PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Wednesday 16 September 2020

REVISED EDITION

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The President, **Mr Farrell**, took the Chair at 11.00 a.m., acknowledged the Traditional People and read Prayers.

BIOSECURITY (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2020 (No. 20.)

Third Reading

Bill read the third time.

SUSPENSION OF SITTING

[11.04 a.m.]

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

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

This is for the purpose of the continuation of the briefing on the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020.

Sitting suspended from 11.04 a.m. to 2.30 p.m.

QUESTIONS

Burnie Court Relocation

Ms FORREST TO LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.31 p.m.]

This is a follow-up to a question asked a little ago.

With regard to the Burnie Court relocation to a more suitable premises, when and in what form will there be genuine community consultation with stakeholders in the vicinity of the proposed UTAS location, including neighbouring residents, Umina Park Aged Care and Burnie Primary School parent groups who feel concerned by this announcement that occurred with no prior notice the site was being considered?

ANSWER

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

The design works and pre-planning matters for the relocation of the Burnie Court are currently being worked through with ongoing consultation to continue. This will ensure that the new facility meets the needs of the Supreme and Magistrates Court judiciary and staff, court users and the community.

It is not unusual for multidisciplinary courts to operate close to services within local communities and the new site is zoned community purpose.

The new court complex will service a range of judicial matters. The Burnie community can be assured that, as is the case in multiple courts around Tasmania, any individuals who are in custody appearing for matters are always securely transported to and from courts. The minister has recently met with local representatives from the Burnie City Council and her department looks forward to continuing its constructive discussions as the project progresses, bearing in mind the role of the council and the planning authority.

As is usual practice, community consultation will occur as part of the standard planning process for any development application and this will include adjacent land owners as well as the local community.

Brighton High School - Site Acquisition Cost

Mr WILLIE TO LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL, Mrs HISCUTT

(1) What was the land acquisition cost of the Brighton High School site?

(2) Will the cost of the land acquisition come from the funds allocated to the school build or will additional funds be provided for the project?

(3) If additional funds are being provided towards the project. what is the total amount?

ANSWER

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

(1) Following extensive community consultation, the Government compulsorily acquired 10 hectares of land at 33 Elderslie Road in Brighton to progress this significant project. The land acquisition process is occurring in accordance with relevant laws which are there to protect the interests of the owners and ensure they are fairly compensated. The Office of the Valuer-General is managing the compensation process. The acquisition process provides a mechanism for negotiation and arbitration, and the final compensation is yet to be determined.

(2) It is important to note that the $30 million in the Government's election commitment was asterisked with a comment 'subject to plans being finalised'. The design and build of the new school reflect the extensive community consultation that has occurred to date, the current and future educational needs of the Brighton

area, construction and land acquisition costs. If any additional funding is required, it will be considered through the state budget process.

(3) Refer to the answers above.

Housing Connect - Presentations for Assistance

Mr WILLIE TO LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL, Mrs HISCUTT

In 2019, Housing Connect services had 40 000 people present for assistance.

(1) How many presentations were there for 2018, 2017, 2016 and 2015?

(2) What is Housing Connect's core recurrent statewide funding?

(3) Has there been an increase in presentations to Housing Connect services in 2020 compared to the same time last year?

(4) If there has been an increase in presentations for 2020, what percentage is the increase?

ANSWER

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

(1) The data the member refers to in his question is not consistent with what is captured by Housing Connect. The Housing Connect Front Door captured data shows -

- in the 2019-20 financial year, there were 67 983 inquiries
- in the 2018-19 financial year, there were 65 466 inquiries
- in 2017-18 financial year, there were 63 205 inquiries.

No data is available prior to the 2017-18 financial year. System enhancements were introduced in early 2017 to better capture Housing Connect demand.

Note that households make multiple inquiries during a financial year, so this reflects the number of engagements and not the number of people presenting.

(2) In 2020-21, the statewide funding allocation for Housing Connect totals $17.27 million.

(3) In the six months between 1 January 2019 and 30 June 2019, there were 34 110 inquiries for assistance at Housing Connect Front Door services. In the six months

between 1 January 2020 and 30 June 2020, there were 33 801 inquiries for assistance to Housing Connect Front Door services, a decrease of 309.

(4) The available data shows there has not been an increase in presentations for 2020.

Soccer - Funding Inequity

Ms ARMITAGE TO MINISTER FOR SPORT AND RECREATION, Ms HOWLETT

One of the fastest growing sports in my electorate is soccer, and Sport Australia's AusPlay participation figures indicate that soccer receives less government funding per participant than any other sport. Will the minister please advise -

(1) What steps are being implemented to address this inequity so that anyone who wants to play soccer can play, to ensure the facilities are adequate and to ensure that our association of football organisations are resourced enough to manage and support the growth of this sport in Tasmania?

(2) With the Women's World Cup set to be hosted in Australia and New Zealand in 2023, can you confirm that UTAS Stadium in Launceston will be upgraded so that it can be reconfigured as a rectangular stadium?

(3) Can the minister please confirm when work on the reconfiguration of UTAS stadium will begin?

(4) Can the minister please advise what feedback has been sought from Tasmanian football association organisations to ensure our state will be adequately prepared to take advantage of the opportunities the third biggest sporting event being hosted in Australia will bring?

ANSWER

I thank the member for Launceston for her question and her interest in this. It is very exciting news for northern Tasmania.

(1) to (4)

I am aware of ongoing calls by Football Tasmania for a fairer level of state government funding as part of its revised 2020-21 state budget submission.

This budget submission from Football Federation Tasmania will be considered as part of the normal budget process. In addition, I am also aware of FT's online petition calling for a fair go for football.

The Government is a strong supporter of soccer in Tasmania and provided $1.2 million in funding across four years to Football Federation Tasmania in the 2017-18 budget. That is in addition to our ongoing funding commitment of

$50 000 per year. This significant investment will support grassroots football development and the men's and women's talent support programs.

Football Tasmania also received the maximum $150 000 in funding, which assisted with the salary costs for 15 of its staff through our nation's leading COVID-19 Sport and Recreation Grants Program tranche 1, which we initiated to sustain grassroots sport in Tasmania through the pandemic.

The Tasmanian Government also committed more than $700 000 in 2018 to a number of soccer clubs across Tasmania to improve and upgrade their facilities and equipment to attract younger players and retain players. Soccer clubs were highly represented across the state in the Levelling the Playing Field Grants Program and many Tasmanian children accessed the Government's Ticket to Play vouchers to join soccer clubs across the state.

The methodology used by Football Federation Tasmania to compare the funding of sporting codes to others - namely, AFL and cricket - does not compare apples with apples. The inclusion by Football Tasmania of national elite-level competitions such as AFL and cricket in comparison with the level of grassroots sporting funding of others such as soccer does not bear scrutiny. The fact is that Tasmania is not represented at the national level in soccer, either in the men's or women's competitions, a situation that we hope we can rectify.

The Government supports any opportunities to enter the A-League or the W-League. In terms of the World Cup, the Tasmanian Government was pleased to be involved in and contribute to Football Federation Australia's winning joint bid with New Zealand to co-host the FIFA World Cup in 2023. This announcement is great news for football fans in Australia and presents some excellent opportunities for Tasmanian fans to enjoy world-class football stars here in our state.

Importantly, Tasmania's involvement will also encourage more Tasmanian women and girls to participate in sport, which is critical to our commitment to make Tasmania the healthiest population by 2025. The Tasmanian Government's agreement with FIFA will provide an investment of $1 million should we secure the three group stage matches and the option of two base camp training venues. I understand Events Tasmania is continuing to work with Football Federation Australia to develop a host city transport and mobility plan and a communication plan to outline the Tasmanian Government's support for FWWC content in Tasmania.

Confirmation of the final host cities and venues is expected to be announced between December 2020 and June 2021. As work continues to progress. I look forward to continuing to work with Football Tasmania and the relevant parties in ensuring we are adequately prepared should we be successful in securing Tasmania as a venue. I hope we are.

Work and discussions are ongoing regarding UTAS Stadium to see if it can be used. It has been used in the past for A-League games. That is something we are working on.

Ms Armitage - Do you know when we will have an answer to it, minister?

Ms HOWLETT - We are currently having discussions.

Ms Armitage - Do we have a time frame, though?

Ms HOWLETT - I will let you know as soon as I know.

Ms Armitage - Could I ask again tomorrow? Perhaps you might check if I asked a similar question tomorrow with regard to time frames for UTAS Stadium?

Ms HOWLETT - I can certainly see. It would require me to get answers back from a few different organisations, including the council.

Mr PRESIDENT - In due course.

Ms HOWLETT - Yes, in due course.

Ms Armitage - How long is a piece of string?

Ms HOWLETT - It is important and it is exciting news for Tasmania.

Ms Armitage - Football Tasmania is very keen to know what is happening.

Ms HOWLETT - It is. I am having ongoing meetings with Bob Gordon and Football Tasmania. We will do everything we can to ensure that this does occur.

Dorset Council - Crown Land, Derby

Mr DEAN TO LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.44 p.m.]

In regard to the alleged illegal building undertaken by the Dorset Council on crown land at Derby, will the Leader advise -

(1) Did the Dorset Council construct a depot, worksite or whatever on crown land at Derby in about 1920?

(2) If so, did the Dorset Council have the approval or authorisation of the state Government, the Parks and Wildlife Service or Crown Land Services or whatever to develop the area as a depot or similar site?

(3) If not, what correspondence and/or conversations were entered into between the authorising government department and the Dorset Council?

(4) Did the Dorset Council erect a depot or similar development on the Derby site contrary to the department's position and being aware of that decision?

(5) If so, what action has been taken against the Dorset Council in the circumstances?

(6) If applicable, and no action taken, why?

ANSWER

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

Mr Gaffney - Honourable Leader, could you ask the member if he would like to correct the year?

Mrs HISCUTT - Yes, I took it that the member meant 2019-20.

Mr Dean - What did I say?

Mrs HISCUTT - You said 1920.

Mr Gaffney - I thought, 'My word, you are very good with your work.'.

Mrs HISCUTT - I was thinking it was a very old building. Anyway, we do know what you mean, yes.

(1) Yes. The construction of the Dorset Council depot at Derby was completed in mid-2020.

(2) No.

(3) There was a range of verbal and written communications between the Parks and Wildlife Service and the General Manager of Dorset Council in 2019 and 2020. These included several stop work directives by PWS in the first half of 2020 as the sale agreement with the council had not been completed and landowner and planning consents had not been obtained. Mineral Resources Tasmania has also been involved due to the depot facility encroachment on an active mining lease and the state significance of the resource that has been impacted by the depot.

(4) Yes.

(5) A thorough legal investigation has been undertaken by the Solicitor-General. The Solicitor-General has written to the council inviting its response to a number of issues. The Solicitor-General is currently considering the Crown's position on the matter .

(6) Not applicable.

Waste Action Plan - Public Release

Mr WILLIE TO LEADER OF THE GOVERNMENT IN THE LEGISLATIVE COUNCIL, Mrs HISCUTT

In October 2019 the Government released its draft waste action plan. When will the Government release the final waste action plan?

ANSWER

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

The Tasmanian Government anticipates that the draft waste action plan will be finalised later this year, at which point it will be released publicly. The Tasmanian Government recently appointed the Waste and Resource Recovery Ministerial Advisory Group, chaired by Tim Gardner. One of the first tasks for this group will be to review the draft plan and provide guidance on the final version.

Derwent Entertainment Centre - Community Courts

Mr WILLIE TO MINISTER FOR SPORT AND RECREATION, Ms HOWLETT

Yesterday, the minister talked about the community courts at the Derwent Entertainment Centre development.

(1) Are the community courts developments going to happen concurrently with the Derwent Entertainment refurbishment?

(2) If so, what is the start date for that project to commence?

(3) What is the expected completion date?

ANSWER

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

The Derwent Entertainment Centre - DEC - is actually managed by Events Tasmania. Tenders will soon be announced for a construction and design tender for the community courts.

Mr WILLIE - Alongside the DEC?

Ms HOWLETT - They will not necessarily occur at the same time. We have NBL with Larry Kestelman and his development, and we have the multi-sports centre, which is managed by Events. I cannot say they will actually be constructed at the same time. There will be a different tender process.

Mr Willie - Do you have a start and completion date?

Ms HOWLETT - No, work is currently ongoing, but I will certainly let you know when it is going out to tender.

LAND USE PLANNING AND APPROVALS AMENDMENT (MAJOR PROJECTS) BILL 2020 (No. 26)

Second Reading

[2.51 p.m.]

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

That the bill be read the second time.

Mr President, 11 years ago the Land Use Planning and Approvals Act 1993 - LUPAA - was amended to introduce the projects of regional significance - PORS - process, a new assessment process which was intended to fill the space between ordinary development applications - DAs - at a council level and the projects of state significance process.

The PORS process provides for the assessment of projects that have significant regional impacts and importance by an independent expert panel established by the Tasmanian Planning Commission.

The PORS process was well intended and reflected similar processes in other states, but history shows it did not prove to be an attractive option for project proponents, including the government that created it. Despite the legislation requiring a review after five years, this never happened, largely because it had never been used.

The irony is that the process specifically designed to provide for important and complex regional projects, whilst offering assessment by an independent panel, did not even provide the range of approvals available through the ordinary council DA process. It is not surprising that the PORS process has been left on the shelf unused.

In 2014, when this Government was first elected, a commitment was made to fix the PORS framework, to address its deficiencies and deliver a process for assessing major projects that is fit for purpose.

Work began in 2015, leading to the release of a first draft of the newly named major projects process in 2017.

The first draft of the major projects bill, like the one being debated today, offered improvements over the PORS process while retaining the essential elements of independent expert assessment of regionally significant proposals.

Key to these improvements is the expansion of the range of other approvals provided for under the one coordinated assessment process.

The consultation undertaken has clearly indicated that significant projects often require multiple permits addressing planning, environmental, historic heritage, Aboriginal heritage, threatened species and water and sewerage.

Currently, only the projects of state significance - POSS - process provides for a single permit application covering all of these approvals.

However, the time and expense involved in putting every significant project through the very lengthy and comprehensive POSS process would outweigh the benefits of a multi-approval approach.

Without an 'in-between' process, project proponents must run the gauntlet of several separate approvals, each with its own time frames - or none - and the inherent risk of any one approval being denied at the end of a long and costly process.

The major projects process aims to test the fundamentals of a project early in the process, to identify issues that could prevent it from being approved before significant time and cost is incurred. It does this by not just coordinating the relevant approvals by the normal statutory regulators, but by requiring them to assess, at an early stage, if there are basic elements of the project that mean there is 'no reasonable prospect' that they can recommend approval under their respective legislation.

It may seem strange to promote a streamlined approval process for significant developments by indicating that the proponent might be advised of this 'no reasonable prospect' early on, but consultation repeatedly showed that proponents want to know that they are not going to waste time and money chasing permits which are never going to eventuate.

Similarly, the state can benefit by not having valuable council or state government resources tied up for many months only to discover a fundamental problem that could have been detected earlier.

For this reason, the bill provides for the minister to revoke a proposal’s major project status if the panel or one of the regulators indicates that there is no reasonable prospect of it gaining approval.

The major projects bill retains some very important features of the PORS process, including the limited role of the minister in determining whether to declare a project, and the assessment of an expert panel established by the independent Tasmanian Planning Commission. There is no capacity for the government of the day, or any vested interest, to influence who is on that panel, or to change its decision. Again, people responsible for managing complex projects have told us that a process where an independent expert panel makes the decisions offers far more certainty than one open to political considerations, and is more likely to be used.

Before I turn to the details of the bill, I will talk more about its consultation and evolution.

Some members of the community have suggested the Government has sought to rush this bill through under the cover of the COVID-19 emergency, but this is patently untrue.

The draft bill has been subject to three phases of public consultation. Two 5-week periods of consultation were conducted, in August to September 2017 and December 2017 to January 2018. A further 10-week consultation was conducted from 3 March 2020 to 15 May 2020.

The latest period was extended to compensate for COVID-related restrictions. When face-to-face meetings were not allowed, individual members of the public, professional groups and interested organisations could also arrange video or telephone briefings from departmental staff. In all, there have been three stages of direct consultation over three years covering a total of 20 weeks, which together elicited over 1500 responses.

The Government has carefully reviewed every one of those responses, including those provided on template forms, or under a covering email from an umbrella organisation, and we have made further refinements to the bill as a consequence.

Interestingly, many submissions from stakeholders opposed to the major projects process urged the Government to instead keep the current PORS legislation. However, the aspects of the major projects process they were typically most concerned about were those drawn directly from the PORS process, and that was including -

- the role of the minister to declare projects against broad eligibility criteria;
- the ability to consider proposals that might not be allowed under an existing planning scheme;
- assessment by an expert panel instead of a local council;
- the final decision by that panel not being appealable to RMPAT; and
- the site-specific amendment of the planning scheme to reflect any permit issued.

Mr President, to the bill.

The major projects bill replaces the current provisions in LUPAA that provide for the declaration, assessment and granting of a special permit commonly referred to as the PORS process.

The major projects process has three distinct stages: eligibility, preliminary assessment and assessment.

I will give a brief summary of these stages.

The eligibility stage is a basic test of whether a proposal is considered eligible to enter the process. Every project, no matter who refers it, is assessed against the same criteria and through the same process.

There is no assessment of the merits of the proposal at this stage, but whether the proposal satisfies the eligibility criteria. It simply provides permission to enter the assessment process.

The minister makes a determination of eligibility based on advice from the Tasmanian Planning Commission, state agencies and the relevant council or councils, and in accordance with determination guidelines which quantify the eligibility criteria.

At the preliminary assessment stage, the Tasmanian Planning Commission appoints an independent delegated panel.

The proponent provides a project proposal to the panel and the relevant regulators for consideration.

The regulator then provides advice to the panel, either -

- a notice that there are no relevant matters for them to assess; or
- a list of the matters that they will require the proponent to address in order to formally assess the proposal; or
- advice that there is 'no reasonable prospect' of them approving the proposal under their legislation.

Should a 'no reasonable prospect' notice be given, the proposal may be withdrawn and the proponent may modify the proposal and commence the process again. This early advice potentially will save the proponent from wasting significant time and money proceeding with a long assessment process with no prospect of approval.

The advice from the regulators is compiled by the panel and draft assessment criteria are produced. The draft assessment criteria are publicly advertised before being finalised. The assessment criteria cover all the matters the proponent will be required to address, and against which the proposal will be assessed.

In the assessment stage, the proponent provides a comprehensive project impact statement addressing all the matters identified in the assessment criteria.

The regulators and the panel undertake a preliminary assessment of the proponent's project impact statement. It is important to note that each regulator undertakes the assessment in accordance with the requirements of its own legislation, just as if the major project was any other application.

An initial assessment report is prepared, which consolidates the advice from the regulators, including whether the proposal should be approved or not and the conditions that should apply.

The assessment criteria, the project impact statement and the initial assessment report are then released for public comment and submissions are invited from the community. This provides for greater transparency and scrutiny, as the public will be able to not only review and comment on the proponent's response to the assessment criteria, but also the panel's and regulators' initial consideration of that response.

Public hearings are then held.

Following the hearings, the panel and the regulators are required to review their advice in the context of the submissions and the issues raised at the hearings, and determine whether to issue the proponent with a major project's permit with conditions, or refuse the proposal.

I will now address some key elements of the major projects process in more detail.

A major project must be for the 'use and development' of land, not just a proposal to amend a planning scheme, and must meet at least two of the three eligibility criteria set out in the bill, those being whether the project:

- will have a significant impact on, or make a significant contribution to, a region's economy, environment or social fabric;
- is of strategic importance to a region; or
- is of significant scale or complexity.

Mr President, the Government's view is that projects with the potential to make substantial impacts on, or contributions to, a region, should be able to be assessed by independent expert panels.

Some submissions expressed concern that the panel's assessment could ignore important local planning requirements. The Government has listened and added additional requirements relating to local planning matters. Prior to declaring a major project, the determination guidelines will require the Minister for Planning to have regard to any specific local planning controls that are in place.

Where detailed local planning on matters such as building heights and city precinct plans has been incorporated within the planning scheme, the Government considers it appropriate that these are given weight in the consideration of any potential major project.

The panel is also required to have consideration to these specific local planning matters when preparing the assessment criteria and also when making its final decision.

Another of the bill's safeguards is the requirement for the minister to consult with a range of people before declaring a project. These include the relevant local councils and the other councils in the area of the project, state agencies, the Tasmanian Planning Commission, landowners and immediate neighbours. Any of these can provide reasons as to why the minister should, or should not, declare a project to be a major project.

Importantly, while a project can be considered even if prohibited under the relevant planning schemes, it must be consistent with state policies, the Tasmanian Planning Policies, and further the 'sustainable development' objectives set out in LUPAA and cannot be inconsistent with the relevant regional land use strategy.

If a project does not meet these thresholds, it is ineligible and the minister cannot declare it to be a major project.

Another feature of the bill is the requirement for landowner consent to be provided by the local council, the Crown or the Wellington Park Management Trust before a project can be declared.

This means, for example, that the proposed Mount Wellington Cable Car cannot be considered eligible to be a major project without the consent of the Hobart City Council, as it owns the land.

Some submissions questioned the independence of the assessment panel and the role of the minister in selecting its members. I can confirm that under this bill, the assessment of projects is conducted by an independent panel established by the Tasmanian Planning Commission in the same way as under the current PORS process.

The bill provides direction for the commission to appoint an expert panel.

One of the key amendments agreed to in the other place was to amend the constitution of the panel so that two members of the panel are to be members of the commission or a person nominated by the commission, one of whom is to be the chair of the panel. The third panel member is to be a person who is not a member of the commission and who, in the opinion of the commission, has the qualifications and experience that are relevant to the assessment of the major project.

The commission can also add up to two extra panel members where additional expertise or skills is required. The only role for the minister in this is to be able to specify the skill set of one of the extra panel members, but not to nominate who the member is.

Many submissions suggested that councils will be sidelined in the process and that communities will not be able to have their voices heard. While the assessment is undertaken by an independent expert panel established by the commission, there is an important role for councils and several opportunities for local communities to be involved.

Since the consultation draft, the bill has been amended to increase consultation with councils throughout the process rather than relying on their representative as a panel member in the assessment process.

Removing the requirement for a council representative on the assessment panel further ensures the independence of the commission's appointment process and reduces the risk of conflict between community advocacy and planning assessment roles, adding to the independence of the panel.

This bill has been further modified so that councils will be consulted as councils, not just in their roles as local planning authorities. This will enable them to represent views relating to all their local government functions and, most importantly, enable them to truly represent the views of their community. Councils will be consulted at every key stage, including before a project is declared, before the assessment criteria are finalised and during the assessment stage of the process.

Major projects rarely just need a planning permit. By their nature, they may need multiple approvals relating to environmental, historic cultural heritage, Aboriginal heritage,

threatened species and other matters. One of the problems with the current PORS process is that it cannot consider all of these issues at one time.

This can result in two problems. A project that successfully obtains a planning permit may fail when it subsequently seeks a permit relating to one of these other areas, such as Aboriginal heritage, or threatened species, and that would mean expensive and time-consuming planning effort has been wasted.

