PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Thursday 11 November 2021

REVISED EDITION

Contents

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The President, **Mr Farrell**, took the Chair at 12 p.m., acknowledged the Traditional People and read Prayers.

LEAVE OF ABSENCE

Member for Pembroke - Ms Siejka

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

> That the honourable member for Pembroke, Ms Siejka, be granted leave of absence from the service of the Council for this day's sitting.

Leave granted.

MOTION

Suspension of Standing Order 26

[12.06 p.m.]

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

> That so much of Standing Orders be suspended for this day's sitting to allow for the Council to sit beyond 1.00 p.m.

This is to sit through the usual lunchbreak.

Ms RATTRAY (McIntyre) - Just one question, Mr President. It is not usual procedure that we do not get a lunchbreak. I know the Leader suggested that we can move in and out of the Chamber. There are other people to consider here, including Clerks and staff. I would like to know if they have been consulted in regard to this. I think it is appropriate to ask that question before we vote.

Ms LOVELL (Rumney) - Mr President, I will flag that at this stage I am inclined to support the motion. However, I do want to put a couple of things on record. It is an unusual practice. We have started late today and we do have a lot of business to get through. I know it is not as easy for Independent members in particular to be able to move in and out of the Chamber and eat and watch what is happening in the Chamber, as it might be for those of us who are in a party and have colleagues who we can rely on. In light of that the reason that I am supporting this is because the business that will happen today over the lunchbreak is something that people will have an opportunity to review in terms of second reading speeches before we have to make any decisions in the Committee stage or in further stages of this debate.

I also want to flag, as I did flag with the Leader when we spoke about this earlier, that if we are going to sit late we do need at least one meal break today. We need to ensure that there is a break later in the day for dinner if we are working through lunch, and to support what the member for McIntyre said about the staff, which I understand is something that has been taken into consideration.

Ms WEBB (Nelson) - Mr President, I want to put on the record that it is quite unfortunate that this was not flagged with us earlier. Very shortly I will be on my feet as part of the business of the day. I will be on my feet for some hours making my contribution. Now, my understanding was I would have probably started that before our lunchbreak, then I would have had a lunchbreak, then I would have come back to continue that in this place. I have not been able to plan for the fact that I will now, without a lunchbreak, be on my feet for that period of time.

Now, I am not saying this is a 'poor me', I am quite prepared to do it. But even a heads-up so I could have planned to have eaten prior to this session would have been useful. I do not see that there is any benefit in having members put into the position of missing the designated lunchbreak without warning, when they are expecting to be making their contribution across that time, which we were all well aware I would be doing.

The Leader was well aware my contribution was of some duration. We discussed it yesterday. I am going to put on the record even a short lunchbreak during the normal period of time would be appreciated, so that I am not put in that position without having being given notice.

Mr VALENTINE (Hobart) - Mr President, I did not know this would be put forward. To be fair to all concerned, I do want to listen to presentations from individuals. It is all very well to say, we can review it. We can review it, but getting the time to review it is always the issue.

If we had a half-hour lunchbreak - I know that is a short period of time, but it is doable. I would be prepared to do a half an hour lunchbreak at 1 pm until 1.30 pm. That is my position on it.

Dr SEIDEL (Huon) - Mr President, I am inclined not to support the motion. It is not the lunch; it is meant to be a break, and some members may have had briefings arranged or meetings with stakeholders. Realistically, it is a break one way or the other, whether we have a break later today, or an ordinary lunchbreak. I am not clear that the case has been made why we have to suspend Standing Orders for that. It is just not clear to me what the urgency is to go through it now. I am inclined, at this stage, not to support the motion.

Ms FORREST (Murchison) - Mr President, I respect the views of others around this Chamber, and I note the member for Hobart's comments. I wonder whether the motion could be amended, or if we need to amend it, so that we sit beyond 1 o'clock, then break. Or do we oppose this motion, and have a motion that when you move suspension, you move to return at 1.30pm, rather than 2.30pm? Does that breach Standing Orders? Do we need to have a different motion prepared? In which case we probably need to do that first.

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - In summing up, Mr President. As to your first question, member for McIntyre, I did ask the Clerks to draft this, so they were aware of that.

I take into consideration what other members have said, bearing in mind, the member for Nelson will more than likely be on her feet if we pass this motion as it stands. Maybe when the member for Nelson has delivered, to the degree that she needs a break, we could suspend at that stage for a half-hour lunchbreak. Other than that, you might not even get on your feet before 1 o'clock as it is.

Ms Webb - While you are your feet, Leader. Since I cannot see the clock when I am delivering my address, it is a pretty big expectation to expect me to be the one to call it. I would prefer it to be a definite time. Why can it not just be 1 o'clock, and we do a shorter time?

Mrs HISCUTT - If that is the case, I suggest, Mr President, that we pass this motion as it is, and I will make a commitment to look at the clock, and at 1 o'clock I will call a half-hour lunchbreak. I will ask whoever is on their feet at that time to call adjournment on the bill.

Ms Forrest - Is that in order with our Standing Orders? Normally we come back at 2.30.

Mrs HISCUTT - I will take some advice. Advice from the Clerk is that once this motion is passed, that is what it is, and if at any time we decide to adjourn the debate for a short break, or suspend the sitting, we are able to that.

I certainly can keep you abreast of the time.

Motion agreed to.

GAMING CONTROL AMENDMENT (FUTURE GAMING MARKET) BILL 2021 (No. 45)

Second Reading

Continued from 10 November 2021 (page 76).

[12.14 p.m.]

Mr VALENTINE (Hobart) - Mr President, I will share a couple of things on the record, from *A blueprint for preventing and minimising harm from electronic gambling machines in the ACT*, by Charles Livingstone, Gambling and Social Determinants Unit, School of Public Health and Preventive Medicine, September 2018.

There are two things in it that I thought were worth sharing. One is on self-exclusion, and the other is on the summary of other measures:

> Self-exclusion from gambling venues is also a 'front-line' strategy for harm minimisation. However, it is also generally only implemented after individual gamblers have experienced serious gambling related harm. There is some modest evidence that this provides support for those with a commitment to address a harmful gambling habit. However, few people

> avail themselves of exclusion, and breaches of exclusion arrangements are commonly reported (Livingstone et al 2014). In summary, while they may support those already committed to addressing gambling, there is little-to-no evidence that self-exclusion regimes reduce gambling-related harm in aggregate.

It goes to what I was talking about last night, as I was virtually completing my offering there. The cases I read out from Anglicare and the Salvation Army were the success stories, if I can put it that way. Indeed, how many others were not availing themselves of those sorts of services? Even the fact they are at those services is a concern.

The second part of this offering from this paper, Summary of other measures, notes that 'none of these measures are preventive' that is in the ACT bill:

> They are focused on those who have reached a state where harm has invariably been suffered by individuals concerned and their families, friends and others. In many cases this means irrecoverable harms have occurred, including financial catastrophe, relationship breakdown, mental illness, neglect of children, and so on.
>
> Effective public health oriented approaches to a problem such as gambling harm involve investigation of a wide range of interventions and regulatory settings with the intention of both preventing and minimising harm. At present, the approach taken in the ACT (as in most other jurisdictions) has been oriented toward 'downstream' harm minimisation activities and regulations which do little to prevent the onset of harm, but are intended to mitigate some aspects of its consequences. In most cases, however, detection of an established harmful situation comes too late to prevent serious consequences.

Those two things are worth noting. It is all very well for us to say, well, facial recognition is going to do this, or self-exclusion is going to do that. Listening to that, it is very wise. Thank you, Mr President. I bring my offering to a close.

[12.18 p.m.]

Ms WEBB (Nelson) - Mr President, I begin my contribution on this bill by acknowledging there are likely to be people in this Chamber, people watching this webcast either today or perhaps at a later date, or people reading the *Hansard* of this exercise at some point, who are actively being harmed by gambling or who are intimately connected with someone who is being harmed by gambling. I acknowledge that, and put out there the methods for those people to get assistance before I begin speaking about the issue. The free 24-hour call line for those who are experiencing gambling harm is 1800 858 858 and the website is www.gamblinghelponline.org.au.

This bill has been a long time coming. If that was because the policy on which this bill is based was robustly developed, evidence-based, carefully designed and well consulted, we could be celebrating here today. We could be welcoming the advent of a new era in which both the health and the prosperity of our state is substantially improved. Sadly, the reality is the polar opposite. We are here today to consider a bill which has come to pass in the most deficient and tainted of circumstances. It continues a shamefully grand tradition in this state

of gambling policy and legislation that is borne from the dishonest and unethical exercise of political influence brought to bear through the deft use of financial reward and threat.

To summarise, this proposed reform and the bill we are considering to give it effect is not evidence-based expert-informed policy, does not deliver the best outcomes for our state either socially or financially, does not put the best interests of the Tasmanian community first, and contains numerous aspects which have received no public discussion or consideration. It is contrary to the views and preferences of the Tasmanian people and removes any future moment in time opportunity for reform of this industry such as this very current opportunity the Government is using to bring this reform forward.

It is my view, that a responsible course of action, given that is the context and the reality of this bill, would be for this Legislative Council to have this bill thoroughly scrutinised and considered in a committee of inquiry or at the very least send it to the Public Accounts Committee to run its eye over. The reason I believe a committee of inquiry or examination by PAC is warranted is due to the breadth and complexity of this bill; the significance of its impact on our state - socially and financially; the lack of evidence and modelling provided to make the case for virtually any aspect of this reform; the absence in entirety of meaningful consultation with the community or non-industry experts in the development and design of this reform policy; the high level of public interest and concern expressed in relation to it and the opportunity for parliament to continue its very valuable role it has previously played at key moments of gambling reform in this state through mechanisms of committees of inquiry to do our job, to do the scrutiny.

This is a discussion we will have in more detail at the appropriate time in this debate, but I wish to be very up-front here on the parliamentary record, as I have been already with my colleagues. We have parliamentary mechanisms available for scrutiny and review that enable this Chamber and its members to undertake their role in a comprehensive, open and accountable way. The parliamentary mechanisms of a committee of inquiry are in fact ideally suited to be utilised for a bill of this complexity.

