Thursday 12 September 2019

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

LITTER AMENDMENT BILL 2018 (No. 60)

Third Reading

Bill read the third time.

LAND ACQUISITION AMENDMENT BILL 2018 (No. 59)

Second Reading

[11.04 a.m.]-

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

That the bill be now read the second time.

Mr President, the bill provides a series of amendments to the Land Acquisition Act 1993. These amendments are primarily designed to streamline the administrative process, reduce red tape and align the assessment of compensation with acquisition legislation in other Australian jurisdictions. The bill also includes minor amendments to update what are now superseded references in the act and to correct spelling and grammatical errors.

The act, which is administered by the Valuer-General on behalf of the minister, provides the legislative process by which an acquiring authority may acquire land in Tasmania and sets out the basis for the determination of compensation paid to property owners who have had all or part of their land acquired for infrastructure projects.

The act is an important component in the provision of infrastructure to improve the way of life for Tasmanians. It has primarily been used by the Tasmanian government to acquire land required for the upgrading of state highways. However, the act is also used by both Crown and non-Crown acquiring authorities for the provision of a wide range of infrastructure projects such as irrigation, dams, powerline easements, and health and educational facilities.

The act has been in force for 25 years without any amendment or review. Reviewing the legislation presents an opportunity to review the basis for the assessment of compensation to ensure it is not unnecessarily out of step with other Australian jurisdictions. The review allows the Government to correct certain references that have been superseded over time and a number of grammatical and spelling errors.

Eight key amendments were identified during the review process.

Section 18 of the act details the requirements that must occur before a 'notice of acquisition' may be published in the *Tasmanian Government Gazette*.

Section 18 will be amended to permit an acquiring authority to proceed to issue a notice of acquisition even though the area of land being acquired is less than the area detailed in the notice to treat, which is issued under section 11 of the act.

This amendment will remove the need for an acquiring authority to have to recommence the acquisition process by issuing a new notice to treat based on the amended area in the accompanying survey plan, thus saving costs and cutting unnecessary red tape.

Section 27(1) provides the basis for determining the amount of compensation to be paid upon the acquisition of private land.

The current definition of 'special value' is open to interpretation to include personal taxation implications associated with a person's ownership of the acquired land.

The primary amendment here is to remove any consideration for a claimant's personal taxation implications from being factored into the assessment of compensation.

Special value has historically been associated with the claimant's use of the land and courts have consistently ruled that personal taxation implications are not considered to be part of 'special value'.

A claimant is otherwise protected by rollover benefits available under taxation law.

Section 27(1)(f) deals with 'any disturbance relating to any loss or damage suffered, or cost reasonably incurred, by the claimant as a consequence of the taking of the subject land'.

The current law is limited to disturbance arising from the taking of the land and not arising from the authorised purpose. Authorised purpose, in relation to the acquisition of land, means a purpose for which the land is acquired by an acquiring authority.

Currently no compensation is payable for 'disturbance' caused to the operation of a business such as a grazing, farming and manufacturing property arising temporarily from the works or long term from the authorised purpose.

The amendment provides a clear definition for 'disturbance' as 'any other financial cost reasonably incurred (or that might reasonably be incurred) relating to the actual use of the land, as a direct and natural consequence of the authorised purpose'.

The amendment will widen the assessment of compensation for disturbance by ensuring compensation for disturbance arising from the works.

Section 27(1)(g) currently provides that compensation can be paid for 'such other matters as the acquiring authority, the Court or an arbitrator may consider to be relevant.'

No other Australian jurisdiction contains a clause like 27(1)(g) as it is unnecessary if all the heads of compensation are covered.

This section is removed as all the heads of compensation are covered in sections 27(1)(a) to (f).

The inclusion of a new section 27(1A) will provide protection to an acquiring authority who has lawfully constructed infrastructure on private land and subsequently decides to acquire that land.

This new section will clarify that an acquiring authority, or its predecessor, will not be forced to pay twice by having to purchase this infrastructure it has constructed as part of the land acquisition process.

Section 37 of the act details the time frame in which to lodge a claim for compensation as 60 days.

If a claim is not lodged within that time frame a claimant whose land has been taken must apply to the court to finalise compensation.

It is not logistically possible for landowners to gather the information required and prepare a claim within 60 days.

Most landowners lodge their claim within four to six months. The time to lodge a claim for compensation varies widely in other Australian jurisdictions, ranging from three months to three years.

The amendment will extend the time for a property owner to lodge a claim for compensation from 60 days to six months.

Section 54 of the act allows an acquiring authority, prior to commencing the process of acquisition, to enter land to investigate whether that land is suitable for the purpose of acquisition.

An acquiring authority can enter land and sink pits, examine the soil, take samples and do other things in relation to the land.

The current act does not provide a general legal obligation on the acquiring authority to remedy any damage caused to the land during that investigation.

The amendment will ensure that acquiring authorities will act in the best interest of property owners and remediate any damage at its cost caused to the land as a result of the acquiring authorities entering land to investigate its suitability for a proposed scheme of works.

The amendment will obligate an acquiring authority to take reasonable care to comply with biosecurity best practice.

Section 78 of the act details that any time frame under the act may be extended upon the request of the property owner or a claimant.

The act limits an owner of land, a claimant or a former owner of land to a period of 14 days at the end of any stated time period in the act to seek an extension of time.

The act also requires that in a default of any agreement to extend the time frame an acquiring authority or claimant may apply to the court to extend the time frame.

The amendment to section 78 will allow the acquiring authority to extend a time frame under the act in the event that they are not able, for whatever reason, to obtain the property owner's request to extend time.

The final amendments relate to consequential amendment to the act, including grammatical and spelling errors and identified superseded legislative references.

The proposed amendments are not complex and add no entirely new process to the act but, rather, they reduce some red tape and align the assessment of compensation with other Australian jurisdictions.

There will not be any negative impact arising from the proposed amendments to the act.

The amendments were met with positive reactions from primary users of the act, including relevant government departments, Crown and non-Crown acquiring authorities, Local Government Association of Tasmania, Australian Property Institute Tasmania, Law Society of Tasmania and the Real Estate Institute of Tasmania.

Mr President, the Government fully supports the introduction of this bill.

I commend this bill to the Council.

[11.13 a.m.]

Ms RATTRAY (McIntyre) - Mr President, the Government's commitment to reducing red and green tape is evident in this amendment bill. I am sure most people, particularly those who live and work within these requirements, would certainly appreciate that. I have no issue with that but I have a couple of questions on some the areas of the legislation. I asked them in the briefings yesterday, which was, as always, very useful, so I thank those involved in the briefings and the Leader for facilitating them.

Because this legislation will be used by Crown and non-Crown entities, I asked what the non-Crown entities were. The answer was TasWater and local government. Could the Leader confirm those are the only two non-Crown entities covered under this legislation? We understand the issue of TasWater. I wonder whether Irrigation Tasmania might be under the Crown, even though it is a government business enterprise, but TasWater and local government are not. It goes on to talk about acquiring authorities for provision of a wide range of infrastructure projects such as irrigation, dams, powerline easements, and health and education facilities.

Mr President, as we speak, quite a few irrigation pipes are being laid in a patch that you and I know very well. They are trying to beat the elements, I expect. They are putting massive pipes through agricultural land and double gates everywhere. Farmers are going around with the biggest smiles on their faces because they have these flash new double gates in every paddock. Those having the pipelines laid through their properties are seeing some benefits in other ways.

Section 37 talks about applying for compensation and the 60-day claim time frame. We were told it is very difficult for a landowner to ascertain firmly what compensation level they might need in a 60-day period. To push that out to six months is reasonable. I support that, albeit we were told that an application can be made to extend the time. If it is in legislation and it says six months, that seems to me to be a more relevant time frame.

Installing the effluent pits and dumps that are to be rolled out across the state will require some land acquisition because they will need to be strategically placed. I look forward to talking with State Growth with regard to where those strategic locations are, how they will meet the biosecurity best practice requirements and how they will negotiate with local government. There will probably be some strong negotiations with local government because they will need access to water and all those vital infrastructure components to make those effluent dumps work effectively and comply with biosecurity best practice. That is something for another day, but it is worth flagging through this bill because I expect it will take some acquisition of land.

With regard to the consultation process, a significant number of departments and organisations have been contacted and they are all supportive. I am not surprised, but I did not see the Tasmanian Farmers and Graziers Association on that list. Was it left off the list? The TFGA is always very good at contacting the Legislative Councillors to make sure we understand if it has an issue. I have not had any contact, so I assume the TFGA is comfortable with what has been put forward.

The intent of the amendment talks about making sure that best practice is used and this is in the interest of the landowners, to get the best outcome for them through land acquisition, so I expect they would be quite satisfied with that. I wanted to confirm that engagement with the TFGA. I expect quite a few of those landowners who have had land acquisitions in the past and will have in the future are likely to be TFGA members. I certainly support the intent and I look forward to more legislation that does reduce those red and green tape compliance obligations that most in our community think are quite onerous and a bit over the top at most times. I support the bill.

[11.21 a.m.]

Mr VALENTINE (Hobart) - Mr President, I thank the honourable Leader for the opportunity for the briefings, always good, as we appreciate in this House. It is quite clear that there are changes that do need to be made. This is certainly a bill that seeks to do that. Acquisition happens quite a lot. It is listed in here, maybe for new roads or widening of roads, for bridges or for schools. The honourable member for McIntyre has mentioned dams associated with irrigation, powerline easements and health. The St Helens hospital might have been on an acquired site.

Ms Rattray - Through you, Mr President, it is a terrific story. The Break O'Day Council owned a parcel of land, so they gave it to the state government and there was enough left over to build a new police station.

Mr VALENTINE - Are you getting an ad in here?

Ms Rattray - I put my letter in to the new Minister, who is also the member for Lyons. I am looking forward to the opening of that one.

Mr VALENTINE - Fair enough. I could not recall, but it did belong to someone else and was given to the government. It may be in the future that there needs to be an extension to hospitals that might take in private land. It is compulsory acquisition, for the most part. That is always a difficult thing for somebody who faces losing part of their livelihood, possibly, or the mainstay of their income. It is important that it is dealt with properly.

Ms Rattray - Through you, Mr President, sometimes it will dissect a property, which can be a challenge.

Mr VALENTINE - That might mean that some part of the residual land that is left over is not as economic to deal with in relation to farming practises, for instance. It might mean that the size of the crop they can grow is reduced when trying to crop a smaller portion of land, or whatever it might be. There could be a lot of reasons.

Ms Rattray - Through you, Mr President, there are also stock underpasses. Something has to be negotiated in those circumstances.

Mr VALENTINE - That is right. We have seen that sort of thing come through the Public Works committee quite often. This bill does deal with some quite important matters. It is about time, given the length of time that it has been in play and it needs to be updated. There is the issue in the second reading speech -

> Currently no compensation is payable for 'disturbance' caused to the operation of a business such as a grazing, farming and manufacturing property arising temporarily from the works or long term from the authorised purpose. The amendment provides a clear definition for 'disturbance' as 'any other financial cost reasonably incurred (or that might reasonably be incurred) relating to the actual use of the land, as a direct and natural consequence of the authorised purpose'.

Last night, I was talking to somebody about their particular circumstance where they had an entrance to their property that they are now turning into a distillery. The entrance to the property had good sightlines to and from that property. A new road was put in, which actually brought the road closer to the business, and when the person applied to register that business or have that business considered for access, it was a 'no' because the sightlines were not good.

Prior to the road upgrade, it was fine. After the road upgrade, it is not because they cannot get the visitors in and out, or could not if the business were to go ahead.

It is that sort of thing these amendments take into account: the impact on the whole business associated with that land. It is a good amendment. It is not retrospective, so that person, unfortunately, will not be able to reapply in that regard because the widening of the road has been done.

This just came up in conversation last night, and I could not believe my ears. I thought, 'This is something we are going to be dealing with tomorrow.'

The issue under section 27(1) is basically avoiding a court process that can be expensive for everybody concerned. It can be expensive for the government and for the person who needs to go to court to have their matter heard. It is a good thing that the legislation will reduce that opportunity.

There is a proposed new section that will clarify -

> that an acquiring authority, or its predecessor, will not be forced to pay twice by having to purchase this infrastructure it has constructed as part of the land acquisition process.

I mentioned during the briefings yesterday that there might be private power poles on a farmer's land, for instance. If part of the land where the power pole stands is to be acquired, presumably the

farmer would be in a position to start a conversation about who owns that power pole, who will maintain it in the future and the costs of originally erecting the power pole because they would have paid for it to be erected.

No doubt it is those sorts of things, but as the member for Murchison pointed out to me, the power pole could be in the middle of the road. It will not help them, but it might end up in the road reserve. These amendments allow those sorts of things to be more fully addressed.

I note the second reading speech says -

> The amendment will extend the time for a property owner to lodge a claim for compensation from 60 days to 6 months.

That is a very sensible amendment. The last thing you need to have on your plate as a landowner is a short time frame in which you might end up having to use the court system to deal with a matter concerning compensation. Six months is a good time frame for claims to be lodged. You need time to get together planners and lawyers, and all sorts of other things that might result in a land acquisition situation.

Provisions allowing the acquiring authority the right to enter and the need to make good are good. People in the past may have suffered as a result of an acquiring authority moving onto their land and perhaps not leaving the land in as good a shape as they found it. That is important.

This example is not in relation to acquisition, but when I was in local government, the communication authorities used to dig trenches through new footpaths. They would then fill the trenches in and re-tarmac the footpath. Later the stuff where the trench had been would settle, the surface would crack and the life of the asset would be reduced accordingly.

When it comes to private individuals dealing with that type of a circumstance, it is important any damage to a property as a result of an acquiring authority going in, doing tests or digging bores is made good.

The land needs to be restored to a safe level especially if a bore hole has been drilled where cattle are. After it has been filled in, the bore hole may sink significantly, which creates an opportunity for an animal to step in a hole and break its leg. There could be all sorts of issues so it is important it is made good. I do not think I have misinterpreted that part of the amendment.

The issue is in the amendment obligating an acquiring authority to take reasonable care to comply with biosecurity best practice. Years ago I regularly used to visit a farm in the Oatlands area. The farmer was concerned footrot might be transferred onto his property. The next-door neighbour had footrot on his property and his did not, so you can imagine an acquiring authority going from one farm to another might have been a concern.

If they were using a vehicle to go from one farm to the other, they might have been carrying soil in on their tyres, which might have meant transmission of a significant disease such as footrot. It is good to understand the biosecurity practices needed and to ensure the acquiring authority is taking reasonable precautions to comply with them.

The second reading speech notes reducing the occurrence of courts being used to prosecute things. I fully support this bill and think it is good. I do not see any problems or issues with it at all. Good points were brought out during briefings. I am happy to support the bill.

[11.33 a.m.]

Ms ARMITAGE (Launceston) - Mr President, I thank the Leader for the briefings. As always, they were informative and cleared up many of my questions.

This bill tidies up the act - which is around 25 years old - by amending eight principal sections, including consequential amendments to address drafting errors, legal doubts and administration efficiencies, and bringing the legislation in line with current practice by correcting issues relating to administering the act as it stood.

We know there are many reasons for compulsory acquisitions of land. Most of the ones I was involved with were to do with highway widening and new highways. I also note the red tape cutting and that the acquiring authority can now proceed with the acquisition if the land being acquired is less than the area in the notice to treat. This will remove the need to recommence the acquisition process. This is a time- and money-saving exercise; obviously, if the land being acquired were more than the notice to treat, the acquisition process would need to recommence.

I am pleased to see in the bill the need to remediate a property should there be damage caused by soil samples, pit digging and so on. It is important the land is put back to right. As the member for Hobart stated - and I agree - if holes are dug on a farm, an animal could break a leg. Some of those animals, especially bulls, are quite expensive. It could be a costly exercise.

Mr Valentine - Might be a tractor that goes in instead if the hole was big enough.

Ms ARMITAGE - That is true. If it is a tractor, the consequences could be quite nasty because someone could be thrown off a tractor.

Clause 18 of the bill also clarifies powers of entry and examination with a proposed amendment to section 54, and I am particularly pleased see proposed subsections 54(3A)(a) -

> (a) activities on the land taken by the person are in accordance with contemporary best practice in relation to reducing the spread of pests and disease;

This is particularly relevant to our biosecurity and properties that may be growing produce or fruit such as blueberries. Having had the inquiry on blueberry rust and similar things a couple of years ago, we know many people do not think about the many things you need to do before you go onto a property and that you can transfer diseases or pests. It is important to have that particular clause in the bill. The following proposed subsections are also listed -

> (b) so far as is reasonably practicable, activities on the land taken by the person do not conflict with the interests of the owner or occupier of the land; and
>
> (c) any damage to the land caused by the person is remediated.

Another welcome change is the time allowed under the act to seek compensation for compulsorily acquired land, which has changed from two to six months. I am pleased to note from

briefings that extensions of time are regularly granted if sought. I seek reassurance from the Leader that this will still be the case with these changes, although they will not be needed as often.

Sometimes a road can dissect a property. There can be differences of opinion on what can be done with the land that has been left. I can think of occasions where a road has gone through a farm and it has been the opinion of the government that the section of land left over would be suitable for housing and still has a great deal of value, whereas the owner of the property might differ in their opinion - they might feel they have more knowledge of the land and that it might not be good for housing and might not have the value attributed to it by the department.

I am pleased to see the extension of time. Sometimes these things can take a long time even to get ready to take to appeal. If your land is compulsorily acquired - and I have been involved in a couple of these - it is important you are adequately compensated. I appreciate the difference of opinion. Not reflecting on the particular properties, but I was involved in one where I recall the difference being that the property owner felt that the value was a certain amount of money, but the department felt the amount of remediation work done, with other structures put in place and certain bridgeworks and underpasses put in, compensated for the land. As far as the owner of the land was concerned, the work put in should not have devalued the cost of the land that was levelled against it.

