break if I can get hold of him. I hate to disturb him at night but I will and will make that request again. I was also hoping to chase up the letter the member for Windermere got from him as well just as fiercely, because I am not sure that he has entirely represented that correctly. With some of the comments, we need to see it in its entirety if that is the case.

I also want to comment on the matter that continues to be raised by the Government in reference to the Tasmania Law Reform Institute. The Tasmania Law Reform Institute has just now published a statement, quite unusually, on its website and its Facebook page. I will read that because I feel it has been drawn into this in a political sense, which is disgraceful.

This is directly from the Tasmania Law Reform Institute:

- The TLRI does not usually publish terms of reference or details of a reference prior to the release of an Issues Paper. However, given the controversy surrounding the work that the TLRI is undertaking on the Transgender and Intersex Reference, the Institute has decided to post the following explanation.

- The TLRI has been asked by the Tasmanian Government to provide advice on issues relating to sex/gender in Tasmanian legislation, including registration requirements for changing sex/gender and consent to related medical treatment.
- It is not general practice for the TLRI to publish terms of reference or details of a reference prior to the release of an Issues Paper. However, given the controversy surrounding the work that the TLRI is undertaking, the TLRI has decided to post the following explanation on its website.
- The terms of reference are to provide advice on:
  - What steps would be required to register a change of sex or intersex status on official documents;
  - What categories of sex/gender should be displayed on birth certificates and other documents;
  - What, if any, reforms should be made in relation to consent to medical treatment to alter a person's sex or gender; and
  - What, if any, reforms should be made in relation to the definitions or use of terms relating to sex and/or gender in Tasmanian legislation?
- The TLRI will not consider policy in relation to these issues. Instead, the TLRI will conduct a technical review of the practical effects of the enacted Tasmanian legislation in light of reviews undertaken in other jurisdictions, to identify any desirable consequential amendments to ensure that the policy settings enacted by Parliament are achieved.
- This is in accordance with TLRI practice not to comment on Bills that are before Parliament, any related amendments or any debate surrounding those Bills, except where reforms relate to recommendations previously made by the TLRI.
- This means that we will not comment on the *Justice and Related (Marriage Amendment) Bill 2018*, or any related amendments, until a final form of the Bill is enacted.
- Preliminary work on this reference has commenced, and will continue regardless of the status of the *Justice and Related (Marriage Amendment) Bill 2018*. This means that the work of the TLRI should not defer consideration of the Bill by the Legislative Council. Our research will incorporate consideration of the terms of any Bill passed into law.
- The TLRI review will the publication of an Issues Paper, a period of public consultation, then the publication of a Final Report. It is expected that the Final Report will be delivered to the Attorney-General on 30 September 2019, prior to its public release on 31 October 2019.

It is important for the record that it is clearly stated there. If anyone wants to check, go to the website, go to their Facebook page - it is there.

In terms of the other matters we were discussing about what to do tonight, as other members have said, we are dividing twice on every amendment. It is wasting five minutes every time we do it. It is not our fault this is dragging it out. It is the Government's decision to divide on every possible vote. It is somewhat churlish and childish. I do not think it is the Leader who is driving this. My assessment of the situation is that she is being driven by others, so I hold no discontent with the Leader. She is doing the job she has been told to do.

I would prefer to see us push on with this as was promised. The electoral bill can be dealt with tomorrow. The lower House is not sitting this week in case you have not noticed and they will be back on Tuesday. If the electoral bill is debated tomorrow, it can have Standing Orders suspended.

I oppose that as a matter of principle. I am only one vote in this place and have often lost that vote and that is fine. It is democracy. Even if it was given its third reading next Tuesday, it will still go to them next Tuesday, the first day they are back.

[6.37 p.m.]

**Mr DEAN** (Windermere) - Mr President, I did not quite catch what the member for Murchison said, but she raised the issue of a letter I received from the Commissioner of Police and made some comment made on that. I will read the *Hansard* to read exactly what was said.

I read verbatim into my second reading speech the document I received -

**Ms Forrest** - Not the whole letter.

**Mr DEAN** - I quoted verbatim into the *Hansard* the comments of the Commissioner of Police in that letter. I wanted to make that clear and am happy to provide a copy of that to anybody. The commissioner has not said I cannot do that. I do not think there are any problems with that.

[6.37 p.m.]

**Mr WILLIE** (Elwick) - Mr President, the clarification from the member for Murchison was extraordinary. This Government has clearly and deliberately tried to blur the lines when it comes to the reference to the TLRI. Not only in this place - and you can shake your head, Leader, but you put out a press release today doing exactly that in the public domain in your name, so you have to take responsibility.

On the Government's business, the Labor Party is prepared to be constructive. We had a conversation before about the possibility of suspending Standing Orders. We have four votes in this House. We would be prepared tomorrow, if you wanted to delay the introduction of that bill, to help you suspend Standing Orders so that we can have the third reading and it can go to the other place on schedule, as you have outlined.

I think it is incredibly important to continue on with this bill. We have members of the public here who are taking a strong interest. They are here now. They want to see this debate continue. I do not think it is fair to continually drag them back to this House over how many months has it been now, and the anguish and the heartache that is going on around us.

We need to be aware of that. We have an opportunity to continue with this bill and we will play a constructive role, Leader, to help you suspend Standing Orders if that is your agenda.

[6.39 p.m.]

**Mrs HISCUTT** (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I appreciate honourable members' comments and the member for Elwick's recommitment to that. I can do the numbers, as people say, so we will go to adjournment, back to plan A.

**Motion agreed to.**

**Sitting suspended from 6.39 p.m. to 7.42 p.m.**

## **JUSTICE AND RELATED LEGISLATION (MARRIAGE AMENDMENTS) BILL 2018 (No. 47)**

### **In Committee**

**Resumed from above.**

[7.42 p.m.]

**Mrs HISCUTT** - Mr Deputy Chair, I would like to make a comment before we move to the substantive clause. The member for Elwick raised some concerns a number of times that the TLRI reference in relation to sex and gender is not as I have previously stated it is.

**Mr Willie** - No, that is not what I said. Do not blur the lines.

**Mrs HISCUTT** - That is good, because I wanted to make it clear the Government referred it, it has been accepted and will be looked at.

#### **Clause 17 -**

Section 17 amended (Registration of parentage details)

**Ms ARMITAGE** - In reference to clause 17 -

Section 17(1)(a) of the Principal Act is amended by omitting “father and the mother” and substituting “parents”

I will not be moving to invite defeat of this clause because you when you look at the principal act, it refers mainly in each of the areas 17(1)(a) through to (1)(f) as a 'parent', apart from (1)(a) where it says the 'father and the mother'. In every other area it refers to the child's parents. For consistency, it is appropriate to leave it as it is. Where section 17(1) says -

The Registrar must not include information about the identity of any of a child's parents in the Register unless -

(a) the father and the mother...

Further subsections list the parents, so I am happy to leave that as it is.

**Clause 17 agreed to.**

**Clause 18 -**

Section 23 amended (Application to register change of adult's name)

**Ms FORREST** - Mr Deputy Chair, I move -

That clause 18 be amended by:

Leave out 'of 16 years or over'.

Insert instead 'who has attained the age of 16 years'.

This does not change the age or change the intent. According to advice from Parliamentary Counsel, that is the appropriate way to do it to draft such a clause to be consistent with Tasmanian drafting style.