I note many others have commented also on the complexity of this bill. The fact is it is an amendment bill of 188 clauses - and it amends a principal act of a similar size, and we will be dealing with amendments to the amendment bill if we make it to the Committee stage - that is three layers of complex and lengthy legislation that we are dealing with, and we have to stand up in front of the Tasmanian people and say with our hand on our heart that we have scrutinised thoroughly and judged to be in their best interests the best piece of legislation that we could deliver to them.

The scrutiny of legislation is a careful process and members here take that very seriously and they would wish, at all times, to do their job with diligence and due attention.

If we find that a committee of inquiry is not supported by this Chamber at the appropriate time that we discuss it and we continue with this bill through to the Committee stage of debate, I have a considerable number of amendments that I will move on the bill. I have also been very up-front with colleagues about my intention to do that.

Broadly, the amendments I will be moving on the bill, if it comes to that, will include areas such as harm minimisation and consumer protection measures, matters relating to the Liquor and Gaming Commission and its powers and functions, taxation rates, new gambling

products, reviews for data collection and reporting, licence periods, ownership limitations and various other miscellaneous matters. I put that on the record and we may have a chance to see that play out.

Members of this Chamber will be well aware of my longstanding interest in this area of social policy. Primarily my passion for this lies in the opportunity we have in Tasmania to do so much better in delivering positive outcomes for our community and our state economy. I have worked in the area of social policy for a long time and so many of the issues that have been part of the research, policy and advocacy I have done in those many roles are things we would often term wicked problems. They are the kinds of things that are multifaceted, complex, interconnected, often generational and on them it can be incredibly challenging to seek solutions and to work for change.

Wicked problems are ones you tend to see replicated the world over, everyone struggles with them and few seem to have found all the answers. One of the reasons I am passionate about poker machine policy and reform is as far as I am concerned it is not a wicked problem. It is an eminently solvable problem. We know that to be true. Nowhere in the world suffers the problem of poker machine addiction and harm in the way we do here in Australia and in Tasmania. Nowhere globally. It is not just a small gap between us and the rest of the world, that we are just a bit worse than some of the others, as we may be on other issues. We are magnitudes worse on this and we know by far the greatest factor in it is the poker machines we choose to put in our communities and where we choose to put them.

Australia has 0.3 per cent of the world's population and we have close to 20 per cent of the world's poker machines. Of all the poker machines in the world that are located outside of a casino or a destination gambling venue, that is of all the poker machines in the world in communities, in local venues, Australia has close to 75 per cent of them. That is how I know this is an eminently solvable problem. We can look to anywhere else in the world, everywhere else in the world and learn what the effective solutions are.

I first encountered the issue of poker machine reform in 2015, when I had the privilege of taking up the role of managing the Anglicare Tasmania Social Action and Research Centre. Anglicare has a legacy of research, policy and advocacy work on this issue since at least the 1990s. It has been one of the strongest champions for positive reform to bring about less harm caused by poker machines in our Tasmanian community. I had the privilege in that role to pick up the baton of advocacy on poker machine reform, to learn from and work with dedicated expert policy and research staff, such as Margie Law, who is here with us today in the Chamber and who I acknowledge.

I had that privilege to work with people to develop my understanding of this issue and set a light in my heart and a fire in my gut to work for positive change on this. While I moved on from my role with Anglicare when I was elected to this parliament, that light did not go out, nor did that fire diminish. I cannot and I will not move on from advocacy and commitment to this issue. Why is that, Mr President? I think about that often. It is because the heart of this issue for me has always been such a simple proposition. Poker machines are purposefully designed to trigger addiction, yet the features of the machines that trigger that addiction can be adjusted and reduced in their impact.

We allow, here in Australia, in Tasmania, poker machines to be set at the highest intensity, the most addictive, far beyond what any other country in the world sets theirs to be.

We choose to put these high-intensity world-worst poker machines into our local communities, typically, into our most disadvantaged communities.

So, unlike any other country in the world, we here in this state, choose to deliberately and unnecessarily expose our communities, our neighbours, our friends, and our family, to a dangerous product. We do this, even though we could readily choose to make poker machines safer to use.

We know categorically that we can make pokies safer to use without any negative impact on recreational use. We know categorically that we can make pokies safer to use without reducing the level of staffing required to operate them, or reducing the number of jobs that support the industry. We know we can do this, and we do not.

If we bring to mind virtually any other product that we may encounter as we go about our daily lives, which has identified risks or dangers, our response as a community, and as a government, is generally to work to make that product safer, to reduce the risk to us and our communities.

An example, just here last month. We brought in a new requirement that quad bikes would have a roll bar. Lives had been lost. The evidence was in. The Government acted to regulate safety features to reduce the risk and minimise harm. That is the job. The Government did that job just last month for those quad bikes. We have done it.

To think of other examples. We required backyard swimming pools to be fenced. We mandated the wearing of bike helmets. We brought, in all sorts of circumstances, work health and safety requirements within workplaces that mandate for example, safety guards on equipment. We set nuanced speed limits for driving cars in our community, modified according to the surrounding environment and the context. We use barriers to separate lanes on the highway.

This is what we do. We look for ways to reduce risk and prevent harm. It is a key role of government. It is a key role of parliament, as representatives of the community.

In all these examples, we can think of a time when those requirements were not in place. When I was in primary school, backyard pools were not fenced. We did not wear bike helmets. The speed limit through central Hobart was 60 not 40. Highways did not have barriers and many workplaces had equipment and practices with minimal safety considerations in place.

For each of these, in the intervening years, there came a time where the risk of danger and the harm that it caused was identified and apparent. That would lead to an investigation of options to increase safety, to minimise risk, and government, informed by evidence and expert advice, acted to legislate to improve the safety of our community.

That is the job. That is the key role, a key role for government and parliament.

Which leads us to ask, if we can do this for bikes, for swimming pools, for vehicles, for workplaces and any number of other products, everything from the paint we put on our walls, to the food we buy in our supermarkets, why do we not do this for poker machines?

Every other country in the world does this for poker machines dramatically more effectively than we do. The governments and parliaments of every other country in the world have legislated to set rules and restrictions that more effectively reduce risk and minimise the harm caused by poker machines in their communities. They have put the helmets, the speed limits and the fences in place but when it comes to pokies not us, not yet, which brings us to the current opportunity. The opportunity presented to this state on the 1 July 2023.

No other state of Australia, with the exception of Western Australia, will ever get the chance to undertake the industry-wide reform that we have the opportunity to consider and bring about now. No other state will have a moment in time like this one where the slate is clean. There is no sovereign risk or legal impediment and a natural point for positive reform is available to us. We have that moment now where anything is possible going forward, where we genuinely have the opportunity to redesign the licensing, taxation and regulatory arrangements of this industry, particularly in relation to poker machines. We could paint the sky with whatever aspiration we desired in terms of outcomes for our community at this moment and set it up for the future. Given this golden opportunity, the question that will be the measure of what we choose to do with it will be: have we delivered the best possible outcomes for the Tasmanian community?

If this bill is waved through our parliament as it stands, the answer to that question is a resounding and unequivocal 'no'. It takes only the most cursory of examinations to know that to be true and I challenge anyone to stand in this place today and claim otherwise.

It is telling that at no point over the past nearly four years that this has been promoted by the Government as their policy have I ever heard the Premier or any member of the Government claim that this is the best possible deal for our state, that this policy will deliver the best outcomes we could achieve for our community in this opportunity that we have. Never, not once have I heard that.

Have we delivered the best possible outcomes for the Tasmanian community that could be achieved at this exceptional moment in time of reform? You will never hear a straight answer to that question from this Government or I suspect from this Opposition.

What you would hear, I suspect, and we may well hear in response to my comments here today are diversions, misdirections, pivots, straw man arguments, reframing, excuses, blaming, accusations and possibly personal attacks. Listen out for them, Mr President. I have heard all of those. What you have never heard and none of us have ever heard - and the Tasmanian community has never heard - is the Premier, Mr Gutwein, or a member of his Government, stand up and publicly say, 'this reform is the best possible deal for our state and will deliver the best possible outcomes for the Tasmanian community'. They cannot do it because it would be a lie.

Let me share with you some comments made in this parliament on gaming legislation on this very matter of the best outcomes for the Tasmanian community. Here is the quote:

> My concerns over this issue, over this secret deal, relate to the stealth, relate to the lack of transparency, relate to the lack of accountability that have led us to the point where the question - 'Is this the best deal for the Tasmanian taxpayers?' - cannot be answered. It is as simple as that.

Second quote:

> There is one key issue here that has to be asked about the whole process that has gone on. Did Tasmanians get the best deal out of signing this deed?

That, unfortunately, is one question that if the Government has its way, we will never, ever know the answer to.

Third quote:

> Look at some of the other issues here, such as the quality of the deal extracted by the Government in the deed. I would think that would be a key matter that taxpayers would have an interest in. Did the Government get the best deal when negotiating this deed? Well, the problem is that this Government does not want taxpayers to ever know whether or not they got the best deal. It is a simple question. Did taxpayers get the best deal? We will never know because this Government does not want that question to be asked.

Those comments were all made by Peter Gutwein MP in April and May 2003. At that time, as a member of the opposition, Mr Gutwein was outraged and vocal in his efforts to hold the then Labor government of the day to account on the matter of gambling taxation and regulation, which is certainly more than we can say for the current Opposition's efforts.

How prescient of 2003 Peter Gutwein MP. He knew how to call out dodgy policy when he saw it. He knew the right measure of such a crucial policy area for our state, whether it was the best deal for the Tasmanian people. Given that he demonstrably knew that in 2003, it is no wonder that we have not heard any categorical statements from 2021 Premier, Mr Gutwein, as to whether this current proposal delivered the best deal and the best outcomes for the Tasmanian community.

He knows full well that to do so would make him both a hypocrite and a liar. Yet, the fact that he is unable to do so is a telling exposure. At best, it exposes his failure in policy development and negotiation and, at worst, it exposes his capture by vested interests. Perhaps the Tasmanian people will surmise, when all is said and done, that it is a little from column 'A' and a little from column 'B'.