Alternatively, the regulators of these other matters may feel pressured into giving approvals because they are approached late in the overall process after the applicant has already invested heavily in the proposal.

This bill provides for a range of permits to be sought at the planning stage, through a single application process, with coordinated, concurrent assessments undertaken by the normal regulators.

Importantly, each of these regulators will carry out their normal assessments independently and feed that advice back to the assessment panel. The bill makes it clear that regulators are required to conduct their assessments in a manner that is required under its own legislation, not to a lower standard, as some submissions have suggested could occur. Each regulator must recommend refusal if it is not appropriate to issue a permit under its own legislation.

There has also been a significant misunderstanding or deliberate misrepresentation of the extent of public engagement provided in the bill. The reality is that the major projects amendments actually increase opportunities for public engagement compared to the current PORS process.

There are four stages of community input into a major project.

First, a range of interested parties have up to 28 days to advise whether they think the minister should declare a project. This includes the owner of the land, owners and occupiers of adjoining land, the relevant local council and other councils in the region, relevant state agencies and the Tasmanian Planning Commission.

Second, the broader community has 14 days to comment on the draft assessment criteria prepared by the panel and regulators before they are finalised. The assessment criteria are the project-specific rules against which the project will be assessed by the independent panel.

Third, the public has 28 days to make representations to the exhibition of the proposal, the major projects impact statement, and the panel's initial assessment report based on the information provided at that point, including the preliminary advice of the separate regulators.

This provides for greater transparency and scrutiny, as the public will be able to not only review and comment on the proponent's response to the assessment criteria, but also the panel and regulators' initial consideration of that response.

Finally, interested parties have the opportunity to appear before the independent panel at a public hearing to follow up on a representation. Hearings are not specifically limited in duration. All persons who lodge a representation will be invited to appear before the panel.

The bill provides for a comprehensive and rigorous assessment process with no 'short cuts' or political involvement.

The panel has the discretion to approve a major project or refuse it.

If a major project permit is issued, the relevant planning scheme can be amended to remove any inconsistency between the permit and the planning scheme. Again, this is not new, Mr President. It is consistent with the Projects of State Significance and PORS processes that we have had for years.

Some submissions were concerned that the major projects process could lead to broad changes to planning schemes, which would allow other projects of the same type or scale to be approved under the normal DA process.

This has never been the intention of the bill and the bill makes it clear that any amendment is limited to the specific site of the project.

I will now address comments regarding the inability to appeal the panel's decision on merit to the Resource Management and Planning Appeal Tribunal.

The major projects process is consistent with the existing PORS process. There is no appeal on the merits of the proposal to RMPAT or any other body.

This matter was raised during the debate on the PORS process in 2009, and the response to it then is still valid today: it is not appropriate to appeal the decision of one independent expert panel to another expert panel. This is completely consistent with all decisions made by panels established by the commission, except where the commission acts as a planning authority under the Major Infrastructure Development Approvals Act - MIDAA.

Consequently, there is no loss of appeal rights from those currently in place under existing legislation because those rights never existed. The point of appeals is to provide an opportunity for representers to be heard and for proposals to be tested by an independent expert panel. The bill provides for this in an efficient and accountable way.

The major projects bill is the culmination of a long process of analysis and drafting following three rounds of public consultation. While some will claim it aims to 'fast-track' proposals and eliminate public scrutiny, nothing could be further from the truth.

This bill sets out arguably the most open and transparent approvals process for major projects in the nation, while providing for all of the key planning-related permits in a single process.

The bill balances time saving for proponents with adequate time for regulators and the independent panel to thoroughly assess a proposal.

Modelling of the time frames indicates that a full major project assessment would take about 11 months. The Government has taken advice from the regulators and from local government and major industry bodies as to their requirements and expectations of the process. There is a consistent view that certainty of time frames is preferred over open-ended and unpredictable processes.

The major projects bill was debated in the other place on Tuesday, 25 August and in Committee on Wednesday, 26 August. A number of amendments to the bill were proposed by Labor and the Greens; five amendments were not opposed and were incorporated into the bill.

(1) The first one - an additional subclause was added to proposed new section 60I(1) so that notification of the proposal for declaration is given to - (h) Any other persons or class of persons that are prescribed.

This is to allow the minister to cast a wider net in who should be consulted before a declaration of a major project is made. Prescribed persons will be set out in a regulation that could potentially include community interest groups in the region of the project, Tasmanian government businesses whose functions could be impacted by the proposed major project or residents in the same suburb as the proposed major project.

(2) Additional words were added to proposed new section 60K(4) and it goes as follows -

Unless the contrary intention appears, the determination guidelines are inserted before determination guidelines.

This is to ensure that the matters the minister considers in granting discretion to declare a major project are not limited to just the content of the determination guidelines, the eligibility guidelines or the ineligibility criteria.

The inclusion of these words will allow the minister to say 'no' to a declaration, even if the proposal meets the eligibility criteria.

(3) An additional subclause was added to proposed new section 60R(1) so that notification of the proposal for declaration is also given to - (j) any other persons or class of persons that are prescribed.

This is to allow the minister to advise those additional persons consulted under proposed new section 60I that a decision on the declaration or otherwise has been made. Prescribed persons will be set out in a regulation that could potentially include community interest groups in the region of the project, Tasmanian government businesses whose functions could be impacted by the proposed major project or residents in the same suburb as the proposed major project.

(4) As noted previously, an alteration was made to proposed new section 60W(1) to change the makeup of the assessment panel.

Two members of the panel are to be members of the commission or a person nominated by the commission, one of whom is to be the chair of the panel

and the third panel member is to be a person who is not a member of the commission and who, in the opinion of the commission, has the qualifications and experience that are relevant to the assessment of the major project.

(5) A new clause and subclauses, as prepared by OPC, were added to specify that the division - the major projects assessment process - would be subject to the review after five years.

The major projects bill was approved by the other place as amended.

In conclusion, the bill will provide a robust, transparent and comprehensive process to assess the major projects Tasmania needs to rebuild and recover from the COVID-19 crisis through an independent process based on established planning laws and meaningful public engagement.

I commend the bill to the House.

[3.20 p.m.]

Ms LOVELL (Rumney) - Mr President, I recognise there is a need to improve the planning process for complex projects across Tasmania, particularly when projects that cross multiple council areas are considered. It is also important to note that this process is not about fast-tracking any approval processes, but about the involvement of an independent panel in assessing complex projects on their merits.

Planning is important to Tasmanians. We all care a great deal about our local communities. There has been significant concern in the community about a number of issues. There are amendments I will be proposing to address some of those concerns. It is a shame that the Government has not been able to do this. Had there been a more open and transparent consultation process and a little less of a rush through parliament, many of these concerns could have been addressed much earlier than now.

There has been significant confusion about these proposed changes on a matter that many Tasmanians feel strongly about. I will circulate amendments as soon as they are available but we are all aware of the workload of the Office of Parliamentary Counsel this week. We will cover this in detail in the Committee stage. I will outline them in my contribution now for the benefit of members.

There has been significant genuine community concern about the lack of appeal rights in the legislation. This concern has not been addressed at any stage through the iterations of the bill by the Government.

It has always been our intention to strengthen the independence of the Development Assessment Panel. The Labor amendment, which was successful in the lower House, aimed to increase the role of the Tasmanian Planning Commission in the Development Assessment Panel, ensuring independence in decision-making. We believe the amendment that was eventually accepted does not go far enough, and I will be re-proposing the original amendment when we go into the Committee stage, presuming that we do. The original amendment was to have two dedicated members of the commission rather than nominees of the commission on the Development Assessment Panel.

This is even more important now, given the Government's interference in the parliamentary process over the past few days through written correspondence to Labor's shadow Planning minister. This panel must be independent. This letter was quite extraordinary and unparliamentary.

The premise of this bill is to enable a planning process to be enacted that relies on the independent expertise of an independent development assessment process to make an assessment on the issuing of a permit for a major project. This is a process that is all about taking the politics out of planning, yet we have this political correspondence from the minister.

Labor does not want to undermine the role of the Tasmanian Planning Commission or the independence of the Development Assessment Panel, and has never sought to do so. The TPC plays an incredibly important role in the Tasmanian planning system and we respect and understand this. In fact, there is a need for greater resourcing of the TPC by the Government. Planning is fundamental to the facilitation of the economic growth of Tasmania and our prosperous future.

During the debate in the other House, Labor moved an amendment in relation to the merits of the rights of appeal being included in the bill. We believe there needed to be a discussion to ensure the concerns of the community were on the record and noted by the parliament. This amendment was not successful; at the time the Government provided an explanation as to why a right of appeal could not be included. We have heard more on that this morning. I would like to thank the departmental officers for the briefing we had this morning.

The Government has had a long time to look at how a right-of-appeal mechanism could have been included in this legislation. It is disappointing that it has failed to do this. After much consideration, Labor has reached the conclusion an amendment of this complexity should have been drafted and put forward by the Government to avoid any unintended consequences. We do not want to undermine the role of the TPC or the independence of the Development Assessment Panel. It was the Government's responsibility to address the concerns of the community and amend the bill to enable a right-of-appeal mechanism. It is very disappointing it has failed to do this.

Mr President, there is also a great deal of community concern about the lack of transparency around political donations. The Premier has made it very clear this week that electoral reform, including donation disclosure, is not at all on his agenda, which makes this amendment even more critical. I will be moving an amendment to insert a new clause in the bill to ensure that the minister may not make a proposal in relation to a major project if the proponent of the project has made a donation to a member of parliament, a candidate for election to parliament, or a political party within the three years prior.

We heard from the department this morning that while this might be a variation in terms of the policy intent of the bill, it will not impact on the operation of the bill in terms of the assessment process. This is about providing confidence to the community that there is no undue influence over the assessment process for major projects.

In conclusion, I support this bill. I would like to see it progressed with amendments to strengthen the bill and provide community confidence in this important process. I look forward to the contributions of other members.

[3.26 p.m.]

Ms ARMITAGE (Launceston) - Mr President, first, I thank the Leader and other members for all the briefings that were organised, and also the many members of the public who actually made the effort to come and speak with us about their concerns and otherwise about the bill. Some were actually very happy with some parts of the bill.

In the plethora of feedback I have received on this bill, a great deal of which came from individual private citizens, an overwhelmingly common theme was the concern about power being taken away from councils to make planning decisions that will benefit local communities. Some are concerned disproportionately powerful legislative reforms are being brought in under the guise of responding to COVID-19; however, that is not my view. In my own consultations I received a reasonably passive response from some who work with such legislation, citing the projects of state significance and projects of regional significance legislation never having been utilised as a reason not to be too concerned about this current major projects bill.

However, my issue is that once power is taken away from local authorities, it would be near impossible to get it back when it is wanted and needed. The concept of having a social licence to build and develop has been cited as a reason to accept passively the effect of the major projects bill. As one person told me -

> Developers generally like to achieve social licence for their proposals. This involves public engagement and consideration by their democratically elected councils. After all, once they are approved, they need to operate in their local communities, therefore I believe developers will continue to utilise the current planning authority process rather than the major projects approach.

I understand some people are content with this, but many people in the community are not. After all, while a social licence is nice to have, it is clearly not an expressed necessity under the major projects bill. I am sceptical of any legislation that proposes to take power from the people and invest it in a body that is unelected, removed from the community and has opaque assessment processes. I believe we and the Government need to accept these are real concerns held by Tasmanians regarding this bill.

I emphasise that I, like many others, entirely understand the significantly positive effect that major projects have on the Tasmanian economy. I do not, however, believe that this is mutually exclusive with responsible and considered development, whose ultimate purpose is to benefit the communities in which they are constructed. I do not want to be misconstrued. Development is important for our state. It is important we fuel our economy by these means. It is also important we listen and respond to the people and their concerns. I believe there is scope for economically beneficial development to occur in a responsible way.

I am aware the major projects bill is not a vehicle to fast-track planning approval processes, but it is a way for significant developments to be assessed by an independent, expert panel. I would suggest, however, that by necessity, the considerations of the impact major developments have on the communities in which they are situated should take precedence. In that case, why should it be taken out of the local council domain altogether?

As one major projects bill consultation submission pointed out, there is a manifest lack of clarity for the justification in taking a proposal outside the normal planning application process in this bill.

Any reason, therefore, for taking a project outside the normal application process is critical to the integrity of the assessment. As a consequence, any social licence obtained during consultation and engagement processes, as I discussed earlier, becomes de-legitimised.

I believe our local councils - the layer of government closest to the people - must retain meaningful and reasonable power to represent the interests of their communities. Planning, particularly for major projects, can be a difficult - even an intimidating - matter for local councils to contend with.

However, local councils, the layer of government closest to the people with a mandate to promote the wellbeing of their communities, must possess some ability to make decisions for their communities.

I believe there is room for improvement of the major projects bill, particularly in the way it interacts with other Tasmanian planning and local government legislation, the way in which it defines certain terms and powers, and how it will operate now and in the years to come.

I hold some reservations at the outset that the review into the Tasmanian Planning Commission is yet to be handed down, and the recommendations considered, and yet we are proceeding with the major planning reforms anyway. Again, I understand the unique pressing circumstances that have led us to this point, but I believe it would be a waste of time and resources to pass and implement such a significant piece of legislation only to have to review it again later down the track.

The review directly assesses the structure of the commission and whether it adequately performs as an independent decision-maker and advisory body, that its functions are not undermined by the demands of historically designated roles under other legislation, and that it operates transparently and meets public expectations.

It is mainly the meeting of public expectations that are relevant to the consideration of the major projects bill. As members would be aware, the statewide planning scheme is still with Tasmanian councils to adapt their own planning controls to be consistent with the requirements of the statewide scheme and deliver necessary flexibility to address local issues. I am sure many members here have been waiting for such a long time for the statewide planning scheme.

In the Launceston area I have constituents who, under the current interim planning scheme, are unable to do any development, but I am told that if they wait for the statewide planning scheme, it will then be possible. It is a terrible state of affairs that things have gone on for so long and people are putting developments on hold and sometimes actually selling their properties because they are just so tired of waiting for something they may be able to do one day in the future, if ever.

Ms Forrest - Holding costs are not insignificant, are they?

Ms ARMITAGE - Exactly. The web of legislation that governs local planning in Tasmania - in order to be consistent - needs to share common objectives, and for the purposes of that consistency should contain similar legislative language and construction. It has been raised that some matters being dealt with by this bill do not appear to be consistent with the objectives of the Resource Management and Planning System - RMPS - and the Land Use Planning and Approvals Act 1993.

It follows that, in order to successfully meet its objectives, the major projects bill should be consistent with these other planning laws. By way of example, I raise the wording in clause 12, proposed new section 60W, which provides for a person with appropriate qualifications and experience in commerce and industry, something on which most of us had feedback from the Planning Matters Alliance Tasmania's briefing materials. I agree it is important that a panel member ought to possess commerce or industry expertise, but as a matter of legislative construction, if you are going to prescribe one area of expertise, you should prescribe others.

To this end, inserting a provision that provides for panel members to possess qualifications or experience in environmental science, management, ecology, health, Aboriginal heritage, and historical culture and heritage might be beneficial because that would bring the bill more into line with, for example, the Resource Management and Planning Appeal Tribunal Act 1993 which does prescribe these attributes.

I understand this amendment was negatived in the lower House, but my point is that the major projects bill does not necessarily fit nicely in with other pieces of Tasmanian planning legislation, which could cause interpretive difficulty later down the track, particularly when considering what legislation has primacy over others.

Further to the point of meeting public expectations, concerns about the powers being invested in the minister have also been raised with me. Further to PMAT's briefing documents, I raised the provision in clause 60Q, which empowers the minister to appoint a member of a panel. I understand that in the Government's response to this, they say that the minister is only able to specify qualifications of one of the additional members appointed, and has no capacity to direct or influence who is appointed. I also understand that the panel is required to act in accordance with the Tasmanian Planning Commission Act of 1997, which is insulated from ministerial influence.

I do not see, however, what prevents the minister from prescribing such specific qualifications for an additional panel member that a particular person's appointment becomes a fait accompli. In such a case there is no qualitative difference between a minister explicitly appointing a person of their choosing, and making the appointment conditions so specific that only one person will fit the criteria. This is nothing against any minister, we do not know who ministers may be in the future. It is certainly no -

Mr Valentine - Any colour.

Ms ARMITAGE - Any colour, any minister. It is certainly no slight on any current minister that we have, it is simply a case that could happen in the future. In other scenarios ministerial power has been exercised and the outcomes are the same. Again, I know that this provision was negatived in the lower House, but again wish to bring attention to the levels of power that this bill centralises and invests into a limited number of institutions and people.

As to the longevity and future use of this bill, I believe it is important to retain independent processes and refer again to the Tasmanian Planning Commission review. I believe it would be prudent to wait for this review in order to inform the substance of the major projects bill, as it would ensure the best outcomes for the bill and promote trust in independent, departmental and parliamentary inquiry processes.

As an advocate for our local communities, I strongly encourage the Government and the department to maintain a watchful eye over this legislation as it is implemented, take stock of any unintended consequences and the feedback from our communities and local councils, and maintain honesty, transparency and accountability by amending it if and when poor outcomes eventuate.

A number of amendments are likely to be put forward. I certainly will consider them in view of the advice received in the briefing. I support the bill into committee.

[3.37 p.m.]

Mr VALENTINE (Hobart) - Mr President, I want to thank the Leader for arranging the briefing today. It provided useful information. It dispensed some concerns, but there are still quite a few remaining. Given that we have not yet received the amendments - we have heard that there are other amendments coming from Labor - it would be good if we could get an extra day before we continue with this debate, so that we have an opportunity to update our second reading speeches with whatever those amendments are seeking to bring in relation to the information that we received today. We have had very little time.

Mrs Hiscutt - Through you, Mr President, I would like to see the second reading speeches done. In my summing up, if members are not then ready to move with their amendments - I think you have an idea what they are like - we can adjourn at that stage.

Mr VALENTINE - We have had some heavy stuff with the member for Mersey's bill. We have been really concentrating on getting it through and to do as best we can with that. It would be good if we could have a hiatus until tomorrow, to be able to consider the amendments and maybe propose other amendments as a result of the information we have received. Being the House of review, that would be a reasonable thing.

I would like to test the floor and move an adjournment of the debate until tomorrow to allow members to have the opportunity to further consider amendments, which no doubt will come to us later in the day, so I move for the adjournment for that purpose.

[3.40 p.m.]

Ms WEBB (Nelson) - Mr President, I would like to support this motion from the member for Hobart. I too have engaged deeply with this bill and have proposed amendments to it. I have literally just been able to confirm those amendments are now drafted and finalised, and I will be able to share them with members this afternoon. I have been getting my head around various versions of that back and forth in drafting. We also received a great deal of additional information this morning that is pertinent and needs to be reviewed and assessed, potentially with a view to our second reading contributions and certainly with a view to the next stage of things, if we move to that.

A small adjournment until tomorrow to continue this process would allow all of us, in a very busy week, to have a short time to consider this issue and do it justice. We are not in this House of review to rubberstamp legislation, or just to do the business of the government of the

day. We are here to do what our communities put us here to do, which is to review genuinely and genuinely attempt to improve, if possible, the legislation that comes before us.

I support the motion to adjourn this debate and our second reading contributions until tomorrow, so we can go straight into considering the legislation in the Committee stage and the amendments that have been flagged can be shared.

[3.42 p.m.]

Ms FORREST (Murchison) - Mr President, I am disinclined to support the adjournment. We are dealing with the principle of the legislation here. The amendments will be aired during the Committee stage. I have not yet heard anyone speak saying they do not support the principle of this sort of legislation. We are doing the same with the End-of-Life Choices (Voluntary Assisted Dying) Bill. We are doing all the second reading speeches because those amendments are not ready either. The purpose of the second reading speech is to deal with the principle of the bill.

I imagine the Committee stage will be quite long because there are many clauses in this bill and there may be other questions unrelated to the amendments, as there usually is, and the amendments will be also fleshed out. I will make a brief contribution on this bill; I have flagged some amendments and a couple of things we did not follow up in the briefing because I had phased out at that point. I will raise them in the second reading debate and the Leader may be able to give some response to them in her reply, which will help to know if we need another amendment or not.

Rather than having to wait until tomorrow to decide even on the basis of some members' contributions in the second reading that there may be further amendments needed, it is better to keep the process going. I am keen to keep going. Another member can try an adjournment later if they want, but I know the member for Hobart needs to speak now. I appreciate that, but this is about the principle, not about the intricacies, of the bill, not about the amendments that may or may not be proposed, of which there are, I believe, a significant number.

[3.43 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I would like to speak against the adjournment, as you can imagine. There are numerous amendments in the pipeline and members will get them. If they are not ready to go at the end of my summing up, I am happy to adjourn until they are ready, but we have had amendments on the run many times; I have done so myself many times. Members will speak to their amendments and we can work through them during the Committee stages as slowly as we need to. I am sure the Clerk will make sure they are covered before she moves to the next clause.

I urge members: please let us continue with our second reading contributions and we will do a slow move through the Committee stage.

[3.44 p.m.]

Mr GAFFNEY (Mersey) - Mr President, we could possibly work around the adjournment if the member for Hobart and any other member could complete their contributions now. I know the member for Nelson would prefer some more time before she makes her contribution; I would be more than happy to ask for an adjournment then. That will give the member a bit more time to be get her speech done, as it will any other member who

might be in that position. Most speeches would get through and that would give the honourable member more time. She has invested so much time in this and obviously some information she received today might cause her to change or modify her speech. That would be more than appropriate.

I will support the adjournment once the member has had his say and everyone else has made their contribution.

[3.45 p.m.]

Mr DEAN (Windermere) - Mr President, I cannot support the adjournment. This matter has been around for a while. It is not as though it was sprung on us within the last week. I have sat through three departmental briefings, and it has been explained well.

It is a large bill. It is probably not as complex to some as it is to others because of our backgrounds, but it would be a dangerous precedent to start supporting adjournments because one honourable member might not be ready. I am not quite sure how much business -

Ms Webb - I did not say I am not ready to do a second reading speech today. I said my preference would be to be able to consider today's new information in more detail, make adjustments and give more consideration. I thought others may have thought the same thing. Just to be clear.

Mr PRESIDENT - Through interjection, that was a point of clarification.

Mr DEAN - I will repeat what I said: I think it would be a dangerous precedent to defer and adjourn cases. The member for Mersey might have mentioned that we have a person who might not be ready to proceed. I am not sure how much business we would get done in this place if that were the case. I remember when we had other leaders in this place who were not as conciliatory as the current Leader.

Ms Forrest - Who?

Mr DEAN - No reflection on our President, who was a great leader and was extremely conciliatory. I support that.

I go back to the times of Mr Parkinson and Mr Aird and a few others, with whom we had some pretty tough times in this place.

Ms Forrest - They were slow learners at times.

Mrs Hiscutt - While the member is on his feet, some of my former family members used to sit here until 12 o'clock and 2 o'clock in the morning, and they just kept going according to what the Leader said.

Ms Forrest - So do some of your current colleagues, don't worry.