**Mrs HISCUTT** - Both the bill and these amendments lower the age at which a person can independently apply to change their name, from 18 years or older to 16 years or older. This is inconsistent with ages in other legislation relating to making a major decision. It makes Tasmanian law inconsistent with other laws in other jurisdictions and has the potential to cause issues for existing data matching rules. This clause was put in the bill by opposition parties in the other place and the Government does not support the inclusion of this clause in the bill.

**Ms LOVELL** - Mr Deputy Chair, I support this amendment as put forward by the member for Murchison. It makes sense to be consistent with drafting principles. I have a question for the Leader about her comment. I am unclear because it did not seem to address the amendment we are discussing. Is the Leader suggesting a further amendment?

**Mrs Hiscutt** - I made a comment on the amendment.

**Ms RATTRAY** - Mr Deputy Chair, I have a competing amendment to the member for Murchison's. Mr Deputy Chair, I move -

That clause 18 of the proposed amendment be amended by -

Leave out 'the age of 16 years'.

Insert instead 'the age of 18 years'.

Am I too early?

**Mr DEPUTY CHAIR** - The member for McIntyre is making an amendment to the member for Murchison's amendment. We have two propositions before the Chair, the McIntyre and the Murchison propositions, and the Chamber will determine that we will deal with the McIntyre motion first. Regardless of whether it is accepted or defeated, we will return to the Murchison motion.

**Ms FORREST** - Do I need to withdraw mine?

**Mr DEPUTY CHAIR** - No.

**Ms RATTRAY** - Section 23 deals with amending the application to register a change of adult's name. How can a person of 16 years be classed as an adult? I touched on this in my second reading speech. Members, a 16- or a 17-year-old person in a vulnerable situation may not be in the right frame of mind to make such a big decision about their life. I suggest that if we do not allow people of 16 or 17 years of age to buy cigarettes, vote, have a drivers licence in the case of a 16-year-old, we should be erring on the side of caution and asking that the adult age in this case remains at 18 years.

I ask members to consider this. I touched on this in my second reading contribution, so everybody is aware of the reasons. I also referred to the fact the children's commissioner, in her correspondence to members, made this point. The children's commissioner supported the application to register a gender and this is the change of an adult's name. I will take you back to the point made when it said it is appropriate and consistent with the child's rights approach to allow a young person who has the appropriate level of understanding and maturity to apply to register a change of their gender.

Do all 16- and 17-year olds have an appropriate level of understanding and maturity to make such a life-changing decision? We have talked about the fact they could well be estranged from their parents or family at the time. Again, you hope that waiting until at least they are 18 years of age would give them the opportunity to really think through something as serious as this. I am seeking we start on this process where we revert to making it 18 years and not 16 years of age.

**Ms FORREST** - I will not be supporting the amendment to my amendment. I will read some sections of correspondence we all received with regard to this. The member for McIntyre read some of the children's commissioner's comments and I am going to read a little further in the section that she was referring to. Ms McLean said -

It is, in my respectful opinion, necessary to understand and appreciate how in practice application processes proposed in the Bill for young people who have attained the age of 16 years may operate given the legislative context within which they exist. In particular, we need to be clear about how these application processes would operate alongside the Family Law Act 1975 (Cth). In doing this we are contributing to ensuring that young people seeking to utilise the application process proposed the Bill are fully informed.

Furthermore, to ensure we take account of all potential scenarios, particularly where there may be a dispute between young people and their parents, it may be prudent to include as an option for an application by a young person who has attained the age of 16 years may also be made to a Magistrate.

Going to the comments from the Equal Opportunity Tasmania's Anti-Discrimination Commissioner, Sarah Bolt. I will read this in its entirety so that I am not taking anything out of context -

The amendments proposed by Ms Rattray seek to change the age in the amended Bill (and in the proposed amendments by Ruth Forrest) of when a person can apply to change their name and change gender information from 16 years of age to 18 years of age.

The proposed amendments by Ms Rattray are not supported by Equal Opportunity Tasmania.

In Equal Opportunity Tasmania's options paper of 2 February 2016, *Legal Recognition of Sex and Gender Diversity in Tasmania: Options for Amendments to the Births, Deaths and Marriages Registration Act 1999*, my office noted at pages 16 and 17:

The issue in relation to the *Births, Deaths and Marriages Act* is whether Tasmanian law relating to change of sex registration should be consistent with the legal principles established by the Family Court.

This is the matter the children's commissioner was referring to -

As indicated earlier, Stage 2 treatment may commence from around 16 years of age should a court find the minor is competent. Reducing the age at which an application for a change of sex may be made to 16 years of age would bring the Births, Deaths and Marriages Act in line with these principles.

Lowering the age at which a person can independently seek to apply to have a change of name or sex registered to 16 years would be consistent with the views of the Family Court. It would also be consistent with the practices adopted by overseas jurisdictions which have given significant emphasis to the views of the child in accordance with their age or maturity and weighed these against the risk of the decision and the extent to which any proposed changes are invasive, permanent or reversible.

Equal Opportunity Tasmania remains supportive of the amended Bill, which provides that a person can apply to change their name and change gender information from 16 years of age.

These are people who are directly linked to this area. The Commissioner for Children and Young People and the Anti-Discrimination Commissioner will not be supporting the amendment to my amendment.

**Ms ARMITAGE** - I agree with the amendment by the member for McIntyre. I am concerned that if we start to allow someone at 16, in this case, to change their gender or make these important decisions, is it the start of a slippery slope. Will we then be seeking for 16-year-olds to vote and perhaps drive a car?

I recall previously when we discussed young people smoking in this House, about the rational part of a teen's brain not being fully developed and that it is not fully developed until the age of 25 or so. In fact, recent research has found that adult and teenage brains work very differently. I have concerns there.

Looking at an area on the website about raising children and talking about legality, the legal drinking age in Australian states and territories is 18 years of age. Until they are 17 - or is it 18 that we are changing it to now - they have to stay at school. We are actually going older, we are not going younger. We are saying you cannot leave unless you have work.

**Mr Willie** - Training, work or - but it is not in force yet.

**Ms ARMITAGE** - It may not be in force yet, but we are looking to ensure that people are 18. It is also illegal to buy cigarettes under the age of 18. Some 16-year-olds might be fine, but there are certainly many 16-year-olds who would not be. I have four sons and I can remember when they were 16 and then 17, when they got cars. They were not always the most sensible at 16, and I would hate to think of my 16-year-olds making some life-changing decisions at 16.

I believe it should be 18; 18 is when you can drink, you can drive at 17, you can vote. I have real concerns that once we start bringing something back to 16, before you know it we will have a private member's bill before whichever House looking to have people driving at 16, drinking at 16 and we have to be very careful about the decision we make. I support 18.

**Ms LOVELL** - I do not support this amendment. The member for Murchison has touched on many of the reasons why these amendments are not supported by some of the experts that have been consulted on this bill. In particular, the member for Murchison read a passage from a letter from Equal Opportunity Tasmania, from the Anti-Discrimination Commissioner, in relation to this particular amendment. I hear what the member for Launceston is saying in relation to the slippery slope argument, but that has never been an argument that has sat well with me. We need to assess every issue on the merits, research and the evidence behind that particular issue. In the instance of this particular issue there are established medical practices that allow young people at the age of 16 to undertake irreversible medical treatment. At this age, stage 2 treatment can commence. This involves hormone treatment. This is irreversible. This is not changing a registration detail. If we are allowing young people at that age to decide regarding medical treatment that will have an ongoing lasting effect on them, then we should allow them to change their registration details to reflect that. If we do not, by preventing that there can be long-lasting impacts on their mental and physical health. They are the reasons I will not be supporting this amendment.