As TasCOSS said in its submission on the exposure draft of this bill:

> The changes to the gaming market outlined in the Bill are arguably some of the most significant changes to Tasmania's gaming framework since the introduction of the state's first casino over 40 years ago. As such, this is a unique opportunity to ensure that the market operates in the best interests of the Tasmanian economy and society.
>
> The introduction of a new market model is also an opportunity to ensure that the gaming framework is consistent with other Tasmanian Government priorities and frameworks. The current development of the next Healthy Tasmania Five Year Plan 2021-26 is particularly relevant, given that gambling is a public health issue.

That was page 3 of the TasCOSS submission. I put that there because stakeholders in the community well recognise this opportunity we have. They well recognise that we have a diverging path ahead of us. We continue down the dark path, where our previous efforts at gambling regulation have left our community hung out to dry. We have an opportunity to take a different path, a path that can not only deliver us better health and wellbeing for our community but will also potentially deliver us a much better financial outcome for our community if we engage in this reform responsibly.

I would like to talk a little bit about the role of government and parliament as regulators. In the first instance, I think the first task for us on a matter like this, our first responsibility, if you will, is to place evidence-based, effective consumer protection measures around a known dangerous product to minimise the harm caused to individuals, families and the Tasmanian community. Job one, priority top.

Poker machines are a legal product, which are purposely designed to be addictive and will cause addiction in at least one in six people who use them regularly. It is the Government's responsibility, its job, to legislate consumer protection and harm minimisation for legal products known to be dangerous. There are straightforward evidence-based measures that would make poker machines safer for everyone to use, less addictive, less harmful, without affecting recreational use or jobs.

The Tasmanian Liquor and Gaming Commission has consistently identified that the most effective harm minimisation measures would be $1 bet limits and slower spin speeds. The commission has never been allowed, by any government, to include those measures in the mandatory code. The Government's policy that we have here in this bill does not adopt any of the expert-recommended measures, does not commit to any changes to the current inadequate consumer protection framework. The Tasmanian Liquor and Gaming Commission was opposed to the Government's multi-licence model because evidence suggested it would likely increase harm and be more difficult and more expensive to regulate.

The Government's failure to thoroughly reassess the consumer protection framework, when fundamentally redesigning the regulatory arrangements in this industry, for the state's most harmful gambling activity, is irresponsible by my measure, utterly irresponsible. It actively puts more Tasmanians at risk.

The second key responsibility, key task if you will, for us as a parliament, the Government as regulators and us as a parliament in relation to these products and this industry, would be to ensure that the value of the lucrative public poker machine licence is fully realised for community benefit, and that super or excess profits are returned to the state. On this second responsibility, rather than maintaining its prior commitment to putting what may be Tasmania's most valuable public licence out to tender, the Gutwein Government now seeks to give it away for free - again. In reneging on its commitment, the Government will likely forfeit hundreds of millions of dollars in lost revenue for Tasmanians, for our communities, over the coming decade.

Even if it may be argued that the Government's proposed model provides a marginally improved financial return to the state than the current model does, that would be no excuse for failing to use this current opportunity to achieve the best financial deal for the Tasmanian people. Just ask 2003 Peter Gutwein MP how he would regard that. Would he pat us on the

back for a marginal improvement on current arrangements? Or would he, as he did then, demand that this be in the best interests, deliver the best deal, for Tasmanian people?

With this current deed coming to an end, we have an opportunity, as then premier, Will Hodgman, said so clearly in 2016, an opportunity to get this right. It remains incumbent on the Gutwein Government to demonstrate through evidence and modelling that it has this right and that this will deliver the best achievable outcomes to the people of Tasmania. They have not done it and they cannot do it.

While we are on the topic of the role of government and parliament as regulators to sensitive industries, I want to name up some uncomfortable truths about why it can be difficult to have confidence the best possible outcomes will be delivered for the Tasmanian community on this topic by the Government, by the Opposition and potentially even by other parliamentarians in some cases.

I will start with the obvious one - political donation disclosure laws. We will never know in this state under current laws the full extent of financial support given by vested interests in the pokies industry to political parties and candidates. Even from the limited disclosures made in relation to the 2018 state election we know the donations to the Liberal Party from poker interests were substantial to say the least and not only that, it received electoral support from the industry-funded third party for the Love Your Local campaign. All up it was millions of dollars, not just deployed in support of the Liberal Party in the 2018 election, but also deployed vigorously in attacks on the Labor Party.

You will recall that I did mention financial reward and threat earlier in my speech. At best, looking at 2018, this leaves us with a disturbing perception that industry electoral donations have been made to directly influence a favourable policy outcome as a result of making those donations. Even more so when the representative body for that industry then immediately, post-election, receives a massive increase in funding from the re-elected government.

At best it just does not look right, but I would suggest we are far from at best. I would suggest what we have is a cloud hanging over our democracy from that election. We need to remember this is the election where six months or so earlier that industry put their developed policy on the table at a parliamentary inquiry right as it closed. That policy in mere months was picked up by the Government in contradiction of all previous public policy positions. It was picked up by the Government and declared to be government policy. Then we saw that election play out with the donations, with threats and the deployment of a vigorous campaign against an Opposition and we saw the result and now we see this bill before us. It just does not look right.

Then we come to the 2021 election this year. Again, at this point in time we have no idea what was donated by gambling industry interests to the major parties and the candidates in the 2020-21 election - none.

Even our entirely inadequate disclosure regime will not tell us anything about that for a while and even when it does, we will not have any visibility on the donations really that were made. During the election campaign this year we find the Tasmanian Labor Party, the Opposition, had signed a secret memorandum of understanding with the THA, the representative body for this industry. An MOU signed in secret by, I believe and tell me if I

am wrong, the then Leader and Deputy Leader of the Labor Party, possibly without prior consultation with other members of the PLP, I do not know. If any members want to cast clarity on that I am very happy to be enlightened, but the MOU which came to light commits the Labor Party, amongst other things, to this and I quote:

> Agreeing to work together on the development of potential, viable harm minimisation measures for gaming products, while also agreeing that any measures need to be workable for industry.

Effectively, this gives the industry veto rights over any harm minimisation measures and undermines all other public statements made by Labor since their 2018 election loss, where they consistently said they would champion harm minimisation measures. Further to that would be my understanding, although I am not a member of that party, that this MOU is in direct conflict with the ALP party platform, which states, and I quote, at number 71 'Labor will engage in responsible partnership and avoid ceding policy influence to vested interests.'

Then lo and behold, when this bill arrives in parliament, we find Labor has directed its attention with laser-like focus to promoting two harm minimisation measures approved by industry. Imagine our surprise, that when it comes to harm minimisation, these two things - facial recognition technology and card-based play - are the ones the two major parties have decided to start talking about, to the exclusion of all other evidence-based expert advice measures. The two parties have arrived at the two measures that they - I would say and suggest - are bound to by the relationships they have with this industry, through politician donations, through memorandums of understanding and through gut-wrenching fear they both have should this industry decide to turn against them at a future election.

They learnt their lesson well in 2018, both of them. In fact I would suggest it is not so much the benefit of financial support that sits at the heart of these two parties beholden to an industry, it is the gut-wrenching fear the financial weight of the industry will be thrown against them again.

Recognition of Visitors

Mr PRESIDENT - Honourable members, I would like to welcome visitors to the Chamber from the TasTAFE group. They are students studying the Certificate I in Transition Education. I am sure all members will welcome you to the Chamber today.

Members - Hear, hear.

Ms WEBB - We will talk more about harm minimisation later, no doubt. But we are talking about good governance here and perception of vested interests' influence on policy. It is not influence. We could go one step further and say capture - vested interests' capture of policy. Political donations and secret deals, they are the flashing lights that draw our attention to such things. It is hard to miss them. But there are also more subtle matters that can create a perception that relationships may have influence on legislative decisions and outcomes. Tasmania is a small place. There is only about one degree of separation. Relationships here matter. Incidental relationships, sometimes through others that we know, through business,

through going to school together, through our kids going to school together, through people we see at the shops.

Parliamentarians here in this state have a more informal relationship with their community and are often more accessible and connected than parliamentarians may be in larger jurisdictions. But it is these connections, these informal relationships, these ways we encounter each other, that therefore build up what may be seen to be a significant relationship or connection that can be perceived externally as problematic when we want our parliamentarians to make unencumbered accountable decisions on behalf of their community.

I am going to reflect on an experience I had prior to coming to this place when I participated, as an external stakeholder, in the joint select committee process on gambling reforms in 2016-17. I had come as a member, one of the stakeholders to present at hearings. We put in a lot of time and effort, as community stakeholders in not-for-profit organisations, who work with and see the result of gambling harm in the community. We put a lot of time and effort into marshalling our resources, into marshalling all our evidence, into marshalling and bringing, to give voice to all those experiences of people who are out there in the community being harmed.

We bring all that, nervously, to a parliamentary committee, which seems very formal and can be quite scary for external stakeholders. We come to make our case. To present the evidence. To give voice to those voices out there in the community that we are trying to assist. We do the best we can, sitting there at a committee table, speaking to the evidence, speaking to the lived experience. Trying to champion the opportunity for positive reform.

After we had had our turn doing that, we sat to watch the next group who came to present their evidence. It happened to be a mix of industry representatives.

Mrs Hiscutt - When you are ready.

Ms WEBB - I will finish my reflection and then we will adjourn.

It happened to be a group of industry representatives who were following us into that space. I couldn't help but be struck by the difference in their demeanour and in the way they were approaching this opportunity, unlike us. We came with our voices shaking. We came with our stacks of papers and evidence. We came not knowing the people across the table from us particularly well. In some cases it was the first time we had met.

When I watched the industry representatives come in, I saw a member of the committee stand up to warmly greet one of those representatives, and thank him for serving their breakfast that morning at the hotel where they are accommodated when they are in this city. We sat there and we watched this as the prelude to that group of industry representatives sitting at the table to make their case, to present their voice and their evidence, such that it was, to the committee.