Mr DEAN - When I first came to this place, we virtually did as we were told with the leaders we had. I am not being disrespectful of those people - they were great people and achieved a lot through this place, so I am not being disrespectful. In this case we should proceed. The Leader made it clear that this bill was coming on. I accept the fact that there is

a great deal of work in it. We may well have another briefing on this that somebody else might want, and we will have a further deferment of it. There comes a time when we have to move forward. I will not be making any great presentation on this bill. I am fairly happy with it.

Ms Rattray - You made it in 2009.

Mr DEAN - Yes, I remember that - what that bill was going to achieve and Ralphs Bay, and the handfish and all of that.

I cannot support the adjournment. I think the member for Murchison made some very good points. We should be in a position to proceed with this bill and get it over with.

[3.49 p.m.]

Ms LOVELL (Rumney) - Mr President, on matters like adjournments, particularly where there is an issue of preparedness and people feel uncomfortable, I like to be guided by the Chamber and how people are feeling. The sense I am getting from the contributions of members is that while some people might prefer to adjourn, there are at least some members who are prepared to push on. I would like to give people the opportunity to make their second reading contributions if they are ready to at this stage. Perhaps, as the member for Mersey said, we can reassess matters later, but at this point I do not think there is any point in adjourning when people are ready to contribute. As I said in my contribution, we would like to see this bill progress. I will not support an adjournment at this stage.

Motion negatived.

[3.50 p.m.]

Mr VALENTINE (Hobart) - Mr President, when this bill came to us and I had a chance to read it, what it was trying to achieve, I have to say I was not totally impressed. There are so many reasons why this is not really appropriate. There is no statewide planning scheme yet that has been fully implemented. The state planning policies have yet to be completed. Statewide planning provisions are being implemented, as the local planning schedules are going through their places with councils. That is bringing some of those into play. The policies are not there. If the policies are not in place, how can the planning provisions be considered complete?

The Tasmanian Planning Commission is being reviewed. It is back to front to be bringing in this major projects bill when the fundamental instrument of the Tasmanian Resource Management and Planning System, the Tasmanian Planning Commission, is going to have its roles and functions reviewed. It does not sit well with me, and I have kept an eye on planning matters for around 28 years. The community, through its council consultation processes, are heavily engaged in good faith in planning matters. We are now rewarding that engagement by taking away the power of their local councils and pushing aside the hard work councils have put into constructing their local provision schedules and other components to facilitate a major project.

The Local Government Association of Tasmania - LGAT - is saying councils are on board with it. Well, the big question is: is the community? I am told 1755 people made submissions, most of which were uploaded to the Department of Justice website on 19 August 2020. Unfortunately, 206 submissions failed to be uploaded, and were thus withheld from

consideration in the parliamentary debate. Analysis found 98 per cent of submissions explicitly opposed the bill, with less than 1 per cent in support. That is what our community is saying.

The other aspect is that given the ministerial power it provides in recommending projects for major project status to the Tasmanian Planning Commission, the fact the donation disclosure laws have yet to be put in place is a real concern. I hear the fact that the minister only refers it to the Tasmanian Planning Commission for assessment, but it does take the minister to do that. The Tasmanian Planning Commission, in its present form, may not be there after the review. Who knows what is going to happen with that review? We are structuring something with the Planning Commission so integral, then we are saying the Planning Commission roles and functions are going to be reviewed.

You have to wonder whether you are actually bringing something in that is basically facilitating a future agenda here. That worries me. There is no formal review of the projects of regional significance yet, even though it was first in place in 2009 and was to be reviewed after five years, which is a statutory requirement. Now, we had some of that explained to us this morning, but there was no public submission process to engage the public on this. There is no report we have been shown. These are just a few of the concerns around the introduction of this bill at this particular time.

I hear the mantra basically saying this COVID-19 issue has really made this type of legislation absolutely imperative to get the economy moving.

This bill, if it becomes law, understand this, will be here long term, not just until COVID-19 is out of the way - if it is ever out of the way - but it is long term. It is a fundamental instrument being placed into our planning system. It has to be considered in the whole context of the Resource Management and Planning System.

COVID-19 is not over yet and the community is disadvantaged by not being able to meet together to consider the implications of it. They are being taken advantage of under the pretext of it being needed to stimulate the economy.

What are the years of effort that has gone into the planning schemes around this state? Interim schemes leading up to a statewide scheme which is yet to be fully implemented.

Mrs Hiscutt - This bill has been in the making for five years.

Mr VALENTINE - I understand that it has been in the making for five years. I totally understand that. That is not my contention. My contention is that it is now before us and people have not had a chance to get together and properly scrutinise it in the public arena. We can try hard to amend it when the amendments arrive, but given the imminent review of the Tasmanian Planning Commission, it seems a bit pointless. You just do not know what it is going to end up with at the end of the day.

Mr Dean - How can you get it into the public arena, though, and make them aware of that? How do you do that?

Mr VALENTINE - I am saying that with the bill before us in its final form, the public cannot come together and discuss it in any groups anywhere across in the city in any major numbers. I am saying they are disadvantaged in that regard. That is a fair comment.

Mr Dean - It is, but I wonder how you can do it?

Mrs Hiscutt - This bill has been modified from previous consultation.

Mr VALENTINE - I know. I appreciate it has been modified. I am not suggesting those 1755 submissions were not looked at - I am sure some of them have been - but there is a lot of disquiet. We have one group - the Planning Matters Alliance - that represents 70 groups of individuals around this state which have an interest in planning matters and they have major concerns with this bill - and they are the community and need to be listened to.

Tasmania's Resource Management and Planning System is a significant instrument for planning and reviewing this state - many planning schemes brought into one. Now we have a further incursion. Where it ultimately leads is the question - consideration of councils as planning authorities going west maybe? I do not know where it is going, but who knows what is next when we see this? Huge work regarding local planning schedules each of the councils have gone into, swept aside by a major project. Where is the rigour? Where is the community engagement?

Under the present system, if a project confined to a council area were to land with a council and it contained a zoning change or some other amendment to a planning scheme, the council would consider it. Individuals - the public - can lobby their local alderman who as a group of 12 is accountable to them. They can either reject the scheme or pass it. If they reject it, the proponent can take it to the commission. The commission's decision does not direct the council to approve it, but it sends it back and says you need to take this and this into account and then the council reconsiders things. The community is engaged there.

Under this system, it is one step further up the chain where the only thing you can appeal on is a matter of law and where does that take you? It takes you to the Supreme Court. Well, every person in the street has the capacity to go the Supreme Court, have they not? Not.

It says in the second reading speech that the projects of regional significance process was well intentioned, but did not prove an attractive option for project components. It is simply not mandated by government, that is why.

Why does a major project proponent get to choose which process they go through? With any other development in the community that goes through the Land Use Planning and Approvals Act - LUPAA - they do not have a choice. They are stuck with the process. They have to go down that line. Projects of regional significance was never used because there was the option not to use it. If the Government stipulated that, yes, that is a project of that size, it is a project of regional significance. You will go down that path. It is a nonsense.

It must be the seat, I think.

Ms Forrest - Way more theatrics are needed.

Mrs Hiscutt - It is because you are not feeling well, I am sure.

Mr VALENTINE - Might be, but I am quite serious.

Appeal rights are being pushed one step further up the chain and can only be on a point of law with the Supreme Court so RMPAT is out of the picture. Proponents of large projects have dollars to put into going to the Supreme Court. The community generally does not. If it were to go through a council and the council voted against a development and it goes off to RMPAT, the council would be in a position to be able to fight on behalf of the community at RMPAT.

Here, they have put their thought processes together and say these are the reasons why we do not want this project to go together, but their consideration is only given regard to - it does not hold any weight. That is how alienating it is. The person with the deepest pockets wins. That is an indictment. Normal community members have to dig deep if they have major concerns.

Taking councils out of the loop removes the fundamental right of an individual to lobby their elected members sitting as a planning authority to uphold the planning scheme accountable to community and allows a minister to declare a major project that can sweep aside provisions in the hard-won local provision schedules to benefit investors who may not even live in the state, let alone the local area that the local provision schedule seeks to protect. It basically sweeps aside the sovereignty that the community has placed with their elected members to sit in judgment on planning matters.

Changes in the wording will result in more time in legal argument as to how things are to be interpreted, if they stay as they are. There may be some amendments there. I hope members are looking at changing that. It will have the reverse effect of cutting red tape, but creating more confusion if they stay the same. Cutting red tape, according to the Government, is what it wants to do, but it will make it more confusing.

It is far more democratic to have nine, 10, or 12 elected members than simply one elected member - the minister - who may be declaring a major project that is not even in their electorate and so is not accountable. The minister might be in the north of the state recommending a project that is going to be in the south of the state and doing other bits and pieces in relation to this major projects process, and they are not even accountable to the community, the electors. Local councillors are, as a group. There is not one of them - there are 12 or 10 or nine, or whatever there is in local council. This is for a project in a council area. It does not work.

As the last backstop for the community, we here are empowered by the sovereignty invested in us - 26 000 people, I think I said yesterday. We are empowered by the sovereignty of 26 000 to ensure our communities are not being disregarded in what could be seen as a move to streamline project implementation to stimulate the economy at the expense of the very communities who elected us to protect their rights, among other important aspects of our membership in this Chamber. Why does the minister get to dictate the expertise needed for a panel member when he may have no expertise at all in what skill mix is required? Surely the tried and proven commission has the expertise to decide which skills are required to assess a major project?

If we are putting so much faith in the commission, we need to put that faith in the commission and not inject something from a single minister. If the commission is to be reviewed, why is this bill, which is so heavily reliant on the commission, being brought through parliament now instead of after the review?

I want to go through a little bit on the second reading speech because I went through this quite a deal earlier and want to make sure I have not missed anything. That is why I wanted an adjournment - so we could have a better chance of completing second reading contributions.

Ms Rattray - Take your time.

Mr VALENTINE - Yes, well, I will do that. Thank you.

The second reading speech says -

> Similarly, the state can benefit by not having valuable council or state government resources tied up for many months only to discover a fundamental problem that could have been detected earlier.

The good old Hobart City Council, which I used to have a relationship with, has a panel that looks at a project before it even gets to assessment stage, and it gives a developer the heads up. They say, 'Oh well, this is not likely to pass', or 'This is likely to pass.'. It gives developers good information and in that way it stops the developer from spending money and also helps them to look at the timing side of things. All sorts of benefits come out from that.

That was actually put in place after I left, and I think that is a good move. There is nothing stopping the Government from providing those sorts of forums for developers to talk to them, but what you always see whenever anyone comes forward with a major project is that it always has to be outside the planning scheme. It always has to be taller than what is allowed. It always has to be bigger or bulkier than what the scheme allows. What is the point of having a scheme if you are not going to keep to it?

Mrs Hiscutt - That council planning scheme is to be respected in this.

Mr VALENTINE - I think it is being regarded. I think it is to be regarded, but I will listen to any feedback you have, Leader. It is to be respected, but it has the capacity to change the scheme. That is the point. Without proper community input, if they get a chance to put in a submission, they do not have a chance to appeal it unless they have deep pockets.

I will turn to a couple of matters brought to my attention, which are why I need a little more time to look at amendments, in the Hobart City Council submission. I want to read this in not because it is my council area - my only council area. I know I have a benefit there, but I do not have to deal with any more than one council -

Ms Rattray - Six for the member for McIntyre.

Mr VALENTINE - Six for the member for McIntyre.

Ms Rattray - Five for the member for Murchison.

Ms Forrest - Yes, you could spit across the member for Hobart's electorate.

Mr VALENTINE - I could spit across my electorate, but if I did I would be hitting quite a few thousand people.

Ms Forrest - Do not do that because you have a lurgy.

Mr VALENTINE - Yes, I have the lurgy; that is it - I cannot project it far enough.

This is the submission the Hobart City Council put in -

> At its special council meeting on 18 May 2020, the City of Hobart resolved the following in relation to the *Land Use Planning Approvals Amendment (Major Projects) Bill 2020*:

- this is to the Planning Policy Unit in its submission - that -

> (1) The Tasmanian Government be advised that the City of Hobart sees no need for the draft Land Use Planning and Approvals Amendment (Major Projects) Bill 2020 to amend the Land Use Planning and Approvals Act 1993 and the Environmental Management and Pollution Control Act 1994 to introduce a new major projects assessment process.
>
> (2) In the event that the Tasmanian Government proceeds with the Land Use Planning Approvals Amendment (Major Projects) Bill 2020, that the following comments be considered:
>
> (a) The third draft of the Bill continues to be vague in relation to the eligibility criteria for declaration of major projects and the fact that they are open to a wide interpretation based on the opinion of the Minister. Definitions have not been included to provide any clarity.
>
> (b) The introduction of a category of major projects in s. 60K(1)(f) -

I am not sure whether that reference is still in the bill, but I will chase that down as soon as I can after I finish my contribution, to make sure whether it has been addressed or not -

> Where:
>
> the characteristics of the project make it unsuitable for a planning authority to determine;
>
> undermines the role of the planning authority, particularly since the criteria are vague, uncertain and dependent on the Minister's opinion.
>
> (c) The introduction of the power of the Minister to be able to propose that a project be declared a major project (s. 60C(2)) is inappropriate in circumstances where it is the Minister who will declare whether or not the project is a major project in s. 60M. It is an inherent conflict and leaves the Minister open to suggestions of political interference.

(d) The statutory clock for determining proposals which are not major projects is proposed to restart on the date of the declaration by the Minister.

Proposed new section 60D(6)(b) is where that reference is -

> It is preferable for the clock to restart on the date that the planning authority receives notice of the declaration, pursuant to s. 60P(1)(d), to ensure that the planning authority is aware of the declaration and does not inadvertently lose time which counts towards the 42 day assessment period.

(e) In the event that there is a declaration that a proposal is not a major project, it is proposed that the 42 day statutory clock resets on the date that notice is provided to the planning authority pursuant to s. 60P(1)(d) so that the date on which notice is provided is treated as day 1, rather than restarting the clock after the declaration.

You have something that is part way through, and they then want to declare it a major project. It is assessed by the minister or the panel, then it comes back to the council. If it is rejected, it comes back to the council. Then the proponent gets to restart the clock; it does not continue on. I think that is what it is getting at, but I will need a bit more time to absorb that -

> In the event that there is a declaration that a proposal is not a major project, it is proposed that the 42 day statutory clock resets on the date that notice is provided to the planning authority pursuant to s. 60P(1)(d).

I have read that in -

> so that the date on which notice is provided is treated as day 1, rather than restarting the clock after the declaration. It is proposed that s. 60D(5) is amended so that rather than a reference in (a) to the 'relevant time' (which is defined by the date a project is proposed to be a major project), that should be amended to be in the day on which the application was lodged with the planning authority. The planning authority is likely to have lost invaluable assessment time if steps have been taken by either the proponent or the planning authority to propose that it is declared to be a major project. If a proposal is significant enough to have been proposed as a major project then the planning authority will need a proper period of time in which to carry out a thorough analysis of the proposal.

(f) The introduction of the ability of a planning authority to propose that a project is a major proposal is welcomed. However, it is recommended that there is a pause to the statutory time frame of 42 days to allow the planning authority

to properly consider whether or not to do so. If this does not occur, the timeframes imposed on the planning authority (in combination with the deemed approval provision in s. 59 of LUPAA) are wholly unworkable. For example:

(i) day 1 - application received and initially reviewed by Senior Statutory Planner;

(ii) days 1-7 - (although a more realistic timeframe would be 14 days or more): consultations by Senior Statutory Planner with Manager, Director and internal referrals within the Council, with a report being prepared making a recommendation to the Council to propose that the project is declared to be a major project - this assumes that the Council has been provided with all relevant information in which to make an assessment as to whether a proposal is (or may be) a major project;'

(iii) the Council would need to consider the recommendation at a Council meeting and unless it is proposed that a special meeting would be called, the likely timeframe for this to occur is two weeks or more;

(iv) if the Council, as planning authority, does not accept a recommendation by its officers that the project is proposed to be declared to be a major project, then valuable assessment time has been lost unless there has been a parallel assessment being carried out by council officers.

(g) In s. 60N(2), it is a requirement to obtain the consent of a Council for a declaration to be made that a project is a major project where it owns the relevant land, but not where it only administers or occupies the relevant land. This may undermine the road network, since many highways which are the responsibility of local councils are over privately owned land.

(h) In s. 60(Z), the 'relevant regulators' are identified. Entities which are responsible for gas, water and sewerage are included, yet councils in their capacity as highway authority and providing the public stormwater system are not. While councils do have an opportunity to provide their views on a proposal which may be declared as a major project, that is in its capacity as a planning authority, which is a statutory role under LUPAA that is independent from its role as asset manager. It is appropriate for councils to have a role [as] a relevant regulator in this context.

I thank you for the opportunity to provide comment.

That is the Hobart City Council submission and it has made some interesting comments. I am going to have to drill down more to see whether they are included in the bill.

We come to Planning Matters Alliance. This peak group represents 70 other groups in the state. I do not know how many members there are of each group or how many people in total, but it would have to be a fair few. They have some concerns. They wrote to the Government and the Government responded to a number of their concerns, which I am sure they were grateful for. They talk about it undermining Tasmania's democracy. They say the Government does not respond to key concerns regarding the undermining of democracy.

They have a few dot points -

- Elected councillors have no part to play in the decision to issue a permit for a major project;

- Councils are not relevant regulators and have the same amount of influence in the assessment process as any member of the public;

- There is no right of merit appeal over the issuing of a major projects permit;

- The minister has total discretion to declare a project a major project and has influence over the composition of the DAP.

> The government says that many concerns relate to processes that the MPB shares with the PORS process. But this does not mean that it is acceptable. The PORS and MPB both have many flaws.

I noticed that and I agree with some of it. I do not know that the projects of regional significance, as set out in the act, is the best system in the world. Clearly the Government does not think so because it is replacing it. It does not mean what was there was right. It is something we have to keep our mind on. They say that there is no response to our concern regarding the inappropriateness of the DAP making a preliminary decision before the community is consulted. It seems to be a little back to front.

Another claim - the new major projects planning assessment fails to take the politics out of planning. And, yes, the old observation comes back: councils and councillors are elected members but, as I said before, it is more democratic when you have 12 people keeping each other honest than one individual, minister.

The eligibility criteria are vague and open. Major projects decision-making criteria - they have quite a few things to say about that -

> We stand by our recommendation that the tests with regard to State Policies and Tasmanian planning policies should be 'consistent' instead of 'not in contravention of' because this is our legal advice (backed up by the Supreme Court precedent) and it was also recommended by the TPC.

> Given the authority of the TPC the government should be compelled to respond to their arguments - a great use a committee of inquiry.
>
> …
>
> The reasons provided by the government for using 'not in contravention of' are confusing (which may be their intention) and I believe are not the true reasons for proposing this wording. We believe that the true reasons are that they don't want criteria to significantly limit what can be approved as a major project. Based on court precedent a State Policy cannot be contravened so every major project passes that test automatically.
>
> …
>
> The government does not respond to our suggested amendment regarding avoiding land use conflict.

I could go on but other members might draw on that. Quite clearly, when we talk about it being acceptable to the community, it is not acceptable to the community. The community has stood up and really yelled about this particular bill, and it is not just one or two pressure groups - it is 70 groups around the state, and we have to take notice of that.

Anyway, I have said enough. I would have liked my delivery to have been a little more coherent because of some of the extra information I have received, but I have not been able to chase down certain things. It is what it is, and I thank members for considering an adjournment even if it did not get through.

[4.22 p.m.]

Ms RATTRAY (McIntyre) - Mr President, I will take the opportunity to use the lectern and spread my papers out.

Mr PRESIDENT - Yes. Members are free to use the lectern if they have paperwork, as long as it is wiped down. I know the member would be very thorough.

Ms RATTRAY - Mr President, this legislation is just as important as yesterday's bill, albeit it has a different impact on the community

It seems a while now since I did some research on this particular bill; I acknowledge we have had quite a few briefings, and I particularly thank the Leader and the people from the department who have been supporting those briefings. They are very important.

We often say in this place, 'Is it not a pity we could not bring all that information we receive in those briefings, verbatim, and put it on the public record?'. We do our best to try to relay back what we hear, but there are always issues or matters that we do not end up putting on the public record. That might be something we continue to consider as we move forward.

When I looked at this matter previously, I went to the Government's consultation website and the bill's fact sheet, which states that the Land Use and Planning Approvals Amendment (Major Projects) Bill 2020 will improve and build on - and eventually replace - the current

projects of regional significance, the PORS process, under the Land Use Planning and Approvals Act 1993. Good old LUPAA.

The website and fact sheet go on to note that the PORS process came into effect in January 2010. I took the opportunity to go through *Hansard* to see what I said in 2009 in regard to this particular process. I will not expect everyone to be that interested in what I said, but at that time I said that planning is complex.

Nothing has changed in that regard and the current process we have for a project of regional significance, or moving onto major significance now, is still a complex exercise to undertake. The PORS process we now have in place did not meet the needs of the community - that is what we have been told - and for various reasons I will continue on with that.

One thing I said then was that local government had not engaged with members of this House at that time. I noted in my speech that we had one submission from the Central Coast Council - one submission back in 2009. Is that not interesting?

The member for Hobart picked up the Hobart City Council submission and yet we heard from Dion Lester on behalf of LGAT this morning that the councils were on board. They have put their trust, I expect, in this House and this parliament to get it right. We did not get it right last time because it was not used, but you might expect that this second time round will be an opportunity to go through the PORS process for a developer who has a project of major significance to an area.

As we know, it could well be just in a single area, as the member for Hobart has indicated, or it could cross multiple local government areas. If it were, for example, in the member for McIntyre's area, it might well go across six local government areas, or in the member for Murchison's area, it might go across five. The member for Montgomery -

Madam DEPUTY PRESIDENT - Probably only four. It is a bit hard to cross King Island and the rest of them.

Ms RATTRAY - If it was a highway between our islands, yay.

Mr Valentine - It might be a wind farm.

Ms RATTRAY - We would think that was just fantastic. Not likely to happen in my lifetime and possibly not in the lifetime of some of the other younger members here, but it is a nice thought.

I found it interesting that again we have not had any direct contact from local government other than Dion Lester who this morning came to talk to us about it. I made a few notes and they are worth reading out.

This is a middle ground. You have the project of state significance and then you have major projects. Mr Lester talked about it being fit for purpose for a certain type of project. He talked about the fact that we have had three iterations of it, so there has been that communication between LGAT and the department. He also talked about the eligibility

criteria, and that is something I will touch on when I get to the Environmental Defenders Office because they talked about criteria. I will make a point of that.

About the assessment guidelines, Mr Lester talked about the panel membership and one of the important points he made was that this new process would remove council representation. The conflict of having a local government member on the panel was certainly something LGAT felt was important. I recall the words provided in that briefing were that this meant those local government areas will be able to represent their communities. They would be able to go through the process and represent their communities. If a community is against a project and the council believes it is fair and reasonable and it does not support it on behalf of its ratepayers, it will go into bat for them. That is what you would expect local government to do.

Mr Valentine - I do not know.

Ms RATTRAY - Is the member thinking I am being too optimistic?

Mr Valentine - If they are on the panel, they cannot just represent their own area. They have to go on looking at the whole.