**Mr ARMSTRONG** - I will support the amendment. The member for Launceston and the member for McIntyre have made some good points. You cannot stand for parliament at 16, you cannot vote at 16 and you cannot drive a car at 16. Sixteen is too young. People are not responsible enough at that age. Some might be, but the majority are not. I will be supporting the amendment.

**Ms ARMITAGE** - I agree with the member for Rumney in some ways when she said she will assess every merit, but we will not be assessing every merit because everyone will be able to change their details. We will not be able to say some 16-year-olds are capable and some are not. Was that your comment when you said assess every merit?

**Ms Lovell** - No. What I meant is we should assess each issue on its merits. Not relate change of gender on a birth certificate to being allowed to vote, stand for parliament, drive a car, drink alcohol or buy cigarettes. These are separate issues and different reasons for having different age limits in place. That is what I meant by assessing each issue on its merits.

**Ms ARMITAGE** - Thank you for the clarification, but I still stand by my concerns that once we start changing one age, it will reflect on others.

**Mr FINCH** - It is interesting. I remember growing up here in Hobart. I went to Macquarie Street Primary School and wanted to change my name at about 10 years of age. I wanted to change my name to Robin Hood. Mum did not allow that to occur. Good old mum. Too young to decide, but when I was 14, I thought I had all the answers in life. I had not even heard half the questions.

At 15, personally I made the decision to go into the workforce on my own. That was my decision. At 16, I left home but that is not what I would recommend for most young people or for my children, but there are some people who are ready to make those decisions. I can imagine for transgender with what they have had to face in their life and the maturity they have had to have to grow to the stage where they are at 16 years of age, they will have the maturity if they need to, if it is imperative they make that change, they will have the nous, the maturity, to make that decision.

I heard what the member for Launceston said, giving an example of the brain not being fully developed between 18 and 25. What do we do? Do we scoot it out to 25 years of age before people can make a decisions about those sorts of decisions? That example is a generalisation, and we can all generalise in respect of this, but I have a sense those to whom this amendment is going to be important - and I do not have that lived experience with the circumstance - would have the maturity, with the guidance of their parents, if they are still with their parents, to make that proper decision for their life.

**Ms RATTRAY** - Mr Deputy President, this clause 18, section 23 amended, is entitled, 'Application to register change of adult's name'. How can we say that a 16-year-old or over is an adult? My understanding is that you were not classed as an adult until you were 18 years of age. I do not understand how this amendment - and we have wandered into the next amendment that it is an application to register change of a child's name. How can you have an application to register change of adult's name if you are not adult? It seems to me you could not do that unless Tasmania decides that an adult is of 16 years of age tonight. I would like to see you try to keep them at school until they are 18 if they are an adult at 16 and they do not want to be there. That would be pretty hard. I seek clarification around that because that is as I read it. I think I still have the right bill. It says -

Section 23 amended (Application to register change of adult's name)

Section 23 of the Principal Act is amended by omitting "An adult person" and substituting "A person of 16 years or over".

There is a competing amendment, and the member for Murchison is ready to explain it.

**Ms FORREST** - I will address the member for McIntyre's question first. If you look to the bill before us, clause 18 says -

Section 23 amended (Application to register change of adult's name)

Section 23 of the Principal Act is amended by omitting 'An adult person' and substituting 'A person of 16 years or over'.

If this amendment is passed, ignoring any amendments at the moment, the act would read, 'Application to register a change of the name of a person of 16 years of age or over.' It is changing the title of that section. It is taking out the word 'adult' and putting in 'a person of 16 years or older.' My proposed amendment was to use what I am informed is the most appropriate parliamentary language. Section 23 of the principal act would read, 'Application to register a change of name of a person who has attained the age of 16 years.'. It is taking out 'adult' and putting that in. As to whether 16 is an appropriate age at which someone could apply to change their name, section 26 of the principal act talks about the registration of a change of name. It says that the registrar cannot change the name of a child if the child is 12 years old or more unless the child consents.

We are saying at 12 years old the child is old enough to consent. The parents might want to change their name, perhaps after a marriage breakup and they were called Joe Smith, which was the father's name, and the mother is changing her name to her maiden name of Jones. If their child is over 12, they cannot do it without the approval of the child. We are saying the child of 12 has to be asked about their name being changed when a parent is seeking to do so.

A lot of 16- to 18-year-olds are not living at home. I moved out of home and started nursing when I was 16. I had my licence. I could not drive straightaway, when I was out of home, but I got my licence as soon as I possibly could. Luckily I was being paid in my nursing training so I could afford to buy a second-hand car, but I was making all those decisions. I was living independently. I was looking after people in hospital, a scary thought in itself. You cannot do that now. I matriculated in one year; I did all that, and went into it.

Some 16-year-olds are very capable. In family law, they expect the child to make a contribution to what they believe is their will and preference from 16 years of age. A child starts questioning things about their own body, their personality, who they are, their sexuality, as the member for Rosevears alluded to, as young as nine or 10 or even younger, and they start questioning other things well before they are 18. They will want to be accepted by their peers. We have talked to very supportive parents, those who would do everything for their child. Unfortunately, not all children live in that circumstance. That was the point the children's commissioner was making. We really need to make sure there is a provision for these young people as well.

A child as young as 12 can give consent for medical procedures provided they can give informed consent, that means they have capacity and they understand the implications. Normally, you would not do that. You would ask the parent to consent to surgery for a child. If the child can demonstrate competence and capacity to understand, they can provide their own consent. There are some adults who are not competent to make decisions, at times. I am not talking about people who have an intellectual disability, simply people who struggle with general decision-making, are making what we might not consider good decisions but they are their decisions nonetheless, well beyond the age of 18. The member for Rosevears talked about the age of 25 of being the age when there is quite a bit of research about the male brain not maturing until then. Yes, we know that is the case. We are not talking about a mature brain. We are talking about someone wanting to change their name for reasons of a gender change, or it may be for other reasons. Sometimes, children need to change their name to protect themselves from some circumstances they may find themselves in, at ages 16 and 18, those who do not have family support. I respectfully argue against the member for McIntyre's amendment to my amendment.

**Ms RATTRAY** - I acknowledge people in our community, minors or children, and I will read the law for the under-18s factsheet published by the Legal Aid Commission of Tasmania. This is dated 15 May 2018 and says -

If you are under 18 years of age the following legal terms may be used to describe you: a child, a minor...

It also says, 'this should be done in the presence of your parent or guardian or another responsible adult.'

Legal Aid Tasmania suggests that you are a minor or a child if you are under the age of 18. There are 16-year-olds that may well be competent to be able to make a decision such as what might

be before them when it comes to changing their name and changing their gender. I will suggest there would be many others who are not.

**Ms Forrest** - Even when they are 18, are you going to make the same argument?

**Ms RATTRAY** - We have had that argument in this place at another time and I was not here for that. My understanding is that the age of consent is 18.