Now, there is nothing in and of itself wrong with that. Nobody did anything wrong in that circumstance. I am illustrating that whenever there are relationships that can be readily perceived by the community, by the people we are here to represent and if those relationships - whether they be financial, incidental or informal - can be perceived, and it could be imagined, that they may have an influence on the consideration and the outcome of a matter that comes before us at this place, then that can be problematic. We would never want to leave that

perception and not be accountable to ensure the community can have full faith and confidence, that influence and relationships haven't had a bearing.

That prompts us, Mr President, to be utterly scrupulous in ensuring that any perception of influence or a special relationship that may be seen to be conferring particular consideration, is able to be transparently and accountably answered. I believe we achieve that through a comprehensive and publicly accountable parliamentary process, and the full use of our functions of scrutiny and review in this place. When the questions are put to us, is this in the best interests of the Tasmanian community, and does this deliver the best outcomes we could possibly achieve for our state? If we are not able to answer in the affirmative with open and accountable evidence of our scrutiny, we open ourselves up to being questioned on matters of influence. That is what the Tasmanian people would expect and it is what they deserve from a healthy, robust, strong democracy.

The Tasmanian people deserve us here to be demonstrably, transparently undertaking our role on their behalf and in their best interests, utilising all the appropriate mechanisms we have available so they can hold us to account for it.

Mr President, I move -

That the debate be adjourned.

Motion agreed to.

SUSPENSION OF SITTING

[1.04 p.m.]

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

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

This is for the purposes of a short lunchbreak.

Motion agreed to.

Sitting suspended from 1.04 p.m. to 1.40 p.m.

GAMING CONTROL AMENDMENT (FUTURE GAMING MARKET) BILL 2021 (No. 45)

Second Reading

Resumed from above.

[1.42 p.m.]

Ms WEBB (Nelson) - Mr President, I am going to talk a little bit about where this model that sits behind this bill, the policy and the bill, come from. These reforms are written by

industry. They are designed to provide the most benefit to large pokies industry interests. The Government is not developing and implementing good policy or evidence-based responsible policy and reform which is in the best interests of the Tasmanian people. Rather, the policy is being legislated as it was originally written by Federal Group and the THA. They tabled it in August 2017 at the end of the parliamentary inquiry on Future Gaming Markets.

The Liberal Government directly adopted that industry-written policy in late 2017. The joint select committee, in its findings, said this:

> The Committee has had insufficient time to complete a thorough investigation and consultation on the Federal/THA proposal. The proposed model was presented on the final day of hearings (18 August). The preliminary analysis contained in the body of this report was prepared by the Committee's Economic Consultant. The Federal/THA proposal will be a matter for the Government to evaluate the model in further detail along with the information obtained as part of this inquiry.

A policy straight from the pen of the largest industry interest to the desk of the minister and adopted by the Liberal Government. Here we find it virtually unchanged, presented in this bill before us. While the Government loves to claim this policy has been around for a long time and people have had a chance to have their say, I thoroughly reject that assertion. Even in its recent media release, when the bill passed the lower House, the Government claimed, and I quote, 'The Tasmanian Liberal Government took the Future of Gaming in Tasmania policy to the public, consulted widely', et cetera, et cetera.

The Government has in fact never consulted the public on this policy, never. Further to that, it has rejected any input from non-industry stakeholders on this policy.

Mrs Hiscutt - Two elections do not matter?

Ms WEBB - I will get to that. I challenge the Government to point to any instance of consultation that it has conducted on this policy. Let me assist, actually, in that task by making it very clear the Government could not point to either stage 1 consultation in March 2020, nor stage 2 consultation in July this year. Why? Because the March 2020 stage 1 consultation paper, which related to the implementation framework and is about the proposed model for the framework, explicitly said, and I quote this from the consultation paper, page 2:

> Matters specific to the Government's policy itself are out of scope of this consultation process.

And then again in the stage two consultation paper, which accompanied the exposure draft of the bill in July of this year. That also explicitly said, and I quote:

> Matters specific to the policy itself are out of the scope of this consultation process.

I reiterate my challenge to the Government. Point to any instance where the Tasmanian public were consulted on this policy. If you cannot then I ask for clarification of the statement made in the Government's media release. Was that statement a simple lie or was the Government purposefully gaslighting the Tasmanian people on this matter?

In a ministerial statement to parliament, on 17 March 2016, let us return to the origins of this policy.

Before it became policy of the Government, before the Government had even seen it, in fact on 17 March 2016, Peter Gutwein, as Treasurer, set out a range of principles that were apparently to guide the gaming reform process in Tasmania.

A notable point made in that statement in 2016, was this, and I quote:

> The processes that led to the development of the earlier Deeds caused concern in the community and cast a shadow over the appropriateness of structural arrangements. The Government does not want a repeat of this outcome. There needs to be a fully transparent public consultation process that enables interested Tasmanians … to have their say on the future structure of the gaming sector post 2023, with the Government's policy position as the starting point.

On that same day in 2016, then premier Mr Hodgman's media release also emphasised the importance of a transparent process. That said, 'today the Government announced a new way forward for gaming in Tasmania, which makes a clean break with the secretive ways of the past'.

The Hodgman and now Gutwein governments have both completely failed to honour those statements. I want to be very, very clear. The Government's policy has not, at any stage, been subjected to appropriate scrutiny, assessment, or public consultation.

To date, no details have been made public on the policy's development, the evidence base that informs it, the social or economic modelling that underpins it, or the detailed public policy objectives that it aims to achieve.

There has been no process by which the Government's policy has been appropriately scrutinised and assessed in an open, public and accountable manner. In fact, interested Tasmanians, to use the Premier Peter Gutwein's phrase, have been specifically excluded from having their say on the Government's policy, even in responding to the two limited consultations that occurred, one on a framework and one on an exposure draft bill.

With no effort made by the Government to consult on the policy, beyond industry interests who wrote it, and no effort made to demonstrate that it is the best option available to our state, it is clear that other interests are being put well ahead of the best interests of the Tasmanian people.

Here are some questions, the first of many, that I have for the Government in relation to the development of this policy.

(1) Why did the Government abandon its repeatedly stated commitment to using a market-based mechanism for licensing the operation of poker machines in Tasmania?

(2) What evidence does the Government have that the change away from a market-based mechanism for licensing for the operation of poker machines

better meets its stated policy objectives, and delivers better outcomes for the Tasmanian community?

(3) How was the Government policy arrived at, given that it contradicts the advice of the Liquor and Gaming Commission, Treasury and the Parliamentary Joint committee and the Government's own clearly laid out principles for reform?

(4) Why did the Government reject the Tasmanian Liquor and Gaming Commission advice, which warned against this individual licensing model?

(5) Beyond providing an initial critical response to the Federal Group and THA proposal, what role has the Tasmanian Liquor and Gaming Commission subsequently played in the development of the Government policy and its planned implementation?

(6) Why did the Government reject Treasury advice against this model, documented in the parliamentary inquiry process?

(7) What other advice or modelling has the Government sought or obtained which supports its policy as the best option?

(8) Which local gambling support organisations and harm minimisation specialists were consulted and/or provided advice? How did their advice inform this policy and its planned implementation?

(9) Which other local stakeholders were consulted to inform the development and implementation of this policy?

(10) What consultation has the Government undertaken with the 74 per cent of Tasmanian hotels and 96 per cent of Tasmanian clubs that do not have poker machines to inform the development and implementation of this policy?

That is the first set of questions I will have today, Mr President; they will not be by far the last. I move now to talk about some of the fairly briefly stated aims of this policy as put forward by the Government. The Government has spoken about a sustainable industry. While the Government asserts in the stage 1 consultation paper in March 2020 that it aims to, 'create a sustainable industry', it in fact provides no definition, principles or parameters of that concept.

The term sustainable is generally used to describe the use of natural resources in such a way that it does not damage the environment. At least that is my understanding, anyway. I believe that inherent in the concept of sustainability is the identification of specific environmental and other values that will be protected, and a plan put in place to accurately monitor the impact on those values and adjust activity as required to preserve them. That is my understanding of sustainable. Yet, there is no material presented in the Government's consultation paper, nor in any other publicly available documentation that I can find, which demonstrates how this policy or its implementation through this bill can be understood to be sustainable.

As TasCOSS points out in its submission on the exposure draft of this bill -

> Neither the 2020 Consultation Paper on the proposed future gaming market model, nor the proposed Bill and associated documents, explain what a sustainable industry would look like. Hence, it is not possible to assess whether the Bill will help to achieve that policy aim. TasCOSS notes, however, that there is an assumption that the market changes could result in smaller venues ceasing to operate, as evidenced by the cap on ownership of 25%.

They go on to say:

> More broadly, TasCOSS also notes that the Tasmanian Government has not shared modelling on the impact of the proposed new framework on the industry, such as whether it expects the changes to result in increased or decreased use of EGMs, whether it expects greater competition between venues, and the impact of additional compliance costs on small venues and regulatory costs for the Tasmanian Liquor and Gaming Commission.

That is on page 3 of their submission. Perhaps, related to this matter of a sustainable industry, I note with some astonishment, the following passage from the Government's second reading speech on this bill -

> As for all policy changes, there will be winners and losers. In this case, the winners will be Tasmanians through additional funds for government services, the community through the increased Community Support Levy and pubs and clubs through an increased share of the return from the new licensing model for electronic gaming machines. The loser will be the Federal Group which is estimated to be $20 million per annum worse off when its 50-year monopoly over gaming in Tasmania comes to an end on 30 June 2023.

Where do we begin with that? Perhaps for a start I would point to the extreme poor taste in utilising the imagery of winners and losers in relation to a policy and a bill that is about the demonstrably harmful and addictive activity of gambling. Winners and losers. Then let us look at who is framed up in each of those pedigrees under this bill. Pubs and clubs are framed as winners. That is true, 100 per cent, although not in an equal fashion, not across the whole industry. The model does favour some over others. We do not know yet what the full impact and/or benefit will be across all pubs and clubs. Some will definitely be winners, others might be small winners. We do not know whether some might be losers.