We have a lot of instances in which the owner of the land does not have a choice and it is compulsorily acquired. I believe it is very important that they have the opportunity to appeal, to go to court if necessary, and make sure that the value of their land, what it is worth to them, is provided. That is the important part - what someone else thinks land is worth might not be the same as what the landowner thinks it is worth to them. I am pleased to see the changes there. I certainly support the intent of the bill.

[11.38 a.m.]

Mr ARMSTRONG (Huon) - Madam Deputy President, the bill tidies up many typos in the original legislation. Those aside, I support the bill on the basis that it ensures that acquiring authorities act in the best interests of property owners. The legislation now extends to remediation of any damage caused to land as a result of acquiring authorities entering the land to investigate its suitability for a proposed scheme of works; the bill also streamlines process and cuts red tape.

The bill extends the time for property owners to lodge a claim for compensation from 60 days to six months. Common sense suggests it is not logistically possible for landowners to gather the information required to put in a claim within 60 days. For example, if a landowner needed a professional valuation undertaken to support his claim, that alone may take in excess of 60 days. This amendment provides a fairer time frame for claimants and will help cut red tape associated with time extensions required under existing arrangements.

As I understand, there has been extensive consultation on amendments to the principal act and support from key stakeholders has been forthcoming. I also note tripartite support in the other place. I support the legislation.

[11.40 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I have a few answers, including a couple for the member for McIntyre who asked what an acquiring authority is. In most situations, the acquiring authority is a Crown body such as a government department, or a statutory authority such as the Department of State Growth, the

Parks and Wildlife Service or Crown Land - services like that. The 29 local government councils are non-Crown entities with acquisition rights under section 176 of the Local Government Act 1993. Less frequently, the acquiring authority is a promoter - that is an entity such as TasWater, TasNetworks or Tasmanian Irrigation. These bodies have specific legislation that enables them to be an acquiring authority under the Land Acquisition Act 1993.

We talked about consultation. In addition to what was in the second reading speech, a further period of community consultation was initiated on 17 May 2018, with submissions closing on 17 June 2018. During this time, submissions were received from the Australian Property Institute, TFGA, TasWater, the City of Launceston, Kingborough Council, Huon Valley Council and the Law Society of Tasmania and others, as I mentioned earlier. Key stakeholders and the parties who made submissions during the consultation process were provided with a copy of the draft bill prior to its tabling in parliament.

The member for Hobart commented on section 27(1)(f). Regarding compensation for disturbance caused by the operation of a business arising from the acquisition of land for an authorised purpose under the act, I understand this has generally occurred during the negotiation phase of that acquisition. The proposed amendment ensures this is considered in future acquisitions.

Mr Valentine - It might have been the council that did it rather than the state.

Mrs HISCUTT - This amendment makes sure that it is there.

The member for Launceston queried section 37. Yes, extensions of the time frame in which to lodge a claim for compensation beyond the proposed six months are allowable.

Bill read the second time.

LAND ACQUISITION AMENDMENT BILL 2018 (No. 59)

In Committee

Clauses 1 to 10 agreed to.

Clause 11 -
Section 18 amended (Notice of acquisition)

Mr DEAN - I raise the issue of land being acquired for purposes such as roads, and there is a need for the title to be changed. I take it that is a cost against the authority, the Crown.

Mrs Hiscutt - That is correct.

Mr DEAN - What is the position on the reclassification of that land as a result of that occurring? Some cases have recently come forward in relation to this. I am unaware whether the Valuer-General is aware of that. Land was acquired and changed hands in Lilydale. There was a reclassification and some issues arose from that. Is that known and what is the position?

Mrs Hiscutt - Could you put that question in more general terms so that we better understand your requirements?

Mr DEAN - When land is acquired, there have to be changes to the title and there is a cost against the Crown. When land is acquired that then causes a reclassification of that title, what is the position?

Mrs Hiscutt - Would it be in the same circumstance the member for Launceston brought forward - a road went in and a little bit of land was left on one side that was reclassified for residential use?

Mr DEAN - Yes.

Mrs HISCUTT - It is definitely considered and every situation creates different scenarios. It is very possible.

Clauses 11 agreed to.

Clauses 12 to 22 agreed to.

Clause 23 -
Section 78 amended (Extension of time or period)

Mr VALENTINE - I want to clarify the circumstances under clause 23(1A) -

> An acquiring authority may, by notice in writing to an owner of subject land, a claimant, or a former owner of land…

Is this with regard to cases in which land may have been sold since the claim was made? What happens if the compensation is paid and the person who acquired the land is receiving compensation for something the other party may have already notionally paid for?

Mrs HISCUTT - When the acquisition is gazetted - that is, when it is transferred to the Crown - the Crown only conducts its business with one owner at a time. Once it has entered into that arrangement, it deals with that one owner. If the property is sold, we still only deal with that one owner and they have to work something out.

Clause 23 agreed to.

Clauses 24 to 26 agreed to and bill taken through the remainder of the Committee stage.

CORRECTIONS AMENDMENT (PRISONER REMISSION) BILL 2018 (No. 15)

Second Reading

[11.52 a.m.]
Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council - 2R) - Madam Deputy President, I move -

> That the bill be now read the second time.

This bill makes a number of changes to the remission provisions in the Corrections Act 1997. The amendments in this bill -

- remove eligibility for remission from those prisoners yet to be sentenced from the commencement of this legislation;

- clarify and limit the application of remission for those prisoners sentenced prior to the commencement of this legislation; and

- refine the scope of remission.

The proposed changes in this bill address community expectations regarding truth in sentencing and ensure that prisoners will not be released earlier than they are sentenced to be released. As I have already indicated, all new prisoners sentenced after the date of commencement of this bill will not be eligible for remission. This bill recognises that it would be problematic to retrospectively remove remission eligibility from prisoners who were sentenced prior to this legislation coming into effect. Therefore, the Government has adopted the approach taken by other states and this bill does not seek to remove remission eligibility from those sentenced prior to this legislation coming into effect. For those still eligible for remissions, the bill limits the amount of remission an eligible prisoner could receive to a maximum of three months on their total continuous term of imprisonment, regardless of how many sentences may make up that continuous period in prison.

This bill makes it clear that remission is granted in relation to sentences of imprisonment and is only calculated with reference to days the person is in custody. This approach is reflected in the bill and aligns legislation regarding the application of remission with what is considered to be the historical intention of the change to the remission system in 1993, with the application of Regulation 22(1). The intention is to cap remission at a maximum of three months on the total continuous term of sentenced imprisonment, regardless of the number of sentences that make up that total continuous term. Setting out when a remission is to be applied to a sentence and limiting the amount that can be applied will provide greater clarity for sentence administration practices at the Tasmania Prison Service and consistency in parity for prisoners who are still eligible to receive remission.

The bill also introduces the term 'special management days' in place of 'special remission'. These changes ensure that a clear distinction exists between 'remission' and 'special management days'. The bill recognises that, although rarely used, these provisions are important to retain as they provide the Director of Prisons with the discretion to grant 'special management days' to prisoners on account of good behaviour while suffering disruption and deprivation during emergency situations, industrial disputes and circumstances that are of an unforeseen or special nature.

The bill modifies existing law in order to expand the factors the director can take into consideration when granting remission to eligible prisoners by introducing participation in rehabilitative or approved purposeful activities as a factor that must be considered. The introduction of this factor further addresses community expectations that prisoners, while in prison, will not receive remission unless they have engaged in good conduct or participated in activities that are purposeful and assist them to be rehabilitated members of our community.

Consultation was undertaken on a draft version of this bill. The draft bill was sent to targeted stakeholders and made available for public consultation via the Department of Justice's website. All other Australian jurisdictions have abolished or phased out remission of sentences for prisoners

and I am proud of the work this Government is undertaking to ensure criminals serve the full sentence handed down by the court. This bill provides the community with the future assurance that a prisoner will not be released until the date they are sentenced to be released. This bill provides clarity for the Department of Justice in regard to how remission must be applied and it limits the amount of remission that can be applied. The bill refines the scope of remission by including extra factors, which the director must take into account when considering granting remission. I commend the bill to the House.

[11.58 a.m.]

Mr DEAN (Windermere) - Madam Deputy President, the briefings were really significant in this instance. They went into a lot of detail and answered a lot of concerns members had in relation to this bill. I want to mention the session we had this morning with the Director of Prisons, Mr Ian Thomas. His input and the issues he brought out were extremely significant to us in making our determination on this bill.

If this bill is supported, parole still remains. We heard a lot about parole. The member for Murchison made a very good comment; she asked why we need remission when we have parole. Parole is available to anybody serving six months or longer in jail.

The sentencing authority - a judge in this case, the person who has heard all the evidence, who has received and given weight to any impact statements that may have been provided - is aware of the severity of the crime; the position of any victim; the background details of the offending person; their demeanor; the level of remorse shown; the likelihood of rehabilitation; the deterrent factor not only on the individual, but also on any others who might be considering going down a similar path; whether the offender has made any genuine changes in their lifestyle since the commission of the crime; and the list goes on. Surely it has to be the sentencing judge or magistrate who is best able to determine the length of prison served by a person found or pleading guilty of a crime. That is a very strong position.

It should be the sentencing judge who makes that determination, not the manager. We heard this morning that senior managers within the prison service within the departments and so on are making that determination. The Parole Board operates, but is a board made up of people with much background knowledge to determine whether a person should be paroled or not. Recently in this place we made some changes for a police officer to be a part of that board so there is a good mix of people with the background to make the parole determinations. In relation to remissions, it comes down to the position of the manager of the departments and sections, as we heard this morning.

So, what is good behavior? Is it being cooperative and compliant in the last 12 months of a sentence or the last six or three months? What constitutes good behavior? I would have thought full compliance for the full term would have been the criterion for good behavior, not just good behavior in the last few months. A sentenced prisoner should understand they will serve the full time as determined by the judge. Perhaps what the sentencing judges should be saying when they sentence a person is something like 'You are sentenced to three years jail on good behavior; bad behavior may mean you will serve additional time.' That is true, because if prisoners play up during their time and commit other offences and crimes, they can be brought before the courts and sentenced for those further bad behavioral instances that do occur within the prisons. Should that not be the position? Most prisoners are going to behave in prison, most would comply with authority, but whether it is a genuine attempt to change to become a law-abiding citizen is another issue. Knowing they might get remission, some would genuinely try to put that across to make clear that is what they were doing, but, effectively, they are probably not changing at all. There are

hardened career prisoners who will not change and will misbehave in jail whatever the situation. We have a great deal of evidence about this occurring.

Commenting on this, yesterday we heard from lawyer Ian Arendt, who commented that in effect judges can or may take account of the period of remission a prisoner might be given when imposing sentences. It was a comment to that effect because I questioned him on that -

Mr Valentine - I thought he may have heard it, but he could not verify it.

Mr DEAN - He said it related to one judge in particular.

Mr Valentine - That is right, but he said he thought he recalled it.

Mr DEAN - I see that as something I could not and would not accept. It attacks the credibility of our judges or a judge. What a situation it would create if judges were to be able to look at a prisoner and say to themselves, 'This prisoner will be of good behaviour, they will get a three-month reduction on their sentence' - or at one stage, as we know, it was a third reduction on their sentence - 'so therefore I am going to tack that period onto the sentence I was going to impose'.

To me, it is not an acceptable position, and I would certainly question that. I could never see that occurring. As we know, sentences dished out by judges are appealable. They are normally identified on previous sentences handed out for similar crimes; the judges look into the backgrounds of prisoners and previous case history as to what sentence is required in the circumstances. They take into account any of those issues. They know very well that if they sentence outside of what is an accepted sentence in all those circumstances, an appeal would be made.

Mr Valentine - It is important, though, that we do not go on hearsay. We do not have evidence that happened; it was not verified.

Mr DEAN - This is the position with briefings - we are given information that is not given on oath; it is simply given as a person wants to give that information or evidence. I think we are entitled to refer to those statements in this place.

Mr Valentine - I am not suggesting for one minute you should not be talking about it; I am just saying it was not verified.

Mr DEAN - No, it was not verified, and this is the problem with briefings as we receive them today. They are not taken on oath; it is simply people coming forward making statements to us and we have the right to question them during that process. I have some concerns with the process.

How often have you heard people say to you that a prison sentence seems to be a harsh sentence or is not an appropriate sentence? Then you say to them 'No, that is not the sentence they will have to serve at this stage; they will be entitled on good behaviour to a fair remission of that sentence and therefore they may be out much earlier'.

It makes a difference. I have had people say to me, 'I saw so-and-so down the street yesterday, but they got 12 months imprisonment - what's going on?' That is where the remission situation comes in and you have to explain to them that the prisoner has been of good behaviour so they got their remission and they are now free and able to do as they want.

Ms Armitage - I had no understanding until the briefings that people could get a remission that was not parole. It was not something I was ever aware of, and I am sure many in the community would not be aware that someone sentenced to 12 months could serve nine months and then not have to be on parole to be released.

Mr DEAN - There would be some out there, but this bill is all about, as the Leader has said a number of times, truth in sentencing. You are right, most people would expect that when a person is sentenced to 12 months imprisonment, they serve 12 months imprisonment, but many people do understand the parole system.

Ms Armitage - I understand the parole system. You might not necessarily know anything about remissions unless you know someone who had been in prison and then been on remission.

Mr DEAN - As I said, the parole system is understood and it is a good system. I think there would not be many people who would not support the parole system. They have every reason hanging over their head to behave themselves when they are out of jail, paroled, for the period of time that parole is in place. With remission, once they have that remission and are released from jail, that is the end of it. There is no further probation, no controls, no checking and no testing. That is the finish of it and that is the problem we have.

The briefing session we had from Tony Bull yesterday was interesting. One could almost say he was a career criminal, having served many terms of imprisonment over a long time. It is great to see he has now seen the light, I suppose, and is now serving and doing good things in the community. We have heard about his woodwork -

Ms Rattray - His woodworking and jewellery boxes.

Mr DEAN - He talked about making things in jail as well, I think.

Ms Forrest - That is where he learned to do it.

Mr DEAN - That is where he learned his skills. Going back some long time ago, I bought a complete picnic set made in the prison. It was a great set; it was really well made.

Mr PRESIDENT - If I may, too, the desk in the old leader's office, that great big desk, was built in the prison. Several items of furniture were constructed in the prison. It was all very good quality.

Mr Valentine - There is one in the foyer downstairs.

Mr DEAN - Top-quality products come out of the jail. It is great to hear Tony Bull commenting about what he did in the jail, the trade he came out with and is able to make a dollar doing, and that he is occupying himself in the right way. He made comments like this, 'You used to get a third off for remission. It made you behave. It made a really big difference'. I am paraphrasing, but they were words to that effect. He was encouraged and told to behave himself. It impacted on how people did their time. That remains and will not change. If remission is removed, nothing changes there. We heard all about that this morning - how good behaviour provides you with all these other opportunities.

He went on to say that it would be a seriously bad move to remove remission. He learned a trade in jail and became constructive. He learned a trade. That will not change. It will not change with remissions being removed. It may make that opportunity more available. He commented that breaking away from institutionalisation is important. The jail does that. We heard from Mr Ian Thomas this morning how much effort the jail puts into trying to break that cycle, trying to take prisoners out of that mode.

I thank the Leader for the briefings and those members who asked certain people to brief us. It was a great session and valuable. I thank the department for the briefing and for clarifying that for us. It was interesting when we talked about parole yesterday. It was Ian Arendt, I think, who made the comment that parole starts at the gate. That is, the time they walk in the gate is when parole starts. Parole starts, as Ian Thomas said this morning, from day one when you go into the jail. You have to behave yourself and do all the right things. At the end of six months that can lead to parole occurring, so parole starts from day one, not at the time the gate is opened and you are released. Certainly, there is a big weight hanging over their heads at the time they leave that gate, but it starts well before that.

The department went into detail about how the bill will now provide for a three-month remission period for those who are currently in jail for each instance and not for future imprisoned persons.

It may have been the department which mentioned remission could, in this instance, cause a further 40 people to be in jail. You could probably challenge that because it would be a very difficult issue to determine because judges and magistrates are starting to issue home detention orders associated with electronic monitoring. In other words, a person who would ordinarily have gone to jail is now being released for detention in their home controlled by electronic devices. We should expect to see a significant change in what is happening with prisoners and the numbers going into the jail. Saying removal of remission will cause more people to be in the jail is difficult at this stage to identify.

Can the Leader identify how many persons serving terms of imprisonment have been released on home detention orders in the past 12 months and whether home detention subjects are increasing?

I refer to some of the comments this morning from the Director of Prisons, Mr Ian Thomas. In answer to a question I asked, he identified the many benefits that come from good behaviour in the prison. He also said that when a prisoner is first brought into the system, they are told during the induction part what can happen in certain circumstances. They are told of many of the benefits that will apply in the event they are of good behaviour. A prisoner will know that. I do not want to go through the great list, but he said that for long-term prisoners exceptional behaviour day release would be applied in some circumstances. Prisoners can be involved in sport, go out and play their footy, cricket and netball et cetera of a weekend if they demonstrate good behaviour. It just went on and on, with all the other people working outside the jail. In fact, people who are of good behaviour have been given virtually a unit - not a prison cell - within the jail to live in. All these things are there. I commend the jail on what it is doing to rehabilitate prisoners and to try to get them back on the straight and narrow, as it were. They are going over and beyond, in my view, to do the right thing in the right way. I think Mr Thomas said that there is a documented list of the privileges provided to prisoners, so there are no secrets involved in any of that.

We talked about all the courses available to prisoners. We were given a list of quite a large number of courses they can undertake study in or trades, and an enormous number of activities

within the jail. What is more, many of them - I think - would continue in those trades and with that study when they leave jail as well, so it does not have to stop when they get out of jail; it can and does continue.

Interestingly, Mr Thomas went on to say that remission is a tool to incentivise prisoners, though he identified that it is not without its flaws. I could see there are flaws with the remission system. I do not think he said what the flaws were, but he said there are flaws with it.