**Ms Forrest** - The age of consent is 17.

**Ms RATTRAY** - Okay, the age you are classed as an adult, I apologise. The age you are classed as an adult is 18 years of age. I will not labour the point. People will have their own views about this but that is what the general public believe, that it is 18 years of age to make such a life-changing decision. I am reflecting what I believe is the majority of people I represent. I go as far as to suggest it is probably the majority of Tasmanians.

I have a competing amendment and I respectfully ask members to consider that not every 16-year-old or 17-year-old would be in the right space to make those life-changing decisions. This is particularly the case without the family support we talk about as so important. I am not saying that about those people who do have the family support. We will speak to that later, where the parents support a change of gender. That is a parent's right to do that, but we are talking about somebody without any parental support who has just attained the age of 17. That is my offering, Mr Deputy Chair, and I will ask members to consider that amendment.

**Mr DEAN** - I support the amendment. There has been discussion about putting 16 years of age out of synchronisation with the act, which refers to 18 years of age. We have that difference. In many instances, 16-year-olds are going through a lot of hormonal and other changes in their life. I look back onto my own life.

At 16 years of age I wanted to make decisions that would have impacted enormously on my future when I thought I had had enough schooling. I thought I wanted to do other things but my parents intervened and made some decisions for me. I am forever grateful for that. I thought I knew best at 16 years of age. When I think back on it, it was a terrible position in the decisions I wanted to make. This is what happens. People make horrible mistakes at any age, but if you look back at the number of 16-year-olds who get themselves into trouble for doing silly things it is quite a large number.

The member for Launceston would know the youth - and I am not going to use his name but he is a Rhodes Scholar - when he was 16 years old, he made the decision to steal a car and he committed a lot of other offences as a result of that. He crashed a car and goodness knows what else. Thankfully, I was able to intervene to have the then commissioner of police - and I thank him for it every time I see him - see that this kid really needed some support. He was doing extremely well at school. It was a terrible mistake and a terrible decision he had made as a 16-year-old child. They withdrew the stealing charge, which would have ruined his life, as well as a conviction for dishonesty. He went on to become a Rhodes Scholar and I can tell you now he has been invited back to the university in England where he has been given the option of completing a degree and honours and goodness knows what else. He will achieve all of that, so that is an example of kids who go through the life changes. Are they old enough at 16 years of age to make the life-changing decision we are talking about here? I do not believe they are sufficiently old enough at 16 years of age to make that decision, whether they are living on their own or not. Many kids who are living on their own have been pushed out of home, yes, others being on their own yes, but there are not

too many of them liking it when you start to talk to them about their backgrounds and where they are going and what they are doing

If you look at the age of majority around the world, in almost all countries the age is 18 years of age. There are a few exceptions - there are two, or rather five countries here where the age of majority is 15 years of age and age 16 in seven countries. These countries around the world are saying the person needs to be 18 years of age before they really are an adult and entitled to most of the adult activities. There are exceptions with drinking in some places and countries. In America it is 21 years of age to go into licensed premises and the age changes around the world for a lot of other things. Smoking in Japan is 20 years of age and also to 21 years fluctuates in other areas. I am clearly of the position we ought not go back and change this to 16 years of age.

This decision is a life-changing situation. They need far more experience. They are or should be still at school at that age, 16 years of age and probably in years 10 and 11. Year 10 students. I am not sure why we are wanting to make the change. How far do we go? If you make it 16, make it 10, make it 5. We have to be realistic and a many 16-year olds need protection and support. We are not looking at this in the right way and I strongly support it should be the age of 18 years. I would urge members to think seriously about where you were at 16 years of age - what you were doing at 16 years of age, as to whether you could have made a life-changing decision. I certainly could not have. I do not want to push my own barrow, but I was doing extremely well at school. I was one of the top people in my class right throughout school, so I was not that needy. I thought I might have had a capacity to make the right decisions, but I did not. This is the case with many 16-year-olds. Lots of things on their plate, things changing, girlfriends, goodness known what, boyfriends whatever - it just goes on so. I certainly will not support the amendment.

**Mr GAFFNEY** - A few words here and this will do for the whole 16/18 debate also going to occur over other clauses and I will not come out of the chair again.

I have experience with this age group, having been a teacher for 25 years teaching from year 7 to year 12. My wife is currently a teacher at Don College and works with 16-, 17- and 18-year-olds. Sixteen-year-olds now in Tasmania are usually grade 10, unless they have come from the mainland because this came in some time ago. So, 17 and 18 years in years 11 and 12.

I have heard people say this is a life-changing decision. I would say for trans kids that it is a life-saving decision and there is a difference there. What we talk about, whether we get a job, a car or whether we drive or go to the pub on a Friday night, that could be life-changing, but what these kids are doing is life-saving. They are making a huge step because they do not want their sexuality to be defined when they are 18 or 19. They have mates and friends in school at nine, 10, 11 and 12. Those are the years they are changing.

Young people start to question their sexuality from a physical, emotional and social side when they are nine, 10, 11 or 12. They have had counselling and found that something is not right or not working. They are different to their brothers or sisters, and do not quite fit in. They have had counselling and their parents have recognised something there is not quite working. That is, if they have the support of their parents.

I do not mean to admonish anybody, but we come from a very protected group of people. If you look around, we are middle-aged, conservative, supported people.

The people we are talking about are questioning their sexuality, their persona and their personality from the age of 12, 13, 14 and 15. We are forcing those young people - who know that they are not quite the same as everybody else, not quite the same as the other guy in the football team or the girl in the netball team, they know there is something different - to wait until they get to 18 before they can make a decision. How stupid is that? By that time, they would have experienced so much negativity and so many brick walls that they will feel that in their whole adult experience they are on the back foot. Instead of enjoying being 15 or 16, 'I need to make a big decision here', we are holding them until they are 18. We say, 'Now you are 18, tick, you can make your decision on what sort of person or who you want to identify as'. I ask people in this place to throw away the norms we were brought up with because it is a different world out there now. We know kids are growing up so much faster. The number of kids we are talking about is a small percentage, but to them, if we do not do the right thing, that is when there will be dangers and kids self-harming; that is where the level of that happens.

We are doing the wrong thing if we extend it to 18 years only because we feel becoming a trans-identified young person should equate to the age at which they can join the army, get their drivers licence or go for a drink in the pub. It is not right. It is a different set of circumstances, it is a different paradigm and it is a different way they want to express themselves as a young person.

Looking back to my college career, I went to a high school and we all went to the same college, so five or six different schools in the Devonport area and they do that in Launceston, Hobart and Burnie.

That is when you start to express yourself and your sexuality and start to develop - I want to go from a kid to an adult. In that transition period, I do not want to have to wait until I am 18 before I can identify with the gender I want to be. Why would you make me do that? Why would you make me hold on for two or three years and wear the clothes that I do not want to wear and have the name I do not want to have just because you feel I am not mature enough until I am 18?

Every person in this place has been to a college or high school production and you have said, 'Look how brilliant those kids are, look how wonderful they are'. They know about things and are connected to the world, but we are not. They show their grandparents how to use their iPads.

**Mr Dean** - They do that at five years of age.

**Mr GAFFNEY** - They do - and do not be silly about it, member for Windermere, when you suggest that a five-year-old should have the same, that is a silly comment, but we will deal with that later. We are deciding between the ages of 16 and 18. Eighteen is too late for those kids who need to decide when they are 16 and not be stuck by this group here saying, 'Oh no, they should not be able to do that before they go into a pub for a drink'.