The Tasmanian community, there in that quote, are framed as winners. The Tasmanian community, burdened for decades financially and socially through tainted industry-designed, put in place through influence, policies that we have had here in this state on the issue of gambling, and particularly poker machines. Here we are with one clean-slate moment in front of us, shut out from having a say on the model being proposed to be put in place, all non-industry input ignored. No improvement to harm minimisation, and it is likely, the commission tells us, a likely increase in harm, with a third-rate deal that delivers an extremely modest financial improvement and locks us out of any future chance for industry-wide reform. Yet, the Tasmanian community are winners under this policy and this bill. What an utter nonsense.

Then we have Federal Group framed as a loser, framed as a loser on the basis that it is estimated that they will be $20 million per year worse off. This is not about Federal Group and whether or not they will be worse off. Good policy in this space on the regulation of gambling, on the regulation of poker machines in this state is not measured by Federal Group's bottom line. We measure this policy area on the outcomes for our community. We measure this policy area on the outcomes for the Tasmanian people financially and socially. We do not measure social policy in this state according to the bottom line of one private business. If we were to do so, we would be exposing ourselves as ultimately and utterly corrupt.

How dare the Government, how dare they frame Federal Group as a loser under this policy. We owe Federal Group nothing. Federal Group is a company which has been gifted for decades, for free, a licence to operate poker machines in this state. It has been a river of gold for them. They have operated their business and they have absolutely been good corporate citizens in the sense that they provide jobs, they provide support to the community, absolutely. I do not begrudge any of that to them. Operating a normal business with a normal profit margin would have seen them be able to do that.

But we have not delivered them a normal business with a normal profit margin these past decades. We gave them for free a licence that delivered super profits to them. Those super profits did not get reinvested into our community, did not deliver even the promised investments that were committed to at the time. They were pocketed.

Normal profits through the normal operation of Federal Group businesses would have delivered us all the things that we could point to and identify as the benefits they have delivered to our state; the jobs, the businesses, the supply chains, those things. Normal profits from a normal operation of a business could have delivered that to us. What we delivered to them were super profits. Those super profits, by and large, were pocketed and taken away from our state. That is what we look at when we look back at the experience with Federal Group in this state on this topic. There could be nothing further from reality than to contemplate that Federal Group are in any sense losers. They have been delivered the most massive windfall from this state for decades at the expense of our communities. Their licence to do so was coming, and is coming, to an end in 2023.

At that point in time, at the conclusion of that licence, we owe them nothing. We are under no obligation to continue or match or exceed anything about the arrangements that previously existed for them. Whatever happens next happens next for their business. I wish them well continuing a normal business with a normal profit margin. We could certainly put arrangements in place to ensure they had the opportunity to do that. But that is not what we are proposing to do here at this free and clear moment, when we do not owe them anything about the situation going forward. When we are redesigning and reforming theoretically in the best interests of our state and our communities, when we are redesigning there may well be a place for them. There could and should be a place for them.

But we do not have to apologise for what that place may be if it is different to the extraordinarily and unconscionably beneficial arrangement that they have had to date. How dare the Government frame Federal Group as losers? What a nonsense, utter ridiculousness.

It is utterly distasteful to speak about winners and losers in relation to this policy in the first place. Quite frankly, it is a policy that underdelivers financially and puts the community

at higher risk of harm. That is the most mild way I can say this. Clearly, if there is anyone for whom this policy is detrimental, it is the Tasmanian people.

I have two further questions for the Government. How specifically does this Government define, because they never have, a sustainable poker machine industry in Tasmania? Where has the Government demonstrated with evidence or modelling that this proposed model meets its definition of sustainable?

That consultation paper from March last year also spoke about a key plank of this being the highest standards of probity, that is how it was phrased. The consultation paper asserted the Government's policy aims to provide the highest standards of probity, page 1. Again, it provides no meaningful description or discussion of what that means or how the model will achieve such standards, necessarily. We have heard more about it through the exposure draft and now in discussions around the bill on some aspects of probity within the model, I grant that.

I find it fascinating because probity is the evidence of ethical behaviour. In fact, it could probably be defined as a complete and confirmed integrity, uprightness, honesty within a particular process. It seems ironic we would be talking about probity in this process in relation to how this policy has been developed and is being implemented. In my estimation, it could not be further removed from any definition of probity.

Having promised transparency and the opportunity for the community to have a say and having committed to a market-based mechanism to get the best value for the right to operate poker machines in Tasmania, back then in 2016, the Gutwein Government now ignores entirely the findings and recommendations of the parliamentary committee it convened specifically to give the community a say.

It has rejected expert, independent advice from the Liquor and Gaming Commission, it has engaged in undisclosed negotiations with Federal Group and the THA, adopted industry-written policy as its own, and the Government then accepted hundreds of thousands, maybe millions of dollars in donations from those same industry entities to assist in re-election efforts. Then, a consultation paper is released which forbids comment on the policy. The Gutwein Government, in its adoption and implementation of this policy cannot lay claim to even the most minimal standards of probity.

I have further questions for the Government. What ethical principles and accountable processes can the Government point to in regard to the development of this policy, this licensing model and regulatory framework that would constitute in its own functions the highest standards of probity? Given its increased regulatory challenges, what specifically in this regulatory structure provides for the highest standards of probity?

There is a third claim often attached to this policy in the consultation materials and the like and that relates to the sharing of returns. I note on page 1 of the consultation papers from March 2020, it was stated that the model:

> … ensure returns from the gaming industry are shared appropriately among the industry, players and the Government, representing the community.

Then, I note it has been slightly but meaningfully adjusted in the Government's second reading speech to read:

> … ensuring returns from gaming are shared more appropriately across the gaming industry, and with the Government, representing the community …

What happened to players? Players were there in March 2020, but here we are, second reading speech; no players to be considered in appropriate sharing of returns. Regardless of who is included, it is entirely unexplained, with no underpinning principles or definition, what constitutes 'appropriately' in this instance. Presenting no rationale for this claim renders it entirely meaningless and misleading.

We know the policy does provide a marginal increase in the overall returns collected by government, a shuffling within the industry as to where those returns come from and a rearrangement of who in the industry gets the rest.

As TasCOSS in its submission to the stage 1 consultation succinctly points out and I quote:

> Thus, the main impact [of the new model] in terms of revenue distribution is to redistribute player losses amongst industry players.

That is page 6 of the TasCOSS submission.

While this may be seen as a marginally better financial outcome for the state than the deals of the past, it is demonstrably far below the best deal the Government could have achieved on behalf of the Tasmanian people.

The abandonment by the Government of their commitment to achieve a market value price for the licence to operate poker machines in Tasmania will again see super profits generated by these machines lost to the state which is not just inappropriate, it is irresponsible. I know the member for Murchison in her contributions has spoken about this - that breaking the monopoly is a complete and utter nonsense if what you put in its place essentially replicates the same flawed elements that were present in the monopoly, with just a slight rearrangement of who gets the best deal.

As for the more appropriate share for players, remembering players disappeared between last March's consultation and this second reading speech, John Lawrence, in his submission on the draft exposure bill said this, and I quote:

> As for the players they have hardly rated a mention. The best way to give players a more appropriate share is to slow down spin speeds, reduce maximum bet limits, increase the returns to players and remove the addictive features of EGMs which prey on vulnerable players. All of these matters could easily be incorporated within other proposed FGM changes.

That is on page 13.

He also then on page 13 had a little break-out box in his submission and that break-out box says:

> The proposed FGM changes can easily be enhanced by offering low impact EGMs as part of minimising harm from problem gambling, one of the aims of the FGM policy. It would be a simple matter to mandate a separate regimen of tax rates and license fees to incentivise a shift to low impact EGMs.

Readily identified for the Government by John Lawrence and many others, were ways that you could have looked to share the returns through this policy differently, certainly with an eye to having players being one of the beneficiaries of what we might call a more appropriate sharing of returns.

My questions for the Government about appropriate sharing of returns are:

(1) What principles beyond a better financial deal than last time underpin the appropriate sharing of returns among industry players and government?

(2) What demonstration can be made that this policy constitutes an appropriate sharing of returns in comparison to other options which were available to the Government?

Perhaps, it would be useful for the Government to provide what they believe to be a definition of an appropriate share of returns, and an argument for why this policy delivers the best we could expect on that measure.

Mr President, I am going to move on to talk about harm minimisation. I have a bit to say about this. Let us start by looking back and examining what the industry claimed when they designed this model. The proposal for the model that was put forward by Federal Group and the THA in 2017 claims that the model would, and I quote:

> … deliver a similar (or possibly better) outcome in terms of player protection and harm minimisation.

That was on page 8 of their submission to the joint select committee on the model. The submission presented absolutely no evidence. No rationale and no modelling to support that claim they made in it, yet the Government accepted it. Having adopted the model, the Government has presented absolutely no evidence, rationale or modelling to support this claim the industry initially made about the model. In fact, the Government has been presented, repeatedly, with expert evidence quite to the contrary. Let us hear some of that.

Because the industry model was tabled right at the close of the committee process, the joint select committee did not have the opportunity to review it, as we have heard from the member for Mersey and I have referred to already. But they did have the opportunity and made the request to have two quick pieces of analysis done on it. One was from Synergies Economic Consulting and one from Tasmanian Liquor and Gaming Commission.

In the letter from the Tasmanian Liquor and Gaming Commission to the joint select committee accompanying its analysis of the model proposed by Federal Group and THA the commission said:

> The current enquiry into Future Gaming Markets post 2023 provides a unique, once in a generation opportunity to provide the people of Tasmania with a safer gaming product.

That is what the commission said to the committee of inquiry. A unique, once in a generation opportunity to provide the people of Tasmania with a safer product. It went on to say, and I quote:

> Specifically, the proposed model does not provide any enhanced harm minimisation initiatives that would protect vulnerable people from EGM use.
>
> At best, it is claimed that the model would not increase the incidence of problem gambling. However, the TLGC has a long record of dealing with compliance breaches in hotel venues and nothing in this model provides comfort that this would not continue, and, in fact increase.

That is Page 200 of the joint select committee report. You will find that quote.