The other thing with the reception process, when prisoners are brought in, is that numeracy and literacy levels of incoming prisoners are tested to see what they can and cannot do. They identify their needs when coming in.

One area I was concerned about, as was the member for Mersey and others, related to parole. I suspect we will now see more prisoners applying for parole; that is a given. If they cannot get remission, they are entitled to parole. I think there will be more applications for parole. If that occurs, will the Parole Board be in a position to activate those applications for parole within a reasonable time?

Is there a backlog in that area with the average time it takes the Parole Board, from getting an application for parole to when the hearing occurs, for it to be able to meet to hear that application? On having heard the application, what is the normal length of time before the board comes in and stamps 'release' - subject to many conditions that we know apply? That is what the Parole Board is able to do: impose many conditions for that parole period, which can include remaining at home at certain times, or remaining out of licensed premises, or remaining in Tasmania. The board can put an enormous number of conditions on parole in those circumstances. What is the length of time for a person to be granted parole? It applies to a prisoner after six months. If a prisoner is serving 12 months only - it might have been the member for Hobart who made a good point here, or it might have been the member for Mersey -

Mr Valentine - I think it was the member for Mersey.

Mr DEAN - If a prisoner is serving 12 months, they apply for parole at the end of the six-month period. We were told many things are done prior to the parole period arising. I think the psychologists' reports and other things occur before that period. I am unsure how long it would take for that to be actioned. If you are doing 12 months, you want to be assured it will be heard and determined well before the period of 12 months. Parole would not be of any benefit to you if it took you into the eleventh month to determine the case. You might be paroled a week early but you probably would not see earlier releases in some cases. That would not be fair in all circumstances and it is something we need to be clear on.

I was a bit surprised when I asked Mr Thomas if he had spoken to his colleagues on the impact of dropping remissions and its effects on their establishments, and he said he had not done that. With the greatest respect to Mr Thomas, I would have thought he would have done that. If I were a director of a jail, I would want to know some of the things I should be considering or confronting when that happens, if it does happen. There was a great deal in the media when it happened in Victoria - a lot in the press about jails being clogged up, additional prisoners coming in and so on. I do not think it came to fruition, based on the information I have. I do not have the facts and figures but I suspect somebody else in this place will.

Is there any data on prisoners who have been released on remission who have committed a crime during that remission period? In other words, if they were serving two years and were given a three-month remission, did those persons offend in that three-month period? The Leader might be able to tell us whether that is the case.

I will listen to the rest of the debate on this. At this stage my view is that I will support this legislation. It will not unduly impact prisoners. It will not change much at all, if it changes anything. Why do you need remission and parole when they can both occur at the same time? You do not need it. As long as we get the parole situation right, as long as we can get that moving ahead fairly quickly and without too much delay, provided the Parole Board has the capacity and ability to do that, I envisage there will be more applications for parole. I think common sense will tell you that. Prisoners will know all about parole, they will learn more about it and they will want to be paroled at the very first opportunity - particularly those who are doing the right thing. It will mean more work. We want to make sure everything is right.

[12.29 p.m.]

Mr GAFFNEY (Mersey) - Mr President, members will not be surprised to hear I have some serious reservations about the bill. It has always been my view that parliament should show restraint when addressing sentencing and related issues. Simplistically, justice and legislation provide a framework to address behaviours and actions that we, as a society, believe are wrong, and we need to protect life and property.

At a federal level, laws are made to allow us to identify what we believe is right and what is wrong. At a state level, laws are made to enable different jurisdictions to acknowledge and identify certain idiosyncrasies of their communities that need to have legislation in place. The Police Offences Amendment (Prohibited Insignia) Act, our Reproductive Health (Access to Terminations) Act and the recent Justice and Related Legislation (Marriage and Gender Amendments) Act are all examples of legislation we require in Tasmania.

I intend to outline what I believe to be the benefit of remissions at the outset, before outlining my concerns about this bill.

Keeping people in incarceration is a costly endeavour. A concerned citizen, Miriam Oxford, outlined this concern in correspondence she forwarded last year. She said -

> This money would be much better spent on improving mental health care. People who are well behaved should be released to the community. Keeping them in prison serves no purpose. Make our community safer and get the money spent on what is really needed. It's time for our state to be smart on crime. Please vote this bill down.

There are alternatives to keeping people locked up unnecessarily. Remission provides inmates with an incentive to behave well. It also prepares people for the return to their lives on the outside.

The cost of keeping people in prison is not just a financial one. JusTAS outlines the criminogenic nature of the prison system -

> We know that upon release, most prisoners will reoffend, and around half of those be back in prison within two years of release. This is what is commonly referred

> to as prison's revolving door, and it costs the government approximately $300 per incarcerated person per day.
>
> More importantly, we have substantial evidence showing that incarceration is not rehabilitating incarcerated people, but is instead criminogenic. That is, prisons create people who know more about crime, that are more socially isolated and more likely to reoffend.

It seems counterproductive that so much public money is spent on a system that does not rehabilitate offenders. My contention is the changes to remissions proposed by the Government will further exacerbate this problem.

Greg Barns, Chair of the Tasmanian Prisoners Legal Service, raised similar concerns in September last year, when he spoke with *The Examiner* -

> All it will mean is you will see more people in jail for a longer period of time. ... The abolition of remissions in other states has had disastrous consequences with prisons overflowing.

Concerns have recently been raised about overcrowding in the prison system. In April, *The Mercury* reported while the system is not at capacity, advocates are concerned that overcrowding and understaffing are leading to frequent lockdowns.

Other communication received by all members, suggests the prison system is, in fact, bursting at the seams. A recent letter authored by Greg Barns, the Chair of the Tasmanian Prisoners Legal Service; Kym Goodes, CEO of TasCOSS; Pat Burton, CEO of JusTAS; Jane Hutchison, Chair of Community Legal Centres Tasmania; Deborah Byrne, Executive Officer of the Brain Injury Association of Tasmania; Dr Chris Jones, CEO of Anglicare Tasmania and Sarah Charlton, CEO of Holyoake Tasmania Inc, makes this claim and in doing so, offers the following figures taken from the Australian Bureau of Statistics -

> Tasmania's prison population is increasing rapidly. Over the last five years, our prison population has increased by 27 percent, from 451 prisoners in 2014, to 614 prisoners in 2018.

The authors expressed serious concerns about the removal of remission, given the manner in which the prison population has increased in recent years.

Their letter states the following -

> When there is a lack of rehabilitation programs, and when alternative sentencing options means that prisoners sentenced to custodial sentences are likely to be imprisoned for longer, it makes no sense to remove an incentive that encourages good behaviour.

There is widespread concern about the further removal of alternatives to incarceration. In light of the facts, as raised by Mr Barns and his co-authors, I believe the present bill warrants serious deliberation.

Remission is not granted lightly. The objective is certainly not to release dangerous criminals into the community. I highly doubt any member who opposed these changes to remission wants to put the community at risk.

The Department of Justice website makes clear the purpose of remissions, while it is also detailing considerations made with regard to community safety. It reads -

> The Director of Prisons may grant remission to a prisoner as an incentive to, or reward for, good behaviour while the prisoner is in custody. A prisoner must be serving a total sentence of more than 3 months to be eligible for remission. The amount of remission a prisoner may be eligible for will depend upon the length of the prisoner's single longest sentence.
>
> If a prisoner escapes, or attempts to escape, from custody, then remission cannot be granted on any part of the prisoner's sentence, up to and including the day of the escape, or attempted escape.
>
> If a prisoner, or detainee, is found guilty of a prison offence then the prisoner may lose part or all, of his/her remission.

I believe the quote adequately proves my views on the benefits of prison remissions are shared by the Department of Justice. The remissions act is a rehabilitation mechanism and a good behaviour incentive. Furthermore, the quote also demonstrates we can be satisfied that the Justice department takes community safety very seriously when deliberating on remissions.

One of the roles I had when I was with the Education department was as an AST3 in charge of behaviour support in the Barrington district. My responsibilities involved working with students, teachers, schools and families in addressing challenging behaviours that isolated the student from the school for short, medium and, in some cases, long terms. I then became a member of a statewide behaviour team. My primary role was to work in schools, reintegrating students into schools, and to work with teachers in demonstrating strategies for working with those young people who often displayed disengaged and dysfunctional behaviour. However, it should be understood that many of the students were exhibiting these behaviours only in the school setting and were more than capable of positively interacting in other environments.

As I was very interested in this area of understanding, I also gained a postgraduate certificate in emotional disturbances and behavioural disorders from the Newcastle University. One of the consistent themes throughout my reading and research was the importance of having as many options or strategies available in the toolbox to address a range of behavioural idiosyncrasies. It is obvious that some strategies will be appropriate for some individuals and not for others. As we heard in briefings, it is acknowledged that some individuals do not respond in the same way as others when presented with the same material or opportunity.

However, in my experience, one of the cornerstones of trying to engage and improve an individual's behaviour is the introduction of incentives and/or rewards for good behaviour. It should be acknowledged numerous studies demonstrate this, and numerous authors have written about positive rewards for improving behaviour and effort, be it a positive comment, an early break, a bonus, an activity or an early minute or, in this situation, three months.

I cannot tell you how many individuals in our educational system have been provided incentives to improve or to help individuals manage their behaviour. There would not be a parent or grandparent in this room who has not utilised positive behavioural reinforcement as a tool to improve behaviour outcomes. It does not always work, nor does the same strategy or same incentive work for different individuals. However, the more options and resources we have available and can draw on, the greater the likelihood of behavioural improvement and, hopefully, an improved feeling and perception of an individual's self-worth.

There need to be as many options as possible for those within the justice system to utilise to provide appropriate support and a way forward for Tasmanians who are incarcerated. The more options available within the prison system to incentivise good behaviour in prisons the better. Abolishing remissions will take one very important option off the table. As incentives for good behaviour are removed, it is logical to anticipate a decrease in good behaviour.

Remission is not the only option available to incentivise good behaviour, as we have heard. Prisoners also have the options of earning a small income. There is unemployment rate, along with different wages for various jobs and activities. Earnings can be spent on food items, telephone calls, hobbies and so on. This program confers some agency on prisoners that they otherwise would not have and it grants them some sense of normal life. It is possible to envisage a time in the future in which all of the programs that offer small amounts of freedom in exchange for good behaviour may be abolished. I do not believe this is an appropriate path forward. I do not believe it is fair on prisoners. I do not believe it will do anything to tackle our troubling recidivism rates.

A report in *The Examiner* in June 2019 stated that -

> Data from the Productivity Commission reveals that in 2017-18, Tasmania's recidivism rate increased to 46.3 per cent, up from 39.3 per cent five years ago - the fastest increase in the country.
>
> In roughly the same period, the state's prisoner population grew from 451 to 666.

Looking to other jurisdictions is always a worthwhile exercise when you are evaluating legislation such as this. I consequently took the opportunity to engage the parliamentary research team. As always, the information I received was extremely insightful. I am reliably informed that New South Wales, Queensland, South Australia, Victoria and Western Australia have all, more or less, abolished remissions. I say 'more or less' because most of these states retained remissions for those sentenced prior to the enactment of the relevant legislation. I view this as a worthwhile effort to avoid retrospectivity.

States and territories introduce different legislation to support certain issues or situations that need addressing in their jurisdiction. Therefore, it is not unreasonable for states and territories to also have different strategies in place to address those incarcerated within our prison system. The director, Mr Thomas, stated that other states have access to strategies that we do not. Perhaps one of the aims should be to have more strategies at our call. If there is an issue with the remission strategy, perhaps it may be worthwhile to address the guidelines and behaviors of that strategy.

I do not believe the removal of remissions is a productive exercise because I see remissions as playing an important role. The director gave me the distinct impression this morning that the remission system has a role to play within our system. If we abolish remissions, we must ensure it is done as fairly as possible.

I feel the need to explain why the retrospective application of this bill is a particular area of concern for me. I appreciate that the Attorney-General mentioned in her second reading speech in the House of Assembly that remissions will be retained for those sentenced prior to the enactment of this legislation, should it pass through this House. I welcome the inclusion of this in clause 4 of the bill.

As the Attorney-General stated in the other place, this bill will -

> clarify and limit the application of remission for those prisoners sentenced prior to the commencement of this legislation.

The Attorney-General also commented that -

> This bill recognises that it would be problematic to retrospectively remove remission eligibility from prisoners who have already been sentenced prior to this legislation coming into effect. Therefore the Government has adopted the approach taken by other states and this bill does not seek to remove remission eligibility from those sentenced prior to this legislation coming into effect. For those still eligible for remissions, the bill limits the amount of remission an eligible prisoner could receive to a maximum of three months on their total continuous term of imprisonment, regardless of how many sentences may make up that continuous period in prison.

Retaining remissions for those sentenced prior to the abolition of remissions appears to be the approach that has been taken across most of the country and I support the Government's attempt to avoid retrospectivity in this regard. I remain concerned that retrospectivity has not been entirely avoided, due to the three-month maximum the Government intends to impose. My view is that a person is entitled to the full scheme of remission that existed at the time they were sentenced. I do not believe it is fair to afford prisoners the opportunity to be granted remission in committing not to apply this retrospectively while also retrospectivity limiting the application of that remission. From a logical perspective, either the Government wants to avoid retrospectivity in the justice system or it does not.

Lon Fuller, a twentieth century legal scholar, outlined his utopian vision for an ideal legal system. This legal system was founded on eight principals of legality. One of these was non-retroactivity. In *The Morality Of Law*, Fuller wrote -

> What appear at the lowest level as indispensable conditions for the existence of law at all become, as we ascend the scale of achievement, increasingly demanding challenges to human capacity. At the height of the ascent we are tempted to imagine a utopia of legality in which all rules are perfectly clear, consistent with one another, known to every citizen and never retroactive. In this utopia the rules remain constant through time, demand only what is possible and are scrupulously observed by courts, police and everyone else charged with their administration.

In light of my view that the removal of remissions must be done as fairly as possible, I will now address another reservation I have about the bill - namely, the lack of an appropriate replacement for the remission strategy. It has come to my attention, thanks to the parliamentary research team, that the need for a replacement for remissions was raised in the South Australian Parliament when it was having the same debate we are having today. As I have been considering

the need for replacement for some time, two quotes from the South Australian debate caught my attention.

First, the honorable Michael Atkinson, then the member for the seat of Spence, raised the following concerns -

> I quite understand why the Liberal Party has a policy of wanting to abolish remissions but what does it replace remissions with? Currently, a prisoner governor has some control over prisoners by being in a position to award or not award remissions. It is an important tool for maintaining good behavior in our prisons.
>
> I am not saying that it is as effective as it might be but one thing we can say is that, since the Liberal Party was last in office, we have not had serious prison riots and the system of remissions can take some credit for that. With remissions abolished, how do we give prisoners an incentive to behave in an orderly way in prison? The solution in the Bill before us is that if they misbehave, they are fined $25 by the prison governor.

The then member for Hart, the Honourable Kevin Foley, also raised concerns about the lack of a replacement for remission. He said -

> What I say to the Government is simply this: if it is going to put 1,000 or more prisoners into the system, what is it going to do to manage it? The reality is that remissions are a management tool of prison managers. Remissions are a mechanism whereby prison managers can keep some order and some level of stability within the prison system. The Government has done away with that and replaced it with nothing. The Government has addressed only half the issue, and I call on the Government to tell me how it is going to reconcile the Audit Commission's recommendations that there are too many in the system, when the Minister's own policy is to expand the prison system by more than 1,000 people.

Mr President, it appears that both these honourable members shared my views about the role of remissions and the dire need for replacement if they were to be abolished. I mentioned the limited number of incentives for good behaviour that remain for prisoners earlier when I discussed the way that prisoners can earn a small income and spend it on various items. I am concerned that if we continue in our present direction, this may be the only incentive remaining for good behaviour. I could perhaps envisage a time when the program is even abolished and there are absolutely no incentives left.

The letter co-authored by Greg Barns and others I mentioned earlier quoted Custodial Inspector Richard Connock. In the 2017-18 report, Mr Connock identified three basic services for prisoners that are presently lacking. These were that most programs and services aimed at maintaining and developing family relationships are facilitated by external organisations on the basis of goodwill, and shortcomings with the existing pharmacotherapy program and mental health services are not meeting the needs of the Tasmanian prison population.

The motivation behind the present legislation may go a long way to elucidating the Government's approach to the justice system and behavioural incentives. Consequently, I would

like to ask the Leader of the Government to outline any steps the Government has taken to look into the business for and against the remissions process.

Furthermore, can the Leader assure the Chamber that the Government is not abolishing remissions for cost-cutting purposes? If this is the case, I am concerned about how much more the justice system will be gutted in the future. It appears that offenders will either be condemned to prison for long periods of time, with very little possibility of early release, should they behave well, or they will be placed under one of a number of disparate options.

Serious offenders who are sent to prison will likely receive parole before being eligible for remission. This point was raised by Mr Barns and his co-authors as follows -

> With the introduction of deferred sentencing, home detention and community correction orders and the expansion of court mandated diversion, the prison population in future is likely to consist of a much larger proportion of prisoners serving longer prison sentences, and for whom eligibility for parole will arise much sooner than release as a result of remission.

Incentives for good behaviour exist in numerous fields, whether it be business, education or junior sports, to name but a few. Rehabilitation is a key role of the prison system. As the custodian of the prison system, it would be reprehensible for the Government to abdicate this responsibility in the name of cost-cutting. It sends a message that the Government believes prisoners are irredeemable. This is a prophesy that could foreseeably become self-fulfilling, where prisoners see themselves as belonging to the prison system and not to society. Inmate numbers would undoubtedly rise in the absence of rehabilitative measures and the behavioural incentives. I would suggest this could be more expensive than leaving remissions in place.