Ms RATTRAY - No, this is taking a council representative off the existing process.

Mr VALENTINE - Sorry, I misunderstood what you were saying.

Ms RATTRAY - Perhaps I was not clear. My understanding was that it was taking the local government representative off the panel so that would remove the conflict of interest. Thank you; I am getting some nods. I am saying that is where, as a local government area, if your community is up in arms and says no, you get your council on board.

Mrs Hiscutt - I have an answer that wraps around this for the member for Hobart about exactly what the council can do - that might help clarify that, too.

Ms Forrest - The council becomes a representor in many respects.

Mr Valentine - It is no different to a person in the street.

Ms RATTRAY - I suggest that council expertise - and I acknowledge that some councils are better resourced than others; I heard the member say that when a process comes to the Hobart City Council, it has a panel it goes to. Not all councils have enough resources to do all those things - given I represent some of the small-to-medium councils, we rely heavily on having that type of advice or expertise brought in to the council.

Mr Valentine - If the Government had a similar circumstance for major projects people, it could give them advice up-front so they are not wasting their time. It was about proponents wasting their time going through a system and getting to a certain point and then finding out they could not make it happen.

Ms RATTRAY - That is a fantastic way of doing it, but not every council in this state has the resources for this.

Mr Valentine - No, I am saying the Government could set it up for major projects.

Ms RATTRAY - Obviously, this is the path it has chosen but I certainly appreciate it.

While I am talking about resources, the member for Rumney touched on the resourcing of the TPC. We regularly hear that no department is resourced well enough, so if there is a change in the duties and expectations of any particular area, resourcing needs to be considered. I expect the Government will address this should this legislation pass, in whatever form, but also through the budget process, and I agree with that.

The member wondered whether his research was coherent. I will probably wonder whether mine is as coherent as it needs to be. The website talked about the intention of the major projects process is to deal with planning projects that are large public infrastructure projects such as the new Bridgewater Bridge or a large renewable energy project, such as wind farms or hydro schemes. We heard there was some engagement this morning in regard to those projects. Those were three areas that had been mooted. The member for Nelson sent around her amendments, and I was pleased to look at them. Part of the amendments were about particular pieces of land that may well have some concerns for various communities.

I will be listening with interest when the member puts her proposed amendments in the Committee process, because some debate is certainly needed to flesh that out. I suppose everyone thinks a new Bridgewater Bridge is fantastic, and there is some federal funding for that. I have been crossing that bridge for 16 years now and I have not had any trouble getting across it except for once when the span was up, when I had to wait a while, but other than there has not been -

Mr Valentine - You did not drive -

Mr PRESIDENT - You just have to drive a bit faster.

Ms Forrest - Do not tempt her. I have heard about the way she drives.

Mrs Hiscutt - Yes, be careful.

Mr Valentine - Well, anyone who owns an SLR 5000 -

Ms RATTRAY - Do not talk about that - that has gone. The member and I had a trip down memory lane via text messages last week when he was up at the Holden display. He was talking about the cars he used to own and I was talking about mine, and the tears were rolling down my face and he was feeling exactly the same - we had a pretty sad exchange. Hopefully, someone had and is still having some pleasure from those beautiful vehicles.

Does the Government have some possible projects other than the three listed that it might like to share with the House? Possibly they may well still be commercial-in-confidence or in their early stages and we probably will not -

Mrs Hiscutt - Of course you are aware of the Bridgewater Bridge; that is a good start.

Ms RATTRAY - That is the only one that has been named.

Mrs Hiscutt - So you are aware of that one?

Mr Valentine - Without rail.

Ms RATTRAY - Some of the North East Rail Trail is still quite good and will go to any other rail around the state; members might keep that in mind for their communities, before whatever is goods sold off.

They have the Legerwood line down the west coast, so there is nothing to say they will not get a bit more of that one. Do not cry, Mr President.

Ms Forrest - We still keeping the trains running on the west coast. That is okay.

Ms RATTRAY - How does the Government propose to change the process? This bill provides for the using of a consolidated major project permit that combines matters relating to land use, planning, heritage, environmental, management, water and sewerage infrastructure and conservation. This avoids the need to obtain separate permits once a planning permit has been obtained, and we heard these particular processes can all run in parallel - they can run together - rather than having to put in one application and then you are putting in another and another. These can all work together. It sounds fair and reasonable.

It goes on to say -

> The bill amends the Land Use Planning and Approvals Act 1993 plus Environmental Management and Pollution Control Act 1994, the Historic Cultural Heritage Act 1995 and certainly some other minor amendment acts that are also included.
>
> The proposed changes in the bill break down the process in what is looked at as three distinct stages; an eligibility phase for the minister to determine whether a major project proposal is suitable for consideration in the process based upon eligibility criteria and guidelines issued by the Independent Tasmanian Planning Commission.
>
> Second, a preliminary assessment stage for the independent panel to prepare the appropriate assessment guidelines for the major project proposal and the final assessment stage, which includes public exhibition hearing and a final report and decision again by the independent panel.

We certainly talk about 'independent' here and I note the Environmental Defenders Office obviously has confidence in the commission and that independence because in its suggested recommendations in the report we received, it talks about the Development Assessment Panel -

> The Commission be made the assessment body, instead of a DAP.

It goes on to say -

> If a DAP is proceeded with, the Bill prescribe the expertise required for a DAP for particular projects, for instance, for matters affected by Aboriginal cultural heritage and the DAP must contain a representative of the Tasmanian

> Aboriginal community or person with expertise in the Aboriginal Cultural Heritage Assessment.

Mr President, I would have thought that was almost a given. That is what the expert panels do - that is my understanding of what they do. They bring in the expertise they need. If there was something relevant to the Tasmanian Aboriginal community, they would find the relevant person. I know there are some exceptionally qualified people in our state who look at those particular areas. I was quite supportive of the process of having the commission do this. I am interested in what the Government sees as the Development Assessment Panel, whether it uses that or just uses the TPC - the commission - to do that.

Is that a problem with the existing bill? I am interested to know because it is something that has been put -

Mrs Hiscutt - We do not see it as a problem; I will provide an answer in my summing up.

Ms RATTRAY - While I am referring to this particular document, another issue is around the criteria for a project to be declared. It talks about 'the criteria'. Could the Leader expand on that particular aspect of a project, how the criteria will be used, the specification categories and the use and development that fall within the scope of the legislation? That issue has been raised again by the Environmental Defenders Office. Its report goes on to say that -

> The Commission be required to prepare the determination guidelines under cl. 60J -

I know Mr Risby will know that one off by heart -

> … before any project can be declared.

Again, the Environmental Defenders Office seems to comfortable that the commission has the independence and the expertise to do this work. Again, I would appreciate having some of that information put on the public record because we were provided with a very good briefing, not only by a representative of the Environmental Defenders Office, but they also joined with Planning Matters Alliance Tasmania - PMAT - and their concerns were shared there.

I want to say a special thank you to Sophie Underwood. I sent off a request after that, and Sophie, as we know, is the State Coordinator of the Planning Matters Alliance.

We often talk about the public interest in relation to any development, or anything really. I asked Sophie about a definition of public interest, and she was good enough to provide me with some information which said that while it is referred to a number of times through the bill, it does not provide a definition of public interest. I think that probably is one for a debate at another time. How do you define public interest? What the member for Rosevears might believe is in the public interest, people on Flinders Island might not believe is of public interest.

I appreciate it is a difficult thing to define. However, given we had talked about that during the briefing process, I thank Ms Underwood for getting back to me. Often we do not

always get responses. Sometimes we do not always give them ourselves. It is always very helpful.

I appreciated the opportunity to hear from Peter Fischer and Sandra Hogue of the TPC this morning. They had some matters that were raised. I thank the member for Hobart for sharing that document. We went through those matters. It is always encouraging when you get feedback from key stakeholders who advise you that some of the issues they raised at an earlier time had been addressed through the bill. That was certainly comforting.

When it comes to drafting style, I have always said in this place it is such a specific area of expertise. I know we have one of the best, or a group of the best. I know that Robyn Webb has support in her office. I think the people from Canada wanted to poach her because she is so skilful. I am pretty sure she likes living in Tasmania; I hope she continues to like it.

Mrs Hiscutt - We are lucky to have her. I have never doubted her drafting styles.

Ms RATTRAY - That is always an interesting piece of feedback we receive in this place. Often when we asked about a particular issue, we were told in the past that it was is just a drafting style; that is how OPC do it. In regard to this, TPC's particular query about the drafting style was that it was extremely prescriptive - we know planning needs to be prescriptive. I refer again to my 2009 speech when I actually said, 'It is either black or it is white; there is no grey.'. You do not need any grey, because you know where you end up - possibly over there if there is too much grey. I am not as concerned about that particular issue. I understand how OPC works after being around here for a while.

The merit appeals process is one of the biggest issues we have heard about from people. The member for Hobart clearly articulated the concerns around the merit appeals process. I asked a question on behalf of a constituent in the briefing session about how we might have public input. This particular gentleman was keen that the parliament should have input. I will just read out part of what he said -

> My concern about the lack of parliamentary scrutiny of a Major Project declaration by the Minister still stands -

I gave him a final version of the bill. He had been interested in it from back in June, and when I received the final version, I handed it on. He goes on to say -

> Because the declaration of a Major Project has the effect that the approval process bypasses local councils -

We have already heard that councils are happy to kick it off -

> … bypasses various other legislated approval processes, overrides local planning rules and removes the right to repeal, it must be scrutinised by both Houses and receive their approval.

He proposed that I should put forward an amendment similar to the words that

- The Minister must cause an order under subsection (1) to be laid before each House of Parliament within the first 10 sitting days of the House after it is so published.

- An order under subsection (1) is of no effect until it has been approved by both Houses of Parliament.

He goes on to say -

> These clauses make the declaration of a Major Project under an amended *LUPA Act 1993* consistent with the Projects of State Significance (POSS) provisions of the *State Policies and Projects Act 1993* and the *Major Infrastructure Development Approvals (MIDA) Act 1999* which both require the approval of both Houses of Parliament for a Ministerial declaration to take effect.

I thank the gentleman for raising that matter. During the briefing I asked why it was not appropriate for it to come to parliament to be approved. The response was, 'because major projects is not around land acquisition'. I asked the honourable Leader if she would be able to provide a more explanatory answer to that question - 'If an individual landowner does not want to sell a piece of land and does not want a project on his or her or their property, then it will not go anywhere.'. That is the reason why that particular clause is used for projects of state significance. The infrastructure development, the MIDA act, is around land acquisition. It would be useful to have that in detail.

We received some useful tables and information, particularly when the department had responded to the PMAT, and they were very useful. I am not going to go through each clause because we will do that when we get into the Committee stage. It was very useful in understanding the differences and responses to the concerns raised. They have worked hard as have other groups. We met with representatives of the Launceston Heritage Not High-rise group. They said they had 230 members and were aligned with PMAT and supportive of the group. I appreciated the opportunity to speak directly with those representatives and I can assure them that their concerns and input have been considered by me through this process, as has everyone's contribution.

We were also given the major projects eligibility checklist. It is a very useful document that talks about what is eligible and what is ineligible. For instance: is the project not in contravention of a state policy? The comment is consistent with requirements under the State Policies and Projects Act 1993. As an aside, I cannot remember the last time we looked at a state policy.

Ms Forrest - When I first came here, we had the protection of agricultural land.

Ms RATTRAY - It has been a long time. We always have a coastal policy, but I am not sure where.

Ms Forrest - It was never ticked off; it just sat there like a dead duck.

Ms RATTRAY - It might have been in the very difficult basket for a long time. I do not think it is a bad thing some of us have been around a while, it just helps us refresh our memory on some of the matters. The member for Windermere can refresh even further.

Mr PRESIDENT - He can go back to 1920.

Ms RATTRAY - I have a list of current sections of LUPAA, then the proposed new sections. We will discuss all these areas in the Committee stage.

My conclusion is that it is difficult to do a direct comparison between the new bill and the old act. There are new provisions to deal with a greater number of regulators, as we have already indicated, and acts and other permits that would need to be sorted under the current process. It is streamlining them into a process in an attempt to reduce the complications and time taken to apply for further permits once a project has been deemed a major project. In essence, it is trying to resolve other permit issues prior to the declaration of a project as a major project, instead of it potentially falling over after the fact due to issues of other regulators.

That seems a fair and reasonable approach. If you are a developer or a proponent of a project, you need some sort of surety about how you might achieve an end result. To not know what you need to comply with, how it is going to work and what might come out of left field halfway through, and, potentially, as we were informed in the briefing, spend $500 000 to be told, 'That is it, it will not attract people to invest in large projects in this state.'. I am not making COVID-19 an excuse here. If we were not in COVID-19, I would say the same thing - that Tasmania needs development, but it also needs to have rigour and certainty around development.

We represent our 25 335 people. Each of us has a particular number we have the privilege of representing in this place. It is up to us to do the best we can for them. I am prepared to support this into the Committee stage. I believe it has some merit. I am interested in the number of amendments that have been put forward or been worked on as we speak and I feel sure even some people who do not have their mind around it yet, may also come forward. As the House of review our role is to deliver what we consider is a fair and reasonable approach. I acknowledge there are probably three gentlemen in the back in the Leader's Reserve who have spent hours and weeks and months and years on this, so I believe we at least need to work through that process and see what comes out the other side. I am prepared to support the bill into the Committee stage. Again, I thank everyone who has been part of this process to date and feel sure we have some way to go, but that is what we do in this House, and we do it well.

[5.01 p.m.]

Ms FORREST (Murchison) - Mr President, planning legislation and reform - what a painful concept. How many times have we dealt with this? How long does it take? The ongoing saga of the statewide planning scheme, and on and on it goes.

I have not had the great benefit of sitting around a local government table dealing with LUPAA at a practical level, so I do not have as deep an understanding of the intricacies of LUPAA as many other members of this place have. I acknowledge the depth of knowledge many other members have.

Ms Rattray - That is probably why you do not have to dye your hair.

Ms FORREST - I have had to worry about other things - saving mothers' and babies' lives is pretty stressful at times.

This is a complex piece of legislation because we are dealing with a complex process around assessing major projects where a process is required that is robust, has appropriate community input, provides real rigour around the process as independent but also has some certainty.

That does not mean certainty you are going to get the outcomes you want, but certainty to know whether 'Yes, you can', or 'No, you cannot' early in the piece. Those of us who have either built or renovated a property, done a major renovation or anything like that where you are required to go through the process of putting in a DA, getting a building permit and all those sorts of things know that if you do not have some sort of certainty, it can be a really difficult and fraught process. A lot of money can be lost even before you get to the first base.

There is more certainty around a DA for a residential development, but then you have people with a lot less money generally making decisions about an individual property. I made that point at the outset - this is a complex area, and naturally the legislation is pretty complicated as a result.

We have been snowed under with paperwork. We have also been snowed under with emails on this, and when you read many of them, you think that a bit of scaremongering has been going on in the community about some aspects of the bill.

Some are very legitimate concerns, and I commend the people for raising their concerns. Sometimes something gets away and gets a life of its own and does not perhaps really reflect the actual reality.

I appreciate the enormous effort of organisations like PMAT, Sophie Underwood and Peter McGlone have into this. The Environmental Defenders Office has a really important role in this matter and has a great interest in planning, openness, and transparency, and appropriate development - and we all want that. I know I certainly want that.

Nothing brings out a rash more quickly than having some development going up right next door to you that you do not like. Those of us here know that not too long ago, and the new members for Rosevears and Huon might have been aware of it - I do not imagine Rosevears took much notice - the Huntingfield development.

We had that, I recall when we got that order and then the people who had not been directly notified - it was a massive issue. I can understand that. Everyone is happy to have a nice big development, but not right next to them, and that is the case. Euphemism is a real thing. It is a real challenge for councils, a real challenge for developers, so we need to get the process right to give people confidence their enjoyment of their property is not going to be destroyed and they will have some input into that.

Mr President, I have been here for a while now and have been banging on for quite some time about lots of things, but one of them has been consistently about having a more strategic and comprehensive approach to this sort of development.

Some years ago, I went to Vienna, and one of the reasons I was in Vienna was to look at how they did what they call Smart City Vienna. They had an organisation called Smart City - Vienna - that is the English version of the term. It was set up as an independent body, funded by government to assess significant development projects. This is my brief account; it is much more complicated than this, obviously. They told me about a project on foot, which was a new housing development to be built on the other side of the Danube River. It was a whole new housing area and because it was remote to the city - Vienna is quite a contained city - you have the ring roads around it, the inner ring and the outer ring, and it is very contained. This was going to be on the other side of the river and before any proponent even got past what you would consider to be first base, they had everyone sit around the table - anyone who might possibly have an interest. They had health, education, obviously the planning people, transport, ICT, energy, water and sewerage, and people involved in the health and wellbeing of communities for the public and open space and small retail representatives. Do you need a local store here? Do we need a school here? Are the transport connections such that it would be just as quick to get on a bus go to the school than to have to build one there? That sort of thing. It was really comprehensive, and I thought 'What a great approach.'.

Not that this actually does that quite to that extent, but it is certainly a step in that direction. It has the potential to actually bring in all those aspects at the very front end to detect what have been termed fatal flaws at the outset, so proponents do not end up spending lots and lots of money to find out, and getting well down the track, before finding out no, it was never going to happen.

I instance this situation - say, perhaps, you have a smelter or something high-energy using - and there are proponents for every smelter planned for the west coast -

Mrs Hiscutt - Did you say pulp mill?

Ms FORREST - Smelter, which probably uses more energy. They want to build it on the west coast - it is a logical place to build it - where the minerals are, but we know TasNetworks infrastructure is barely managing with the load there at the moment.

If they had to go all through the process of all the other assessments and then they went to actually build the thing and TasNetworks said actually, no, we are going to do a major upgrade of all the infrastructure from Rosebery to Burnie or Hampshire, or wherever, who is going to pay for that? Maybe the Government should pay for that. TasNetworks has plenty of money - no, they have not, they are in debt up to their eyeballs, but that is the sort of the thing we need to consider.

I have actually put an amendment that has either been circulated or is about to be.

Mr Valentine - Yes, it has been.

Ms FORREST - It asks for, not TasNetworks specifically, but any relevant GBE or state-owned company to be included at that front end. Yes, you could prescribe them, but I think they are so important they have to be in the front end so they are one of the bodies that are consulted. I do not think this is contrary to what the Government's intention was in supporting the amendment in the other place to prescribe other parties, but I think these sorts of organisations - whether it be rail, ports, electricity infrastructure or any others that are relevant - should be engaged in that early process because if that were to be the case, you could

find that you have approval to build the smelter but you cannot run it. There is no energy. That makes it more clearly comprehensive in its approach. In principle, it has great potential to achieve a more coordinated and comprehensive approach that benefits not just the proponent - though obviously it will benefit them - but also the communities. We are looking at everything here: three-quarters of the way through the process, this is raised, or Aboriginal heritage is raised.

Overall, the intention and the policy intent behind this is good. We know the projects of regional significance was brought into this place when I was here. I admit that. We do it with all good intentions at the time. There may well need to be amendments to this legislation over time, however it ends up leaving this place, but it is an improvement. To me, it is much more comprehensive, and that is what we have been needing for a long time.

There does need to be a look at these projects of state significance, the POSS process. It is fundamentally flawed in a number of areas which has been highlighted during the journey. I reckon these guys are sick of planning reform right now, but they are happy to finish their job.

I agree there needs to be some certainty at an earlier point. Yes, they still need to spend money to get to the first base. They still have to do a certain amount of work and invest significant money but they will not get so far down the track that it becomes impossible to be rejected because of the input they have put in. We need to avoid that because you then get this adverse outcome of pressure being put on to approve because they have already spent $10 million or $20 million.

Ms Rattray - And a bad reputation for the state as well.

Ms FORREST - That is right. The member for McIntyre touched on this - we should not kid ourselves this will be the panacea for economic recovery. We had a briefing from the MBA today. They made that suggestion.

Mrs Hiscutt - MBT.

Ms FORREST - Sorry, Master Builders Association of Tasmania.

Mrs Hiscutt - They call themselves MBT.

Ms Rattray - Changed their name since Michael Kirschbaum left?

Ms FORREST - Yes, they have.

We need to be realistic about what this is about. We need to be sensitive to the challenges we are all facing as a result of the COVID-19 restrictions. Major projects will still have greater challenges in getting off the ground while ever the restrictions on our borders remain and they remain for the right reasons.

I am so pleased to see things are improving significantly in Victoria. They still have a way to go before there will be able to be free flow of people between our state and Victoria. There is always going to need to be, until COVID-19 either dies a natural death of its own -

which you can only hope will happen - or there is an effective vaccine and there is no guarantee of that either. Life will be different for some time yet.

It is not going to be a be-all or end-all. It is not going to be a silver bullet and it is not going to necessarily be the panacea that we hope to assist, but it will not get in the way of those sort of projects going forward.

The other matter of concern raised in a lot of the communication we had from community members - from PMAT, which we have talked about - is the capacity for the government of the day to influence the decision here. It has taken a little while for me to get my head around the process to understand whether that is a genuine and legitimate concern or not.

We know that in Tasmania we have the weakest political donation laws in the country. We know there has been significant influence through the use of donations and money in our political process. We just know about it much later than it happens. We do not know about all of it, we only know about bits of it. We do not know about third party donations.

When I spoke to the Leader, I think last week, I said I really was keen to actually see this report into donations reform. It is not related to this legislation, I know, but if that amendment regarding political donations is put up, I think it is important for us to see that. I would appreciate the Leader actually taking that request seriously. It is relevant and it is important. I cannot, for the life of me, understand why the Government would not release it. It has had it since around November last year, possibly even before November. We just did not know when it landed on the Attorney-General's desk. I do not think it is good enough to keep that hidden away; it is such an important matter. I am just raising that.

Is there a capacity for the Government or the minister of the day to directly influence the progress of a project through this assessment? Yes, the minister does make a decision about whether to refer that particular project or not. Can they influence that? The project has to meet set criteria, or two or three aspects. But once it is referred, the minister can identify specific skill sets to the panel - skill sets, not people I understand that to be - I think the Leader did clarify that. I would ask her to clarify this again in her response, that the minister can only recommend skill sets, not people with those skills.

Mrs Hiscutt - I can do it in the summing up or clarify now that that is correct.

Ms FORREST - Okay. But the other question that flows from that then is: Can the panel or the commission appointing the panel reject that? Can they say, 'Actually no, we believe that we have those skills in the commission already that we are intending to put on to the panel. We actually need skills in *x*.'? I think it is important if the minister is trying to get someone on there with a particular set of skills for some purpose. What if there is a disagreement between the commission, or the commissioner who is making the decisions about the appointments to the panel, and the minister?

Regardless of that, once it is in the system, the minister really has no influence. It is then up to the commissioners who are skilled, independent, and should be highly regarded - I believe they are - members of the Tasmanian Planning Commission to actually undertake this specialist work. You can argue that if the proposal was going through the council you have more vested

interests sitting around the council table than you have around a Tasmanian Planning Commission panel table.

Mr Valentine - At least they are keeping each other honest, though - 12 elected members.

Ms FORREST - Are you saying how many members of the commission panel are not?