Further, I quote again:

> Despite words to the contrary, there is no argument as to how the proposal would strengthen Tasmania's player protection and harm minimisation framework.
>
> It is claimed, without evidence, that moving to this model 'will not increase the incidence of problem gambling'. The Commission considers that the incidence of problem gambling in Tasmania is not insignificant and that there is nothing in the proposal that addresses this.
>
> The TLGC has a long record of dealing with licence breeches by individual venue operators, despite the strong harm minimisation measures contained in Commission Rules, and the Responsible Gambling Mandatory Code of Practice.

End of quote. That is Page 202 of the joint select committee report.

The commission is saying there is nothing to support the claim from industry that harm minimisation would be better. At best it might stay the same and on their estimation, it is likely to increase because they are familiar with industry noncompliance. It is specifically what the commission had said. The commission explained further, and it is again on Page 202 of the joint select committee report, and I quote:

> The compliance issues, particularly for small venues that would become owner/operators of EGMs, remain a concern for the TLGC and there is nothing in the proposal that addresses this concern.

Having adopted this model as its policy, the Government continued to openly eschew any opportunity to utilise this clean-slate moment we have before us to review and improve harm prevention and minimisation and consumer protection. They did not take the advice of

the Liquor and Gaming Commission to take this once in a generation opportunity, to provide people of Tasmania with a safer product.

On Page 5, of its stage one consultation paper on the implementation framework in March 2020, the Government stated that its policy, and I quote:

> Does not propose any specific changes to the harm minimisation framework, harm minimisation has continued to be front of mind during the development of the changes to be introduced under the new arrangements.

It is quite baffling. Why would Tasmania in redesigning the fundamental licensing and regulatory arrangements for its most demonstrably harmful gambling activity not include a thorough reassessment of the harm minimisation framework that accompanies it? Especially when prompted to do so by the independent expert, Liquor and Gaming Commission. If, as the then premier Mr Hodgman said to the Joint Select Committee on Future Gaming Markets on 22 March 2017, and I quote:

> It is within our capabilities to do what we think is in the best interests of the people of Tasmania and future generations.

It would appear that the Gutwein Government regards the current levels of harm caused by poker machines to be the best outcomes achievable for our community. Those current levels of harm which the Liquor and Gaming Commission again explicitly advised, were not insignificant. If this is the Government's view, it is at odds. It is at odds with the independent expert advice of the Liquor and Gaming Commission, it is at odds with the overwhelming weight of evidence from local research and national and international jurisdictions.

That statement in the consultation paper is actually worse than baffling. I think it is misleading. There is no evidence presented in that paper or any other material made available by the Government that harm minimisation has, I quote, 'continued to be front of mind'. That is the phase that we have used on page 5. There is no modelling to indicate the likely impact of this policy on levels of harm expected to be experienced by Tasmanians. There is no acknowledgement of the expert independent advice that indicates the policy, in fact, risks higher levels of harm.

While taking the opportunity to change the fundamental basis on which we license poker machines, this policy completely turns its back on the opportunity to meaningfully improve harm minimisation through measures which are supported by overwhelming evidence, internationally proven and recommended by local independent experts. The next stage consultation paper and ever since, through to this day, the Government has given no acknowledgement that the individual licensing model presents an increased risk of harm to gamblers, primarily from, we understand, the heightened likelihood of a competitive environment that we have never had existing here under the current single-licence model.

During the joint select parliamentary committee, both the current chair and the immediate past chair of the Tasmanian Liquor and Gaming Commission expressed significant concerns about the proposal that was originally presented by Federal Group and the THA and is now government policy. Some of the concerns raised by the chairs of the Liquor and Gaming Commission related to evidence from other jurisdictions which have individual venue licence models, where harm minimisation measures are much harder to enforce, and competition

between venues drives licence holders to compete for patrons, maximise patron losses. It is a perverse incentive that is against all harm minimisation efforts.

In evidence to the inquiry, the commission confirmed its longstanding opposition to an individual venue licensing model on the basis that it would increase social harm and be difficult and more expensive to regulate. Additionally, the former chair of the Tasmanian Liquor and Gaming Commission, Peter Hoult, also gave evidence to the joint select committee, noting, and I quote, 'interstate experience had shown that such a direct licensing ownership model resulted in dangerous inter-venue competition to attract more gamblers, and very high costs for the government in oversight and compliance'.

Rather than harm minimisation being front of mind, as suggested by the Government, I think what we have seen from this Government is a wilful disregarding of clear, independent, expert advice. What we have seen is absolutely no evidence that this Government took any action in response to the warnings of the current independent commission, or the previous chair of the Liquor and Gaming Commission, not to mention numerous other independent expert stakeholders. Front of mind must be where this Government puts things it wants to ignore completely. Either that or what we are experiencing here is more gaslighting from this Government.

I look at the Government's second reading speech on page 1, where it says:

> The state's existing harm minimisation framework will not be affected by this bill, as the Government's policy is about the structure of the market rather than the way gaming services are provided.

It says:

> In Tasmania, harm minimisation requirements are prescribed in the mandatory code, standards, rules and licensing conditions, which are developed and adapted by the commission. This approach ensures that the harm minimisation framework remains agile and reflects best practice. The harm minimisation framework is a living document, created, changed and enforced by the commission, which itself is empowered by the law. It is in this framework the minister and commission have roles and powers to improve harm minimisation in Tasmania.

It is fascinating to read that. When you read that or heard it being said, you would think the commission can create and put in place whatever harm minimisation measures it might deem to be the best, the most advisable for our state. That is how it reads. But, in fact, that is not remotely the case. We know what the Tasmanian Liquor and Gaming Commission think would be effective and important harm minimisations for our state. They have told us numerous times since it was created.

They have not done it, and why have they not done it? It is because the action of the Liquor and Gaming Commission is entirely directed by the minister of the day. The commission cannot decide what is in the mandatory code in a fundamental way, even though that quote from the second reading speech says, 'the harm minimisation framework is a living document created … by the commission'. No, the commission cannot create it. The commission can do what the minister says it can do.

Last time we reviewed the mandatory code, my understanding is the commission was not allowed to contemplate measures such as $1 bet limits or slower spin speeds and we do not see them in there. I think it is quite misleading to say -

Ms Forrest - The whole issue of $1 bet limits has been almost - I do not know whether we had a bill in this place but we certainly had debate about it, there was pressure about it, so it is not something that has not been tested to a degree here in the past.

Ms WEBB - No, this is the point. I think there was a bill in the lower House, in the other place, for $1 bet limits back in 2011, something like that.

Ms Forrest - It was a while ago, that is what I am saying.

Ms WEBB - Yes. True. What has been really clear since 2008, when the minister at that time directed the then chair of that gaming commission, who was Peter Hoult, to do a response to the SEIS that came out in 2008 - the minister directed the commission to provide a response and in that response the commission clearly laid out its view that, amongst other things, $1 bet limits were a preferred harm minimisation measure.

From that time onwards, at many occasions when it has been able to provide its independent view, the commission has stated that. It cannot decide to put those measures in place. The commission cannot decide to put those into the mandatory code. The commission cannot decide that an element of the mandatory code will be programmable features of the machine. It cannot decide that without being directed by the minister to include it.

That is why I am suggesting that it is incredibly misleading of the Government in its second reading speech to describe that mandatory code as a living document created, changed and enforced by the commission. It cannot be created and changed at whim by the commission on its own expert understanding of evidence. It is created within the tight parameters that are allowed by the minister of the day.

We are still talking about harm minimisation. I would like to talk about what expert evidence we do have and what we know would work to reduce harm. We have ample expert evidence, we have just been talking about it now, evidence and advice on what would work to reduce the harm from poker machines. Maybe that concern that we heard the Government talking about being front of mind is actually so large it is blocking its view of the great big pile of evidence that is sitting right there in front of them. The Government continues to ignore evidence-based best practice harm minimisation and prevention measures from all sources. The commission, as I said, has often specifically been tasked with providing advice, amongst its other functions, to the Government on this area of policy, and then that advice is explicitly ignored.

I spoke about what happened in 2008, when the then Treasurer directed the Liquor and Gaming Commission chair to provide a response to the SEIS. In response to that request, the Commission released a paper that was called - Social and Economic Impact Study into Gambling in Tasmania - Policy Responses - Report to Treasurer. That document acknowledges that with regard to harm minimisation in Tasmania, and I quote:

> There are significant problems that remain unaddressed and policy responses are available with the potential to ameliorate these problems.

The 2008 commission report that I have just referred to states this:

> … the TGC is firmly of the opinion that there is enough evidence available to strongly suggest that -

It then lists a dot point list of the things that evidence can suggest to us. Here they are:

- Problem gambling is a significant issue here in Tasmania;
- The number of problem gamblers is underestimated;
- EGMs are the most dangerous mode of gaming especially for those individuals most likely to become problem gamblers;
- Such gamblers contribute disproportionately to EGM turnover and losses;
- There are a range of policy options available to Government that would result in interventions that would reduce the losses of problem gamblers;
- Recreational gamblers may well be more tolerant of additional interventions than has been implied by some parties – particularly if they are aware of the reasons behind them; and
- A secondary result of such interventions would be a decline in the profitability of the gaming industry and gambling tax revenue to Government.

Therein lies the rub.

Mr PRESIDENT - Order. I ask the member to resume her seat. In accordance with standing order 39, we have Questions without Notice at 2.30 pm. which it has just turned. The question is does any member have a question without notice?

QUESTIONS WITHOUT NOTICE

Biosecurity Tasmania Staff in Western Australia

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

[2.33 p.m.]

Regarding the Tasmanian Government-employed Biosecurity Tasmania staff stationed at Perth Airport on 5 November 2021, can the Leader please advise:

(1) Are these staff stationed at Perth or other airports on a regular basis, and if not, the reasons for their presence?

(2) What was the purported benefit of these officers stationed at Perth Airport, Western Australia, given they only asked passengers if they had their travel permit to Tasmania and did not ask to view or scan them?

(3) How long were these staff located in Perth, Western Australia, and do they attend each flight to Tasmania or was it just the inaugural direct flight from Perth, Western Australia, to Launceston?

ANSWER

Mr President, I thank the member for her question.