Mr President, I am highly sceptical that limiting incentives will lead to good behavioural outcomes. I am therefore of the opinion that should we abolish remissions, a replacement is required. We in Tasmania have seen before that there is an undeniable link between the conditions faced by prisoners and their behaviour. I am sure members will recall the sieges that occurred at Risdon Prison in 2005 and 2006, as well as the riot that occurred in 2018. Such situations are highly regrettable and dangerous.

I believe we have an obligation to consider the safety of both prisoners and staff. Consequently, my view is we must incentivise good behaviour as much as possible. It is in this sense that I agree with the sentences of Mr Atkinson, whom I mentioned earlier. I can see the relationship between good behaviour and the incentives that bring about good behaviour. That is why it is my view that if we are to abolish remissions, we must create one or more alternatives.

Mr President, as I have said at the outset, I have serious reservations about this legislation. I look forward to hearing from other members.

[12.50 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I thank the Leader for all the briefings, particularly today; they were really informative and cleared up a few further issues we have.

It is clear from those briefings and also debate in the House this morning that there is disagreement on what reason is used to justify the removal and refining of the scope of remission. In her second reading speech, the Attorney-General clearly argued that the bill is largely to address

community expectations regarding truth in sentencing that prisoners will not be released earlier than they are sentenced to be released.

As a movement, truth in sentencing has been responsible for the abolition of prisoner remission in New South Wales - about which I will speak later. I would first like to reflect on the function of remission as opposed to sentencing. Many do not realise sentencing is a highly nuanced and involved process. It is not something which a judge can make up on the spot. Guided by a raft of legislation and common law, the rules of sentencing are informed by the expectations of the community expressed through the legislature. Consequently, what we are saying about our own judiciary, when we suggest prisoners can have early release in an extrajudicial process where remission can be granted by the Director of Prisons, is worthy of consideration. The effect is a person's sentence is lessened without the consideration which judges must take into account when that sentence is handed down. The notion of sentencing being retrospective in that it is based on the nature, severity and impact of a crime, and that remission is prospective because it is based on the progress of rehabilitation of a prisoner is, while accurate, not reflective of the purpose of the sentencing process.

There is clearly an inherent tension between a sentence imposed by the court and the shortening of prison time by the non-judicial officer based on considerations like good behaviour. Essentially, the operation of remission does undermine the original sentence imposed on an offender. It is indisputable most people would assume when the court sentences an offender to a term of prison, it is that length of time they will be incarcerated. As I mentioned to the member for Windermere earlier when he was speaking, I had no understanding that a prisoner on remission would be seen as having served their time. I understood parole and thought if they had remission, they would still have been under the eye of the judiciary system.

Conversely, the availability of remission causes prisoners to see the reduced sentence as the term which they will serve and that loss of remission is the result of disciplinary action being imposed upon them. The operation of remission is, therefore, arguably incompatible with the community's understanding and expectation of the nature and length of sentence to be imposed on the prisoner.

Of course, the consultation, brief as it was when it was conducted in 2017 of the relevant stakeholders, must account for something. It is clear a number of organisations that work with the prison and with offenders have expressed their support for the remission process to be maintained - some with various caveats. The Tasmania Prison Service and the Law Society of Tasmania see the function of remission as to encourage discipline and good conduct within the prison system, as did the National Association of Community Legal Centres. The Probation and Community Corrections Officers' Association submission indicated incentives and rewards for good conduct should be provided to prisoners, in addition to the availability or possibility of remission.

One issue currently ignored is the remission system raises issues of favouritism and subjectivity. The individual approach of prison officers writing up reports and feedback on prisoners seeking remission can be highly inconsistent.

Remission is seen to be a useful tool in the toolbox of the Tasmania Prison Service; however, that cannot negate the fact that errors and misconceptions can occur. What is this a tool for, necessarily? It encourages good behaviour in prison inmates, but along with remission comes better control over the prison population by prison staff. This is, surely, an incentive for prison staff and the director to consider granting prisoner remission. I question whether remission is actually

conducive to long-term and meaningful rehabilitation of a prisoner. It may only serve to bring on good behaviour in the short term and within the very sanitised prison environment, which does not necessarily translate into the real world.

It is very possible remission in the short term could be used as a way to get back into society without proper, reflective and genuine rehabilitation, without which it would be far easier to lapse back into criminal behaviours. The natural conclusion to this possibility is a person ends right back in prison in an even more disadvantaged position than they were before.

In other words, I do not necessarily see a causative connection between the availability of remission and a minimisation of recidivism.

The Australian Bureau of Statistics indicates that as of 2017, in Tasmania, just over three out of five prisoners have previously been in prison. For approximately 60 percent of prisoners, their previous time incarcerated has clearly not had any bearing on their future behaviour. Additionally, the ABS indicates the most common offences in Tasmania, as of 2017, were acts intended to cause injury, 27 per cent, followed by homicide at 12 percent. These are not light misdemeanours. The rates of recidivism and the nature of the crimes considered in the Tasmania context coupled together may demonstrate an argument in favour of the Government's prevailing concern of protecting the community.

There remains a possibility of a significant disconnect between the sentence imposed by the court, which as part of this process determines that sentence by considering the quality of evidence, the effect on the victims of crime and the prospects for the offender's rehabilitation. The Director of Prisons makes a determination only by good behaviour, which itself is largely informed by the prospect of early release, not necessarily because good behaviour is intrinsically the right way to conduct oneself.

An evaluation of the operation of remission and sentencing in other jurisdictions might therefore be informative. This brings me to the New South Wales experience with the removal of prisoner remission.

The truth in sentencing movement in 1989 abolished remission and increased non-parole periods, resulting in an increase in sentence lengths by 90 percent for adults and 30 percent for children, with a 30 percent increase in the prison population over the first two years. Of course, prisons became significantly overcrowded, an environment hardly conducive to meaningful and beneficial change to occur for prisoners.

The result in New South Wales is that there has been significant volatility between 1989 and now. It has seen prisons move between significant overcrowding, the effect of the numerous punitive legislative measures passed during that time, and bareness, with prisons closing during periods of low crime rates. There has been no legislative consistency and therefore it is arguable whether risks to the community have been mitigated.

The notion of prison is not just to punish those sent there and protect society. It is also supposed to reform and rehabilitate people so they do not end up back there.

Overly punitive legislation is liable to miss the point of rehabilitation and bound to fail society by reinforcing a 'revolving door' prison system. The NSW Bureau of Crime Statistics and Research

survey on public confidence in the criminal justice system found the majority of those surveyed had misconceptions about the justice system.

Many do not realise crime rates either fall or stay at the same levels, and rarely rise, and they have minimal understanding of conviction, sentencing and imprisonment rates. In other words, the public's misconception of crime and criminal justice was largely out of step with the reality and largely informed by highly sensational media reports.

The truth always lies somewhere in the middle. If the removal of remission is based on emotive and misconceived notions of criminal justice, it cannot possibly have a reasonable and proper effect. I am unconvinced there is a solid causative connection between the removal of remission and the safety of the community, which, by the Government's own admission, is the primary motivation behind this bill.

Why eliminate remissions holus-bolus? The bill seeks to modify existing law and order to expand the factors the director can take into consideration when granting remission to eligible prisoners, by introducing participation in rehabilitative or approved purposeful activities as a factor which must be considered.

Why not just keep remission and retain this provision? I do not believe the Government's reliance on the community safety and truth in sentencing arguments necessarily address this.

It should go without saying, therefore, that if prisoner remission is removed, adequate support ought to go to the Tasmania Prison Service to ensure it is able to manage properly the prison system and those living within it.

I agree greater clarity around the granting of remission, if at all, is required, and the bill seeks to do this. However, I urge small steps be taken regarding prisoner remission, especially as the New South Wales experience shows significant rise in volatility.

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

RECOGNITION OF VISITORS

Mr PRESIDENT - Honourable members, I would like to say a few words before we go to questions without notice. *Talofa Lava. E faafeiloai atu i Sui Mamalu ma le Failautusi o le Palemene o Samoa. Afifio maia i le Palemene o Tasemania.*

With a great deal of luck and very little skill, I hope I said, 'I wish to welcome honourable members from the Legislative Assembly of Samoa and their Clerk to our Chamber.'

Honourable members are here for a study visit sponsored by the United Nations Development Fund. They will also be travelling to the federal parliament as part of their professional development. The study visit includes observing our parliamentary and committee proceedings, and meetings with members and chairs of committees, which they have been very busy doing over the last couple of days.

This exchange and professional development program gives us the opportunity to strengthen our parliament's relationship with the Parliament of Samoa. I encourage all members to take that opportunity. Members who have been to Samoa have enjoyed it greatly. It is with great pleasure we are able to host honourable members and return the wonderful hospitality shown to us in recent and past visits to Samoa. I am sure all members will extend their warmest welcome to honourable members and the Clerk of the Legislative Assembly of Samoa.

QUESTIONS

May Shaw Aminya Aged Care Home

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

[2.33 p.m.]

Talofa lava. I am learning; I have been practising for two days. It was lovely to have Samoan members of parliament and the Clerk come to the Subordinate Legislation Committee today. We are already talking about an exchange of ideas about the committee process.

Following the recent announcement that the May Shaw Aminya aged care home in the north-east is undertaking an almost $6 million development to enable the high-care and low-care facilities to amalgamate under one roof -

Can the Leader please advise us about the Government's plan for the current James Scott Wing building of the North Eastern Soldiers Memorial Hospital, which provided exemplary care to residents requiring a high level of care who will move to the new facility once the development at Aminya home is complete?

ANSWER

Mr President, I thank the member for McIntyre for her question,

My linguistic skills are very poor, but I welcome our visitors.

May Shaw currently manages Aminya, an aged care facility adjoining the Scottsdale hospital site, and has a lease in place to occupy the James Scott Wing which is attached to North Eastern Soldiers Memorial Hospital and owned by the Tasmanian Health Service.

May Shaw is in the process of expanding Aminya to enable those residents currently in the James Scott Wing to be relocated so both residential wings are under the one roof line, which will deliver more effective service deliveries and operations.

Following the completion of this expansion, the James Scott Wing will be vacated and possibly be available for other purposes.

I am advised initial discussions have commenced with staff, service providers and community members in the area. The Government welcomes community input into this process.

Tasmanian Housing Debt - GST Relativity Calculations

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

[2.36 p.m.]

(1) Will the Leader please advise the House on the agreement between the Commonwealth and Tasmania to waive the outstanding housing-related debt?

(2) Have the conditions been confirmed by the Commonwealth Treasurer in writing to the Tasmanian Treasurer in relation to excluding the amount waived under this agreement from its calculation of the GST revenue sharing relativities?

(3) If not, when do you expect this condition will be met?

ANSWER

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

(1) to (3)

The Australian Government Treasurer has agreed to direct the Commonwealth Grants Commission to exclude the waiver of Tasmania's housing debt from its GST relativity calculations. This is reflected in the agreement signed by Tasmanian Government and Australian Government ministers for housing. The Treasurer has written to the Australian Treasurer regarding confirmation of this arrangement.

Tasmanian Health Service - Expenditure and Budget

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

[2.38 p.m.]

I too welcome our guests from Samoa.

Will the Leader please advise -

(1) The total expenditure of the Tasmanian Health Service in the 2018-19 financial year?

(2) The total budget for the Tasmanian Health Service in the 2019-20 financial year?

(3) If further bed closures are proposed to limit expenditure, could the Leader please explain how this will address the existing problems of ambulance ramping and hospital bed block preventing the movement of patients requiring admission from the Department of Emergency Medicine.

ANSWER

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

(1) The Tasmanian Health Service financial statement for 2018-19 is currently being finalised. The final 2018-19 expenditure will be available in the 2018-19 annual report, which is due to be tabled in parliament on 31 October 2019.

(2) The 2019-20 Tasmanian Budget identifies a total $1.613 billion in funding for the Tasmanian Health Service.

(3) There are no proposed bed closures to limit expenditure and there are, in fact, significantly more beds open with the Tasmanian health system now than in 2014.

Bus Stop - Giggles Early Learning - Current Safety Assessment

Ms FORREST question to LEADER of the GOVERNMENT OF THE LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.38 p.m.]

With regard to the proposal to allow children to be dropped off at an existing bus zone to access after-school care at Giggles Early Learning in Smith Street, Smithton, a matter the Circular Head Council fully supports and the proprietor of Giggles has agreed to take responsibility for children alighting from the bus to attend her service -

(1) Why is a further safety audit needed when another bus service carrying students already stops at this location?

(2) Are there any other barriers to implementing this service?

ANSWER

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

(1) The existing bus zone on Smith Street, Smithton is currently utilised only by a general access service and a service transporting college-aged students. A current safety assessment is needed to ensure the bus zone is suitable for primary school-aged students to disembark the bus. This assessment is required in light of concerns raised in 2016 about the Smith Street bus zone, including congestion, parents parking near the stop, uncontrolled crossings and children crossing the street with limited visibility due to the parked cars.

Ms Forrest - Yes, but they do not have to cross the street to get into the centre.

Mrs HISCUTT - While the proprietor of Giggles has agreed to take responsibility for children alighting the bus to attend after-school care, other primary school-aged passengers not attending Giggles would also be able to disembark at this stop. It is necessary to ensure the stop is safe for these passengers who may or may not be supervised.

(2) Upon a satisfactory report the site is suitably safe, a contract variation can be implemented to allow the bus to use the stop. There are no other barriers to implementing this arrangement.

Colonoscopy and Endoscopy - Waiting Times

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

[2.40 p.m.]

Will the honourable Leader please advise -

With regard to waiting times for colonoscopies and endoscopies categories 1, 2 and 3 at both the Royal Hobart Hospital and the Launceston General Hospital, what is the 75th percentile wait for these categories at each hospital?

ANSWER

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

I will read the figures for categories 1, 2 and 3 in that order -

Royal Hobart Hospital: category 1 - 265; category 2 - 607; category 3 - 298.

Launceston General Hospital: category 1 - 207; category 2 - 421; category 3 - 265.

Importantly, the revised 2019-20 Tasmanian Health Service plan provides an additional 2248 endoscopy procedures.

Smoking

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

[2.41 p.m.]

My question relates to smoking near school premises and hospitals. This issue was raised in 2017 by me when the state gave an undertaking to examine the situation with a view to restricting smoking in and around schools and hospitals. I have twice since that time sought an update on where the review is at, but have been told it is underway. Other states and territories have been addressing this issue and some have restrictions in place.

Will the honourable Leader please advise -

(1) Where is the review at?
(2) When is it likely to be concluded?
(3) If it is not moving ahead, what is stalling the process?

ANSWER

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

(1) to (3)

The Government has committed to finalising policy options by the end of 2019 - so that could be a target. There is no delay to the outcomes of the review. The department of Health and Tasmanian Health Service are currently consulting with local councils and the Department of Education.

Hospital Sitters

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

Will the honourable Leader please advise -

With regard to department-employed sitters currently working in the public hospital system -

(1) How many sitters are employed full-time equivalent at the Launceston General Hospital, Royal Hobart Hospital and North West Regional Hospital?

(2) What is the minimum and/or preferred level of skill or training that an employed sitter is required to possess for these positions?

(3) How many hours across the three major hospitals did the sitters work in the last financial year?

(4) What was the total cost of employing and retaining these sitters in the last financial year?

ANSWER

Mr President, I thank the member for Launceston for her question. I am pleased to be able to provide the answers for her today -

(1) A number of different occupational groups are utilised in the sitter role, making it difficult to state the employed FTEs for the role of sitter. Assistants in nursing are employed predominantly to undertake the role of patient sitters. In the south, approximately 38 FTE assistants are employed in nursing. In the north, assistants in nursing are employed on a casual basis.

(2) Each patient is clinically assessed to determine the supervision required to ensure patient safety. A patient who requires clinical intervention may be allocated an enrolled or registered nurse who is able to provide the full scope of care required by the patient. A patient who just requires observation to maintain safety may be allocated an orderly or a security guard. Their role is to raise the alarm if a patient has a safety risk, which will activate a response from nursing staff.

Assistants in nursing are the preferred patient sitters as they have the scope to provide some nursing interventions. Assistants in nursing must have the following qualifications -

- a Certificate III in Health Services Assistance - HLT32507 (Acute Care); or

- a Bachelor of Nursing student who has completed a second-year clinical practice placement; or
- a Diploma of Nursing student who has completed their first clinical practice placement.

(3) I shall read out to members the hours worked by patient sitters in 2018-19 by region and then by hours. In the north, 17 087 hours; in the south, 126 181 hours; in the North West Regional Hospital, 22 096 hours; and at the Mersey Community Hospital, 6290 hours. The total was 171 654 hours.

(4) The total cost for the patient sitters in 2018-19: inn the north, the cost was $764 040; in the south, $4.41 million; at the North West Regional Hospital, the cost was $1.02 million; and at the Mersey Community Hospital, the cost was $263 126. The total came to $6.46 million.

CORRECTIONS AMENDMENT (PRISONER REMISSION) BILL 2018 (No. 15)

Second Reading

Resumed from above.

[2.47 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I agree that greater clarity in the granting of remission, if at all, is required and this bill seeks to do this. I urge that small steps be taken regarding prisoner remission, especially as the New South Wales experience shows there has been significant volatility. That could be devastating to a small state like Tasmania. A focus on evidence and expertise-based legislative reform is called for here, not an emotive overcorrection fuelled by sensationalism.

I am not sure how to feel about remissions. I feel remission undermines the authority, expertise and experience of the courts and judiciary and, for the victims of crime, it is unfair to know that the sentence a person gets is probably far longer than the time they will serve in prison. There is a strong argument to be made about community expectations - truth in sentencing. However, I think people really misunderstand sentencing law to a significant degree and that in highly emotive cases, which are extremely emotive and extremely rare, sensationalism can force a government into passing legislation that could be seen as an overreaction; does little, if anything, to address actual issues; and could create the kind of volatility we now see in the New South Wales system.