Mr Valentine - No, the panel is fine. Why is the minister dictating the expertise? Why not have the commission dictating expertise?

Ms FORREST - I was just asking about that. If there was a dispute about -

Mr Valentine - That is right. But why do it in the first place? That is what I am saying. Why have the minister do that anyway?

Ms FORREST - Those questions can be prosecuted in the Committee stage. I will listen to the debate on that if that amendment is moved. I think it is an important process. I think generally Tasmanians are sick of seeing mates supported and helped, absolutely sick of it. We see the influence and we do not like it. I do not like it; I know the people I represent do not like it unless it is benefitting them directly, but there are not many people in my electorate who will fit that bill. My electorate is not one of the most well off in this state.

I want to raise another couple of points the Leader made in her second reading speech. The two out of three matters they need to meet.

Mrs Hiscutt - The criteria.

Ms FORREST - The criteria, yes. The Leader said a major project must be for the use and development of land, not just a proposal to amend a planning scheme so you cannot amend a planning scheme.

They must meet at least two of the three eligibility criteria set out in the bill, those being whether the project -

(1) will have a significant impact on or make a significant contribution to a region's economy environmental or social fabric, or

(2) is of strategic importance to a region, or

(3) is of significant scale or complexity

One of the concerns many people raise is: do we not consider the triple bottom line, the social, economic and environmental aspect? If you can just meet a significant contribution to the economy and you still have to get through environmental approvals, I accept that, but if your only focus here is on the economy and it is of strategic importance to the region, that is enough. This is where people get concerned. It is really important we understand that even if the key contribution is to the economy rather than the environment or the social fabric of a place, we would have to have demonstrated some value to all three of those values - the economic, social and environmental - to actually have it approved.

Mrs Hiscutt - You are saying a project that will benefit all of Tasmanians will benefit individuals?

Ms FORREST - It does not have to benefit every Tasmanian, but it has to make a significant contribution - it can be the region's economy environment or social fabric.

Mrs Hiscutt - Proposed new section 60M(1)(a) says 'economy, environment or social fabric' so it is there already in the bill.

Ms FORREST - No, that is what I am saying. It is my point exactly.

Mrs Hiscutt - It is here.

Ms FORREST - That is my point exactly. It is 'or not and'. Could you have a development that focuses entirely on the economic value, whilst having no regard to the social or environmental harm it could cause, because there is no requirement for it to have a benefit environmentally and socially as well? Do you understand what I am saying?

You might have something to say in your response.

This is the criticism we received and then we go back to the - I will just whisper it so the member for Windermere does not hear - the pulp mill. One of the key things there was the demand for an economic, social and environmental impact assessment, not just an economic one. It seems that we should be looking at all three, not just one, when we are assessing whether it is also of strategic importance to the region or of significant scale or complexity. That is my point.

Mr Valentine - There is a fourth bottom line called culture.

Ms Rattray - Did not the TPC touch on the weighting of those things this morning?

Ms FORREST - Yes, but we are not in the briefing; we are in here where I want -

Ms Rattray - No, I know but I am saying they are actually talking about the weighting of each of the criteria.

Ms FORREST - It is really important all three of those key factors are considered, as well as being of strategic significance or of significant scale or complexity.

The other question I had - I will just wait for the Leader getting some advice. This was only raised in the briefing this morning.

Mrs Hiscutt - We are of the opinion the member does not quite understand that correctly, so we will just get some words together for you.

Ms FORREST - I might well not have. That would be great.

One of the matters raised in the briefing was the notification of neighbours, the owner of the land or occupiers of adjoining land, the relevant councils in the region, relevant state agencies and the TPC. The comment was made by the representatives from the Planning

Commission that occupiers change and this process can take up to a year. I asked whether the notification of occupiers of a premises is at a point in time and then at another point in time if the occupier is different you have to renotify? I want the Leader to clarify this because it could be quite onerous. Say you have notified John Smith who lives in that property and the process continues, and John Smith moves out and Joe Blow moves in: do you have to go back and notify that person? If you fail to do that, the whole process could be subject to challenge because you did not notify an occupier. Occupiers change much more frequently than owners. Owners can still change, people can sell their properties. If you could explain to us in your reply about the process of notifying occupiers. Is it just at a point in time and then they are deemed to have been notified? And then if there is another point in time, is it just at that point in time and if that is done at that time, that is the end of it? Some occupiers are hard to contact.

Mrs Hiscutt - So you are talking about renters?

Ms FORREST - Potentially, yes, or leasing a property, because we are not just talking about houses, we are talking about occupiers of other buildings.

Mrs Hiscutt - As opposed to owners?

Ms FORREST - Yes, and sometimes they are not always easy to identify. You can easily identify who the owner of the property is.

Mrs Hiscutt - The address would still be the same.

Ms FORREST - The address would still be the same but this is occupiers. It does not say the address, it says the 'occupier'. That means the person who is either living there or has a lease there.

Mrs Hiscutt - To the householder of that particular address. We will get an answer.

Ms FORREST - It was raised legitimately by the Tasmanian Planning Commission as a potential issue that if it was not well understood, it could mean that someone could challenge on a point of law. So Joe Blow was not notified - sorry, your permit is invalid. That would be a bit inconvenient.

Mrs Hiscutt - It would be most inconvenient.

Ms FORREST - Yes, very inconvenient, and also quite costly.

Other than that, I will listen to the debate in the Committee stage, which will be quite comprehensive. There were a couple of my amendments.

The final amendment on my list that has just been circulated is about removing of the delegation power for the panel. The panel is a delegated body of the commission. As the departmental officers informed us in the briefing, that was probably an oversight that should have been taken out. The commission has its delegation powers. The delegated body should not delegate further. There is an amendment to remove that provision.

Other than that, Mr President, I support the principle and we will see how we go in the Committee stage.

[5.28 p.m.]

Ms PALMER (Rosevears) - Mr President, as the commission pointed out this morning, its decisions are not subject to a merit appeal, except for a decision under the MIDAA process. The MIDAA process allows a decision to be made without a public hearing. All other commission decisions include a public hearing before a decision is made.

Appeals are there to review decisions by councils that may have been subject to political considerations.

The major projects bill relies on a determination by an independent expert panel appointed by the commission and operating under the Tasmanian Planning Commission Act 1997. Under major projects there is no appeal beyond the panel's decision on merit; however, the panel's decision is subject to appeals under the Judicial Review Act 2000. This is consistent not just with the PORS process but to other assessments undertaken by panels appointed by the commission such as in regard to a proposed planning scheme amendment or a combined development application and amendments under section 43 of LUPAA which are not subject to merit appeal either. The Tasmanian Planning Commission is the pre-eminent planning body in the state.

There is a general principle that appeals must always be made to a higher authority and appeals against the determinations of the commission or a panel established by the commission are generally only to the Supreme Court under judicial review. It is therefore unclear how provision could properly be made for a decision of the panel in regard to a major project to be appealed on merit. It is noted that some have suggested that the panel's decision in regard to a major project should be subject to appeal to RMPAT. However, as discussed during the debate on the PORS process in 2009, it is not considered appropriate to appeal the decision of one independent expert panel to another expert panel. Further, while an appeal to RMPAT against a decision of the commission-appointed panel is not quite the same as allowing for a decision of the Supreme Court to be appealed to a local magistrate, the principle is the same.

Allowing for an appeal on merits in regard to a major projects decision would not only undermine the commission in regards to those decisions but would have implications for the integrity of the commission's statutory decisions more broadly. It should be noted that an appeal heard by RMPAT allows them to hear the matter afresh in order to make their decision.

Under this amendment, an appeal in regard to a major project hearing the matter afresh would mean the minister's declaration, assessment criteria and project impact statement are all reviewed again and the proponent and appellant would be required to make further submissions on every aspect of the process. This would take much longer than currently occurs for an appeal in regard to a development application and come at much greater cost to government, appellants and proponents. The much higher cost to appellants to participate in the appeal process would cause them to be excluded from the appeal, undermining the intent behind the amendment, which is to invite third party appeal.

In addition, given that in Tasmania the TPC is the pre-eminent body in regard to land use and planning, it is unlikely that RMPAT, which shares a number of delegates with the TPC, would, in the absence of significant new evidence, second-guess the decision of the TPC-appointed panel. This means the appeals process would likely result in the same outcome in regards to the decision but at great cost in terms of time and money.

[5.32 p.m.]

Mr DEAN (Windermere) - Mr President, I am not going to make a lengthy contribution. I thank the Government for the briefings. I think it was three department briefings, plus all the other briefings from the different bodies. I appreciate hearing from the other side of issues. It makes for a good debate and better legislation.

In today's *Mercury* the minister has been strong in relation to this. He said that if there were any amendments to this bill it will be withdrawn. Whether he means amendments that might impact on the workings of that bill, that is what it might be. It said if there were amendments then they would not be supported downstairs and that it would be withdrawn.

Mrs Hiscutt - It depends on which amendments they were.

Mr DEAN - It may be.

Mrs Hiscutt - As we work through it, I will indicate what we do not like.

Mr PRESIDENT - That is how it works.

Mr Willie - It is for the parliament to determine, not the minister.

Mr DEAN - I am going to raise one or two issues that came out of this morning's briefings. Some have been referred to. What happens in the briefings does not get into this place unless we bring it in. It is not referred to in *Hansard* at all. I have been one to say our briefings ought to be either recorded on *Hansard*, or to be taken on oath or what have you.

I hearken back to local government. The member for Hobart, the member for McIntyre, the member for Mersey would well remember, I would think, certainly the Launceston City Council, when they used to have that type of briefing we have here in private in most cases. They then changed the system, said this is not good enough, the public should get to know what is also happening in this place. Then the Launceston City Council opened it up to a public session, the planning and policy committee meetings, I think they referred to, words to that effect. We ought to be going down a path of recording so we can have a record of what has been said in those briefings.

Mrs Hiscutt - I can see the member looking at me. That is not the Government's call, it is the Legislative Council's call.

Mr DEAN - Sure, I am sorry if I was looking at you.

Ms Rattray - That would make for some very lengthy *Hansard*, we are sometimes in that room for hours.

Mr DEAN - I need to stick to this bill. I am going to refer to what came out this morning, in this bill. I remember on one occasion where I made a comment on an issue that came out in one of those briefings and I was challenged on my statement. Some might recall when I was challenged that I misinterpreted what had been said and did not take it down correctly.

Ms Rattray - I would be surprised if that was the case. I watch you writing everything.

Mr DEAN - The member for Hobart made quite a lot of comment about councils and their position. We heard from Dion Lester this morning, representing LGAT. I think I had this right, that local government had issues with it. They raised a number of issues, a number of changes were made to the bill over time, before the bill we are now debating was, I understand, accepted by local government. I am confident that is what Mr Lester said. Many of the issues, he said to us that, 'many consultations and progressively improved; have gone through a tortuous process'; he mentioned the long process it has gone through.

He commented that, 'it will not be used every day'. It is not something that is going to be happening every day, as is happening in local government with DAs and the positions they have to adopt. Every meeting a number of DAs normally come through councils. There is an opportunity for council input - he talked about that - to this process. I asked a question: have any members returned to you with any issues regarding the bill as it now is? I am confident his answer to that was no. If I am wrong, please correct me. All issues were addressed over time.

He also went on to say he was aware of the issues that PMAT had drawn to our attention as well, during that briefing, and that those matters, I understood him to say, had also been raised within local government. It would seem, if that was the case, they were reasonably happy with the situation there with the answers provided to that organisation.

While this is taking away from local government these developments because of their size and everything else, the impact they have, they are supporting the bill. So, to me that means quite a lot. George Town Council, for instance, I know raised a number of issues. I have a document here from them; as I understand it, most of its issues were satisfied in the main, as was the case with a lot of other local government areas.

The Master Builders Tasmania or the Master Builders Association - Tasmanian branch gave a fairly strong position to us this morning as to why this bill should be supported. They said it means so much to them to be able to move forward; they referred to the COVID-19 position as well and they are urging us to move forward.

That does not mean we should pass bad legislation. That is what a lot of people would say, just because they want it, just because it is going to improve development, just because it is going to give them the work that they need to keep these people employed, does not mean to say that we should pass bad legislation. Of course we should not, and that is what our processes are all about.

I will not go into any more detail there. The Tasmanian Planning Commission - the department went through a number of issues with political donations. We will be dealing with that during the Committee stage. I am confident this bill will get into that stage so I do not really need to say too much about that at this present time.

I think the members for McIntyre, Launceston and Rosevears might have been at the meeting when we had Jim Collier and another person came in with him -

Ms Rattray - They represented the Launceston Heritage Not High-rise group and they have 230 members.

Mr DEAN - Yes, that is right. It was interesting there. They have a number of issues. We discussed those with them quite openly. During the discussion I referred to - at the time, I was concerned it might have been a confidential document to us but it was not - the eligibility of major projects checklist. I referred to one or two of the matters in that. This was a good document. I like documents like this that succinctly identify what some of the changes are about. I was able to refer to some of the issues in this document and I remember Mr Collier said, 'Well I was not quite aware of that'.

That was when I referred to the three eligibility criteria that had to be met so when you start to talk about some of the issues in the bill they are concerned with, it comes out that they are not absolutely familiar with it. What is happening is many of these people who have written to us are listening to what others are saying, they are being indoctrinated or being influenced rather than having a good close look at the bill themselves and having an understanding of it.

To me, that comes through fairly loudly and clearly. At the end I provided those people with a copy of this document so they went off with it and they did not come back. They have not been back to me so I am not quite sure whether they are more accepting but when they left our building they seemed to be more accepting. I am not saying they are accepting the bill as it was but more accepting of it. I think I am okay in saying that.

The member for Murchison is absolutely right in just adding more to that. In my opinion there has been scaremongering. There has been jumping at shadows and there has been, I think, a position of unreasonable suspicion being drawn in this case. The suspicion has been drawn from issues like - and I heard and it is in some of the documentation I have received - that this is really all about getting the cable car up.

This is all about -

Ms Forrest - I thought it was about the Westbury prison?

Mr DEAN - And that was there as well. That is there too. It was all about the Westbury prison.

Ms Rattray - The 'northern correctional facility'.

Ms Forrest - I am sorry.

Mr DEAN - The northern correctional facility. It is all about some of those other big developments that have not gone through the approval processes as yet. That came out in many of the letters that I received. I am satisfied that many of these people are suspicious of this bill and that is what it is about.

Ms Forrest - You can understand why that has happened though, can't you?

Mr DEAN - You can understand why it has happened.

Ms Rattray - If you look at the time frame this started five years ago, and it does not fit with either of those. I am not entirely sure about the cable car, whether that was prior to five years ago but certainly the northern correctional facility was not.

Mr DEAN - You are right. Some of the projects are well after that five-year period. Things like that they are either not aware of or they have overlooked it, and I am not saying that these people are concocting stuff at all.

Ms Rattray - They have a genuine concern around the establishment, particularly in that northern correctional facility. I acknowledge that.

Mr DEAN - I should have mentioned before, when I referred to the three eligibility criteria, what did come out - and the members who were there might recall - where I think it was said that could be a fairly low threshold. If you look at 'a significant impact' or 'a significant contribution' it is to the region, not the state. If you are looking at a big development in Launceston -

Ms Rattray - Big box?

Mr DEAN - Whatever. As I understand this and the bill, proposed new section 60M is the clause in the bill that refers to this, it is simply a significant impact on the region. You could probably say that the Hotel Verge might well have a significant impact on the region. It will bring a lot of people in, a lot of visitors.

Ms Rattray - The Silos?

Mr DEAN - The Hotel Verge, it is a new one, opening today. It probably could meet this strategic importance, something like that could. This is what was raised. They were saying it could fit a fairly low threshold when I talked about it. The other one stands alone. Three, which was that it has to be a complex technical number of permits, number of councils, and that stands alone very clearly, identified as it has to be a significant development and would impact the state, not just the region. That was raised.

I am not going on any further on this. Matters will come out in the Committee stage. I am fairly confident we will get into the Committee stage, and it should. The PORS, the POSS, I do not want to go into that. I can remember in this place all the angst and concern. I can remember it was Mr Aird - I think Michael Aird was the leader at the time; I can remember him sitting over there, shaking his fist and jumping up and down.

Ms Rattray - I remember when he had a nose for something too, the sale of TOTE.

Mrs Hiscutt - Would it help if I did that?

Mr DEAN - I remember it very well and here we are today, knowing it has never been used and if we went back through some of the speeches in relation to that it would be interesting to see some of the comments made. I would be surprised if some members did not make similar statements in relation to whether it would be used and/or not and what was it really going to be for in this state.

Having said that, I appreciate the work put into this over a long period by the department and no doubt that has come out very clearly. It is a big bill a lot of work. I commend the staff for the way in which they have so diligently gone about their work putting this together, the briefing and talking to us.

[5.50 p.m.]

Ms WEBB (Nelson) - Mr President, today I listened to the Leader put the Government's case for this bill, and I have listened to the contributions of other members and certainly appreciate very much hearing their thoughts on this.

I have also met with stakeholders and have attended departmental briefings on this bill and briefings provided by other stakeholder groups. I thank all those stakeholder groups and the departmental officials for their really generous time and approach to continuing to provide materials for us to add to our understanding of this bill and to respond to things that we have been presented with in other circumstances.

I have also received quite a high number of communications from constituents on this bill and from Tasmanians outside my electorate. I must say none of those communications I have directly received from the Tasmanian public has been in support of this bill. All of them expressed concern, anger at times and anxiety. That is probably no surprise when we find this complex bill before us and to some extent a controversial one, given what we can observe in the Tasmanian community in terms of quite extensive response.

I am not a planning expert. I do not intend to pretend I am, but that is not the sole and exclusive consideration we are to bring to bear here when considering this bill. It is our role in this place to evaluate proposed legislation against a whole range of criteria to undertake our function of review.

We are certainly to consider fundamental democratic principles such as good governance, transparency and accountability, consistency, fairness and due process. Therefore, while it is incumbent upon me to listen to those with planning expertise, it is equally important to listen to those potentially affected.

In relation to this bill I have heard it identified that a planning process which allows for projects of a certain scale and complexity to be dealt with under an independent non-political assessment with concurrent consideration by regulators and an early indication of a reasonable prospect of success would provide proponents with a process that is shorter, simpler and involves less financial risk. It would give them more confidence.

I accept that such a process is one that proponents would find attractive in this state. I also accept it could potentially hold value for our state and for other stakeholders and the community.

The projects of regional significance, as many of us have noted, has been in place since 2009 and was put in place to provide a similar such process. What we have seen play out there, as has been noted, is that while it was due to be reviewed after five years, it did not actually eventuate as a functional process, in that it was never used. As a result, it is generally regarded to be a failure. I am led to believe and would agree with that assessment given its complete lack of use.

Criteria for the legislated review of PORS are mostly redundant as we discussed in a briefing earlier today, because the process was never used, and most of the criteria that are in the legislation have never occurred in order to be reviewed. There is one criterion in that legislated review that would remain relevant however and that is (d) and it says -

> Any other matters relevant to the effect of this Division on providing an efficient and effective planning approval process in Tasmania.

That is quite a broad invitation to review not just the efficient and effective use of PORS, but the efficient and effective planning approval process in Tasmania in the context of PORS, the review that it is legislated to be reviewed as part of.

I note the member for Hobart's comments indicated there was no public consultation process, no public report of a review of PORS shared in the public domain and no indication that a review and analysis perhaps could have been conducted in a limited way but certainly a purposeful way in relation to that criteria (d) in the legislation. There is none in existence. It makes me wonder what would a formal review of PORS have delivered to us? The principles it sought to give effect to, the efficient and effective planning approval process in Tasmania and what could be added to that, and the failure of PORS to result in the expected outcomes when it was first put forward. In light of thinking about what a review might have provided, there are three basic sets of questions a government should be asking at the earliest opportunity when beginning the development process for a new planning scheme such as this.

The questions I think important are: What do proponents need? What are their priorities and concerns? What do communities need? What are their priorities and concerns? What does good governance require when we consider this new planning matter or process?

These questions should be asked at the outset of the development of the new planning process and that learning and understanding would then form the foundation from which you would embark and engage in future work and development.

Engagement with all stakeholders, including the community, would be required in order to answer those three sets of questions. Answering the questions would provide the opportunity for consideration, analysis and appropriate balancing of the full range of needs, priorities and concerns. It would serve to ensure buy-in from all stakeholders and confidence in the process of development that would grow from it.

It would be the first, and I think most important, step in developing public confidence in and a social licence for the process under development that would become ultimately part of the planning scheme.

When we had the chance to engage in this kind of thorough and inclusive process in the contemplation of a review of PORS and then the anticipation of a creation of a new process, what did the Government actually do? The Government asked that first set of questions: what do proponents need, what are their priorities and concerns? I am sure the answers to those questions were readily provided to the Government. Absolutely appropriately.

When and how at that earliest opportunity did the Government ask the equally important second question: what do communities need, what are their priorities and concerns? That question was never put to the Tasmanian community at that earliest opportunity regarding the development of this new process. It was confirmed to us in briefings that there were no community stakeholders engaged by the Government in the initial stage of contemplating the creation of this new process from the ashes of the failed PORS process.

The neglect of community input and engagement at that point was wrong. It was a mistake. The community deserved better at that time. Sadly, the failure to give appropriate involvement to the community at that time set us up to be encountering some of the issues that are now being expressed today and that we must deal with in the scrutiny and review of this bill.

Additionally, in the absence of that second question being asked and answered, in failing to include purposeful consideration of communities at that initial stage, we also curtailed, in some measure, effectively answering the third question: what does good governance require? Community input would have been fundamental in answering that third question too.

A great deal of consideration has been given to good governance in a process that has ensued since and to good effect in many ways in what we see presented here today. Because we did not include a lens of community that we would have gained in asking those questions at the earliest opportunity we have some missing gaps and what those matters we may be dealing in the next stage of things have their origin in that.

Community was not brought into this process until a draft bill was in place. And what effect does this have? Introducing community at that point when there is already something presented to them?

It tells the community members they are not central stakeholders in their own state planning scheme. It sets up the opportunity for an adversarial approach.

The message that was sent to community at that time - that they are not central to the earliest consideration in developing new matters in the planning scheme - is an unfortunate message and sets up an adversarial approach.

In the development of this bill, the Government failed in creating its own social licence for the new and significant process it sought to create. What a shame and how unnecessary. As we make our way through consideration of this bill and potentially into the next stage, I hope we can do work that helps to redress that to some extent. I acknowledge it would have been more appropriate and perhaps easier if we did not have to do that, if it had been done correctly and inclusively in the first place.

There are interesting parallels here in the shortfalls of this process used to develop the major projects process itself and in some of the shortfall that people have identified in the major projects process. What the Government did in relation to not including community at the earliest opportunity, presenting community then at a slightly later stage with a completed entity to respond to in some sense - in that, there was already a bill then as the first thing to respond to - and then not providing necessarily fair ways for that to be reviewed and assessed in a way that communities really felt included. There was a perception of not being included. This mimics some of the concerns people actually have for the process presented in the bill that community is not being included at the earliest opportunity, that it is being presented with something that looks almost like a completed product. They are put into an adversarial role unnecessarily as their first involvement and there is not necessarily a fair and transparent opportunity, or there is a perception there is not, for the community members. There is an interesting parallel there.