(1) Biosecurity Tasmania has engaged passenger service contractors based in all major airports with direct services to Tasmania. They assist travellers and boost the visibility of Tasmania's border rules, as per the Premier's 4 Point Delta Shield Plan, point 1 - strong border controls.

(2) Passenger service contractors educate and support travellers and encourage them to register in the Tas e-Travel system. They do not have any legislative powers under the act but can advise of the action that will take place upon arrival, if not registered to travel.

(3) They have been operating since early September 2021 and attend all Tasmanian-bound services.

Tasmanian Population Rate Response

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

[2.34 p.m.]

The Premier recently announced that Treasury forecasts predict Tasmania's population will increase by up to 0.6 per cent. In light of this prediction, can the Government please advise:

(1) Will the state budget be adjusted in line with this forecast to provide for the increased impact a larger population will have on state and local government services?

(2) Has any government department undertaken an assessment or conducted any modelling of what this population growth will mean in its portfolio service areas?

(3) If so, please advise which departments have undertaken this work and provide copies of these assessments.

(4) If not, please advise when these assessments will be undertaken and commit to making any assessments public on completion.

ANSWER

Mr President, in the 2021-22 Budget the Department of Treasury and Finance forecast population to grow by 0.5 per cent in the 2021-22 in year-average terms of 0.6 per cent in 2022-23 in line with the long-term average. The potential impact of population growth on the state

budget is complex, with impacts on revenue sources, as well as additional expenditure requirements to meet service delivery needs. Whilst over time population growth generally positively impacts the state's revenue raising capacity, the most significant potential impact is on GST distribution. The impact of changes in population on GST distribution may be positive or negative, as the distribution is impacted by the state's relative share of the national population.

In relation to expenditure, as part of the annual budget development process, the Government considers changes in demand and service delivery needs over the budget and forward Estimates period. Agency budget submissions identify policy initiatives and provide advice to government on service delivery impacts due to demographic population and other issues. Community consultation also provides an important opportunity for all Tasmanians to provide input into the development of the state budget and reflect community needs.

Community consultation submissions are considered by agencies in the development of agency budget submissions. Population projections of future growth are used by policy areas across government to inform planning for potential changes in demand in infrastructure and services.

Tasmanian Gas Pipeline and Tamar Valley Power Station

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

[2.37 p.m.]

Leader, my questions are:

(1) The Tasmanian Gas Pipeline has provided information to members, suggesting that the Government, through the Hydro is pursuing a new gas contract for the Tamar Valley Power Station, which will be insufficient to power the combined-cycle gas turbine.

(2) Is this correct?

(3) The inquiry into the energy crisis of 2015-16 found that the Tamar Valley Power Station should be retained, recommending that the Tamar Valley Power Station, particularly the combined-cycle gas turbine should be retained at least until there is a reliable alternative in place to mitigate against hydrological and Basslink failure risk.

(4) Given the Government's decision to abandon the back-up generation capacity of the gas-fired combined-cycle gas turbine, in the words of the Tasmanian Gas Pipeline, in their letter of 4 November 2021, why is the Government mothballing the combined-cycle gas turbine?

ANSWER

Mr President, the answer is, Tasmania's renewable energy future has never been more secure. Tasmania's energy security is underpinned by our Hydro storage levels, which as of Monday 8 November, sit at a healthy 52.6 per cent, the highest storage level since 2014. The energy security risk response framework, which the Government put in place in legislation by way of amendments to the Energy Co-ordination and Planning Act of 1995 is working effectively. The Government takes seriously the 2017 Tasmanian Energy Security Taskforce recommendations regarding retaining the Tamar Valley Power Station.

In recognition of the important role that the Tamar Valley Power Station plays in energy security, the Government committed to retaining it at the state election in May this year. Since that time Tasmania's energy profile has also significantly changed. Wind farms that have become operational since that recommendation, like Cattle Hill and Granville Harbour, inject an additional 260 megawatts of capacity into the power system. This has helped Tasmania reach 100 per cent self-sufficiency in renewable electricity, well ahead of our 2022 target. To further build on this momentum, the Government has legislated a world-leading 200 per cent Tasmanian renewable energy target. The current gas transportation contracts between Hydro Tasmania and the Tasmanian Gas Pipeline expire on 31 December 2021. The negotiations for the next contract are actively underway.

The negotiations are commercially sensitive and are occurring at arm's length from the Government, as is appropriate. It would, therefore, be inappropriate for the Government to disclose or comment on the details of these negotiations while they were underway. However, I can confirm, as previously stated by acting CEO of Hydro, Ian Brooksbank, that there are no plans to decommission the combined-cycle gas turbine at the Tamar Valley Power Station. Tasmania should be assured our energy security is stronger than ever and the Government will ensure that the outcome of negotiations between Hydro Tasmania and the Tasmanian Gas Pipeline will be in the best interests of Tasmanians.

GAMING CONTROL AMENDMENT (FUTURE GAMING MARKET) BILL 2021 (No. 45)

Second Reading

Resumed from above.

[2.41 p.m.]

Ms WEBB (Nelson) - Mr President, I just referred to a dot point list from the 2008 report from the Liquor and Gaming Commission the minister had requested in response to the social economic impact studies that year. That had suggested a range of statements relating to harm from gambling. The report presents a wide range of opportunities to implement harm minimisation measures.

I note the treasurer who requested that report from the commission in 2008 was Labor treasurer, Michael Aird. The Labor Party, of long standing, also have knowledge of and access to the crystal-clear advice from the independent expert authority in this state as to the most advisable, readily implementable harm minimisation measures.

If the Government's view is obscured by its overburdened front of mind, I do wonder what paltry excuse the Labor Party could possibly put forward for its own decision to wilfully ignore all evidence and expert advice informing its position on harm minimisation.

While no subsequent Tasmanian treasurer has ever again asked the Liquor and Gaming Commission to provide a similar review and policy response to subsequent SEIS reports, these evidence-informed observations from 2008 remain true today. Perhaps it is not surprising that no subsequent treasurer has made that request, since they so thoroughly have not wanted to hear it.

In its submission and in the evidence to the parliamentary inquiry in 2017, the commission reiterated much of this earlier advice. It stood from 2008, when it was first provided, through to 2017, when the commission was again able to give voice to its independent thoughts on this matter to the inquiry. It reiterated that including measures such as $1 bet limits, slower game speeds, reduced opening hours, timeouts from machines and more were a way forward for us to consider. It specifically describes the $1 bet limit as:

> A simple, cheap and effective way to reduce the amount that can be lost and, therefore, reduce harm to problem gamblers.

Returning to the stage 1 consultation paper from March 2020, I note the Government also makes this statement on page 2:

> The Government and the TLGC will closely observe and monitor the operation of EGMs in Tasmania in the restructured gaming market and will act quickly to address any harm concerns.

Again, baffling, the patent lack of action from the Government on evidence-informed, expert-advised harm minimisation provides the Tasmanian people with absolutely no confidence in such a claim.

The Liquor and Gaming Commission has closely monitored and observed the operation of poker machines in Tasmania for over two decades, and has regularly explicitly raised concerns about levels of harm.

In doing so, it has formed clear evidence-based views on measures which would produce a genuine reduction of harm to Tasmanians. Those views have been presented to governments, past and present, and have been almost entirely ignored. Virtually the only harm minimisation measures that have been adopted in Tasmania are those approved by the Federal Group and the THA, the most influential players of the industry.

Amongst the evidence provided by the Liquor and Gaming Commission to the parliamentary inquiry, then subsequently ignored by the Gutwein Government, was a refutation of the claim that Tasmania has a low level of problem gamblers.

The Liquor and Gaming Commission acknowledged the methodology for collecting prevalence data is significantly flawed and likely to be a substantial underestimation of the real prevalence of problem gambling.

The statement from the Government, in its stage 1 consultation paper that the Government and the Liquor and Gaming Commission will closely observe and monitor the operation of EGMs in the restructured market and will act quickly to address any harm concerns, seems at best astronomically optimistic, if we look for evidence of such action ever having occurred in the past.

My questions to the Government are:

(1) Do you still stand by your statement the Government and the Liquor and Gaming Commission will closely observe and monitor the operations of EGMs in Tasmania in the restructured gaming market and will act quickly to address any harm concerns?

(2) If so, if you do stand by that statement, having been so regularly and explicitly alerted for years now to the concerns about harm and presented with clear evidence from the commission and others, when specifically should we start the clock on your quick action to address these harms?

(3) And, importantly, what is this quick action likely to entail and what specifically do you expect to achieve with it?

I would like to talk now a bit more about what gambling harm looks like in Tasmania.

What you often find is the harm caused by gambling to Tasmanian people and families is downplayed and implied to be virtually infinitesimal. How many times have we heard things like only 0.4 per cent of Tasmanians are problem gamblers? Or 99.5 per cent of Tasmanians gamble without a problem.

These are pat phrases that are thrown around by politicians and by others, including industry, who either do not understand how to interpret data and evidence or sadly are prepared to lie and mislead in the interests of promoting flawed, tainted policy.

In some ways it is understandable. If I had a policy dictated by industry donors that was indefensible in its lack of robust and appropriate policy development and lack of any modelling or evidence base to support it as the best option for my community I had been elected to represent, I would no doubt too be tempted to twist data and misrepresent the evidence in an attempt to try and deflect criticism and probably even to try to ease my conscience to help me sleep at night.

I do not think I am ever going to be in the position to have to worry about that, but if I was, I can understand you might be tempted.

But for anyone who cares to be informed, I would like to paint a much more accurate picture of the gambling harm and what is indicated in terms of the prevalence being much higher and more consequential than at first glance some of our limited attempts at measurement might suggest.

We should be prompted by what the Liquor and Gaming Commission said when they made the comment the harm from gambling in Tasmania was more consequential than might first be thought.

Let us take a moment to build our understanding. Those figures of problem gamblers, let us start there. That comes from prevalence studies that are done and I will explain a little more about them and their limitations. Some here in the Chamber, or some listening or reading later, might not understand where those figures come from. It is important to because, when those figures are used so roundly to dismiss responsibilities within policy development, it is important that we know.