I want to believe that people are essentially good and can change. However, remission only encourages short-term good behaviour with the prospect of early release, at which time it is easy to fall back into old criminal habits and end up back in prison. Therefore, honourable Leader, on this occasion, I will support the bill.

[2.49 p.m.]

Ms FORREST (Murchison) - Mr President, this bill has been on the Notice Paper for some time, and I wondered whether it would ever be brought on. I can definitely see both sides of this bill. I was keen to listen to other members who seemed willing to speak early on, to see what their views were. I also appreciate the briefings that enabled us to have more discussion about some aspects of this. We heard from the Director of Prisons, and we are still waiting for some significant information from the Leader's office, including the number of prisoners who have been released on

remission and the recidivism rates, as were able to be collected, and the programs provided within the prison service by the Tasmania Prison Service. I had hoped to see these before now, but I have not, which makes it hard to comment. If this information is provided and circulated while I am speaking, maybe I can.

Mrs Hiscutt - I have been informed those figures are very hard to get. We just do not have them at our disposal.

Ms FORREST - I asked for more than that - the provision of the information about the programs provided by the Tasmania Prison Service within the Tasmania Prison Service.

Mrs Hiscutt - I have that.

Ms FORREST - That would be great to be circulated, so we could all see it.

Prison must be a really difficult place. I cannot imagine being locked up in a prison anywhere. People in prison have done the wrong thing. They have done something to such an extent that the courts have decided, based on the laws we pass in this place, that they deserve to have their liberty taken away for a time. That is the price they pay.

We often hear people in the community say that it was not harsh enough when a certain sentence is handed down, or they ask why this person gets *x*-number of years when this person, who allegedly did the same thing, only got this number of years. That is why we have a court system, for the courts to take into consideration all matters relevant to the case. For someone who has had a family member murdered, no sentence could be long and harsh enough because they live with that forever. It is the same for a person who has been raped, whether it be male or female, and a number of other violent crimes that leave victims harmed and with significant lifelong implications.

In light of all that, people in prison are in prison because of the laws we pass here. They have decided to break the law, or have broken the law while under the influence of something else, but they have done the wrong thing to such an extent that the court has decided their liberty should be removed and they are put into prison.

There are a number of ways of dealing with sentencing. The member for Launceston said we should be careful about the comments we make on sentencing and that it should be left to the courts. I think the member for Mersey also mentioned that in his contribution. I agree with that but we in the parliament need to give them the tools to do that. We need to give them as many tools as we can to promote restorative justice. If we do not have a really strong focus on restorative justice, what are we doing here?

Sometimes people do the wrong thing. Some people do some very bad things and they do it more than once. Some of them may be our sons, daughters, parents or friends, but we should do everything we can to restore them to society in such a manner that they will not reoffend, and that they can become productive and happy members of our community. Some people might suggest I am living in utopia to think that could be the reality. I am not; I know it is very difficult.

I recently visited the prison to participate in a session with some medium-security male inmates, who were participating in a Just Sentences program. We were doing a session on engaging with their families and children. The men in this group were fathers of young children. From memory, one man's child had been born while they were in prison. You can only imagine how

difficult it is to make a connection with your child and to be a good father. I say 'good' in inverted commas because it is a very subjective term.

It was fascinating, going through all the security, taking some time and having almost everything removed from the body that was not clothing, then being told in an email to bring a belt. I was thinking, 'What do I need a belt for?'. It is to keep your duress alarm on, so it is always at your side, on your waist. It was interesting going through the various levels of security, even having teabags taken from us. They could not even have a cup of tea in teabags. We were allowed to take coffee and there were some snacks we could take for them, but it was all heavily monitored. I do not have a problem with that. There are rules and that is fine.

To sit in the room with these guys and hear their stories - I thought, 'How do you start a conversation in prison?' I thought I would try football to start with; it is usually a fairly good thing. We had a good conversation. They all had their views about football and we did not disagree - we all respected each other's views on which team was the best in AFL. It was interesting to listen to Tony Bull yesterday when he was talking about playing football in prison. As a former inmate who has now appeared to have turned the corner and is living in society with the rest of us, he is doing, it seems to me, a pretty good job. He was talking about the great opportunity he had in prison to play football. He played for the Cazaly Rebels and it was really interesting listening to his story.

It was interesting being with these men in the prison, right in the heart of it, and seeing some of the challenges they must face and hearing how difficult it is for them to make connections with their families. One of the reasons they were attending this program was because this is part of the good behaviour aspect, to try to help them. I do not know what their crimes were. They are in medium security. One man who was supposed to be with us had been shanghaied up to maximum for a little spell, so he was not there. If they do not act with appropriate behaviour, as I was hearing in the briefings, they could have opportunities for visits from their family reduced, including their newborn babies or young children.

Mrs Hiscutt - I have emailed all honourable members the list of programs available.

Ms FORREST - Thank you. They were participating in the program and they had to participate in all the sessions. If they mucked up on another day and had a bad day, that connection with their child could be removed as a penalty for that notionally bad behaviour. It opened my eyes a little bit to some of the challenges there.

I will go to this list - it is not mentioned on here. We were emailed a list yesterday about the services provided by excellent providers, which are mostly educational programs. As I was reading through those, I thought inmates would really need a pretty decent level of literacy and numeracy trying to take a lot of those courses. I know they are assessed at reception when they go in but I think the need for literacy and numeracy support, even at some basic levels, may be the most important thing at the outset. This is a list of programs available at the prison -

- EQUIPS Aggression
- EQUIPS Addiction
- EQUIPS Foundation (general offending)
- Apsley-alcohol and drug treatment unit
- FVOIP/DAP - Family Violence Intervention Program or Domestic Abuse Program
- New Directions, a sex offender program

- AOD Counselling - one on one counselling

I assume that is alcohol and other drugs -

- Smart Recovery

The last is followed up when they graduate from Apsley, which is the drug and alcohol treatment unit. All EQUIPS programs run for 10 weeks and Apsley runs for 12 weeks. They are fairly short courses, which -

Mrs Hiscutt - They are run at the prison by the prison.

Ms FORREST - These are run by psychologists and others employed by the prison.

Mrs Hiscutt - Yes.

Ms FORREST - They would probably be accessible to almost all inmates because most of them would be staying than 10 weeks, as a general rule. The email goes on -

> In regards to other literacy and numeracy programs, the Government provided an additional $150,000 in this year's Budget for Rosie Martin's Chatter Matters 'Just Time' program to continue being run at the Prisons.
>
> Just Time uses evidence based practice matters to improve literacy, numeracy and communication skills.

That is what I was participating in. I commend the Government for doing that. It is an important thing. Rosie Martin is an incredible woman who does some incredible work in the prison, with a really big heart for social and restorative justice. Her efforts in the prison are exemplary. I want to note that. She is an amazing person.

I was hoping to receive some information about woodworking and gardening - and there are horticultural courses and things like that, but you need a certain level of literacy. I have heard anecdotally that there is a reasonable garden at the women's prison that inmates can be involved with but I am not sure about the men's prison. These are the sort of things that can help people to be reintegrated and restored to our community.

It must be difficult being locked up in a place 24 hours a day, 7 days a week. Your freedom and access to your family, friends and other people is restricted. Many liberties we take for granted - having money in our pocket we can spend, the freedom or ability to watch a TV program or DVD or read a book - are not there. I understand the reasons for that, but it must be a difficult thing to come to terms with. We need programs that can help people adjust to that. People who are keen to turn their lives around, who realise they have done the wrong thing and do not want to go back are probably likely to comply with these sorts of things. Remissions are part of the reward system.

The member for Mersey talked about this. We all use positive reinforcement messages with children. I am not saying these people are children - I am not suggesting that for second - but we do reward good behaviour. As parents, we tend to ignore some of the not-so-good-behaviour rather than give it any credence at all. We are talking about adults in prison but the principle is of rewarding behaviour you are seeking to encourage. There are measures to indicate whether a person

is thinking about what they are doing, perhaps realising that 'If I want to get out of this place and not come back, my behaviour has been a problem and I can do something about it.'

To me, remission is part of that because it is a behaviour management tool used within the prison system. It was said at the briefing yesterday that remission is about getting someone on the right track and helping them to get the biggest reward of all - their freedom - a little earlier. Some of them may think, 'Well, stuff that, I'm just going to do whatever I like. I'm not going to worry about it, it's all too hard', or whatever. They do the full sentence and then get out and nothing has changed. At least with this, there is the expectation of a real reward rather than more money, like $2.50 to $7.50, in your pocket, or access to a PlayStation if you can afford to buy one and get it into the prison, and things like that. How do you measure that sort of reward, or a bit more time visiting your family sometimes, against freedom? Remission offers a very high incentive for freedom, unless they go out and do the wrong thing and then they could find themselves back.

When they are out on parole and they do the wrong thing in that period, they can be returned to prison smartly. I know members of the community for whom that is a better option in some respects. Once they are released on remission, their sentence is over, whereas when they are on parole they have the opportunity to be sent back. We see that happen sometimes. There are swings and roundabouts here. Should we just use parole so if they behave badly when they are out on parole or do the wrong thing or commit an offence, we can shoot them straight back and maybe extend their sentence?

The member for Windermere verballed me quite a lot at the beginning of his speech when he said that I said, 'Why do we need remissions when we have parole?' I did not say that. I talked about clarifying whether, if you have the opportunity for remission, you can get it on parole or you can have it in combination with parole. I was not asking the question as if we should get rid of it. I was asking what the benefit of parole is, what the difference is and why one might be used or offered and the other might not be.

We know from what we were told in the briefing that two-thirds of prisoners are appropriate for parole. That is a matter determined in sentencing, when the sentencing judge makes that determination. About one-third are appropriate for remission.

We were also told by the Director of Prisons today that remission is a useful tool, but not without its flaws. It is not the only tool. The Director of Prisons went on to talk about the different contract arrangements and other measures they have. Some of that is related to the programs offered, which I have already spoken about. The tools they use in the prison are always seeking to ensure that when they release prisoners into the community, they are right and safe to do so. If they have served their full sentence, unless they have committed a criminal offence that has resulted in them going back to the court and having another sentence imposed or their sentence extended, they will be out. The most important thing we can do for the prisoners while they are in there is encourage them to learn to act in ways we consider are socially acceptable and do not breach our laws.

I think he said the question is, 'Is the person ready to return to the community?' I guess they would always like to answer that question with yes, but unless you provide programs and opportunities in the prison to help people to become more able to live in our society without breaching our laws, we are not doing a good job for them.

Mr Gaffney - It was interesting how he also mentioned that there is a form of remissions, even though it is slightly different, still utilised in England. Looking at other jurisdictions similar to ours, he said it is a little different in the way it is done, but still a remission-type program.

Ms FORREST - I was going to go onto that. He also talked about remissions being used as a tool in other jurisdictions. He talked about other aspects of sentencing, like home detention and other measures, and members have referred to some. It is disappointing there has been a delay in some of these other measures being brought in. Some good measures are being introduced and the court-mandated drug diversion programs are very positive and important aspects. I hope people in prison as a result of offences against our Safe at Home legislation will be actively encouraged to engage in those programs, particularly the Family Violence Offender Intervention Program and domestic abuse programs so when they are released, we do not see their partners at risk of further violence.

The other question I asked the director was about the resources in prison to facilitate and meet the needs of the inmates. He said it was difficult to get the appropriately qualified staff; I am sure it is the case in every prison. I do not think it is unique to Tasmania. We are looking for psychologists with specialised skills to ensure these programs can be delivered effectively and appropriately. I am sure there is increase in prison numbers and overcrowding in the prison, and if we remove remissions, and potentially if some of these other measures like home detention and things are not actively progressed, it is not going to change. Even though the proposal for the northern prison is progressing, it is not going to be built tomorrow, and I am concerned about removing one of the tools in the toolkit.

The member from Windermere raised the question of what constitutes good behaviour. That is a difficult term to use because it sends all these messages about what is good and what behaviour is. It may be in the eye of the beholder - I am sure there are some kids in the class who are really difficult to handle no matter what you do. As a mother of four children, I know they are all different and sometimes difficult.

Mr Willie - Not difficult - a challenge.

Ms FORREST - A challenge, yes, a challenge to handle. One of my children was more challenging than the others in terms of behaviour and so different measures were needed to deal with that one.

Mrs Hiscutt - Taking after their mother.

Ms FORREST - One person's judgment of a particular action of any person may be judged differently by different people. Overall, when the heads of these areas make the assessments about whether a person's actions would warrant consideration for remission, it is not one event, it is over a period of time. We are all entitled to have a bad day. If you have a bad day and commit a serious violent act, that probably rules you out, but if you have one bad day where you lash out verbally at someone and then apologise later, surely that would be forgiven. We do not need to define what it is, but be conscious of the fact it is probably not easy to be prescriptive around that.

In listening to the views of others, I can understand why both sides of the argument will get a good run. I am disinclined to support the removal of remissions from the toolkit of our justice system and the operation of our prisons.

Mr Gaffney - Through you, Mr President, when I read the letter we all received from Kym Goodes and Greg Barns, all the different representatives -

Ms FORREST - This is a while ago.

Mr Gaffney - Yes. They deal with the people in the prison system. When you receive a letter like that from those people to say, 'Do not get rid of them', that is coming from people -

Ms FORREST - They pick up the pieces.

Mr Gaffney - They do. If they did not think it was going to work, they would tell us to get rid of them, but they don't.

Ms FORREST - I will go back to their letter. As the member for Mersey indicates, there is a letter signed by representatives of the Prisoners Legal Service, JusTAS, the Brain Injury Association of Tasmania, Holyoake Tasmania, TasCOSS, Community Legal Centres and Anglicare Tasmania. The very last part of their letter said -

> In summary, we strongly urge you reject those aspects of the Bill that remove and narrow the eligibility of offenders for remission and support the amendment to section 90(2)(d) that will encourage participation in rehabilitation or educative programs.

That puts me in a quandary. If we were to support that, which is a really good idea, we would need to allow this bill to go into Committee to support clause 6(a) and reject the rest, as I read it. I do not have Parliamentary Counsel advice as to whether that would do it. If the Government is committed to that sort of approach, which I commend it for, and if it wants to bring back a bill that simply does that, I would be really happy to support it.

The Supreme Court looked at the application of remissions in terms of a number of sentences being separately imposed on one person, effectively giving them a longer than three-month remission if they applied it to each sentence. In the briefing, I asked whether a change in legislation would be required to fix that. I had already gone to the regulations that sit under this principal act, the Corrections Act. Regulation 25(1)(a) deals with this. I would like the Leader to respond to this in her reply. If we are to fix that aspect the Supreme Court ruled on, it needs tidying up to make sure a prisoner can only receive a three-month remission from their global sentence - a change to regulation 25 would be necessary, not a change to the act.

I will listen to any other members who wish to speak on this matter. I agree with the authors of the letter sent to us on 18 June 2019 by the organisations I mentioned. I wonder if it is possible to include -

> by omitting from paragraph (d) 'while the prisoner is serving his or her sentence' and substituting 'while the prisoner is in custody or as an incentive to, or reward for, engaging, while the prisoner is in custody, in activities that are rehabilitative or of a kind approved by the Director' …

It is a bit messy to try to do that. It may be better to take note of this bill and encourage the Government to reconsider that at a later time, particularly in terms of promoting restorative justice. I will listen to the rest of the debate, but I am disinclined to support the bill.

[3.19 p.m.]

Mr FINCH (Rosevears) - Mr President, I have always thought that there are two purposes to our prison system. First, to protect our society from dangerous criminals who would threaten our society if they were allowed to go free. Second, to help rehabilitate those who have committed crimes. The first objective is obvious, but I am not sure that prison is the only way to achieve rehabilitation. There are fines, house arrests, supervision orders and a host of other methods to achieve deterrence and rehabilitation. It is probably a way down the track to further consider those methods.

Given society's present obsession with deterrence, we are stuck with our present system. What about rehabilitation? What about incentives for good behaviour and good attitude by the wrongdoers? So-called truth in sentencing seems to have nothing to do with rehabilitation and helping wrongdoers re-enter society as useful members of our communities; it is more to do with retribution. I cannot understand why the prison system cannot give wrongdoers an incentive, this incentive, to be rewarded for good conduct with the option of shortening sentences by remissions.

We have the problem of an overcrowded prison and the astronomical costs per prisoner. It would seem to make sense to keep as many offenders out of prison as possible. Although we had the briefing, I still remain confused by the term 'special management days' and how that is applied. It was pointed out in the briefing this morning that the system of remissions is not the only reward for good behaviour. The better behaved, the more benefits an inmate gets; the contract system. Contract 1, 2, 3 and 4 and you get the education courses and you get the privileges, such as a PlayStation, pool tables and so on.

I thank the Leader and Mr Ian Thomas, the Director of Prisons, for giving us that briefing and enlightening us on the circumstances in our prisons.

Going back to my focus on rehabilitation, it is clear from Tony Bull's submission in our briefings that he believes the remission system has a big influence on prisoners' behaviour. He would know something about it. He has been in there 50 times. He is a slow learner. He is only 54 and has spent 40 years in prison. He lamented the lack of rehabilitation programs that help prisoners break away from institutionalisation. He told us that released prisoners face homelessness, unemployment and depression, and they need help to reconstruct their lives.

Tony Bull stressed that remission is a reward for good behaviour and he said, 'Take it away and there is trouble ahead. You have to understand what it is like to get out of prison. You have to adjust and it is a major problem.' He said it is great to be free and that the only way to stop recidivism is rehabilitation. I would be more inclined to support this bill if the Government could point to an effective rehabilitation program for released prisoners. Inside prison, there is a wide range of education and training programs. We heard about that, and they help rehabilitation. There is a widespread belief that released prisoners need much more help.

This bill seems to be just an attempt by a conservative government to demonstrate that it is tough on crime. It is an old-fashioned approach, and I do not think it works anymore.

What about deterrents? It could be argued that the strongest deterrent is the certainty of being caught.