That is all I am going to say on the age group issue, but I hope people reflect on the small percentage of 16-year-olds this will affect. They are not doing this without thinking deeply about what they want to do, without cares and safeguards in the bill. Unfortunately, I understand where the member for McIntyre comes from. She is a good person and wants the best, but on this one she is misguided, and I will not be supporting the amendment.

**Mr VALENTINE** - I also read the children's commissioner's letter already read in by the member for Murchison. I would seek leave to table that document.

## **Leave granted.**

When I read what the children's commissioner had to say and it has already been read in, I look at the amendments to follow with regard to this and to page 8 of the member for Murchison's amendments, and it gets down to (6) and says -

An application under subsection (1), (3) or (4) to have a gender registered in relation to a person who has not attained the age of 18 years may be accompanied by evidence that -

- (a) the person has undertaken counselling as to-
  - (i) whether or not the application ought to be made, and
  - (ii) the implications of the registration of the gender in relation to the person; and
- (b) the counselling was provided by a person, chosen by the applicant, who the applicant considers has suitable qualifications, training or experience to provide such counselling.

Further on we know that the registrar can then qualify this is the right person and they did have competence to give counselling.

The point is I want to read you a letter from a college student. I have asked permission and she has provided that -

My name is Laura Campbell. I am in Year Twelve at Elizabeth College.

I have never written to an MP before, but today you will be debating a Legislation that will affect a number of my friends. I encourage you to vote in favour of the reforms to the Births, Deaths and Marriages Act.

I am trusting you with the responsibility ...

This is a college student talking to us -

to recognise and respect the incredible people within the Transgender community. The reforms will only affect the three per cent of the population who need it, and if passed will be a historic victory in this struggle for equality.

Please, consider carefully.

This is from a college student.

I support what is in the original amendment of the member for Murchison. I do not support taking it to 18 years because of the information we also received in respect of the fact a 12-year-old can even object to their parents having access to their medical record.

**Ms Forrest** - They can give informed consent for medical procedures. No, no, that was something else.

**Mr Gaffney** - A 14-year-old.

**Mr VALENTINE** - Then a 10-year-old can be convicted of fraud. It is not like it is wrong. Given the advice we have from the children's commissioner, given the fact there are those other aspects in law that allow younger people to do various things or are responsible for committing crimes at the age of 10, I commend the member for Mersey for his speech in that regard. I think it had great insight and we have to understand if the child at the age of 16 understands that this is what they want to do, it is not sex change, it is gender change, as far as I am aware. I do not think they can have an operation to change their sex at the age of 16.

**Ms Forrest** - They can if consent is provided. You cannot have surgery done without consent.

**Mr VALENTINE** - No, I am asking the question about a 16-year-old being able to have a sex change operation.

**Ms Forrest** - If consent is provided.

**Mr VALENTINE** - I do not think it can. It is only a change of gender, so it is not something that cannot be reversed. The reason they would want it this early is because they would want to start a regime of treatment that would enable them to transition to the gender that they identify as. It is important to understand all of that and with a certificate to show they have had counselling and understand what they are doing, the opportunity is there for the registrar to have that. With that impassioned plea from a college student, we do know that they do know what they want to do at that age.

**Ms RATTRAY** - I appreciate everyone's contribution in this place. I am just not sure I like to be called 'misguided', but if that is what a member thinks, that is what they think. Picking up on a point that the member for Windermere made, and I thought it was an important point, that 'adult' is a term defined in the principal bill as an 18-year-old, how does that work? It seems as though it does not really matter anymore; you just do whatever you think is the right thing to do. That is what I will continue to do, do what I think is the right thing. I have talked to many people in the community about what they believe is an age where somebody without any parent and family support could make such a decision - that is what we are talking about here. We are not talking about those people who have the support of their family, we are talking about the ones who do not have that support. That is a big difference. I take on board that the member for Mersey has been a teacher for 25 years. I have been a parent for 36 years, and that takes a bit of doing at times. I do not have the answers to everything, but I have seen them go through those stages, and I would hope they have the support they need. I am trying to protect those who do not necessarily have the support and are trying to do something that they might regret later.

My well-intentioned amendments do not seem to be gaining the support that I need. I ask members to consider that if it were their 16-year-old and they were estranged from them and did not have the support around them and wanted to retaliate in some way, would they want them to wait another couple of years before they made a decision like that? I appreciate what the member for Hobart said about where they are in their journey of life, and the heartfelt contribution from the college student who would be 18, so they can do what they like.

I have made my point and again urge members to at least consider that this is about those 16- and 17-year-old minors, or children, in our community who do not have the family and the parents' support that others might have to make those decisions.

**Mr DEAN** - The thing I have struggled with throughout this is that we have very few people, in my opinion and from the feedback I have received, making this sort of decision. I could accept this and the position being argued by members that it be 16, 15 or 14 years or what have you, had the people, the public, all the stakeholders been involved in this process and had an opportunity to have had a say in this.

I am like the member for McIntyre, I would be surprised if it is not happening around the other electorates. I have received hundreds of emails and many of them are touching on this very point about age. They are touching on the other point of opting out rather than opting in with sex being registered on birth certificates. They are two of the main points raised by me. I might have had some saying that 16 years is okay. This is the feedback I am receiving. I would like other members to tell me what sort of feedback they are hearing in their electorates. This is one bill where I have had a flood of emails from my electorate. It might have been orchestrated by somebody sending up messages. I have had a flood of them coming from my electorate and my staff and I have been trying to answer them all. This is a decision made by a few people only and I cannot and will not accept it, hence I am voting against everything in this bill for that very reason.

I support transgender people. I support people who are going through these issues and have these things they are confronting. I support them making it right and getting rid of discrimination and all of that. Had the process been right, we could have moved on before Christmas. We could have gone through this on our last day here with at least 10 or 11 supporting it. The position we find ourselves in today is sad. It is not good at all.

Under everything else in this act, you have to be 18 years of age to have been guilty of an offence and be tried as an adult and - I do not care what the member for Mersey says - it might be life-saving but it is also life-changing. The member keeps asking why we keep making these people in that position wait until they are 18 years of age. As I understand it, correct me if I am wrong, we do not. We are not doing that. With their parents' or guardian's consent and courts, they can move forward in this. They do not have to wait until they turn that magic age of 18 years before they can do this, so it is wrong to suggest that.

I ask members to look seriously at this matter. In the courts, a child is deemed to be a person under 18 years of age in all criminal offence statutes in this state; traffic and the rest. You have to be 18 years of age before you can be tried as an adult in an adult court. Why is that, tell me? The police do not have the right to interview any person under the age of 18 years alone. They have to be accompanied by an adult, and the acting chairman in her position as a justice of the peace would be able to vouch for this. Why is that? The reason is because it has obviously been put forward under 18 years of age there is the possibility they need adult support to ensure they are on the right path, doing the right thing, that police do not stand over them and all their rights are explained to them and all the rest. There is a reason for that. I have worked there for 35 years and understand it well. Police are very careful when it comes to managing people under 18 years of age. They also care for them over that age, but certainly more careful of them under 18 years of age.

There is every reason to support the amendment we have. I say again, I am not going to repeat too much more, but there are only a few people here, making a big decision. I urge you to think seriously where you are and what you are doing and support the amendment being put forward. Had this gone through the right process, I am confident all of these matters would have been sorted and ironed out, with good and strong support through this place. Currently, we know where the support is and we know what is happening and that is a pretty sad situation when we are talking about an issue such as this.