I will speak briefly about some of the concerns expressed to us broadly, many of us, by many community members about this bill and by other stakeholders. The context of this bill has been talked about by some other members. It is a crowded space at the moment. At the same time this bill has been in gestation we have also had a new statewide planning scheme being created - still not entirely bedded down. We have a continuing ongoing review of the Tasmanian Planning Commission and note, as many others have, progress has stalled on electoral donation reform which, while not immediately pertinent to this bill, is tangentially pertinent. This is a matter we will be discussing more in time to come.

Mr Valentine - The planning policies have not been developed either.

Ms WEBB - Indeed. That is a further part of this crowded area of many unresolved matters and on top of that we are in the middle of a pandemic, which presents many of its own problems as others have noted.

Another area of concern expressed is about what could be included in, what could be drawn into, this major projects process as presented in this bill. It has been put to me this bill could see quite controversial proposals that have already been through, for instance, the council planning process and been rejected or those that were approved by council but have had their decision overturned through an appeal process or all those currently prohibited developments within a planning scheme - we could see those kinds of examples declared and assessed under this legislation. Many of us will have heard from a range of community stakeholders who are extremely alarmed on this point. They cite examples such as Cambria Green, the large-scale complex outside Swansea, arguing that such a project could be considered, and despite a rezoning application for the proponent's land having been rejected by the Tasmanian Planning Commission, it could still be submitted under this bill to be assessed.

Similarly, concerns for the integrity of our cityscapes and built heritage in Hobart and Launceston have been raised. We have seen large developers putting forward quite vast, out-of-scale and inappropriate plans that will potentially dwarf our heritage-rich spaces and our cultural aesthetics. We see what happens in local communities when those sorts of proposals are put forward under circumstances now. I understand why people who feel alarmed at those prospects feel that there may be an easier pathway for some of those projects to be considered under this bill, and are concerned about that.

Some additions have been made and potentially the community are not as up to date with those additions. Some consideration must be given to special arrangements in areas in local communities. Consideration can be given to those. I think that is a really positive improvement that was made in the process of the bill.

The community's confidence has already been shaken with recent changes, which many perceive to have undermined the integrity of Tasmania's planning system, including the new planning scheme's apparent, in some people's eyes, downgrading of the protection of local character and values. Some have put to us that they have seen that demonstrated through projects such as Kangaroo Bay. I am not commenting on the merits or otherwise of that, but I did note, after hearing concerns raised from the public, we have also heard from an industry stakeholder that that would be an example of a project that could be considered under this major projects process. While that was put to us, it is not confirmed to me that it could be. But if

there is an industry stakeholder who believes that it could be, then that is an interesting thing to note.

Concerns based on lived experience in our communities make them worried that this proposed bill may bring eventualities in their communities that they find distressing. Despite protestations from the Government that this is not a fast-track legislation, the bill certainly appears to shift the emphasis for larger scale projects towards approvals rather than assessment. There are potentially some straightforward adjustments that do not interrupt the process of the bill, but would alleviate that perception. It probably is a perception. If there is a way we could alleviate the perception effectively without interrupting the intent and the process that is in the bill, we should consider this closely. I hope all members, and the Government, will be open to considering that.

A consequence of this bill, given community consternation and concern, could lead to the erosion of the building of a social licence for any of the projects that use the process. It is a shame and awkward if we have created a process that already has built-in opposition to what may be subject to it. We may be able to again alleviate that outcome to some extent with some minor amendments that we may consider in the next stage that would really assist in helping calm community, while not interrupting the intent and the process.

A further concern was on the lack of merit appeal rights. Others have spoken about that in their contributions. It sounds like it will be a matter that we discuss in detail in the Committee stage. It has been a matter of high concern for the community. I will mention briefly that the principle of merit appeals is right, it is elemental in the idea of a functioning democracy. I will speak more about that when we consider potential amendments.

A key concern with this bill is political influence. I take on face value the pride expressed that this bill, by assertion from the department, has a high level of transparency compared to similar examples of planning schemes around the nation. It has a high level of transparency and arms-length operation from political decision-makers. I applaud that. In many measures it does and pride in that is well placed.

It is part of the Government's narrative around this bill that it takes the politics out of planning. In some ways that is true. I also believe that in making that claim the Government is downplaying the role the minister still plays in the process. That is still a matter for us to contemplate further. Characterising the power to declare a project at the outset and therefore bring it into this process 'simply provides for the proponent to enter the process', and implying that is a simple matter and it is not of political consequence is misleading. That power to declare a project has to be recognised for what it is. That is, it is significant and it sits in a political player in the process.

The opportunity for the minister to specify particular experience or qualifications in one member of the panel also has the potential to be significant. I fully appreciate that this is not the minister appointing a member of the panel. We would be quite appalled if there was that power. Even this power to specify a particular experience or qualification in a member of the panel has the potential to be significant. It can be quite narrow. It could point towards either a small handful or perhaps even one person in a state like Tasmania. While the minister is not appointing that person directly, in defining the qualifications and experience in a particular

way, the minister could certainly point towards very particular people. Again, the perception of that is perhaps more problematic than the real risk it presents.

A case has not been made as to why it is necessary or valuable for the minister to have that power and why, over and above the fact that the TPC could make this determination independently from any political influence at all, this should be an essential power for the minister to hold in this process. If the case has not been made that it is necessary and we know the independent entity involved, the TPC, could quite well undertake that determination of particular qualifications and experience required, why would we have something there that has that perception, if not tangible risk, of political influence? We will likely discuss this in more detail in relation to an amendment.

A further concern that I am going to touch on is around so-called safeguards that are in the bill. The Government says there are sufficient safeguards in the bill to protect the public interest. We had a serious anomaly at the beginning surrounding the failure to undertake a genuine five-year review of PORS. Granted, it could not have been the full review that was specified in the legislation because of the inapplicability of a number of the criteria, but at least one broad and significant criteria could have been the basis of that review.

When that process was introduced into the state planning system in 2009, the statutory five-year review was inserted at that time as a safeguard. A safeguard that in the end has proven ineffectual from the Tasmanian community's standpoint, because it did not result in delivery of the review it mandated.

This is a breakdown of good governance. It is a breakdown of a safeguard and it is oversights like these, inadvertent or deliberate, which contribute to heightened community concern, distrust and the erosion of public confidence. It also means people are understandably suspicious when they are told blithely there are sufficient safeguards to prevent politicisation of the planning system or to prevent fast-tracking of projects proposed by corporate donors or supporters of whoever is the government of the day. People understandably would hold suspicions, may feel distrustful of promised safeguards if we have a history of those safeguards not delivering from the community's perspective.

I am going to mention the complexity of this bill as a matter of concern. Not because it should not be complex in delivering what it is going to deliver ultimately, to us as a state, but in terms of the fact we are going to be dealing with it in a complex way here because of the quantum and nature of concerns and issues that remain to be resolved and discussed at this stage of the process because of a failure to effectively address those things by an inclusive and appropriate process earlier on.

I understand other members have circulated proposed amendments and I have circulated a suite of amendments for consideration during the Committee stage, should we get there. I intend to address all those amendments in detail when we are there in due course rather than to speak on detail to any more of them here.

In particular, I am interested in hearing other members' views and ideas via amendments on how to protect the community's rights and the capacity to participate in the process of this major project's endeavour including, potentially, merit-based appeal rights, providing clarity

over the permit criteria and ensuring public confidence in the non-politicisation and transparency of the process.

I particularly mention my gratitude to OPC for the assistance in drafting the suite of amendments I intend to bring. The responsiveness and alacrity with which they have been drafted in the past 36 hours or so have been really appreciated and I am very grateful for their professionalism and the quality of the work.

To conclude, two threshold tests against which it is important to assess this bill are: First, how does the proposed bill measure against the fundamental democratic touchstone principles of good governance, transparency and accountability, fairness and due process? Second, do the proposed changes in this bill invest in strengthening social licence for any project that goes through the proposed new process? Those two questions still have elements that need to be answered and I would hope we can potentially provide some answers as we have further discussions here.

I contend this bill falls short on both those accounts to some extent and, in doing so, instead of being a valuable and well-respected addition undoubtedly in the community's mind to our planning scheme, it risks contributing to community anxiety and division and undermining the social licence for future projects. I suggest the last thing the planning environment in this state needs is greater inflammation of community fear and anger at being taken for granted and having the interest of developers put ahead of the interests of the community.

These systemic failures, to some extent at earlier stages of this process in good governance, in transparency and fairness, in inclusion would potentially be enshrined in this bill as it currently stands and that would ensure that proponents accessing the process would be at risk of failing to secure a social licence for their project.

I think we can engage in effective and helpful work in this Chamber in the passage of this bill. Some of the consternation and concerns that have failed to be allayed in the community across the extensive period of time over which this has been developed can be, to some extent, ameliorated in some straightforward ways through some straightforward amendments that will not impact on the intent and the veracity of the process as it has been conceptualised by the Government.

They will be important in terms of public perception and in rebuilding a sense of social licence and community and public confidence in this bill as it passes through our Chamber and becomes something that is given effect to in our community.

I look forward to us delivering on that for the Tasmanian community and helping to provide that more positive outcome than may otherwise have been achieved.

[6.21 p.m.]

Mr GAFFNEY (Mersey) - Mr President, I appreciate the briefings we have had and I also acknowledge the contributions from many of the members and that is one of the strengths in this place. People come to this Chamber with a lot of different lived experiences. I am not saying those lived experiences mean they are experts, not at all, but they have come across it and I think that has been invaluable in this process.

I rise to speak on the major projects bill, a bill that has the best intentions and yet may well be wanting in a number of crucial areas.

Like many of us in this place, I speak from a position of experience. As a past Latrobe councillor for 20 years and mayor for 12 years, I have been party to a significant growth and development and the strategic implications surrounding this.

Especially Latrobe, the township, and Port Sorell, is one of the fastest-growing municipalities in Tasmania and has been for many years. Also, as president of LGAT for three years I am keenly aware of the challenges faced by both councils and development proponents and the crucial role of community input, open communication and a transparent appeals route in successful planning processes.

It is reassuring to see the minister in the other place declare that he has accepted a variety of feedback on his Government's proposals and to note that he has added additional conditions to take account of local requirements, especially for them to be given weight, or to have consideration of local planning matters. But there is a concern that these come with no authority and they do not come with any autonomy and only at the latter part of the major projects decision-making process. Whereas maybe they should be seen as a primary 'must' at the front end rather than a mere point of conjecture in the final phases of the panel's deliberative process.

Perhaps, these local factors should be weighted and seen as a critical part of the initial screening of a proposal, one that could be actioned before a project is tested against the major project selection criteria, the definitions of which are broad enough to allow most or almost any project to readily meet a couple of them - enough to make the grade to be considered as a major project.

Looking back at local planning precedents, it should be noted that many highly successful major projects have engaged planning processes that cross council boundaries, and have been resolved to the complete satisfaction of all sides - usually accomplished under a joint planning authority process. This includes projects that could even be seen as being of state significance. One of these is the Bell Bay Power Station, a resource that helped save the day for Tasmania when our Hydro storages ran low.

The key element in this was that the proponent, in this case, Alinta Energy, took the process seriously, prepared properly and addressed community concerns with due consideration and open communication, giving us a near flawless process and sustainable outcome. There is also the Tasmanian Planning Commission, which offers independent and trusted processes that can facilitate fair and reasonable decision-making on planning initiatives, especially those that court controversy.

With the proposed review of the TPC already in the pipeline, is it too much to expect this legislation might eventually come to be seen with the same regard? One can only hope, as currently it is being seen as divisive and potentially unfair by a significant number of stakeholders. The real risk here is that this process and way of doing things will remove an authentic local voice as a key agent in planning deliberations. Planning outcomes will be imposed on local communities with no chance of appeal or redress. Can this legislation, as

currently drafted, guarantee that the backers of major projects will respect the communities and their landscapes within which they may choose to develop their various projects?

David Ridley, the chair of the No Turbine Action Group, has written to me, and I assume other members too, expressing its concerns about a supportive and authentic appeals process, together with amendments to improve a panel's decision-making criteria. I offer this quote from his correspondence -

> There is a need to ensure Permit decision criteria by the Development Assessment Panel be amended to include the tests for public interest requirements and require consistency with tests for planning scheme amendments.

Part of ensuring this respect of process is by having the right of appeal by all sides on any decision, be it on merit, adherence to legislation, or following the correct process. The Government advised that this will be implicit in a major projects process. Whilst the suggested route is via the Supreme Court, I think this is a somewhat draconian and complex method that is way beyond the means and patience of many people or legal entities.

In its considered briefing and supporting papers, the Planning Matters Alliance Tasmania has suggested that appeal rights need to be embedded within the legislation to ensure natural justice. Appeal rights are open to all parties, be they the proponent, the councils, government or opponents of a proposal, to give the potential for review that is truly independent and can reinforce the veracity of any decision or the processes surrounding it.

These rights may never actually be used to any great extent. If the Government has nothing to fear in the robustness of the major projects process, then maybe such amendments or a further strengthening of the weighting of local considerations and their place in the process, can restore community confidence and trust in this novel and complex legislation.

Within all this we have to note the planning decisions are lasting. They can be multifaceted and are mostly irreversible, with a 'no stopping' rule that can only be reinforced by this legislation. One of our happy accidents in Tasmania is that much of what we cherish, and what our visitors cherish too, has not been destroyed and sacrificed in a rush to be replaced with low-grade development at the behest of purely commercial interests.

In fact, so much of what our visitors appreciate about our state is its history and historic built environment that has not yet been overwhelmed by inappropriate development. This is complemented by the opportunity to enjoy so much of our unsullied natural landscape that is within easy reach of our distinctive urban centres, a natural setting and peaceful landscape that is perhaps unique in a world dominated by concrete and steel.

However, I fully understand there has to be a balance of progress against conserving what we have. This has to be in a way that respects these points and the needs of our community, yet be in a way that will continue to confidently attract people and investment to our island home.

Can the Government guarantee that this bill is not just an attempt to rework the failed PORS legislation that hit the statute book 11 years ago, a statute that has, in the Government's own description, proved to be dysfunctional and redundant as a viable planning tool and unfit for its intended purpose? The dysfunction included the failure to conduct a legislative review

of PORS, for whatever reason, which was supposedly due to be conducted five years after the act came into effect and should have happened over six years ago. Perhaps one reason for the failure of the PORS pathway is the result of a more expeditious route being available through the normal local council processes I have already described.

My next question is that in light of this, is the major projects bill simply a solution looking for a problem to solve that may not actually exist except in the minds of the underprepared proponents who are unwilling to authentically engage with the familiar planning routes we do have? We are currently in a unique situation as we seek to recover and build in what we hope will soon be a post-COVID-19 world. This is about the long-term future of our island state; planning is a critical part of this and it has to be guaranteed into perpetuity.

A small state with only a small number of major projects to be considered at any one time, we are not exactly overwhelmed by a process or lacking capacity to determine the merits of a project. With a truly collaborative approach, all proponents and other stakeholders can be said to get a fair hearing at all levels. I am not sure the bill as it is currently drafted fully accomplishes this to the best of its potential. In this place, a place of review, we look at legislation with fresh perspective, with the benefit of our experience and beyond party influence. We are here to strengthen, when needed, what comes to us from the other place with any sensible amendments or refinements that can improve the function of a bill.

Like many of us, I have received a considerable range of input from a variety of stakeholders relating to this bill and perhaps this quote from Gwenda Sheridan's correspondence as a tenant underpins much of the community's sentiment on this and it is something that rings true to me -

> Planning is for the people, not for business or corporations with a lot of money.

Maybe it is too late. I hope for all of our sakes the minister can give, and hold to, his Government's word that it is not and that we as Tasmanians are not going to be sold down the river to the highest bidder. However, I look forward to trying to improve the bill in the Committee process but I am not inclined to support it, because we have too much at stake.

[6.32 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I will give a bit of a rundown of the rest of the evening. We will stop for a dinner break. I will adjourn the debate when I finish my summing up. We will then go to the Justice Legislation Miscellaneous Amendment Bill and the Police Legislation Miscellaneous Amendments Bill. I am swapping tonight's activities for tomorrow's activities.

Members have had those bills since October last year, so hopefully they will be ready to go on them.

I have quite a bit of summing up here. A couple of questions asked by the member for Nelson during our briefings for which answers have been prepared. I will start with them -

> Why has there been no formal review of the PORS process? The current LUPAA specifies in section:

60Z. Review of Division -

(1) An independent review of this Division must be commissioned by the Minister as soon as possible after 1 January 2013 to enable consideration of -

(a) The effectiveness of this Division in approving special permits for projects of regional significance; and

(b) The operation of the powers under this Division permitting the Minister to declare a project to be a project of regional significance; and

(c) The effectiveness of guidelines issued by the Commission under this Division as to the matters to which the Minister is to have regard as to determining whether a project is to be declared a project of regional significance; and

(d) Any other matters relevant to the effect of this Division on providing an efficient and effective planning approvals process in Tasmania.

No such review specifically in these terms has been undertaken. The matters all assume that there would be projects assessed and perhaps approved. The fact is that no projects have been declared, no guidelines have been issued by the TPC and no special permits issued. This means the specific considerations cannot be pursued.

On that basis previous governments determined the specific content of the required review cannot be addressed. Commissioning an independent person to conduct a review with these terms of reference will produce nothing of a substance and probably only point to the fact there is nothing to review.

The other question asked by the member for Nelson was: on what basis did preparation for the major project bill commence?

In 2014, the incoming Liberal Government committed to using the existing calling powers available in the projects of regional significance process and to expand those by adding an in-principle approval stage and other reforms. The first step was to seek advice as to why the PORS process was not being used. The absence of the formal independent review required under the act in itself pointed to the need to consult not on how the provisions of the act have been working and the results they have produced but on a different issue.

Why has it not been used? The early consultation with key stakeholders, especially industry groups, indicated the PORS process was not an attractive proposition for a proponent because of the high costs of entry, the limited range of permits provided and the uncertainty of time frames for the decisions. The initial consultation on the replacement major process was predicated on addressing these issues.

On 16 May 2016, Cabinet agreed to the drafting of amendment to the Land Use Planning and Approvals Act 1993 to amend the projects of regional significance process in LUPAA to

deliver on the Government's commitment to provide for the assessment of major development proposals. The member for Hobart then spoke about the eligibility criteria being modified. It has been modified. The councils' ability or lack of ability is excluded. The time frames have been fixed.

Mr Valentine - Sorry? Have been?

Mrs HISCUTT - Your time frames have been - I think you must have been talking about things which were in previous bills because what you were talking about there -

Mr Valentine - Yes. No, that is right. They do not match up.

Mrs HISCUTT - Is not there now.

Mr Valentine - Do you say it has been fixed?

Mrs HISCUTT - The time frames have been fixed.

Mr Valentine - Thank you.

Mrs HISCUTT - You also talked about landowner consent. It does not include where council administers crown land. Proposed new section 60P(3)(b) now includes -

> … land that is not owned by a council but is occupied or administered by a council -

That is on page 54 of the LUPAA. Proposed new section 60P(3)(b) reads -

> where all or part of the land on which the project is to be situated is land that is not owned by a council but is occupied or administered by a council - the council

Then on it goes.

Mr Valentine - Thank you.

Mrs HISCUTT - The member for Hobart also spoke at length about how major projects are connected to the current review of the Tasmanian Planning Commission. There is no connection at all between the major projects assessment process and the current review of the commission. I think that was where you got a bit excited.

Mr Valentine - Well, it is just if the commission -

Mrs HISCUTT - There is no connection -

Mr Valentine - Its roles are -

Mrs HISCUTT - The major projects assessment process has been in development for over three years. The review of the commission only commenced early this year and its timing was triggered by the resignation of the then executive commissioner. When the establishment of the planning -

Ms Forrest - He went to a better life on King Island.

Mrs HISCUTT - Well, there you go. Looking -

Ms Forrest - He did. He is the general manager over there.

Mrs HISCUTT - Mr President, with the establishment of the Planning Policy Unit in the Department of Justice, the role of the commission has gradually evolved with a reduced rolling policy development and a refocus on statutory review and assessment. It has become evident there is now a degree of confusion with regard to who does what, both externally and internally. It is hoped that one of the key outcomes of the review will be clarification of the role of the commission and its statutory functions.

The review has concluded and the report is currently being finalised. The minister has not yet received the report or been advised of its recommendations. It is important to note that the roles and responsibility of the commission are established under legislation.

Mr Valentine - Are you saying, or was the advice to you, that the functions the commission is responsible for in this bill are not going to change?

Mrs HISCUTT - Would you like to clarify that again?

Mr Valentine - I am interested to know whether the roles and functions under review -

Mrs HISCUTT - They are not going to change under this bill.

Mr Valentine - That the commission's role in this bill is not going to change.

Mrs HISCUTT - They are not going to change.

Mr Valentine - Thank you.

Mrs HISCUTT - Should any changes to these roles and responsibilities be proposed as a result of the review, these would need to be endorsed by parliament before they could be given effect. You had concerns about the consultation - there were three years and 20 weeks of consultation on three different draft bills.

Mr Valentine - That is fine.

Mrs HISCUTT - That is a great deal.

Mr Valentine - That is a fair bit of consultation, but at the end of the day the community still feels upset about it. That is interesting.

Mrs HISCUTT - You also asked about the role of local government and you talked about the reduction of local government roles. The role of local government is to advocate on behalf of the community throughout the major projects process. Councils are given a number of opportunities to do this through making submissions to the minister about whether to declare a major project, advising what matters should be included in a draft assessment criteria, making

a formal submission during the exhibition of the draft assessment criteria, responding to requests for information from the panel before a major project is placed on public exhibition, making a formal representation during the exhibition of the major project, and appearing at the public hearings for the major project in support of a representation. In all these cases, a council is not limited to just providing its views as a planning authority. It can step outside that.

Mr Valentine - My point is the fact that -

Mrs HISCUTT - Let me finish, and I might answer your question.

Instead, the council can provide broader views that can reflect all its functions and responsibilities, such as social community advocacy, political views, or as the landowner or manager or as a road authority or on engineering matters.

Mr Valentine - It still does not change the fact that the planning scheme can change because the major project says that they need to have a zone change and -

Ms Forrest - The zone can change, not the planning scheme.

Mr Valentine - There are local provision schedules.

Mrs HISCUTT - What I have just read out is what is pertinent to the bill here before us.

Mr Valentine - Yes, well it is but, anyway, I have had my arguments earlier. There is not much point in carrying on.

Mrs HISCUTT - We have more advice for you about the 'no reasonable prospect test'. You asked about early advice on that.

The no reasonable prospect test provides the proponent with an early indication that their proposal is unlikely to be approved by either the panel or at least one of the regulators. It is in effect a fatal flaws test. The commission provides the panel and the various regulators with the project proposal for consideration. The regulators then provide advice to the panel. It is either a notice that there are no relevant matters for them to assess, a list of the matters that they will require the proponents to address to formally assess the proposal, or advice that there is no reasonable prospect of them approving the proposal under their legislation. Should a no reasonable prospect notice be given, a proposal may be withdrawn or the proponent may modify the proposal and commence the process again. This early advice will potentially save the proponent from wasting significant time and money proceeding with a long assessment process with no prospect of an approval.