Our society needs to approach our problem of criminal infringement totally differently. We need to start with youth justice, which is totally underfunded. We need more research into why

some members of our society commit crimes. We need to look at the drug problem and how it can be overcome. Above all, we need a comprehensive program. We cannot keep locking people up in prisons without giving them an incentive to work for themselves and, with help, become more productive and creative members of our communities.

Like the member for Murchison, and I get a feeling from others, I am disinclined to support the bill.

[3.26 p.m.]

Mr VALENTINE (Hobart) - Mr President, I have been listening carefully to each member's contribution, and there have been some interesting components to them.

I thank the Leader for the briefing. I also thank those who came to us from the legal fraternity, and indeed for the visit of Mr Bull. It was entertaining, if nothing else. I have to say, it is refreshing too, in the sense of being able to hear from somebody from the inside. I think we all took something away from that briefing session. You can almost hear the thoughts of some of the members - 'Well, yes, but he kept going back, he kept going back, and therefore remission wasn't really doing a lot to restore him.' However, I will get to that a bit further on.

I appreciate the Leader's sharing the consultation list with us; she might wish to run through some of the organisations consulted on this. It is important that they be on the record.

My main questions, which I asked in the briefing, are: What is the main benefit of this legislation? Is it just to say we have delivered on our election promise? This is a bigger issue than simply achieving a promise, to my mind.

This is ultimately about people's lives. It is ultimately about how they are impacted in the system. Yes, they have done wrong. Yes, they are being incarcerated. Some would say we are incarcerating them because we are teaching them a lesson. The only way you are going to teach them a lesson is if, in the end, they are rehabilitated.

The less time they spend in that facility, the better. If providing a remission allows them to spend less time behind bars, surely that is a positive. If their behaviour is improved while in prison, that is another positive.

What is the main benefit of this legislation coming into play?

How have you measured community expectation? The second reading speech says the 'proposed changes in this bill address community expectations' How is that measured? Is it measured by letters to the editor? The consultation list is big, which is to be applauded - I have asked the Leader to read that into *Hansard* for the purposes of it being clear as to whom this has gone to. What was the response? There were three responses out of a huge list, which makes me think whether it is seen as a big issue in the community. I do not think it is. It gets down to whether we need to be tough on crime and deliver this because we are being tough on crime rather than looking at the benefits of the remission itself.

It exacerbates the increasing prisoner numbers, which has already been pointed out. The prison is currently crowded. It also removes a lever for encouraging better prisoner behaviour - as has been pointed out, it is as simple as that. It also says the less time young people spend in that system, the better. A young person going in for a 12-month sentence for whatever reason who gets out in

nine has a better chance of being rehabilitated than sitting inside that system for another three months.

Mr Dean - How do you measure that?

Mr VALENTINE - As a police officer, you must know what it is like, what sort of networks are inside a prison. You would have heard or talked to prisoners when apprehending them for another go inside the bars. You would know the networks in prison mean it is not a pretty place to be. As the member for Murchison said, I would not want to be in there. I have been inside prison once to play cricket and it is not a place I would want to be.

Mr Dean - They are there for punishment.

Mr VALENTINE - I stress: not only hardened adults are inside the system, sometimes they are younger adults experiencing prison for the first time with a 12-month sentence reduced by three months. The truth in sentencing is if the judges put them behind bars for 12 months, they ought to serve 12 months. The magistrate has no understanding as to how a particular individual is going to be able to handle incarceration.

They do not understand and have no measure because it might be the first time the person has gone behind bars. They have no measure as to how that person is going to handle the situation. It might frighten the hell out of them, they learn a lot and that three-month remission might be the difference between them continuing on into being a hardened criminal as opposed to a person who might come out and enter some rehabilitative course because what they have seen inside means they do not want to go there again.

I am always saying in this place that we need to leave the decision up to the judges, but there is a certain limit in that they really do not know how that person is going to react. Giving the Director of Prisons the opportunity through their unit managers to apply that remission is a positive. Some would say recidivism does not bear that out, like our friend. During the briefing he said he had been in however many times, but the benefit he saw was it helped people to behave.

Mr Dean - If the judge or the magistrate had an idea of how that person would react, should it make any difference to the fact they are going to be sentenced?

Mr VALENTINE - I am not suggesting the judge prejudges. The judge gives a particular sentence according to a hierarchy of things they have at their disposal. Once the offender is inside and once the Director of Prisons sees how they are becoming rehabilitated or their general behaviour, surely, somehow, that has to be an influence on how long they spend behind bars.

Mr Dean - The director said he did not make that decision. That decision is made by the unit manager.

Mr VALENTINE - Ultimately he is responsible.

Mr Dean - He said only where remission is not provided. That is normally when they come to him, he said, when it is not given they -

Ms Forrest - When it was challenged or appealed, wasn't it?

Mr Dean - That is right. When they did not get a remission when they were entitled to it, they would then go to him if they did not get it - that is what he said.

Mr VALENTINE - Still, at some point, somebody has oversight of that person and they are making a judgment that, yes, this person is behaving to the point where they feel that they have the opportunity to have a three-month reduction. Only 27 per cent end up getting remissions, for various reasons. It might be parole that ends up taking place and therefore the remission can never happen because they are released prior to the remission taking place. There are all sorts of reasons. We are talking about only a smaller percentage - a bit less than one-third - who are impacted by this bill; I understand that.

If it is only such a reduced number of people who we are talking about, why remove that lever? I think it was the member for Rosevears brought that up. Because other states have pushed this aside, I would like to think more evidence was coming from those states on whether it is working. It may have been in there for quite some time, and to get a proper measurement of that would take some time. Maybe it is worth taking the time to do an analysis by approaching those other states. I could ask the Leader what other states have been consulted on other measures they put in place as incentives towards good behaviour. That is the first thing. What programs have they put in place to replace the remissions component if they have pushed it aside? That would be interesting. I would also ask them whether they have evidence that getting rid of remissions has worked. They may well have some historic evidence. I would be interested to know whether the Government approached other states to get some finer detail in this regard.

Surely the intention of incarceration is to teach offenders the error of their ways and ultimately rehabilitation - restorative justice has been talked about in this Chamber for quite some time. I do not think it is the intention -

Mr Dean - And to protect the public.

Mr VALENTINE - Yes. I appreciate there is a balance there to protect the public.

Mr Dean - You did not mention that.

Mr VALENTINE - Of course, it is there to do that, but the ultimate aim would be for the individual to be there for the least time possible because the more they are in there, the more they get into the system. You heard Mr Bull yesterday saying that you become institutionalised; that is the last thing we want people to become - institutionalised. The less time they spend in prison, the better, to my mind.

Mr Dean - The reason it occurs is for punishment. That is the first reason. They have committed a crime, so they are being punished.

Mr VALENTINE - What is the purpose of belting someone up through incarceration?

Mr Dean - So you leave them out there?

Mr VALENTINE - No. What is the point of belting them up if you are not trying to fix them?

Ms Webb - Depravation of liberty is a punishment. The conditions under which you deprive someone of their liberty then can either be something that ameliorates their condition towards them being a better citizen or drive them in another direction.

Mr PRESIDENT - I will just remind members everyone has a chance to get up and speak on the bill. If we can just keep the interjections brief and to the point as we normally do, without entering into other debates.

Mr VALENTINE - Thank you, Mr President, I appreciate that. I am probably as guilty as anyone else in terms of inviting - well, not always inviting the comments - but will try my best to concentrate on my own offering. Maybe others have either had their opportunity or may care to comment when they have their turn. The restorative justice principle is about the individual and trying to make sure that individual is, as best as possible, rehabilitated back into the community. To be given the opportunity to taste what it is like to be incarcerated and hopefully have them understand it is not a nice place to be.

The contract system was talked about. I thank the officers for giving us an understanding of the four levels of contract inside. I can see in some ways the benefits there, but there are restrictions. They have different levels. They might get level 1 for noncompliant behaviour. They might be a maximum security person for example. The money they can spend at the canteen is set at the minimum at something like $2.50. You cannot have much for $2.50 whether they are subsidised goods or not. What they can have in their cells, whether they can have books or photographs. All of this is to incentivise good behaviour. I can see that.

Then level 2, which might be dealing with more medium-security prisoners getting increased access. They might get more money, $7.50, to spend. That was one of the examples given. They might have books or recreational programs. That is all up to the unit managers to decide. They can also apply to go up a level, depending on how their behaviour is going. With a system like that, my immediate thought is, those really hardened fellows who have been in the system a fair old while will be going up to somebody who has fewer restrictions and bullying them, saying, 'You have just spent $7.50 at the canteen; I will have half of that, thank you.' These networks happen inside prisons and we are naive not to think about that. Those sorts of things occur.

Is that system more open to abuse of individuals than the remission system? I have to question: why take it away?

Mr Dean - The prisoners are segregated. Isn't it true model prisoners are not associating with the hardcore criminals?

Mr VALENTINE - They might be for some part, but they might not be for their duties in the kitchen or duties wherever else they are.

Mr Dean - But the hardcore ones are not in the kitchen.

Mr VALENTINE - No, but I am saying there are four levels. It could be between levels 3 and 4, or 2 and 3 that some of that happens. It could be the more hardened ones, you might be right; I would have to delve into exactly how that happens. We only had a little opportunity to question across the table. Quite clearly, if you are setting up a structure like this inside a prison, somebody there would gain as best they could. That is the point I am trying to make. Whereas it is harder for a more hardened criminal to intimidate another person who might be working towards, and stop

them from obtaining, that remission. My point is that I do not think the same opportunity is there - that is the point I am making. Yes, the system is there to teach them a lesson for sure, but it is also there for restorative justice reasons. It should be focusing on the individual in detention and their rehabilitation, not the system itself. That is an important thing. The member for Mersey outlined a number of respected organisations and individuals against this move. That list was partly read by the member for Murchison as well.

Perhaps I can go to that letter of 18 June 2019, It has already been noted by some members, and was written by Greg Barns, Prisoners Legal Service; Kym Goodes, Tasmanian Council of Social Service; Pat Burton, JusTAS; Jane Hutchison, Community Legal Centres Tasmania; Deborah Byrne, Brain Injury Association of Tasmania; and Dr Chris Jones, Anglicare Tasmania. These are respected individuals and it is interesting that in this letter they say that it makes no sense to remove an incentive that encourages good behaviour. I have to agree with that.

Under the bold type, it says 'increasing prisoner numbers but inadequate services', and -

> Tasmania's prison population is increasing rapidly. Over the last five years our prison population has increased by 27 per cent, from 451 prisoners in 2014 to 614 prisoners in 2018.

We are talking here about 27 per cent of prisoners not getting remission as per the figures shared during briefings and from what other members have said. If you are looking at an increase of whatever the difference is between those two, you are looking at a very significant increase in prisoner numbers if we take away the remission. Why do we want to overcrowd that prison any more? Not only that, there is the number of staff that it takes to look after those extra prisoners. Here we are seeing cuts across the board in government departments to try to gain some dollars back so the government can meet its budgets and here we are, looking at a mechanism that has the capacity to increase the number of prisoners being looked after, requiring more officers to look after them - either that or you do not have the officers and they are locked up in their cells for longer and therefore they are more impacted by that and then possible more likely to reoffend when they get out because they have not had that rehabilitation opportunity or recreational opportunities. Look at the big picture as to what we are trying to do here with this. I scratch my head because for some small promise that was made, it does not make sense to get rid of it as I read through this, in my mind.

The other thing is: why spend more dollars on looking after these incarcerated people by not giving them a remission when those dollars could be going to boosting services for those prisoners when they get out of prison so that they can break the networks they are in and can move on as individuals - a bit like Tony has, although it has taken him a long time to learn, as he himself acknowledges, but he has been out for eight years so something has worked for him. It is not making sense.

I do not think I will go on much further than that, Mr President. The letter from those six people of good standing in our community covers a lot. I encourage the Government to look further at this, look further at the Law Society's idea on section 87 of the principal act being changed. They agree with that component. That is about the 'special management days', which has been put there to stop confusion between that and remission. They want to change the name because it was used in a way that suggested remission was being applied. They wanted to make sure that, if remission is taken out of the system, it is replaced. It says here -

', subject to any regulations for the purposes of this section, grant to a prisoner, in relation to the sentence, or sentences, of imprisonment in relation to which the prisoner is in custody or that form part of a continuous period in which the prisoner has been in custody, one or more special management days';

They were agreeing with that aspect. I cannot see any real benefit in this at all. I appreciate the services being provided by third parties. We received a list of those from the Leader, thank you. We have also received the other list with respect to what is behind done inside the prison. Even on that list, I did not see a lot of activity to say that they are receiving some greater benefits from the system while they are inside.

Mr Dean - With all the incentives, programs and everything else available, what more could they do?

Mr VALENTINE - What they used to do, I suppose. That list shows which certificates are being provided. Private enterprise or external parties are providing that, but that needs to be provided within the system. It needs to be a holistic approach, not put in place by a set of parties not connected with the prison.

Mr Dean - It is delivered by those people who have the knowledge and background, to deliver that trade or program.

Mr VALENTINE - How long has that been in place? How long has the delivery of those courses been in place?

Mrs Hiscutt - I am not too sure; it is years and years.

Recognition of Visitors

Mr PRESIDENT - Honourable members, we are joined today by Somerset Primary School grade 6 students, who are here to see how the Legislative Council operates.

Your honourable member is the member for Murchison, Ms Forrest, who sits there as the Chair of Committees. You will probably pick up as we go on that we are debating a bill to do with prisoner remission. It is one of the bills we debate this week. We are in the second reading stage, when members give their contributions. I am sure all members will join me in welcoming you to the Legislative Council Chamber today.

Members - Hear, hear.

Mrs Hiscutt - Regarding the list of vocational courses you referred to, we are led to believe that has been in place for at least 10 years, with different mixtures of things, on and off, to discover which will work best.

Mr VALENTINE - It is interesting. Our friend, Mr Bull, said that he did not think they were happening, and he has been out for eight years. I will take that information. It is not a huge point I was trying to make and if that is happening now, that is good. I still find it difficult to understand why we would take away a lever for good behaviour if it seems to be working for 27 per cent of the prisoner population.

Mr Dean - Do you believe a unit manager should have the right to overrule the decision of a judge?

Mr VALENTINE - No, they are not overruling the decision of a judge, but through their experience. Because the judge does not know how a person is going to react to incarceration, there is no other way, is there? What other way is that information transferred back to the judge? He cannot modify the decision once it is made. It is as simple as that.

Mr Gaffney - You made some good points about parole. If a judge says, 'Yes, you are in there for 12 months under the current system with no parole, you will be out in nine months if you have shown good behaviour because there is the three-month caveat'. If a judge say, 'Yes, you are in there for 12 months, but you have a parole period of six months', that person can be out in six months, yet we are worried about the person not seeing out their full time. Do you understand? It is easier for a person who is supposed to be there for 12 months to get out six months in advance if they convince the Parole Board. Therefore, they are not doing more of their time. They are only doing 50 per cent of the time, as alluded to by the judge. You cannot have your cake and eat it too. You made some really good points about that.

[3.58 p.m.]

Ms WEBB (Nelson) - Mr President, many good issues have been raised and views shared. I will try to be fairly brief and touch on the points I would like to reiterate. I appreciate the bill we are discussing attempts to provide greater clarity as to how remissions are used in our prison service, and I welcome those elements of the bill. At this stage, I cannot support a bill that removes remissions entirely.

I would like to speak about that aspect of the bill rather than those other elements. The member for Murchison clarified that we could achieve some of those other intents through regulation. That was a point well made.

I am not able to support this bill. There are two quite simple reasons for that. First, we are debating a policy that appears to be more about ideology than policy. It seems to be more that we are looking at a slogan - 'truth in sentencing' - rather than a case being made about a clear problem we are trying to solve with this action of removing remissions. That is the core of any action we take with policy or legislation. We have identified a problem we wish to solve or an outcome we wish to achieve, and we find the best way toward that solution or the achievement of that outcome. There is not a clearly articulated problem here to solve or a clearly articulated outcome that is being sought.

Second, the other simple reason I cannot support this bill is that while missing those first things, it also provides the potential to contribute to the difficulties already being experienced in our prison system, particularly in regard to staffing and overcrowding. I will speak for a moment on this second point and then go back in more detail to the first.

In recent times we have heard yet again staff shortages at Risdon Prison Complex have resulted in the prisoners being placed in lockdown on a fairly regular basis. This is not the fault of our prison officers, who do an important job in a challenging environment. It is a systemic problem which the Government has known about for years; it is a challenging one to address, but the Government is yet to properly address it. Staff shortages negatively affect working conditions as prison officers have to work in increasingly - what I would imagine be to be - heated and tense environments. Lockdowns also adversely affect or impact upon prisoners through reduced access to educational

programs, to other forms of offender programs, being denied visits from family and friends - all matters that can be ameliorative for them within the prison environment.

We heard in April how people who should have been released on bail were instead held in remand due to being on a waitlist to be accepted into appropriate housing. I find this a further disturbing aspect of our dire shortage of affordable housing in this state and another unfortunate aspect of an overcrowded prison. Staff shortages in the prison are also ultimately impacting on our state's finances. Under questioning from the member for Windermere, we learned this Government spent $5.7 million on overtime for staff in the last financial year alone. It looks to me that even with all the overtime being done, the prison is regularly put into lockdown, potentially almost on a daily basis. It would seem the prison is being locked down because there are insufficient staff to fully and safely operate it. It is a disturbing situation.

Mr Dean - The lockdowns are also occurring through criminal activity and violence within the jail.

Ms WEBB - Thank you for your comment on that, member for Windermere. I will take questions at any stage.

Mr Dean - The question is: are they?

Ms WEBB - I am not in a position to answer that question. You would best ask the Government about that through our usual processes.

Mr Dean - Okay. You were talking about it.

Ms WEBB - I was talking about the points I was making. You asked me a question about something different. I will leave you to follow that up through other channels.