**Ms LOVELL** - First I concur 100 per cent with the comments made by the member for Mersey. He has summed this up more eloquently than I certainly could and I agree with everything he said.

We are debating the application to change your name on your birth certificate. We are not debating anything else, we are not talking about gender at this point - we are talking about change of name; that is it.

**Ms Rattray** - I think we have wandered.

**Ms LOVELL** - I agree we have wandered. I hope members might bear that in mind when we move onto the debate about change of gender, so we do not have to be here all night listening to the same arguments, because I think we have heard them. Having said that, we are talking about change of name, but so far because the debate has wandered, we have had discussions about decisions being made about a young person's gender identity compared to drinking, smoking, car theft crime and to all kinds of things. There are age limits put on lots of different things that happen in our society for lots of different reasons. The age at which you are held criminally responsible is 10 or 12, not 18 - that is when you are tried as an adult, yes, but you can be held responsible for a crime at the age of 10 or 12.

We have also heard from parents of transgender children, who have explained to us why this is so important. One of the examples they have given, and this is only one, is that at this age often your birth certificate is the only form of identification you have. In most cases, this would happen if you were living with a supportive family, supportive parents, you might have been living as a gender that is not the sex you were born for many years. You could have identified as another gender, and children start to do this at the age of between three and five, so it could have been more than 10 years you have been living as another gender.

It comes time to apply for a part-time job, as many people do at this age, and as soon as they have to show ID which you do to apply for a job and the only form of ID you have is your birth certificate, everybody knows you are transgender. Nobody might have known this for 10 years, but all of a sudden people know.

**Ms Forrest** - Nor do they need to know until you get the job.

**Ms LOVELL** - Exactly, it has absolutely no relevance. Let us remember what we are debating here, let us try and remember we are not talking about a crime, we are not talking about people making a decision that is bad for their health, and yes, member for Windermere, this is absolutely a life-changing decision. Let us not underestimate the positive impact that this change would give to young transgender people.

It is not irreversible, unlike the medical treatment that expert clinicians have determined you can undergo at the age of 16. If we are allowing people to make a decision to undergo irreversible permanent medical changes to their body, why would we not allow them to change their name?

**Mr DEAN** - I am trying to follow the position. Nobody is trying to stop them at all. I ask the Government - and I do not know if the Government or somebody is able to answer it: am I right in saying that if this amendment got up with 18 years of age, would a 16- or 17-year-old with the consent and support of parents or guardians be able to transition to another gender? Please tell me if I am wrong.

We are saying that people down to 14 years, with the consent of parents or going to a court, et cetera, can start to make some of these changes. If I am right there, it is beyond me because that is not what the member for Mersey said. It is beyond me how another member in this place can stand up and say they support 100 per cent everything the member for Mersey said. I have difficulty in understanding how that could be the case if what was said was not right. That, to me, starts to send messages about how much I can accept of what some are saying. I have difficulties with that.

This is a difficult matter to deal with and I accept that. I am putting my position forward on all the evidence I have, the advice I have received, and the law as I understand and know it. There are reasons as to why 18 years has been identified by the authorities, by this place, in setting legislation, and by the many other countries throughout the world. I have identified those and showed you that document.

The position put forward by the member is a very strong position. It is a good argument and I am asking that you listen to it and get the facts; that you know what the real facts are. That is what you need to do when you are making decisions like this. The chain comes back to me as well and I accept this, I wear it. Do not accept everything I am saying and certainly, if you feel I am wrong, question me and tell me. If I am wrong, I will accept it and admit that I am wrong.

You have to get the facts, the true position and situation to make decisions like this. Once again, that is where this has gone horribly wrong. We have missed many of these facts and details because it has not gone out to all the stakeholders and departments it should have gone to, and many of those people have not been able to have a say.

I went to the Law Society and asked them for their position on it. Their response was words to the effect that they had not been consulted or approached on this bill at all, and therefore, at this stage, they did not take any position on it. That is only them but there are others. To me it defies logic.

**Mr VALENTINE** - There are a couple of things I did not touch on that have come to my mind about this. The member for Rumney points out that it is about name change. I appreciate that because there is the broader issue later on that we will be dealing with. A 16-year-old can be living away from home independently, supported by a living away from home allowance - I cannot think of the term.

**Mr Willie** - The Child Safety Service supports kids who live independently at 16.

**Mr VALENTINE** - That is in the units that are successfully operating near Elizabeth College. At 16, they can be a parent and the child is their responsibility. Seventeen, is it? It is under 18, and they can have a child. Is that life-changing? It is absolutely life-changing.

**Mr Dean** - I heard the people talking today about a 14-year-old girl with a child.

**Mr VALENTINE** - That was me, and a 28-year-old person was a grandmother. There are things that are so much harder for people to cope with under the age of 18. If we stick to what we are trying to deal with it is changing a name and, yes, it might be that in doing that they are transitioning to a different gender. They are simply changing their name, yet they could be looking after a young child. We have to put it in perspective.

The heading in the principal act talks about the 'application to register change of adult's name'. Will the heading change when the body changes? I do not think you have to move to have the heading changed, it is a descriptor.

**Madam DEPUTY CHAIR** - As a point of explanation, an Acts Interpretation Act provision will address that when the bill is passed.

**Mr VALENTINE** - We do not have to amend the heading. That answers the member for McIntyre's concern.

**Mr GAFFNEY** - I thank the member for Rumney for bringing me back to the change of the name. I said I would speak on the issue of 16- to 18 -year-olds. I am trying to put in context how I believe a 16-year-old is mature enough to make decisions regarding this activity. When we say everybody has not had their say on it, every trans person who has presented to us, whether it be a parent, a trans person, or people representing the group, has told us they think 16 is an appropriate age for many of the 16- to 18-year-old queries we were discussing. Not one of those groups has said it should be 18. We need to keep that in mind.

Some people are stuck on the proper process of how this should have gone to the community, et cetera, but our aim is to strengthen every bill, whether or not we agree with it. I would never make the statement that I am not going to agree with any of these amendments because I am annoyed with what has happened beforehand. That is the process of this place: whether we agree with the bill our aim is to strengthen a bill. At the end of the process, you vote for it or you do not. That is what we need to do. If we think a 16 year old should be doing this and this, has the capacity, whether you agree with the process or how it got there, you should still be mature enough in this place to say yes. Even though you do not like what has happened, and I do not like this, it is still a good amendment and what I am going to vote for - because of this. Not because I have a bee in a bonnet about the whole process from way back, what should have happened and I was defeated in that, because that is what we do in this place, we strengthen bills.

**The Committee divided -**

AYES 6

Ms Armitage  
Mr Armstrong  
Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)  
Ms Rattray

NOES 8

Mr Farrell  
Mr Finch  
Ms Forrest  
Mr Gaffney (Teller)  
Ms Lovell  
Ms Siejka  
Mr Valentine  
Mr Willie

**Amendment to Amendment negatived.**

**Amendment agreed to.**

**Clause 18, as amended, agreed to.**

**Clause 19 -**

Section 24 amended (Application to register change of child's name).

**Ms FORREST** - Madam Deputy Chair, I have one amendment to clause 19. I am sure the debate on this one has been had. I move -

That clause 19(a) be amended by -

*Leave out* 'under the age of 16 years'.