Do the assessment criteria need to consider the planning scheme? The planning is required to have regard to a range of matters in forming the land use planning elements of the assessment criteria, including any relevant planning scheme and in particular any specific area plan, particularly purpose zone or site-specific qualifications that apply to the land. Additionally, the merit of making any subsequent changes to the planning scheme needs to be considered. There are also other processes for considering proposals outside the planning schemes. Proposed new section 60C deals with projects of state significance, as do sections in LUPAA and MIDAA. This is not a unique process.

We moved on to the member for McIntyre. I have a couple of things here. Why not disallow a declaration? Projects of state significance and MIDAA are subject to disallowance. These have land acquisition powers so give not only planning and other permits but also the rights to take the land to actually do the development. The bill provides only a planning permit and is no different to the LUPAA process. The TPC explained how it would operate and select a panel. You also spoke about the panel membership. The key is not to duplicate the regulators' expertise. The panels are the planning experts and the coordinator of the others, the regulators.

The eligibility criteria - the definition guidelines are to assist with eligibility criteria. The major projects bill requires that within six months of the bill receiving royal assent the Tasmanian Planning Commission must issue determination guidelines and publish them in the *Gazette*. The purpose of the determination guidelines is to quantify the eligibility criteria and they will be used by the minister in deciding whether a proposed major project meets the eligibility criteria and whether it should be declared or not.

We move to the member for Murchison who also spoke about the eligibility criteria. The eligibility criteria provide matters to select to enable an assessment to occur. The assessment covers all relevant economic, social and environmental aspects of the project specific to where it is located. The assessment is required to further the objectives of the bill, which refer to environmental, social and economic matters. The assessment will have to meet the triple bottom line in its approach. A project may not have an impact on all three criteria but they have to meet them. You talked about the skill set. If the minister directs the skill set, the commission has to act on the skill set.

Ms Forrest - There is no intention to have a process as a circuit-breaker.

Mrs HISCUTT - There will be a skill set identified as being necessary and the minister will declare that. That will have to be appointed by the commission.

We talked about notifying occupiers of the land. Occupiers at that particular point in time; if they have moved out then they do not need to be pursued. The new occupant is contacted, notification is to the household by letter, 'Dear householder'. Councils do this all the time. Every DA does this where they send a letter to the householder.

Why does the minister specify a particular skill set for a panel member? We will come back to this. The TPC cannot refuse to select such a member, the direction is only for skill set. During the examination of the project for declaration by the minister, they seek advice from a range of parties, and these may raise particular issues that suggest a specific skill set is required. The TPC is not privy to all of that advice but the minister does not just pluck a trade out of their head, they seek the advice of a range of parties to decide that. The TPC is not privy to all of that advice. The minister wants to make sure that the proposer receives the correct type of assessment.

I finish with the member for Nelson. What about controversial projects? You did say what about this and what about that, I would just like to clarify -

Ms Webb - I just mentioned concerns raised.

Mrs HISCUTT - Yes, and you mentioned a few things up the coast.

Ms Rattray - The Cambria Green.

Mrs HISCUTT - That was mentioned.

In itself, controversy is not a consideration in the determination of a project's eligibility or ineligibility. To be declared, the minister must determine that the proposal satisfies at least two of the three eligibility criteria - that is, the proposal may make significant impacts or contributions to a region's economy, environment, or social fabric; it may be of strategic importance to a region, or of significant scale and complexity. In addition, a proposal must be for a use or development, such as a building or structure; seeking a planning permit, bricks and mortar, not simply a proposal to amend the planning rules applying to a piece of land such as the Cambria Green proposal. It does not apply to that.

Endorsed with the consent of any council or state agency that owns the land - for example, the cable car on kunanyi/Mount Wellington would require the consent of the Hobart City Council, and the Cataract Gorge chairlift would require the consent of the Launceston City Council.

With respect to skyscrapers that may be big, but in planning terms, they are certainly not complex or strategically significant. In addition, the major project process requires specific consideration of any local unique planning rules, such as a specific area plan or a particular purpose plan in determining eligibility, developing the assessment criteria and the panel's assessment of the proposal. Both Hobart and Launceston city councils are currently working on special controls for the height of buildings to limit very tall structures. Once in effect in the planning scheme, these would be a relevant consideration.

Mr Valentine - That is the problem, it is only a consideration. They are not bound to -

Mrs HISCUTT - That would be a very relevant consideration.

Mr Valentine - A 200 metre-high building, 'Well, we have considered it, but we will let it go through.'.

Mrs HISCUTT - Well, I do not think the council would do that.

Debate adjourned.

SUSPENSION OF SITTING

[6.53 p.m.]

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

> That the sitting be suspended until the ringing of the division bells for a dinner break.

Mr President, I would be looking at about half past seven, a little bit shortly thereafter. We will see how we are going.

Sitting suspended from 6.52 p.m. to 7.40 p.m.

ORDER OF BUSINESS

[7.41 p.m.]

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

> That intervening business be deferred until after consideration of Orders of the Day Nos 4 and 5.

Motion agreed to.

JUSTICE LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2019 (No. 39)

Second Reading

[7.41 p.m.]

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

> That the bill be now read the second time.

The Government is committed to ensuring that Tasmanians have access to an effective and efficient justice system. Consistent with that commitment, this bill makes minor amendments to three acts commonly used by the courts. These amendments will clarify or improve the operation of the respective acts.

I will now briefly outline the reason behind the changes.

Amendments to the Sentencing Act 1997

Part 5A of the Sentencing Act 1997 introduced the new sentencing option of a home detention order, ensuring there is a broader range of appropriate sentencing options for the courts to apply, depending on the seriousness of the crime or the offence committed.

Home detention orders require an offender to be at a specified premises during specified times and to comply with strict conditions, including electronic monitoring. The courts have embraced this sentencing option and, as at 1 September 2019, there have been 48 home detention orders made.

With these provisions now increasingly in use, the Chief Magistrate has requested some minor amendments relating to procedural aspects of home detention orders, in particular the section in Part 5A of the Sentencing Act 1997 that sets out various powers to arrest offenders who are subject to home detention orders.

Currently a court can issue a warrant to arrest an offender where the offender fails to appear as required, or where reasonable efforts have been made to serve an offender with an application. The court may also issue a warrant to arrest an offender to whom a home detention

order relates if the offender has failed to comply with a condition of the order referred to in section 42AE(1) of the Sentencing Act 1997.

In accordance with section 42AL(4), the police may arrest an offender subject to a home detention order if the police officer believes on reasonable grounds that the offender has breached, is breaching or is about to breach, a condition of the order.

While the Sentencing Act 1997 does provide a process for offenders arrested by police, the act is silent on what occurs after the arrest on a warrant. However, the Criminal Law (Detention and Interrogation) Act 1995 requires the offender who is under lawful arrest by warrant or under the provisions of any act to be brought before a magistrate or a justice as soon as practicable unless the person is released.

If a person is arrested for an offence and brought before a justice, a justice has, subject to some exceptions not relevant for current purposes, powers under the Justices Act 1959 to grant or refuse bail to the person.

However, people arrested under a warrant issued by a court are not necessarily arrested for 'an offence'. For example, the warrant might be issued for failing to appear as required, or for breaching a condition of an order. Therefore, the provisions of the Justices Act 1959 providing a single justice with the power to grant or refuse bail for an offence would not apply for an offender arrested on a warrant under the home detention order arrest provisions.

The effect of the current provisions means that there may be increased time in custody if an offender is arrested out of hours. While the offender would still be required to appear before a single justice in an after-hours court, the justice would have no power to admit the offender to bail or remand the offender. This results in inefficiencies within the system.

This bill addresses this situation by providing a justice with the power to bail or remand an offender who has been arrested. This additional power only applies to an order made by a magistrate. A person who is subject to a home detention order made by a judge must be taken before a judge, as it is appropriate for the jurisdiction that made the original order to make decisions in regard to any subsequent action.

This bill also provides clarifying provisions in relation to the procedure when a person subject to a home detention order is arrested by police.

The bill also amends section 44 of the Sentencing Act 1997, as requested by the Chief Justice.

At present section 44 provides that:

> A court that orders an offender to pay a fine must also order that the fine be paid within 28 days.

The act is silent as to when payment is required in a situation where a court imposes a fine but makes no order as to the period of payment.

This bill addresses this by allowing a default period to apply to the payment of fines ordered by a court in the event that a court does not specify the time frame. This removal

provides clarity for those being sentenced and removes any doubt over when enforcement action can be commenced.

Amendment to the Criminal Code Act 1924

The Director of Public Prosecutions has requested the amendment to section 401 of the Criminal Code Act 1924 to provide the power to allow an appeal of an order deferring sentence.

This amendment will make the Crown's appeal rights for deferred sentences consistent with those for other sentences that can be imposed under the Sentencing Act 1997, as well as with how deferred sentences are dealt with in some other Australian jurisdictions.

The ability to defer sentencing is an effective tool for the courts to assist certain offenders to take steps towards their rehabilitation, such as drug or alcohol treatment, prior to finalising sentencing. The power to appeal an order deferring sentencing provides an appropriate balance to review it, for example, an order does not include adequate oversight to ensure community safety.

Amendment to the Criminal Law (Detention and Interrogation) Act 1995

The Chief Justice has requested an amendment to section 4 of the Criminal Law (Detention and Interrogation) Act 1995 to ensure that the current practice where a person arrested under a Supreme Court warrant is taken directly to the Supreme Court is reflected in legislation.

At present, section 4(1) of the Criminal Law (Detention and Interrogation) Act 1995 provides that:

> Subject to subsection (2), every person taken into custody must be brought before a magistrate or a justice as soon as practicable after being taken into custody unless released unconditionally or released under subsection (3) or subsection (5) or under section 34 of the Justice Act 1959.

Judges routinely issue warrants for the arrest of accused people and witnesses who have failed to attend the Supreme Court. In practice, it appears that a person who is arrested pursuant to a Supreme Court warrant is not taken before a magistrate or justice, and is instead brought before a judge as soon as practicable.

A concern has been raised that a literal interpretation of section 4(1) of the Criminal Law (Detention and Interrogation) Act 1995 may be read as to apply to individuals arrested pursuant to Supreme Court warrants.

Supreme Court proceedings would be delayed unnecessarily if, instead of being brought by police directly to the Supreme Court on an arrest warrant, a person was first brought before a magistrate or a justice. Bringing a person arrested on a Supreme Court warrant before a magistrate or justice could potentially result in longer trials and unnecessary delays.

Magistrates and justices appear to have no powers to remand or bail a person arrested on a warrant issued by a judge, so a requirement that a person be brought before a magistrate or

justice appears to serve little purpose. At times it would delay, and create unnecessary work for both courts.

To address the concern that has been raised, this bill amends the Criminal Law (Detention and Interrogation) Act 1995 to expressly provide that section 4 does not apply to persons taken into custody pursuant to arrest warrants issued by judges of the Supreme Court.

It is important for both the courts and those that use them that there is certainty in how the law is to applied. The amendments in this bill provide for that.

Mr President, I commend the bill to the House.

[7.51 p.m.]

Ms RATTRAY (McIntyre) - Mr President, a somewhat brief offering to this bill. I note the Chief Justice and the Director of Public Prosecutions have been quite busy suggesting some very reasonable amendments to these three acts.

With regard to the 48 home detention orders as at 1 September 2019, effectively 12 months out of date, what are the updated figures? Obviously, that process is working quite well.

The amendment to the Criminal Code Act 1924 has been requested by the Director of Public Prosecutions. I expect he knows exactly what he is doing and what he needs to carry out his duties. Again, I have no issue with supporting that.

The suggested amendment to the Criminal Law (Detention and Interrogation) Act, where the Chief Justice again has requested an amendment with regard to the issuing of warrants and the arrest of accused people and witnesses who have failed to attend the Supreme Court. In the interests of facilitating those, I am very happy to support them at this point in time.

[7.53 p.m.]

Mr DEAN (Windermere) - Mr President, I have a short offer too. I certainly support these amendments. They are necessary to bring things into line and put things in the right perspective.

I have been following the bracelets and home detention orders because I have seen that over a long period of time they are a good way of keeping people out of prisons. Prisons should be an absolute last resort. That is where many of our offenders, unfortunately, learn the finer things about crime and criminal activity. We should be preventing and stopping that from happening. Our prisons are crowded at the present time.

It says, where an offender was arrested on a warrant taken before a Supreme Court, they are obviously appearing before a Magistrates Court at some stage or another and that was probably slowing down the processes and is what they are talking about here.

There are no other points to make other than to simply say I support the amendments. They straighten things up and get things right.

[7.54 p.m.]

Ms FORREST (Murchison) - Mr President, we routinely get a justice legislation miscellaneous amendment bill every year. I happened to speak to the Attorney-General over the very brief dinner break we had.

Mrs Hiscutt - Thank you for your cooperation in this.

Ms FORREST - I am informed there is another one probably down the line which may be bigger than this. I made the comment to her that normally they are much bigger in comprising many more amendments and they are amendments to Justice-related legislation. Nearly always, or I would say without exception, these come from recommendations from those operating within our court and justice systems to sort out problems or inconsistencies that occur through the use of legislation. As we have often admitted in this place, we do not always get everything exactly right. It takes sometimes the application of the act to see how it does not quite work.

These amendments essentially clear up some of those inconsistencies or some of those potential conflicts and inconsistencies on the advice of those working in Justice, the magistrates and others. They are appropriate measures. They are not exerting an additional power that should not be there or anything like that. On that basis I am happy to support the bill.

[7.56 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, there was only one question from the member for McIntyre. As at 31 January 2020, the courts have issued 114 home detention orders and they have been imposed ranging from one month to 18 months. The average length of order to date has been six months.

Bill read the second time.

JUSTICE LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2020 (No. 39)

In Committee

Clauses 1 to 10 agreed to and bill taken through the remainder of the Committee stage.

POLICE LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2019 (No. 44)

Second Reading

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

That the bill now be read the second time.

The purpose of the bill is to make miscellaneous amendments to several acts administered by the Department of Police, Fire and Emergency Management to correct issues that have been identified as a result of prior legislative reform or to enhance the operation of existing provisions.

The acts to be amended include the Community Protection (Offender Reporting) Act 2005, Road Safety (Alcohol and Drugs) Act 1970, Police Powers (Vehicle Interception) Act 2000, and Police Offences Act 1935. I will now summarise the changes relating to each of these.

The Community Protection (Offender Reporting) Act 2005 is the Tasmanian legislation that establishes the state's sex offenders register. Under the act, offenders who commit certain serious offences can be declared reportable offenders, requiring them to report to police to reduce the likelihood of reoffending. The act also recognises reportable offenders from other Australian jurisdictions and New Zealand.

In 2017, capability was added to the act to place further restrictions on some reportable offenders, in the form of a community protection order. Where a magistrate is satisfied that a reportable offender poses a risk to the safety or wellbeing of any child or children, the magistrate may make an order that includes conditions requiring that the reportable offender:

- not associate with or contact certain persons;
- not be present at, or in the vicinity of, specified places;
- not undertake employment of a specified kind;
- not consume alcohol or drugs; or
- not engage in movement or conduct of a specified kind.

Where an offender breaches a condition of such an order, an offence provision is provided at section 33A of the act. When community protection orders were added to the act in 2017, no provision was made at the time for recognition of similar orders made in other jurisdictions. The bill seeks to address this by making amendments to the Community Protection (Offender Reporting) Act 2005 to recognise equivalent orders made in other Australian states and territories and New Zealand.

Moving to the Police Offences Act 1935, Division 2 of Part IVA of that act contains provisions allowing for the confiscation or clamping of vehicles used in the commission of certain offences. The relevant offences are defined as prescribed offences in section 37K of the act, and includes offences against section 32 of the Traffic Act 1925.

In September 2017, the offence of dangerous driving was moved from section 32 of the Traffic Act 1925 to the Criminal Code and made a crime by the Criminal Code Amendment (Dangerous Driving) Act 2017. An unintended consequence of this move is that dangerous driving offences are no longer covered by the confiscation or clamping provisions.

The bill will amend the Police Offences Act 1935 to include the crimes of dangerous driving, causing death by dangerous driving, and dangerous driving causing grievous bodily harm as confiscation or clamping offences.

A further amendment to the Police Offences Act 1935 relates to a reference to the Road Rules 2009 in section 47. These rules are due to expire at the end of 2019 and will be remade as the Road Rules 2019. To address this, the bill will amend the act to refer simply to the Road Rules allowing for transition between the Road Rules 2009 and the Road Rules 2019, and any subsequent Road Rules, without needing to amend the act, this form of citation being provided for in the short title of the Rules.

The Road Safety (Alcohol and Drugs) Act 1970 is the legislation that creates the offences for drink and drug driving in Tasmania and provides police with the authority to test drivers. In 2018, a number of amendments were made to this act, including a process change allowing police to collect samples of oral fluid from drivers for laboratory analysis, following a positive roadside screening test for drugs. Prior to this, it was required that a blood sample be obtained. However, in making this change, there were two inadvertent omissions.

The first relates to evidentiary certificates for the taking, and delivery of oral fluid samples. Section 27 of the Road Safety (Alcohol and Drugs) Act 1970 allows for evidence of the taking, handling and delivery of a blood sample to be given by an evidentiary certificate, rather than requiring those involved to give evidence. However, no similar provision was inserted to cover the taking and delivery of oral fluid samples. This bill will rectify that omission.

The second issue relates to the Police Powers (Vehicle Interception) Act 2000. This act contains the offence of evading police, which was expanded in 2017 to provide a further offence of evading police with aggravating circumstances, with one of these aggravating circumstances being that the driver was committing a drink- or drug-driving offence at the time of the evasion.

As a result of the overlapping development of the respective amending acts, the aggravating circumstances in regard to drug driving refers to the presence of an illicit drug in the driver's breath or blood and not to the presence in their oral fluid. The bill will amend the Police Powers (Vehicle Interception) Act 2005 to rectify this issue.

Mr President, the bill will become law on the day on which it receives royal assent.

I commend the bill to the House.

[8.07 p.m.]

Mr DEAN (Windermere) - Mr President, 35 years of my life and I still cannot get away from it. A big part of my work in my electorate is still police issues. People still come to me for advice. In fact, they come to me for advice from right around Tasmania, not just in my electorate. I had a guy come to me the other day from Port Arthur wanting advice.

Mr PRESIDENT - It is a good thing you kept the flashing lights for your car.

Ms Forrest - And the handcuffs. You should not have given them back.

Mr DEAN - I kept my handcuffs and my baton. I kept a few other things.

There will be support for these amendments to cover these changes. They are needed and they simply straighten up a few issues in the legislation. There will be strong support for any change in the Community Protection (Offender Reporting) Act 2005, particularly involving declared reportable offenders.

In this case the amendment is to recognise criminal orders made in other Australian states and territories and New Zealand. There are probably more people from New Zealand in this country than there are Australians so we need to ensure that we have -

Ms Forrest - I am not sure that is the case now with COVID-19. COVID-19 has sorted some of them out.

Mr DEAN - It probably still would be the case because they would not have been able to return to New Zealand -

These are good orders. I support any legislative amendment that will remove risk, safety issues or wellbeing issues where our most vulnerable are involved and that is our children. We read every day now about offences being committed against children - paedophilic activity. It just goes on. I read in the paper the other day of where they had busted another ring of senior people involved in their activities with young children. It really defies common sense. You just cannot comprehend -

Ms Forrest - The vice of humanity.

Mr DEAN - Yes. You just cannot comprehend the actions of them, paying parents in other countries to have their children raped and filmed. You just really cannot understand.

Ms Forrest - It is not just other countries where that happens.

Mr DEAN - No, it is not, but this was in the paper the other day. I read it and you have cold shivers run up your back. It is horrendous. It ruins their lives forever, and it is a sad situation.

With this amendment, a breach of a New Zealand order was taken as a breach that is actionable here in Tasmania, and is an offence here and punishable here, as I understand it when I read the act. I take it, though, that no order that is actionable here from another country - from New Zealand, say - can be altered in any way in this state. It must remain as it was issued, I would suspect, in the first place from the other country, for instance New Zealand. There can be no changes or amendments made to it.

Mrs Hiscutt - While the member is on his feet, Mr President, I can confirm that.

Mr DEAN - That is interesting.

Dangerous driving and the issues around that - causing death by dangerous driving, and dangerous driving causing grievous bodily harm - in the Police Offences Act fixes the anomaly

we did not pick up when previous amendments were made to move these offences to crimes in the Criminal Code, confiscating and clamping the vehicles involved.

The member for Elwick asked me, at lunchtime I think, what police have been doing in this situation of clamping and taking possession of these vehicles in dangerous driving situations. My response to the member was that the police would use the 'ways and means' act. It is a well-known act. I am sure the police would have acted properly, and they would have acted in accordance with the law, or what they believed to be right in all of the circumstances.

Ms Forrest - And thus identified the need for this amendment.

Mr DEAN - And thus identified the need for this amendment. During the time between that change and now, have any crimes of dangerous driving, deaths and grievous bodily harm crimes resulted in confiscation and clamping of the vehicles involved? Obviously, the answer to that is yes. It will be interesting to see how many, and what has happened there.

I do not need to comment on the road rules change, as it is a simple amendment to the Police Offences Act to pick up the expiration of the Road Rules 2009 and their expiration in 2019. That 10-year period arises as with all regulations. There is a 10-year sunset clause on them. We are all aware of that in this place, all of the older or previous serving members. Maybe the newer members might not be.

Amendments regarding the taking and the delivery of oral fluid samples under the Road Safety (Alcohol and Drugs) Act 1970, again, is done to rectify an omission. I was interested in the recent figures released in New South Wales on road deaths. I have raised that in this place many times, too. More deaths have occurred that are drug-related than alcohol-related. It took me some time to get that through the system. I have been harping on that for some time.

Ms Forrest - As a result of vehicle crashes?

Mr DEAN - Yes, vehicle crashes.

Ms Forrest - There are more drug drivers? There is a higher fatality rate?

Mr DEAN - Yes. There are higher numbers of deaths through people with drugs in their systems when driving than alcohol. It was always the case that the testing of drug drivers was an impediment and that was clear. I had information provided to me in relation to this, and that the budget would not provide for the numbers of drug testing that officers wanted to do. They were restricted in that to some extent.

Ms Forrest - That was a cost prohibition mostly, was it?

Mr DEAN - Yes it was. I have been pulled up, as any of you here would have been, for breath testing. I would be surprised if you have not. Have any of you been asked to provide a sample for testing for drugs?

Ms Rattray - I have had a breathalyser test but I have never been asked to take a drug test.

Mr DEAN - Who has had an oral fluid test, or whatever it is for drugs? I have never had one.

Mr Willie - While evading the police?

Mr PRESIDENT - They are taking notes.

Mr DEAN - The other rectification here relates to the offence crime of evading police in aggravating circumstances. The amendment seems a bit of a nonsense for me because whether or not the illicit drug is found in their breath, blood or oral fluid, it is in the body of the subject. The amendment fixes this issue.