On top of the staff shortages we appear to be experiencing, we are also experiencing serious overcrowding in our prisons. In the 12 months to June this year, Tasmania's prison population grew from 596 to 689. The issue of overcrowding was acknowledged as the TPS's figures were challenged by the state's Custodial Inspector, Richard Connock. This has resulted in cells designated for one or two people now being double- or triple-bunked. Furthermore, I have heard that due to the lack of space, prisoners who are supposed to be in minimum security have ended up at times in medium security.

I can imagine how both the staffing issues and the overcrowding issues can lead to negative outcomes for the prisoners and for prison staff substantially. More could be said about the state of our prisons, but I wanted to make those points briefly.

At the heart of it, what we are interested in is the safety and welfare of all Tasmanians. Politics aside, I am sure everyone in this Chamber, regardless of viewpoints around certain particular elements, can agree more needs to be done with our prison system to make sure it works well for everybody involved, including the broader community.

Given the current set of circumstances and difficulties being experienced in our state's prisons, I do not believe removing remissions at this stage would contribute materially to addressing any of those challenges faced. What we have heard is the removal of remissions will likely add about 40

people to our prisons per year and an additional 40 prisoners will not do anything but exacerbate an already difficult situation.

Regarding the first point I raised, which is my key concern and the reason I cannot support this bill. I do not believe the case has been made that the removal of remissions is required or advisable. I wonder where this call is coming from. I wonder what problem we are seeking to solve in removing remissions. Who has raised the call to bring this measure to bear? Did it come through the prison system itself? Has it just been tagged onto the slogan 'truth in sentencing'?

I do not believe a robust case has been made. I agree with the comments made by the member for Hobart. He asked, in relation to the claim that it is to meet community expectations, how those community expectations were measured and in what explicit way were those community expectations translated into a call to remove remissions. It is important for us to be very clear about the distinction between the opportunity to improve and make more transparent the process for granting remission as opposed to whether remission has value or presents a problem we must solve.

It is quite likely we could improve the implementation, transparency and accountability of the remissions process. Indeed, the community could quite rightly expect there would be regular efforts to best utilise and most accountably implement the remissions process. I would certainly argue for a review of that process with a view to ensuring the stringency and accountability of its application. We have clearly heard that the remissions system in place has a role to play in incentivising good behaviour in our prison system. At no stage during the briefings we received from people involved in that system did I hear a call being made for the removal of the remissions system and the process in place.

Remissions in the Tasmania Prison Service are seen as a good incentive for prisoners and a useful behaviour management tool. We have heard that through a number of sources, from people who interact with that system and people within the system itself. Therefore I think removing remissions has the potential to limit the tools available to our prison staff in managing behaviour. These are not just my fears; as we have heard, and it has been referred to already today, these are the fears of key voices in this field. Representatives of organisations that have connections with and work in the prison space have written to us expressing that view.

We have to be clear that remissions, as far as I understand them, are generally not there as a tool focused on or targeted towards what we might term 'hardened criminals'. I do not believable they are used or are intended to be used for that cohort of prisoners, but more as a behaviour management tool for prisoners, particularly those who may be on shorter sentences. In that circumstance, they are in fact an effort to encourage people away from becoming more hardened by their experiences in gaol.

I respect that, in parliament, we are going to have different views on that and on many aspects of this topic; however, in presenting this policy I fear the Government has been guided more by ideology than on producing good evidence-based policy and legislation. I believe it is our responsibility to refer as much as possible to the evidence and to good practice when making policy. This results in informed decisions which have the least chance of negatively impacting the community. This would prompt us to ask: what does the evidence say on this?

We know that improving our prison system means improving or providing more effective rehabilitative and educational programs within the prison system, including offender programs. Doing so helps to improve the outcomes for everybody involved. It helps the working conditions

for our prison staff because prisoner behaviour is improved with greater provision of those programs and services. It helps prisoners themselves by improving their overall wellbeing, with education being a particularly positive step for them to take during the time they spend in prison. It helps the economy as prisoners have higher levels of education upon leaving prison and also more capacity in terms of socialisation, more capacity in terms of relationships and less likelihood of having challenges with drug and alcohol issues. All those circumstances being improved during the time in prison means people are more likely on release to be successful in re-entering society, contributing and being positive members of our community. Ultimately, the improved rehabilitation programs are the things that best help improve the safety of our community. Studies into prisoner reoffending show a prisoner is less likely to be reincarcerated or increase the severity of their offending, if they have had experience with good, effective rehabilitation, education and offender programs during their time in prison.

I was pleased to hear during the briefings and information provided to us on this bill about the TasTAFE courses offered in Risdon Prison. It is a promising step towards improving prisoner welfare to provide education programs and towards improving outcomes for our wider community. In our briefings it was helpful to hear about the various other educationally focused courses or rehabilitative offender programs offered in the prison system, noting this is a range of worthwhile programs offered over a period of time. There remain some questions on the access to those courses and programs for all prisoners. We are given to understand such opportunities are allocated on the basis of targeting those prisoners who are most at risk or in need. Targeting is required because it would appear there is a lack of resources, compounded with other factors such as difficulty in recruiting appropriate staff to deliver courses and anticipating prisoner population and therefore, the level of need. All of those factors contribute to the fact it would seem, as reported to us, not all prisoners have access to courses and offender programs relevant to their offending.

The member for Windermere previously asked what more could they do, and that is a good question. We would all answer that question by saying there is always more we could do to make improvements and not dream of looking at our current situation as the best possible effort we could aspire to. We would all agree that what more could we do is to ensure there will always be further efforts towards improvements in what we provide that deliver greater experiences within the prison for staff, prisoners and ultimately our community when people are released.

I see no reason for us needing to have an either/or debate about remissions versus other behavioural management tools available within the prisons or a debate about remissions versus the range of other educational and offender programs available. The more tools available, the better it is to manage behaviour, incentivise good behaviour and equip people to be in a more positive circumstance when they leave prison, and to enhance the rehabilitative experience during incarceration for the better outcomes of our community in the long run.

Safety of the community is posited as a rationale for the removal of remissions. That case has not remotely been made. We could make a case for improving the remissions system by insuring accountability and reviewing it to make sure the system is operating as is intended so that it is accountable to its intentions. Delivering it according to the way it is designed would be a good effort towards improving safety in our community. I have not heard an argument made successfully that says the removal of remissions equals increased safety in the community.

I suspect and would anticipate that the impact of the removal of our remission system would be most strongly felt not in the community, but within the prison system itself by staff and by other prisoners.

Removing what is regarded - and we have heard it quite clearly from a range or sources - as a useful behaviour management tool could reasonably be expected to have repercussions internally in the prison system. Given that, I wonder what is proposed to replace the acknowledged positive impact that remissions have once they are intended to be removed. Is it greater funding and staffing levels generally? Is it greater staff funding and staffing levels for offending programs? Is it greater funding and staffing levels for educational programs? If commitments were made for all of the above, it still is not clear that this would ameliorate the loss of the tool of remissions. All those things should absolutely be committed to for our prison system broadly, and remissions should be retained as a valuable tool within the toolkit available in our system of prisons. I would like a clear understanding from the Government of what commitments it is making to ensure the working conditions and the wellbeing of our prison staff are not compromised further by the removal of remissions.

We have talked about the fact that other states, in various ways, have removed remissions from their systems. Other members have spoken about this in detail, so I am going to mention it only briefly. It is good practice to look at other jurisdictions when you are seeking to make good public policy. It is part of establishing an evidence base for the best way forward. However, without a starting point for our policy process of an identified problem to solve or an identified outcome to achieve, it becomes problematic to implement other good practice and public policymaking processes well.

While we might look to other jurisdictions and note they have removed remissions, without knowing why we want to do it and without knowing what we want to achieve by doing it, we do not know whether we can be informed by what they have done before us and take lessons one way or another from what other states have done. We certainly know that circumstances will be particular to each state; we know they will have, in various ways undoubtably, made different arrangements around the removal of remissions from their jurisdictions. It is not easy for us to apply a situation whereby we look to them and say, 'They have done it over there and therefore we should do it over here.' That is just not good enough for public policymaking in this state. Our community deserves much better than that sort of simplistic thinking.

We have had a fairly interesting discussion and some interesting interjections about the purpose of incarceration. I do not want to speak to that in any great detail while I stand here, other than to state very simply that there will be range of views on that. My view is that the purpose of incarceration is to punish and the deprival of liberty is a very serious punishment that we levy on people who have broken the law. The deprival of liberty is the ultimate punishment, short of capital punishment, that we can put on people in our community. I firmly believe the deprival of liberty is the punishment aspect when people are sentenced. What circumstances we surround them with while they are being deprived of their liberty is key to us achieving a good outcome in the risk of reoffending and ultimately in protecting our community. I am all for us using evidence-informed research and thinking about the best rehabilitative functions to put in place around people we deprive of liberty through incarceration. They are being punished, but we also need to make sure they will not need to be punished again. We do that by equipping them with prosocial skills, by assisting them with health issues like drug and alcohol addiction, by assisting them with offender programs that address the problematic behaviour that may have led to their offending, and by giving them skills and education to take with them when they leave prison to become constructive and positive members of our community. That is my view on the purpose of incarceration. The remission arrangement we have is, by all reports, a useful tool in behaviour management, has the potential rehabilitative function and assists people to leave prison in a more positive fashion if it is implemented stringently and accountably, and that is a very compelling reason to keep it.

I do not believe the case has been made for this measure of removing remissions to be taken. The problems we are trying to solve with this have never been identified. The outcome we are trying to achieve with this has also not been properly articulated beyond something very broad and amorphous regarding safety for the community. How will we know when this measure has 'worked'? It is an important question to ask whenever we are implementing a policy response. It sits alongside the fact that we must have an identified problem we are trying to solve or outcome we are trying to achieve when we put policy in place. At some point, we will want to ask ourselves and want to know whether this measure has worked. I am very interested to hear, if we were to pass this bill and remove remissions from our system, how we would know that has worked as a positive and good public policy measure that delivers better outcomes to our community. For all those reasons, and because of the potentially negative impact I see it having, I cannot support this bill.

Mr Gaffney - You mentioned 40 people a year -

Ms WEBB - That might be clarified by the Government. I believe we heard that figure in one of our briefings.

Mr Gaffney - I thought prisoner cost was $300 a day. According to the Auditor-General, it was $378 in 2015-16. If we assume $378 and the 40 people and three months is 90 days - if they now take that away - that will be an extra $1.36 million a year of expense if we do not have remissions. That is only an estimate for the 40 at $378 a day.

Ms WEBB - That is only an economic cost. We also have to think about the environmental cost within the prison system in overcrowding, stress on staff and the way that having more prisoners incarcerated at any given time impacts on that environment.

Mr Gaffney - The member for Windermere gave a figure about the overspend for -

Ms WEBB - It was the spend on overtime in the last financial year and it was $5.7 million on overtime for staff in the last financial year alone. I am happy to be corrected but that is what I believe came from a question asked by the member for Windermere in this place.

Recognition of Visitors

Mr PRESIDENT - Honourable members, I welcome a second group grade 6 students from Somerset Primary School. Your local member in the Legislative Council is Ms Forrest, the member for Murchison. The Council is currently debating a bill on prisoner remissions. We receive legislation to debate after it has been to the lower House. We debate it here and, if it passes here, it goes to the Governor. They are the three stages of government. I am sure members in the Chamber welcome you all here today and hope you enjoy your time in parliament.

Members - Hear, hear.

[4.24 p.m.]

Mr WILLIE (Elwick) - Mr President, the member for Murchison was after some data on how many prisoners have been released on remission in the last five years. Is that available?

Mrs Hiscutt - I have it here to provide an answer.

Mr WILLIE - Mr President, I find it galling that the Government is bringing this debate on at time. Every time a particularly tragic, high-profile crime is mentioned in the media, this bill is dusted off for another debate. It is disgusting politicking and I say to the Government today: have some decency, have some compassion and have some self-respect.

Look at the history of this bill. It was introduced in the last parliament and debated in the other place on 2 November 2017. The Government said it was moving to scrap remissions because it was an important reform and an outdated practice. It was tabled in our House on the 3 November 2017 at a quorum call and it lapsed at the election, despite three more sitting weeks occurring that year. It was debated again in the other place on 18 September 2018. The Leader of Government Business said it was a matter of urgency that it be debated and sent to the other place, yet it has sat on our books until now. Why the delay? A high-profile coronial inquest is active in the media and it suddenly appears.

Remissions only impact one-third of prisoner population. Two-thirds are either not eligible for any form of parole or parole may be activated before they have earned a remission. The Labor Party is not going to engage in the Government's nasty and divisive politics and let this bill through. The real issue is the Government's appalling record of botched prisoner releases. Do not forget, it was the Hodgman Government that cut $28 million from its first budget to upgrade ICT systems, which included the Justice department upgrade. They made that decision and they need to own the consequences - it is not good enough to say it happened under Labor. We knew it was a problem and we were moving to do something about it. You have been in Government for the best part of six years, and prisoners are still walking free from jail in botched prisoner releases.

The other day, a man was incorrectly released from Risdon Prison because of a human record keeping error. He was the ninth prisoner to be incorrectly released in four years. A Justice department spokesperson said the prisoner was returned to custody on Saturday without an incident. A department spokesperson said a review of the incident was underway to identify deficiencies in processes and methods to mitigate risk of further human error. This was known about over six years ago; a prisoner was incorrectly released due to human error in record keeping, a spokesperson said.

The Examiner followed up with another story. It says -

> The state government is investing $24.5 million over four years into the Justice Connect ICT program to centralise systems between the department, courts, police and corrective services.

Hooray, that was what was cut in the first budget. The upgrades will not be completed any time soon, leaving the prison system vulnerable to ongoing human error. They went on further - a Justice department spokesperson, not the minister, and this is a bugbear of mine. Why do ministers not front up to this? It is their portfolio. They use spokespeople all the time in an attempt to avoid accountability -

> A Justice Department spokesman said the new Sentence Management Division would be responsible for calculating sentences through a stable, tiered structure, reducing unnecessary referrals of decision-making.

They have set up a task force, effectively -

> 'It will be informed by best-practice models from other Australian jurisdictions', the spokesman said.
>
> ...
>
> Seven people will be employed once the division is fully operation by the end of the financial year, with specialist staff tasked with interpreting warrants and imprisonment orders; conduct sentence calculations; ensure accurate record-keeping; liaise between the Tasmania Prison Service and the courts; and authorise releases. Recruitment for the division's central manager is underway.

After six years, we now have an interim measure. We have an ICT upgrade that should have happened a long time ago, still in the pipeline, and this bill is cover for that. You are still letting prisoners out early. There is nothing about this bill that is not political; it is purely a political tool being used by the Government - make no mistake about that. It also had a review by KPMG in 2017 to make some of these recommendations already known about.

I will conclude by saying: make no mistake, this bill is a political cover for the Government's own failings. It pretends to be tough on crime because it likes to stoke fear in the community. Government members should be ashamed of themselves.

Mrs Hiscutt - While the member is on his feet, Mr President, did Labor say it was going to vote for the bill?

Mr WILLIE - I said we will let the bill through.

Mrs Hiscutt - That is what I thought you said, thank you.

[4.31 p.m.]

Mr ARMSTRONG (Huon) - Mr President, when researching this bill, the first thing I needed to do was understand the difference between parole and remission. I concluded remission is an early release from a court order under custodial sentence. Parole is release from custody under strict conditions for the remaining term of the sentence. If an offender offends while on parole, they will likely have to serve out their original sentence in custody. An offender released on remission on the other hand is free with no conditions and no-one necessarily needs to be notified.

The bill recognises the importance of truth in sentencing, which means letting a prisoner out early without any supervision is not right. When a victim has been through a court case and the judge has handed down a sentence, the victim walks away from that court knowing incarceration is part of that sentence. A certain period of time, a three-month discount on this, is not truth in sentencing. From a victim's point of view, we need to make sure everybody understands when a judge hands down a decision, there is not a discount of three months available to that prisoner through a remission process.

Mr Dean - The victim has not been mentioned much here.

Mr ARMSTRONG - We have heard many times when mandatory sentencing has been the topic of discussion. Many believe the court and the judge should be the one that makes the decision.

As it is now, whoever grants remission is overruling the court's decision, the one the judge has handed down. We have been told the judge is the best person to make that decision, but with remission he is overruled.

Mr Gaffney - The judge knows the remission is there. The judge knows they have the choice to make a remission, so it is not as if the judge does not know.

Mr Valentine - They are not saying do not give him/her a remission.

Mr ARMSTRONG - The judge makes the decision; he sets that sentence on what he thinks is right, and then in jail people can overrule that. When we talk about mandatory sentencing, they say it is the judge who has the power to impose the proper sentence -

Mr Valentine - That is right; an interesting point.

Mr ARMSTRONG - As I said, I have heard many times that the judge is the best person to make the decision.

Mr Dean - You are saying it is a bit of hypocrisy?

Mr ARMSTRONG - Well, I will not go that far. A three-month discount on a judge's sentence is not in keeping with what the community expects. The practice is also out of step in other jurisdictions around Australia, except the ACT. There was much debate about remissions being part of a toolkit for the prison service, because they are a useful incentive for good behaviour. I know the Tasmanian prison system currently has such systems in place.

One thing that grabbed my attention was the contract system, whereby incentives and privileges are used to encourage positive behaviour by a raft of different mechanisms. A contract is a formal agreement between the prison service and the prisoner. The contract outlines the prisoner's obligations and details his or her personal goals and targets. The contract system is dual purpose, which is to contribute to the safety and security of the prison environment through the effective management of prisoners using an incentive-based behavioural contract system. This is so prisoners and staff have a safer environment. It is also to provide incentives for prisoners to participate in personal development opportunities. Privilege incentives may include additional visits, access to recreational opportunities and equipment, and the ability to have additional cell property such as games, consoles and the like.