*Insert instead* 'who has not attained the age of 16 years'.

I do not wish to repeat any of the debate because it is related to the change of gender. It was well and truly prosecuted in the last amendment. It would be churlish, when we are trying to get through this bill, to delay it.

**Ms RATTRAY** - I indicate to the members and those watching that I do not intend to prosecute my amendments any further and appreciate that we have had that discussion. It is clearly articulated in the *Hansard* for all those to read, should they wish to. In response to the comments made by the member for Mersey and the Deputy Chair, I do not often get a win in this place. Today has been one of those days but I will always do my work as I go through a bill and I never hold a grudge.

**Mr DEAN** - I will not be rushed by anybody or for any reason. In clause 19, the phrase 'who has not attained the age of 16 years' is substituted for 'under the age of 16 years' in the amendment to section 24 of the principal act, which issues a simple change in wording with no impact on interpretation. I note, however, that the member has left intact the change to subsection 24(3), that the test for a magistrate considering an application by a parent to change a child's name will be, if the magistrate is satisfied that the change is consistent with the child's will and preferences, not the best interests of the child.

This goes somewhat to my argument in the previous matter, what a 16-year-old and a 17-year-old can do if the amendment had been passed -

- (1) How would a magistrate determine the will and preferences of a child? At what age will a child be considered capable of expressing an informed will and preferences?
- (2) How will a magistrate reconcile a will and preferences test with the overriding best interest of the child test under the Family Law Act?

Former magistrate Don Jones talked with me at some length about this, as he probably did with the member for Murchison. This is an area where he has some concerns as to how far down they can go and how they can find the information and evidence to satisfy some of these issues.

The change to section 26 of the principal act, clause 20 of the amended bill, has also been left intact. There is no notation of change of name on a birth certificate unless requested by the person to whom the birth certificate relates and then only in a birth certificate extract. An extract is not generally accepted as evidence of identity. This amendment could cause problems for a person needing a full birth certificate showing a change of name for identity purposes. There are a number of areas that should be addressed. To take Don Jones's position to an extreme, he asked, 'Would I, as a magistrate when I was sitting on the bench, have to ask a three-year-old to work out how they feel and what they think? How would I do it?' I will not be supporting the amendment.

**The Committee divided -**

AYES 8

Mr Farrell  
Mr Finch  
Ms Forrest (Teller)  
Mr Gaffney  
Ms Lovell  
Ms Siejka  
Mr Valentine  
Mr Willie

NOES 6

Ms Armitage  
Mr Armstrong  
Mr Dean  
Mrs Hiscutt  
Ms Howlett (Teller)  
Ms Rattray

**Amendment agreed to.**

**Clause 19, as amended, agreed to.**

**Clause 20 -**

Section 26 amended (Registration of change of name)

**Mr DEAN** - Mr Deputy Chair, I move -

That clause 20 be amended by:

*Leave out* all words after 'is amended by'.

*Insert instead* 'omitting from subsection (3) all words after 'for the person' and substituting the following -

'must -

- (a) include both the name to which the person's name has been changed and a notation of each name of the person that was previously registered; or
- (b) if the Registrar thinks fit and has been requested to do so by the person applying for the birth certificate, include only the name to which the person's name has been changed, without a notation of any name of the person that was previously registered.'

That is the amendment.

Clause 20 amends section 26 of the principal act to provide that a birth certificate issued after a change of name is to have no notation of a previous name unless requested by the person, in which case the registrar may issue an extract of the birth certificate with a notation that the person was previously registered with another name.

The comment I make here is this amendment means the applicant for a birth certificate has full control over the inclusion of information about any previous names. That is a good position.

Given a birth certificate is the primary identification document in Tasmania, it is preferable any decision about the inclusion or otherwise of information about a person's previous names, if any, should be at the discretion of the registrar. Further the registrar's email advice notes that proposed new subsection 26(5) only allows the registrar to issue an extract with an annotation showing the change of name, not a full birth certificate. This has the potential to create issues for an individual needing a full birth certificate to show their change of name for evidence of identity purposes.

It is not likely but I ask that members give some consideration to the position I have put forward.

**Ms FORREST** - I am going to encourage members to vote against this clause, generally, and thus against this amendment. When you look at the principal act and the bill before us this inserts a provision about the issuing of certificates once a change of name has occurred on the register. I am not disagreeing with the member for Windermere on the intent about a person being able to get a certificate with both their former registered name as well as their current registered name if they need that. But, after discussions with Parliamentary Counsel, this provision should be in the current act under section 46, I think it is from memory, where it really fits better.

I encourage members to vote against the amendment and against the clause when we get to that, because there are provisions that effectively do the same thing, but in the place where it should be, under section 46 of the principal act, Issue of certificate, because that is what this relates to. The section inserted in the bill in the other place in this section relates to the registration of a name change, not the issuance of certificates. On that basis, I will not be supporting the amendment and I will be inviting members to vote against the clause.

**Mrs HISCUTT** - The Government does not support the inclusion of this clause in the bill in the first place, but we acknowledge the efforts the member is to making to fix up something that was inserted in the other place. The Government's position remains the same.

**Ms RATTRAY** - I heard the member for Murchison say that she did not disagree with the member for Windermere's proposition.

**Ms Forrest** - Intent.

**Ms RATTRAY** - Intent. Does that mean that it is not drafted well enough?

**Ms Forrest** - I am saying it is in the wrong section, but I have a competing amendment that does a similar thing with a name change, when we get to that.

**Ms RATTRAY** - If it is in the wrong section, OPC has drafted it in this section so OPC must have felt it was relevant to put it there.

**Ms Forrest** - I requested the drafter to put it into section 46 of the principal act as it fits better there. That is about the issuance of certificates, not about registration.

**Ms RATTRAY** - That is my question. The member for Windermere had a number of discussions with OPC about this amendment, so I would be interested to hear the member's position on that given that the member for Murchison agrees with the intent. I would like to support the member in his endeavours to clarify this and if OPC have drafted it to fit in there.

**Mrs Hiscutt** - To be clear, OPC has drafted the amendment, not the original. That is what you are saying, isn't it?

**Ms RATTRAY** - Yes, they have drafted the amendment. Sorry, I should have made that clear. They have drafted the amendment for the member for Windermere and I am interested to know from the member for Windermere whether OPC had suggested it belonged in another place or best fit in another place.

**Mr VALENTINE** - I am little confused. We are talking about the member for Windermere's amendment, which is on page 3 of his amendments. Is that right, member for Windermere, clause 20 and it is version 5? It says -

insert instead 'omitting from subsection (3) all words after "for the person" and substituting the following:

If you go to the principal act, subsection 26(3) does not have 'for the person' in it.

**Ms Rattray** - Yes, it does in (4).

**Mr VALENTINE** - In (3).

**Ms Rattray** - No, it is (4).

**Mr VALENTINE** - It says 'omitting from subsection (3) all words after ...'.

**Ms Forrest** - It should be (4).

**Mr VALENTINE** - Where is (4)? Can I seek your advice?

**Ms Forrest** - I think you are right.

**Ms Rattray** - Could that go on the public record, please?

**Mr DEPUTY CHAIR** - Members, to keep you informed, there seems to be a problem with this. We are seeking further advice. Thank you members for your indulgence. There does seem to a drafting issue here and the member will need to contact OPC at the right time. Could the member seek leave to withdraw the amendment?