Evade police, aggravating circumstances should be a crime. It is seen as a game by many offenders and the risk of death or serious harm to anybody else on the road, innocent people, is of no concern to many of these morons. If you get the statistics in relation to the numbers of people evading police, it is enormous.

Read the papers and you will see, day after day, offenders in there for evading police and I am very surprised that we do not have far more deaths as a result of these imbeciles behaving in the way they do. It is seen as a game to them.

Ms Forrest - That is why police do not chase generally, is it not?

Mr DEAN - That is right. They do not chase because it involves more risk to the people on the roads, pedestrians and everybody else, and more risk to them as well.

Ms Rattray - There is a 'no pursuit' policy, is there not?

Mr DEAN - The department has policies and the offenders know what the policies are as well. They have a very good understanding of it, hence the reason they take off, knowing full well that they cannot be chased. It is interesting now with police in the position of being able to use drones and so on, as to how much they are being used in this area and as to whether or not more of these people will be caught at the time, or close to the time of the offences. It is a pretty poor situation that we have in that area.

In '18-19, there were 409 offenders proceeded against for evade and 285 were charged with the more serious offence of aggravating circumstances.

Mr Valentine - Did you say '18-19?

Mr DEAN - Yes, 2018-19.

Mr Valentine - I thought you had gone back in history then.

Mr DEAN - Mr President, with some people, you have to spell it right out.

Mr PRESIDENT - It is just that each time you speak, you go back 100 years.

Mr DEAN - In 2018-19, 409 - that is the number of people they were able to catch up with. I suspect there would have been evaders who would have gotten away, had false plates on their vehicles and all of those other things that they do, stolen vehicles and goodness knows what else. These are the ones they have caught up with, and 285 for the more serious offence

of aggravating circumstances. Really, it is not good enough. Almost six a week committing this crime or being caught and some get away.

Having said that, I support the amendments. They are necessary and they clear up some issues and problems. I support the bill.

[8.19 p.m.]

Mr WILLIE (Elwick) - Mr President, I have a couple of questions from the second reading speech. We support the bill and there are some good protections in here for the community.

In terms of protection orders from other jurisdictions and being able to implement further restrictions on those, I am interested in the number we are talking about. How many in any given year are in Tasmania from other jurisdictions and the number we are talking about providing further restrictions if needed?

Mrs Hiscutt - We will try to have a look to see if we have those figures. We might not have them here but we will look at it.

Mr WILLIE - I am interested because this is three years ago so there is a number of people the authorities have not been able to provide the restriction to.

My other question is on dangerous driving, again, that was 2017. I remember debating that bill in this House including the provision police could enact evading police laws after the fact. They did not have to catch them in the act, which was a huge problem at the time. Obviously, there was an oversight at the time where the police could not confiscate or clamp for dangerous driving. What number of dangerous drivers have there been since that time and did police confiscate or clamp any vehicles in that time? How did they do that given the legislation was not right?

Mr Dean - Maybe the legislation should be retrospective.

Mr WILLIE - Potentially. The other question is on road rules. It has been a long time. Where I was heading was obviously the Government wanted to pass this bill a long time ago, but they have expired. They were due to expire in 2019.

Ms Forrest - They were remade within the time frame.

Mrs Hiscutt - Yes, but they were different numbered.

Ms Forrest - They are always a bit different.

Mrs Hiscutt - They have been remade.

Ms Forrest - The regs have been remade and went through Sub Leg.

Mr WILLIE - You have answered my question. Thank you very much, member for Murchison, who sits on the Subordinate Legislation Committee and has seen those remade.

The other question is the oral testing. In 2018 those provisions were put in the act. What legislative framework has been in place for that to occur since then? It is obviously being rectified now because it says 'no similar provision was inserted to cover the taking and delivering of oral fluid samples'? Has that been taking place since 2018 and, if so, how?

They are the only questions I have. Hopefully, we can get a few answers but thanks to the member for Murchison for her insight.

[8.23 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, one of the member for Elwick's questions was the same as one for Windermere so we have covered both.

Talking about dangerous driving, no vehicles have been clamped or confiscated under the provision for dangerous driving since the amendment in 2017, hence the need for this amendment. However, section 32 of the Traffic Act 1925 still retains the ability to clamp or confiscate for negligent or reckless driving. Despite the omission, vehicles involved in serious crashes, especially involving fatalities, may be seized briefly for examination or for longer periods under coronial legislation where there is a death.

With regard to your question about oral testing, because there was no evidentiary certificate that could be issued they had to go to court to do that, to sort that one out and we are still looking for some numbers for you.

I have a bit more to add, Mr President, and there is still some more coming. We are busily seeking some information for you.

The number of community protection orders is very small. Only four have been issued in Tasmania. Other states are doing similarly small numbers and consequently the numbers of affected people coming to Tasmania is very small. We do not have actual numbers but there may not have been any.

Community protection orders are different from offender reporting orders. Member for Elwick, if that does not answer your question, maybe put it on the Notice Paper because we need a bit more time to look up more stuff.

I have one more thing to look up for the member for Elwick. I will not be a moment.

Mr President, the reference to the road rules relates not to an offence provision but to permits for motor vehicle races. The provision is currently out of date, given the delay with the bill, but the amendment will correct this issue.

I hope that answers your question.

Bill read the second time.

POLICE LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2019 (No. 44)

In Committee

Part 1, clauses 1 and 2 agreed to.

Part 2, clauses 3 and 4 agreed to.

Clause 5 -
Section 3A - Community protection order

Mr DEAN - It is wise to look at clause 5(c) where it says -

> an order made and in force in a State or Territory, or in New Zealand, that corresponds, or substantially corresponds, with an order made under section 10A or 10B.

I take it that is our legislation.

So when it says it 'substantially corresponds', in other words, an order must be written out very similar to the way in which our orders are issued and written out because I could see that there would be substantial differences, I would have thought, with another country - New Zealand - with reference to certain parts of what might be an order compared with here, say. I am just wondering how closely they have got to resemble our orders to be actionable here?

Mrs HISCUTT - That is a fair enough question. I will just seek some advice. What it means is it is not the form of the order but it is the legislation creating the order that is substantially the same. So the backing, the bit behind it that makes the order has to be substantially the same. That is why we would be with New Zealand; I would imagine they would be substantially the same. It is the legislation.

Mr DEAN - Just so I have that clear, so it is the legislation under which the order has been made that has to be similar to our statutes or our legislation here? It does not matter what the order is or how the order is written out or what the order looks like. That is what you are saying, as I understand it?

Mrs HISCUTT - Yes, it is. While the member is on his feet, as long as the legislation stipulates (a), (b), (c), (d) and (e) which is similar to what ours stipulates, then that is fine. That is the way it is.

Mr DEAN - Corresponds with an order made under section 10. Sorry, I am just reading, the way it reads here, 'that corresponds or substantially corresponds with an order made under section 10A or 10B'. I interpret that as the document identifying the order must be written in such a way that it is very similar to ours - similar orders that would be made here. But you are saying no, that is not the case. You are saying it is the legislation that must be similar. Just so I get some clarity on that because I am reading what it says in the bill.

Mrs HISCUTT - I will just seek some advice. The legislation has to create an order of the same character. It is the type of orders that can be issued, not the wording or the actual order.

If the member has time at a later date, you might like to go to the act itself, Community Protection (Offender Reporting) Act 2005 and look at parts 10A and 10B. It stipulates there what the order takes into account and what they can do. If that part in our act is similar to a New Zealand order when it comes out, that is fine.

For example, 10A of the bill says -

> The reportable offender consuming alcohol as defined in the Alcohol and Drug Dependency Act 1968.

If the other legislation in New Zealand was similar to that, no alcohol to be consumed depending on what, yes. So long as it is similar to those two sections.

Clause 5 agreed.

Clause 6 -
Section 33A amended (Failure to comply with community protection order)

Ms RATTRAY - With regard to this clause, Failure to comply with community protection order, I would like to have a clarification. According to the clause notes, this -

> Amends the offence provision in section 33A for breaches of community protection orders to utilise the new definition of community protection order in section 3A (inserted by clause 5).

I take it we no longer refer to a reportable offender, it is referring to a person. Is that what that means? I do not have the act front of me and I am interested in what the explanation or clarification is, thank you Leader.

Mrs Hiscutt - I do not think that is what it means and I will get some clarification.

Ms RATTRAY - It says 'omitting reportable offender (twice occurring) and substituting 'person'.

Mrs HISCUTT - Community protection - a reportable offender is anyone from the register. A community protection order can be applied to reportable offenders, but are very rare. The new definition of community protection order omits the term 'reportable offender' only to more easily capture equivalent orders from other jurisdictions.

Clause 6 agreed.

Clauses 7 to 18 agreed to and bill taken through remainder of the Committee stage.

ORDER OF BUSINESS

[8.41 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, as we still have 20 minutes left before 9.00 p.m. I propose to read the MARPOL second reading speech and then adjourn, and members will know where we are going for tomorrow.

Mr President, I move -

> That intervening business be deferred until after consideration of Order of the Day No. 6.

Motion agreed to.

MARINE-RELATED INCIDENTS (MARPOL IMPLEMENTATION) BILL 2019 (No. 37)

Second Reading

[8.43 p.m.]

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

> That the bill be now read the second time.

The purpose of the bill is to protect the state's waters from pollution and give effect to the International Convention for the Prevention of Pollution from Ships, otherwise referred to as the MARPOL Convention. Australia is a signatory to the convention and it is important that we play our part in maintaining a healthy marine environment.

The bill protects waters up to 3 nautical miles from our coastline, whether a pollution event occurs within that distance, or the pollutant has originated from outside state waters. The main strength of the bill is that it improves the Government's capacity to respond to and police any such event. The bill is also consistent with the equivalent legislation in other jurisdictions, and with the Commonwealth legislation that protects Australian waters.

Clean seas are important to Tasmania's economy, recreation and future prosperity. The bill, if enacted, will play a fundamental and vital role in protecting Tasmania's environment and interests. It will also help us to meet our broader national and international commitments and obligations. The bill achieves its purpose of protecting our marine environment in five significant ways.

First, it replaces the existing Pollution of Waters by Oil and Noxious Substances Act 1987, which is outdated and only gives partial effect to the MARPOL Convention.

Second, the bill contains provisions to prohibit actions that could pollute our seawater with oil or oily mixtures, other noxious liquid substances, packaged harmful substances, sewage or garbage.

Third, the bill removes the possibility of a party to a pollution event evading the legal, financial and environmental consequences of their actions. This can be a major problem for regulators due to the complex and often obscure relationships between shipowners, operators and charterers. To deal with this issue, relevant offences under the bill will now apply to each of the ship's master, charterer and owner. Other responsible individuals are also captured by the bill's provisions. People whose reckless or negligent conduct leads to the discharge of a pollutant will be guilty of an offence, as will those who knowingly cause a discharge.

Fourthly, the bill provides the power for courts to impose significant penalties on individual and corporate polluters. For example, for a very serious offence the court may impose a prison term of up to four years or an individual penalty of nearly $1 million, and a maximum corporate penalty of nearly $4 million. These serious penalties emphasise the Government's resolve to protect state waters and will make it clear to any irresponsible shipowners and ship operators our seas are not a dumping ground for their waste.

The penalties are also consistent with those applying in other states and at the Commonwealth level. Penalties for relatively minor offences are proposed to be dealt with in Regulations prepared under the provisions of the bill. Marine pollution events can be very costly to manage and clean up. Therefore, the fifth key element of the bill is it allows the state to recover these costs, instead of the community having to fit the bill.

Parts 2 to 6 of the bill provide the core provisions for preventing pollution from a wide range of liquid and other noxious substances. They also describe the main offences and related penalties. For example, Part 2 deals with the discharge of oil or oily mixtures into state waters, and its provisions are similar to those used elsewhere in the bill. Oil-based pollutants are unfortunately one of the most common and also one of the most difficult problems to deal with in the marine environment. Their discharge into the sea is therefore banned, unless required for ship safety or to save lives. Exclusions may apply, subject to strict conditions such as ship location, size and diluted oil concentration.

Importantly, the bill establishes a duty to report actual or potential pollution incidents to a prescribed officer. Timely and truthful reporting from those involved is critical to the effective management of marine discharges and it will be an offence not to do so.

Part 3 of the bill covers an important aspect of marine pollution risk by prohibiting the carriage of unevaluated substances into state waters. If a potential pollutant is brought into our waters there needs to be a record of what it is so that an appropriate response can be formulated in the event of an emergency. Marine pollution spills not only occur when a ship is travelling across the sea; they can also happen when materials are being transferred from a ship to the shore, or vice versa. The Part 7 provisions make it an offence to discharge pollutants into state waters during such transfers.

I am pleased to advise that the State Marine Pollution Committee will continue its important administrative and oversight role under the new act. The committee's job will be to coordinate and support a quick response to any actual or threatened marine pollution incident.

The Director EPA will continue to chair the committee and report to the responsible minister. Committee members will include representatives from all relevant government

agencies, the Local Government Association of Tasmania, the TasPorts Corporation, the Australian Marine Oil Spill Centre and the Australian Maritime Safety Authority.

An incident controller will take immediate responsibility for the management of operations on behalf of the committee. The incident controller will in turn mobilise trained and experienced staff from a range of agencies and other organisations to do whatever hands-on work is required.

In the unlikely but potentially catastrophic event of a marine spill, it may be necessary for the responsible minister to declare an emergency, so the incident can be dealt with quickly and efficiently. The bill therefore allows the minister to suspend any state law, or part of a law relating to the state's physical environment, for a period of up to two weeks.

The minister must have reasonable and urgent grounds for doing so, including the requirement the situation poses a grave and imminent threat to the state and its waters. An important safeguard is the law to be suspended must be inconsistent with the urgent action, or would otherwise impede it.

During an emergency, it may also be necessary to provide a place where waste can be stored. The director is therefore empowered to direct the owner or occupier of a port, terminal or ship repair facility to store waste arising from ship repairs, or to offload waste from a ship involved in an emergency. This will strengthen existing administrative and practical arrangements for storing marine pollution waste at suitable locations around the state.

In addition, the bill also establishes the very important role of an inspector to undertake investigations, gather evidence and give appropriate directions to a ship's master or to any relevant land occupier. An inspector may also take possession of relevant items or facilities if the situation demands it. The inspector may be a police officer, the director, or a person appointed by the director, the Australian Maritime Safety Authority or a harbourmaster.

Importantly, the director may also detain an Australian or foreign ship in state waters if there are clear grounds for believing the ship has been involved in a marine pollutant spill. The ship must be released if financial security has been provided or legal proceedings have been discontinued.

In addition, this bill empowers the director to take any practical preventative or clean-up action required to limit environmental damage during a critical event, or to safeguard human or animal life. This is just one aspect in which the bill strengthens the role of the director in responding to and managing marine pollution events. This could involve the deployment of machinery or human resources. It may also mean restricting public access to affected areas so the public is protected from any contamination and the response team can get on with their job.

I mentioned earlier the bill allows for recovery of any costs associated with a marine pollution event in state waters. These costs can be very large and it is entirely appropriate that they be passed back to those responsible for the pollution. Therefore, it is vital the Crown be able to recover any costs for preventing or cleaning up a spill. There may also be substantial legal costs if court action is required to deal with offenders, and these should also be recoverable.

I am pleased to advise the House the bill provides substantial powers to recover both types of cost. In addition, a port manager, government department or individual are not restricted by the bill in claiming or recovering damages arising from a marine pollutant spill in state waters.

In terms of consultation, the bill was released for a period of key stakeholder comment during June and July 2019, demonstrating this Government's commitment to listen to the views and concerns of industry and agencies involved in marine management. Comments were received from the Australian Maritime Safety Authority, Local Government Association of Tasmania, TasPorts, Marine and Safety Tasmania, Huon Aquaculture, and the Department of Police, Fire and Emergency Management. Their valuable comments were largely positive, and helped to inform the finalisation of this bill.

In conclusion, it is important the shipping industry has certainty about their rights and requirements when operating in Tasmanian waters. The legislative changes brought together in this bill leave no doubt as to the environmental requirements expected by this Government and the community. The bill provides the legal foundation for a modern, proactive approach to managing marine pollution, in line with our national legislation and international commitments. It will enable the Government to deal quickly and effectively with any significant marine pollution event, to recover the costs incurred, and to make sure that offenders receive the appropriate penalties.

Mr President, I commend the bill to the House.

Debate adjourned.

ADJOURNMENT

[8.55 p.m.]

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

> That the Council at its rising adjourns until 11 a.m. on Thursday 17 September 2020.

I remind the members that we have a 9.00 a.m. briefing tomorrow morning, as requested by the member for Windermere, in Committee Room 2. At 10.00 a.m., after the briefing, we will have the Police Offences Amendment (Repeal of Begging) Bill 2019, then we will deal with the Land Use Planning and Approvals Amendment (Major Projects) Bill 2020, the Marine-Related Incidents (MARPOL Implementation) Bill 2019, and, of course, the condolence motion for Tony Fletcher at 3.00 p.m.

Motion agreed to.

MAIB and NDIS - Person-Centred Support Failure

[8.56 p.m.]

Ms FORREST (Murchison) - Mr President, I will make a brief contribution on adjournment. This matter came to my office just a few days ago and disturbed me to the point that I asked the people involved if they would mind me sharing their story on the adjournment here and ask the Government if it is able to assist in any way.

The email and communication came from a behavioural specialist in Wynyard who works with people with severe and complex disabilities, who are funded by the NDIS.

I am going to quote her email -

> I am writing to you today as a personal matter … on behalf of my long-term friend, Melissa Reyenga who is currently in my office distraught and on the edge of a complete breakdown due to bureaucratic systemic oppression that continues to traumatise and neglect her son, Josh.
>
> Melissa's youngest son, Josh, was involved in a serious car incident nearly three years ago, which resulted in catastrophic injury.
>
> Josh has a severe traumatic brain injury, is a quadriplegic and has lost all bodily function.
>
> Josh was placed in an MAIB house with five other, much older clients. Josh is 21 years old.
>
> The care within the MAIB house has been reportedly negligent and as a mother myself, absolutely heartbreaking.
>
> Josh is peg-fed and requires 2:1 supports 24/7. Melissa and husband, Danny, are fearful for Josh's wellbeing in his current situation, and his current levels of funded supports.
>
> Melissa and Danny have desperately pleaded for Josh to be able to move into a supported independent living unit, as the current MAIB house is inappropriate for Josh's needs.
>
> The long-term goal is for Josh to be at home with them in a purpose-built house with adequate and appropriate care.
>
> Josh has no voice and not even a functional communication system as MAIB will not fund any other speech pathologist apart from their own.
>
> Melissa and Danny have put in several requests for the NDIS to partially fund the gap but MAIB are saying they will not fund in regard to appropriately qualified therapists and an appropriate accommodation setting.

> Yesterday, the NDIS rejected the request for funding to supplement MAIB care so Josh can be moved into a more appropriate accommodation setting with appropriate supports.
>
> MAIB report they can only fund partially independent support, despite several reports stating Josh requires at least 1:1 support and many activities such as transfers at 2:1 support.
>
> The NDIS refuse to pay the gap because they say it's MAIB's obligation to fund.

Imagine being in this situation. They have attached the MAIB document which I will briefly quote from in just a moment -

> Despite the horrendous things I see every day with regard to a broken system - high suicide rates, both children and adults, increasing mental illness with a lack of adequate supports or access to tertiary mental health services, the second-highest Huntington Disease rate in the world, children with severe trauma symptoms and not enough therapists to do the therapeutic work, inhumane treatment of people in group homes and ongoing institutionalised care - this is the first time I have reached out.
>
> We don't know who else to talk to. Melissa has a great team around her although no one seems to be able to explain or fix this family's current situation which is all about funding, not person-centred supports at all.
>
> These parents are broken. Their son appears to have fallen into a loophole between two bureaucratic systems who continue to pass the blame and no-one is willing to fund appropriate services for a 21-year-old boy who will require enormous amounts of support for the rest of his life.
>
> Melissa and Danny are not asking for the world, however, human dignity and decency with access to appropriately funded services to adequately care for their son who will continue to require a huge amount of support for their rest of his life.

I challenge anyone to think that they would not want that for their child -

> The MAIB have pointed to the fact that this family must fill the gap in supports. This will mean when Josh resides outside the current facility/share house that his family will need to fill the gap in supports of approximately 100 hours per week, including active night shifts. This will render the family to a life of poverty, unable to complete their home for Josh to return to when modified.
>
> For the most part, the NDIS has been revolutionary for people with a disability. However, there are gaping cracks.
>
> Melissa and Danny feel they have nowhere else to go and don't know what to do next. Surely in a system that is supposed to support people with a

> disability they can't refuse to fund cases that are certainly not black and white and do not fit into pre-prescribed boxes. Despite being told Josh requires level 3 complex care, his current disability support agency are only able to provide level 2 support due to funding.
>
> This is not right, Ruth.

They go on to ask for an opportunity to sit down with me and have a chat, which I will do when I get back to Wynyard.

I want to go to the MAIB letter, which sets out Josh's requirements; effectively they are saying there are two scenarios: one scenario sees a shortfall of 67.2 hours; the other scenario sees a shortfall of 103.71 hours. I will just read the MAIB commentary on those scenarios -

> Scenario 1, above, details a shortfall of 67.2 hours of required care if Joshua is to reside in private accommodation whereas scenario 2 details a shortfall of 103.71 hours. This would need to be satisfactorily managed via either gratuitous care or funded care from an alternate funding provider to be MAIB.
>
> Further to this, there will be variables to the total fundable hours that will exist in Josh's support plan that will need to be accounted for, such as the rate at which care is provided and any temporary additional need as recommended by a qualified professional or, if treatment or rehabilitation sessions are not attended, additional attendant care will be required at these times for Joshua.

And there is at least a positive in this -

> The MAIB are committed to working with you both, building a support plan for Joshua until we are able to confirm the final arrangements.

Mr President, this is a broken family. They have been dealing with this for some time now. It is the first they have come to me and brought it to my attention. What we have here is a bureaucratic nightmare with a young person with serious needs and a family struggling to care for him and provide the care they really want to be able to give. I just hope the Minister for Disability Services and Community Development - and the MAIB is a GBE with a shareholder minister who I believe is Mr Ferguson and I will be contacting him after I have met with this family, but I wanted to raise it now. It is such an urgent problem that I would be happy -

Mrs Hiscutt - Usually when something like this is raised, I send the *Hansard.* Would you still like me to do that?

Ms FORREST - I would absolutely like you to do that because I will not be back up in Wynyard until after next week because we are here for two weeks.

Mrs Hiscutt - When the *Hansard* is out, that is usually what we do, so we will do that.

Ms FORREST - Yes, that would be helpful if you could do that because I hope to be able to go to them with some sort of commitment that this will be worked out so they can be

supported because it is not good enough. It could be any one of our children tomorrow or today.

Mrs Hiscutt - I will do my bit and you keep doing your bit.

Ms FORREST - Yes. Mr President, I appreciate members' time to listen to that story. It is a harrowing story and I will update members along the way, hopefully with good news, but thanks for the indulgence of the Council.

The Council adjourned at 9.05 p.m.