There are other opportunities to incentivise good behaviour rather than the early release remission. I find it hard to accept it is a tool essential to promote good behaviour. Other mechanisms are in place within our prison system to manage our prisoners and encourage good behaviour rather than letting them out early.

I do not like the fact prison authorities are overruling the court by allowing remissions. For those reasons, I will support the legislation.

[4.36 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I thank all members for their contributions. I have a plethora of answers here. I will work my way through them. They are all over the place; hopefully, I will have the member's name before I deliver the answer.

The member for Mersey asserted that the bill may be a cost-cutting measure. I advise that the modelling indicates the abolition of remissions would equate to approximately 40 additional prisoners per year, and I can assure the member that cost-cutting was not a factor in the determination of this bill. The member is not here now, but I know the Attorney-General is a strong believer in truth in sentencing so cost was not a factor in this.

The member for Mersey also raised the issue of retrospectivity. Remission was intended to be capped at three months from the date the new remissions scheme commenced on 1 January 1994. However, in 2015 the Supreme Court determined the specific working of the relevant corrections regulations should actually be interpreted differently - specifically, that a prisoner could receive up to three months on each sentence, not three months on the total period of imprisonment. This was not the interpretation used by the Tasmania Prison Service for the proceeding 11 years. The clarifying provisions included in the bill intended to restore the three-month cap in force up until the decision starting in 2015.

The member for Mersey also raised concerns around the lack of alternatives to remission; a few members mentioned this also, so if you mentioned it, please take it on board. As the Director of Prisons outlined in this morning's briefing, the prison service uses the contract system. While he conceded remission is a useful tool, he reiterated it is not the only tool used to incentivise good behaviour. The incentives of additional visits, items and access to recreational activities should not be underestimated.

The member for Windermere asked about the number of prisoners on home detention. Home detention is a court order handed down in lieu of a person being sent to prison. Currently, 41 people are subject to a home detention order.

The member for Windermere also raised the questions of parole and asked whether there were delays in receiving parole. As the Director of Prisons said, there is no backlog in the prison service. If a prisoner has commenced the pre-parole process prior to the eligibility date, there should be no delay in the consideration of their parole by the Parole Board. In fact, the Parole Board can and has on a number of occasions considered someone's application for parole prior to the eligibility date. Delays can occur from time to time and in a final decision being made about a prisoner's parole for a number of reasons, including the requirement of additional information. If that is the case, the Parole Board will typically adjourn the matter in the first instance rather than refuse. This means the matter can be considered as soon as additional information becomes available. The additional information could be a report from a psychologist or anything of that nature.

The member for Windermere also asked how many prisoners had been released on remission. The TPS does not routinely collect this information, so it is difficult to provide detailed statistics. However, TPS has reviewed prisoners released from January to July 2019 and can say that of the 364 prisoners released, sentence served - not released on parole - 131 had received some remissions.

Ms Forrest - Some remissions, not necessarily three months, or it might have been less - is that what it is saying?

Mrs HISCUTT - It is saying some remission, yes.

Ms Forrest - There were 131 since January?

Mrs HISCUTT - January to July, six months.

Mr Valentine - What was the total number released?

Mrs HISCUTT - There were 364 prisoners released, sentence served.

The member for Windermere also asked about reoffending while on remission. There is no readily available way to gauge how many ex-prisoners reoffended during the period they have been released on remission. This is because they are no longer under sentence once released. They are therefore no longer under any conditions, nor are they any part of the prison system - they are out. From a practical data point of view, remissions are captured as part of the TPS system. Any reoffending is captured in police arrest data and then in court data, and these are entirely separate systems.

Members were also interested to hear about the list of programs available to the prisoners. The member for Murchison read those out so I will not read them out again.

In regard to literacy and numeracy programs, the Government provided an additional $150 000 in this year's budget for Rosie Martin's Chatter Matters 'Just Time' program to continue being run at the prison. Just Time uses evidence-based practice matters to improve literacy, numeracy and communication skills.

In response to the member for Murchison's question about the issue of ensuring remissions are captured at three months, that could potentially be remedied through a change to regulation 25.

Ms Forrest - Capped at three months, not captured.

Mrs HISCUTT - What did you say, sorry?

Ms Forrest - I thought you said 'captured'.

Mrs HISCUTT - Capped. Similarly, subject to advice from the Office of Parliamentary Counsel, this could be done for requiring participation in programs.

Ms Forrest - That does not make any sense. The question was about making sure the three-month maximum remission was clear, but you are talking about doing programs. The change to the regulation I was asking about was to do with clarifying that the Supreme Court found the three months issue could be extended if they had separate sentences.

Mrs HISCUTT - The member for Murchison also asked about other educational activities. Outside of formal education programs, other activities include, but are not limited to: gardening crews, whose job it is to maintain vegetable gardens, produce of which is then donated to charities; oyster basket-making; and woodwork and joinery.

The member for Hobart asked about putting on the record the number of groups consulted so I will run through that list. In October 2017, the bill was made available for public consultation on the Department of Justice website and circulated to key stakeholders including the following: the Director of Public Prosecutions; Tasmanian Council of Social Service; Community Legal Centres Tasmania; Tenants' Union of Tasmania; Tasmania Prison Service; Community Corrections; Magistrates Court; Supreme Court of Tasmania; Tasmanian Aboriginal Corporation; Community and Public Sector Union; United Voice; Prisoners Legal Service Tasmania; Probation and Community Corrections Officers' Association; Hobart Community Legal Service; Launceston

Community Legal Centre; North West Community Legal Centre Incorporated; Women's Legal Service Tasmania; the Law Society of Tasmania; Tasmanian Bar; Tasmania Law Reform Institute; Civil Liberties Australia; Legal Aid Commission of Tasmania; Tasmanian Women Lawyers; Tasmanian Aboriginal Community Legal Service; Department of Treasury and Finance; Department of Police, Fire and Emergency Management; Department of Premier and Cabinet; Department of Primary Industries, Parks, Water and Environment; Department of State Growth; Department of Health and Human Services; Sexual Assault Support Service; Police Association of Tasmania; Australian Lawyers Alliance; Parole Board; and the Victims Support Service. There were 35.

Mr Valentine - There were three submissions from all of those.

Mrs HISCUTT - The member for Hobart has mentioned that. You asked for a list of people who were consulted.

Mr Valentine - Yes, that is right; I just wanted to confirm it, that is all.

Mrs HISCUTT - The member for Hobart also asked why the Government is doing this. The Tasmanian Government believes that simply letting an offender out three months early is not acceptable. Other methods of incentivising good behaviour in prison are more appropriate. It is our view, and I am sure many victims of crime would agree, that if you do the crime, you should do the time. Granting remissions is an outdated practice and out of step with other Australian jurisdictions that have phased out their use. The Government took this position to the 2018 election and the community supported it with their voice.

Mr Gaffney - On that point, if the remission is of three months, how do you justify a parole period where a person gets put in there for three years and can get out 15 months or 18 months early?

Mrs HISCUTT - The Government believes in truth in sentencing and we believe that the victims have a better call than the criminals.

The member for Hobart and the member for Murchison asked about consultation with other states. While I do not believe that other states were consulted in determining this bill, discussions at annual corrections ministers' meetings, including prison trends and operational procedures, almost certainly would have helped form the basis of this policy.

The member for Hobart also asked about programs available outside the prison. We have already run through a few of them. The Tasmanian Government introduced the new Prisoner Rapid Rehousing, a specialist throughcare and reintegration program for high- and complex-needs prisoners who are exiting prison and who have chronic accommodation and support needs. Prisoner Rapid Rehousing tenants are provided with support to transition back into the community, to access and maintain stable accommodation and to address issues which may contribute to reoffending through the Salvation Army's specialist throughcare and reintegration program, Beyond the Wire.

Beyond the Wire provides prisoners exiting prison with access to tailored case management, service coordination and planning. It will also enable access to a broad range of services provided by each organisation. These are Anglicare, CatholicCare, Colony 47, Hobart City Mission and the Salvation Army Tasmania. This is an intensive case management approach focused on

interventions that will reduce the likelihood of people exiting prison returning to a life of criminal activity.

Just a couple of comments on the contribution of the member for Elwick, who spoke about incorrect releases. I reiterate: while it is inappropriate to comment on individual prisoners, the Government takes this issue very seriously. Of course, any incorrect release is unacceptable and we are doing everything we can to prevent these. I point out that despite incorrect releases occurring in 2010, 2011, 2012 and 2013, Labor chose to do nothing to fix those longstanding issues. The Government is continuing to implement the recommendations of the KPMG audit.

Mr President, I will seek that other bit of advice I was looking for earlier for the member for Murchison, so, subject to advice from the Office of Parliamentary Counsel, the clarifying provision capping remission at three months could potentially be achieved through an amendment to regulations. This debate was a marathon effort and I thank everybody for their contributions.

The Council divided -

AYES 9	NOES 5
Ms Siejka (Teller)	Mr Finch (Teller)
Ms Armitage	Ms Forrest
Mr Armstrong	Mr Gaffney
Mr Dean	Mr Valentine
Mrs Hiscutt	Ms Webb
Ms Howlett	
Ms Lovell	
Ms Rattray	
Mr Willie	

Motion agreed to.

Bill read the second time and taken through the Committee stage.

MOTION

Government Administration Committees A and B
Revised List of Ministerial Portfolios

[4.59 p.m.]

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

> That the following revised list of ministerial portfolios be allocated to the Legislative Council Government Administration Committees A and B, as a result of the 2 July 2019 ministerial portfolio changes.
>
> Committee A -
>
> > the Treasurer
> > the Minister for Environment, Parks and Heritage

the Minister for Health
the Minister for Women
the Minister for Primary Industries and Water
the Minister for Energy
the Minister for Resources
the Minister for Veterans Affair
the Minister for Human Services
the Minister for Disability Services and Community Development
the Minister for Housing
the Minister for Planning
the Minister for Aboriginal Affairs
the Minister for Police, Fire and Emergency Management, and
the Minister for Local Government

Committee B -

the Premier
the Deputy Premier
the Minister for Tourism, Hospitality and Events
the Minister for Trade
the Minister for Advanced Manufacturing and Defence Industry
the Minister for Prevention of Family Violence
the Minister for Education and Training
the Minister for Mental Health and Wellbeing
the Minister for Sport and Recreation
the Attorney-General
the Minister for Justice
the Minister for Corrections
the Minister for Building and Construction
the Minister for the Arts
the Minister for Racing
the Minister for Infrastructure and Transport
the Minister for State Growth
the Minister for Small Business, and
the Minister for Science and Technology.

[5.00 p.m.]

Mr DEAN (Windermere) - Mr President, why it has taken so long for this process to reach this stage? I will support this motion. I am not sure about the rest of Government Administration Committee B. Those members will speak for themselves and vote as they see fit. I support it as it is now.

We should never have been in this position. The first draft, as provided, was written on my advice after much effort and time was put into it by senior staff within the Legislative Council to ensure there was an even workload between the two committees; they went into considerable detail to ensure that was the case. In looking at the portfolio areas, you cannot look only at the number of ministers a committee is responsible for, you have to look at the amount of functions within that portfolio.

That first draft was circulated and was accepted by some. A couple of issues were raised but it was accepted. They put a huge amount of work into getting that right. I asked why that was not accepted. What happened in the meantime? The practice in this place has always been, since the origin of the sessional committees, for members to move across to the other committee to press their position, to ask their questions of a minister sitting outside their jurisdiction, outside of their committee. That is what this process provides for. I have moved from Government Administration Committee B into Government Administration Committee A for the purpose of asking questions during Estimates and on some other occasions.

If, in setting up these committees, we are going to listen to individual persons and their preferences as to which ministers they might want within their committee, we are going to have immense problems. We should not be put in that position. It should be set up by senior staff within the Legislative Council and the Clerks ought to do this. There ought to be no interference by members in the process being set up. An independent body must do it. We need to determine that is the practice, and that is the way we will do this and that we will not do it in any other way.

I strongly support our Clerks, the secretaries and other people involved in this process. They were very careful in the way they set it up. We should not allow individual persons or elected members to interfere in that process. If you are not happy with the sessional committee you are on, yes, you can seek to change if that is available. If not, there is the other process I referred to. That is, move across as you feel fit, to ask questions and to be engaged.

If a committee is set up in another sessional committee, there is an opportunity to move onto that committee under certain circumstances. I identified my annoyance with what was happening. Over time it has caused much frustration, some concern and some hurt, and we should not be in that position. The sessional committees are a good system. The sessional committees are doing great work. We need to get the process right because these committees will change from time to time. Every time there is a change with the ministers and the portfolio areas they will carry, there may be changes probably to the sessional committees. I agree with that - we need to keep the ministers and all their responsibilities in the one area under one sessional committee.

I support the motion currently before us.

[5.06 p.m.]

Mr VALENTINE (Hobart) - Mr President, I am happy with the way things have turned out. It is important that the expertise is placed where it can yield the best result. Members have the opportunity to request to be on a certain committee. I suffer a little bit because I have a passion for technology, which has now gone to Government Administration Committee B and I am on committee A. There are winners and losers in anything put up, so I am happy to accept what is put forth.

[5.07 p.m.]

Mr GAFFNEY (Mersey) - Mr President, I congratulate you on what has been done. In the time I have been here, the staff put forward what they believe is a fair workload for Government Administration Committee A and Government Administration Committee B. Sometimes they get that right and sometimes they get it wrong, but it is our call. They ask us for any input to help, whether we have any issues or if something needs consideration. Last year, one committee finished at lunchtime on the Thursday; the other committee went right through until later.

Ms Forrest - That is Estimates. This is government administration.

Mr GAFFNEY - Sometimes, committees will change because we want to make certain we have representation from the north, north-west and the south on each committee, so that we have a good balance across the state and do not have Labor on one committee and all the Liberals on the other. We try to balance it out. If any member has a passion for an area they feel comfortable with, they should ask how we can work as a group. We have a process in front of us for that and I do not think anybody should be feeling out of sorts, hurt or intimidated. This is a process we go through to reach a compromise.

Some people agree and some will not, but that is the process. The President was asked for his advice and was involved in the discussion because it was not an easy decision, and we have arrived at something. We have two committees looking at different work. All the people on those committees will work very hard to ensure the public hears all the questions and answers. Congratulations to those people involved in that discussion. I am satisfied we can move on and do the best we can.

[5.09 p.m.]

Ms FORREST (Murchison) - Mr President, I was not going to speak, but since other members have it is important to make a few comments on this. Ministerial reshuffles always result in a reshuffling, depending on the extent. It was quite a big change this time and that required a major rethink. The first draft to come out was considered by some of the staff, which is right and proper, but there was no consultation with any members, not even with the chairs of those committees. That is okay, to a point. It was then put out for comment, so some people did, as is their right and as you would expect. There were some suggestions made to try to make sure we could facilitate members' expertise and preferences as much as possible.

Since I have been in this place, we have always done that. I brought these committees into being in 2010. Since 2010, this has always been the case. Previously, and continuing on, there were Estimates committees. I am not sure which year they were set up, but it was before I came. Those committees had a similar structure. We try to keep the same structure on portfolios, which is a sensible thing to do for that corporate knowledge and the maximisation of the knowledge base when you are questioning ministers and related government businesses.

We have always, in my time here, been able to facilitate and be flexible around people moving between committees. The former member for Western Tiers and then McIntyre, Mr Hall, was deputy president and chair of committees. He chaired Estimates Committee A, but moved to Government Administration Committee B because he wanted to spend some time in those portfolio areas and that was facilitated. We have seen the member for Huon, the member for Hobart and the member for Rosevears move committees. It has always been the case that we facilitated these movements, where possible. The challenge is that Government Administration Committee A has six members and Government Administration Committee B has seven. Sometimes it is the other way around. Sometimes we have even numbers when there have been government ministers in this place and we have only had six on both. I have been here on all those occasions.

If someone really wanted to move from Government Administration Committee B to committee A, where their interests lie, it would be easy - you would make a request and we would move you across. At the moment, because of the way it is, if someone wanted to move from Government Administration Committee A to committee B, you would have to arrange a swap of members. That was suggested and that was asked for but no-one on Government Administration Committee B was willing to change, and that is okay. If they were happy with where they were, that is fine.

We have always tried to facilitate this for the best outcomes for this place, to ensure that ministers and the government of the day are held to account. This is done as best we can, by using the skills and knowledge we have. It is a little bit disappointing the member for Windermere raised some of the comments he did. I do not think there was any interference from members. It was a normal process of consultation once that first draft went out. That is normal, that is not interference, that is consultation and feedback, as was sought.

To say this caused concern and hurt, there has been some hurt caused by some comments made by the member for Windermere. People may feel they have been targeted in this, in that they have been wanting to change. That is not fair and not right, either. As we all know, our last sitting week was a bit of a deadlock. One proposal was supported by one committee and another proposal supported by another committee. I said that I would be happy for the President to look at this and make a determination, which is what has happened. We have a committee looking at how we resolve deadlocks in another situation. This time, we used the President and it has worked well. There is no criticism from my part. I am happy with what we have on each committee and I am happy to work with whoever is on that committee. If anyone from Government Administration Committee B wanted to come across to Government Administration Committee A because there is a space for a permanent member, I would welcome them, and I am sure all other members of committee A would. We cannot go the other way for the reasons I have mentioned.

It is unfortunate we have debated this. It has been a proper process. There has been no interference, as suggested. It is an appropriate process to seek feedback, once a proposal has been put forward, to try to do the best we can to facilitate the interest and desires of members, as we have always done in this place.

Motion agreed to.

LEGAL PROFESSION AMENDMENT (VALIDATION) BILL 2019 (No. 34)

First Reading

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

ADJOURNMENT

[5.16 p.m.]

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

> That at its rising the Council adjourn until 11.00 a.m. on Tuesday, 17 September 2019.

Mr President, because the bill I was waiting for has arrived, there will be no quorum call tomorrow morning. An email has been sent.

Motion agreed to.

The Council adjourned at 5.17 p.m.