**Mr DEAN** - Mr Deputy Chair, I accept all the advice. I seek leave to withdraw the amendment as it is.

**Leave granted.**

**Amendment withdrawn.**

**Mr DEAN** - Mr Deputy Chair, I move -

That clause 20 be postponed.

**Clause 20 postponed.**

**Clause 21 -**  
Part 4A substituted

**Mr DEPUTY CHAIR** - Because this is a new clause, we are going to call each subclause individually so that we deal with each of those individually.

**Clause 21 -**  
Part 4A substituted

**Mr ARMSTRONG** - Mr Deputy Chair, I move -

That the Committee report progress and the debate stand adjourned.

It being 9.35 p.m., the next couple of calls will take considerable time to go through. As I said earlier, I have a long way to travel. We have to be back here at 9 a.m. for briefings, and we had a late night last night so I think 9.30 p.m. is a reasonable time to pull stumps. I do not know whether it is possible to start a bit earlier in the morning and then we have all day tomorrow to finish this bill and the electoral bill. That is what I propose.

**Mrs HISCUTT** - I am terribly sorry, member for Huon, this is going to take a long time and urge members to stay for at least another hour. There is a lot of work in this and if we do not work later tonight, we will be later tomorrow night. The Government really needs to get the Electoral Amendment Bill through, so I need to do that. I urge members to do a little bit more work for me to 10.30 p.m., another hour. Perhaps if we work a little way through it, we will see how it will go and then I might be happy to adjourn. Please consider another hour at least.

**Mr DEAN** - I do not want to throw a spanner in the works, but I understand the need to get through this. I think we have sorted out the Electoral Act now, and thanks to the member for Elwick, Mr Willie, for raising some issues about why there was that need to rush it through.

**Mr Willie** - I am here to help.

**Mr DEAN** - He is here to help. That is great. That is wonderful.

We should never take our eyes off the area of occupational health, safety and welfare. That is a concern to me. I do not have that far to go and I will probably walk up, those extra 10 or 12 kilometres I have to go. I will probably walk - I nearly always do - but I think we have to consider the other people as well and the member for Huon in particular, unless he was able to get accommodation here, which I suspect at this late hour would be difficult. I just hark back to my time as a commander of police when I would not allow any of my officers to return from Hobart after being down here for a full day after 5 p.m. because I would wear it if there were problems on the road. We have to consider that.

I think starting earlier is a good idea. Can we not start an hour earlier in the morning?

**Mrs Hiscutt** - We can start half an hour earlier.

**Mr DEAN** - Half an hour earlier tomorrow. We can pick up some time there. I am not sure what the briefing is tomorrow morning.

**Ms Rattray** - It is the bus review.

**Mr DEAN** - I would have thought that we could postpone that. I have been involved in that. That briefing was for my purposes, in many respects. We do not need to have that exactly. I would have thought we could postpone the briefing on the bus Project 2018. That is what they want to talk to us about.

**Ms Forrest** - We could start at 9 o'clock in the morning.

**Mr DEAN** - We could start at 9 a.m. if we needed to, that is right. Not at 10.30 a.m. to pick up half an hour, but at either 10 a.m. to pick up an hour, or 9.30 a.m. Other members would support that. If we postpone the bus issue, it is not that urgent - it is Project 2018, for members' information, and it is about bus contracts. I am not saying they are all department problems but there have been some issues. Let us start with this matter early in the morning.

**Mrs Hiscutt** - I have been advised it would be very difficult to rearrange. We cannot do it tonight and the advisers will be organised and ready tomorrow.

**Mr DEAN** - Project 2018 is a matter that could be deferred. Work has been put into it but work will still be there when we can rearrange the briefing. Those who are going to give that briefing would fully understand the reasons, knowing the bill we are handling. Yes, we need to get through this bill. I accept that.

**Mr DEPUTY CHAIR** - I hear what you are saying. We may return to this and see if others want to stay tonight. The Leader has heard your point of view.

**Mrs Hiscutt** - We have decided we will send an email to cancel all briefings and start in the Chamber tomorrow at 9 a.m.

**Ms ARMITAGE** - Mr Deputy Chair, I support the member for Huon, mainly because clause 21 is long and confusing. I have amendments and the members for Windermere and Murchison also have amendments. My amendment refers to page 20, proposed new part for a proposed new section 28D. If I do it as an amendment to the amendment by the honourable member, Ms Forrest, I do it as proposed at 28A. It is very confusing. I feel that we need to be fresh. It is an important bill and I would like to do it in the morning.

**Mrs Hiscutt** - We can do a 9.30 a.m. start. That will give us half-an-hour to sort out the departments, if we stay until 10 p.m.

**Ms ARMITAGE** - I would need to speak to the Deputy Clerk. I do not know whether I should put my amendment. My personal amendment is in a different clause than if I amend the amendment of the member for Murchison. I would like a chance to speak to the Deputy Clerk.

**Ms RATTRAY** - I rise to support the honourable member who has a way to travel. I have asked members for exactly the same consideration in the past.

**Ms Forrest** - We have been denied many times.

**Ms RATTRAY** - I do not want to deny the opportunity to somebody who feels they need to go now. We can start earlier tomorrow, Leader, with fresh eyes for a clause that is going to take

some time. With any more talk we are only delaying the member's drive home and we want everyone to arrive home safely.

**Mr FINCH** - Everyone needs a good night's sleep because from 9.30 a.m., for the sake of these people who are here, as spectators to this historic bill, we have to continue through to get it done. It might take us through to a late night tomorrow night, but we have to keep going until we get it out of the way.

**Mr FARRELL** - Because everyone else is having a bit of a talk, I thought I might fill it out until 10 o'clock. I have a way to travel too, but I would be quite happy to work on until 10 o'clock. It is difficult for the Leader to make these calls because no-one would be keener to get out of that chair and have a break than the Leader. It is a reasonably fair concession to have an early start. We would probably be able to steam through that. I am happy to follow whatever the Leader's wishes are. We have to compromise, and starting earlier and working through is a really good idea. Everyone is pretty keen to have it finished. My first wish would be to stay with the Leader and work through, but I understand others have different challenges.

**Ms Forrest** - We need to be prepared to sit late tomorrow night and book accommodation if necessary.

**Progress reported. Committee to sit again.**

## **ADJOURNMENT**

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

That at its rising the Council adjourn until 9.30 a.m. Thursday 4 April 2019

### **Rodney Croome - Comments on Statewide**

[9.49 p.m.]

**Mr DEAN** (Windermere) - Mr President, I will be brief but I need to make this statement. It is fairly important, following the questions I asked today at 2.30 p.m. and because of a previous statement I made in this place in my second reading contribution.

I have had the opportunity to talk to Mr Rodney Croome in relation to the issue about a statement made on the ABC. I thank Rodney Croome for the very good discussion we had. It turns out Rodney Croome indicates he was given that information by a person within the parliament and that was the information he relied on when he made that statement. I accept that without qualification at all. I accept the position of Rodney Croome and that is what I said in the second reading speech. I want to make that clear because it could have gone to his credibility for people following this closely and that was the reason it needed to be clarified and cleared. Thank you for that and hopefully now the matter can be satisfied.

**Motion agreed to.**

**The Council adjourned at 9.50 p.m.**