In a local context, we undertake a prevalence study every three years as part of our state government-funded Social and Economic Impact Study into Gambling in Tasmania. The prevalence study part of the SEIS involves a phone survey to both landline and mobile phone numbers. The survey takes approximately 15-20 minutes to complete and you could expect that the more gambling activity that you engage in, the longer the survey is going to take because you will have more details to provide. An important question is, how accurate are the prevalence surveys? For a start, these are opt-in surveys and they are self-reported data. That is okay, but we immediately have to understand the challenges that presents. We can listen to experts who are involved in delivering these surveys to get some understanding of that.

I will talk about Sarah Hare, who is from Queensland's Schottler Consulting, she is a well-regarded prevalence study expert. She happened to be in Hobart in 2019 for the National Association for Gambling Studies Conference and she participated in a discussion about prevalence studies. Sarah Hare earns money consulting doing these prevalence studies. She was certainly not suggesting they were of no value at all. They are part of how she has earned her living, so I do not think she would talk them down to a great extent. What she did say, as an expert and someone who delivers them and which has relevance for Tasmania to consider, is that self-reported data can be very inaccurate.

Here is what the survey does. The survey asks people, gets them on the phone and asks them to estimate across the previous 12 months, how much time and money they spent gambling. It does that through asking a series of questions. It is going to ask people about all the different types of gambling that are available; pokies, races, keno, online, lotteries, all of those things are asked about. For each type of gambling the person identifies that they have engaged in over the previous 12 months, they are asked for more detail.

I am going to give you a broad indication. I am not claiming to be entirely accurate to the wording of the survey. It is indicative only, but it will give you a bit of an idea. If someone has identified that, say, they had used poker machines in the last 12 months, they would be asked questions along these lines - how often in the past year did you gamble on poker machines? How many of those times did you gamble on poker machines at casinos? How many times did you gamble on poker machines in a hotel or club? How much did you usually lose each time you gambled on poker machines? Those are indicative of the questions people are asked to get that sense of how often and how much. It gives you an idea.

As I ran through those questions, you may have already gathered that there are two primary challenges for this survey. One is people remembering accurately and giving an accurate estimate of those things across the past 12 months. The other is that people are likely to provide underestimates due to the fact they feel uncomfortable telling a stranger on a phone how much they really gamble or how much they really lose.

Many of us can probably relate to this in a small way when we think about how we feel when we are answering our GP when they ask us about our weekly alcohol consumption. It would be very usual, I suggest - I do not think I am unusual here - for many people to be

inclined to lowball their estimate. No doubt, GPs probably take that into account. That happens because we probably feel a bit embarrassed sometimes and we do not really want our GP to think less of us.

To stay with that analogy, for those who do not drink it is a really easy question. For those who drink only one glass a week with a Sunday lunch it is also a really easy question. For those people who fluctuate in how much they drink, especially in relation to how stressed they feel or the contexts of their lives, it can be a really quite tricky question. For those who drink frequently, and potentially to excess, it is likely to be a question that is highly uncomfortable and hard to answer.

I reflect on that when I think about these gambling prevalence surveys. In addition to asking about the 'how often' and 'how much', there are also screening questions to help distinguish people who might be experiencing problems from gambling. They are questions along the lines of, how often have you felt guilty about your gambling? Or, have you borrowed money from family or friends to fund your gambling? Those sorts of more nuanced questions.

With a range of those questions and with the 'how much' and 'how often' questions it can be quite challenging for people to answer. From all those answers that are gathered on the phone surveys, those conducting the survey then characterise respondents into categories and those categories might be a non-gambler - someone who has not gambled at all in the past 12 months. It might be a non-problem gambler, so that is somebody who has identified various gambling they have done but they have not ticked off the boxes for being in any at-risk categories. And then there are three at-risk categories. Those are low risk, moderate risk and problem gambler.

I invite everyone to ask themselves this: if you did have a problem with gambling, how relaxed do you think you would feel during those 20 minutes or so while a stranger asks you those questions? Mr President, I do not know about you but I think I would feel relatively uncomfortable. Quite frankly, I find it incredible really that the Social and Economic Impact Study (SEIS) prevalence survey finds anyone who fits the category of 'problem gambler'.

Sarah Hare, the prevalence expert, agreed with that when she spoke in the conference session here in 2019. She agreed it was highly likely that a problem gambler would get distressed answering surveys of this kind and could easily be expected to hang up or refuse to answer the questions. So the interesting thing about that is that when the Tasmanian prevalence survey was done for 2017 SEIS - and that is the one that I referred to and made notes on about this. I have not updated it. I apologise. From the 2017 SEIS, the number of people who were ultimately found to be problem gamblers in that category in that survey, the same number of people hung up during the survey. We do not know why they hung up. It could have been anything. Something as simple as not having the time to complete the survey or it could have been that they were feeling uncomfortable or distressed because they have a problem with their gambling. We will not know. The likelihood is though that we are unable to accurately measure how many people in our community have a serious problem with gambling through a phone-based prevalence survey because answering a phone-based prevalence survey will be just too hard for many of the people who would fit into that category so the accuracy is compromised.

When we talk about people who have been classified by these surveys as problem gamblers, it is acknowledged by all experts that it is an underestimate, that it under-reports the real level.

The SEIS makes it clear these limitations are there and those figures are underestimates and that is good. However, it means that every time any of us use those SEIS figures - and here I look to all my colleagues in this room because I know many of them do use those figures when they are making arguments about gambling and gambling harm in our community - so anyone who uses SEIS figures of prevalence of problem gambling needs to be very clear and have very much front of mind, the limitations of those figures, and an acknowledgement that it is an underestimate. They are the barest minimum indication of the number of people in our community who are being harmed by gambling. It is certainly not a maximum.

The best we could say with accuracy from the latest SEIS figures is that at least 0.4 per cent of Tasmanians fit into a category of problem gamblers. Even that small tweak of language would represent more honesty from the Government and any others here or elsewhere when using those figures. Unfortunately, what I mostly hear people say 'only' 0.4 per cent, and I think that again is deliberately misleading. For those who were here last year when we debated a motion I brought on on matters relating to poker machines, some may remember I shared then a possible alternative way we could get some indication of how much of an underestimate those SEIS figures might be. We can look at self-supported spends on poker machines in that SEIS. This is when people were asked to nominate how much they lose. We can look at what people said. Once we extrapolate it out, we can compare it to the reality, what people said they spent, extrapolate it for the whole community, compared to what was really spent, because we have those figures from the industry.

As I said last year, when we were talking about this similar topic, it is probably a little bit back of the envelope but it is nonetheless interesting. I am going to repeat it here again for those who maybe did not catch it last time or were not here. I used again the 2017 SEIS to do this calculation and have not updated it for the 2020, my apologies. We find the self-reported spend in the 2017 SEIS, once we extrapolate it out and apply it to the whole state, would see that self-reported figures would show us then what we could expect to have seen in poker machine losses during the 12-month period it was reflecting on.

What we find when we compare it to the actual reality of figures, is the self-reported figure was 28 per cent of the actual figure across that same period. It is a pretty big underestimation of the spend, giving us a flavour of the accuracy as a genuine representation of prevalence in our community through that data in the SEIS. It is useful, meaningful to be done, but it has to be treated with the appropriate understanding of the magnitude of underestimation. Particularly interesting is when you look at the information collected through the SEIS on other forms of gambling, there is not necessarily the same lack of accuracy for all forms of gambling as there is for poker machines.

It turns out in answering questions about keno, the survey respondents self-reported spend, once it was extrapolated out for the state, was pretty close to the total actual spend we know was there on keno for that period of time. It was actually 92 per cent of the actual total, pretty close compared to the pokies estimate, where the self-reported spend was only 28 per cent of what the actual spend was. It is very interesting.

I do wonder if there is a connection there to that element of shame often associated with having a problem gambling on poker machines, the way so many judge those who are affected by that issue as having some form of personal character failure or weakness. Perhaps it is also linked to the experience of people who are either developing a problem or having a problem controlling their gambling, the experience they have of losing track of time and awareness when they are in front of a machine, being in the zone. Perhaps it is hard to self-report accurately because of the nature of that machine and the impact it has on people. Either way the pokies losses reported in the prevalence of this are dramatically lower than the reality, the keno is about the same.

It might, hopefully provide us with some pause for thought when we next hear those figures trotted out to downplay the need for harm minimisation in our community. Just have in mind, now you are informed, they are significant underestimates. In its submission in the stage 1 consultation in March 2020, the Department of Communities Tasmania said this:

> Communities Tasmania is particularly interested in the impact of electronic gaming machines (EGM) gambling on Tasmanian communities. The 2017 Social and Economic Impact Study of Gambling in Tasmania found that moderate and high-risk gamblers account for 28 per cent of EGM losses.

That is on page 1 of their submission. Do not get confused and think the 28 referred to there is connected to the 28 per cent I just talked about in my other calculation. It is separate altogether.

This is fascinating; this is Communities Tasmania, the department which oversees the gambling support services and the funding and implementation of those.

They have highlighted in their submission to the implementation framework in March 2020 to this policy that they feel concerned because the SEIS says that, and remembering SEIS is an underestimate:

> Of all the EGMs the pokies losses in this state 28 per cent of them come from people in those two most serious categories of harm - moderate risk and problem gamblers.

I note that poker machine use, as reported in the latest SEIS has declined overall; 9 per cent of Tasmanians used poker machines in that previous year but the losses materially over that time have not substantially declined; in fact, post-Covid-19 they have jumped right up.

What we are really telling ourselves is quite a significant percentage less of people are using poker machines but losses are staying about the same. It does prompt us to wonder whether it is likely recreational use has in fact declined and problematic use has potentially increased. That is something we could and should know more about in this state. We do not really look into it as purposefully and meaningfully as we could to better inform ourselves about an appropriate response, particularly an appropriate, preventive and public health response to ensuring that is not occurring.

It is important to remember it is not just those who are categorised in those categories of severity as problem gamblers who experience significant harm. Studies from the Victorian

Responsible Gambling Foundation called Assessing gambling-related harm in Victoria a public health perspective. That is from 2016. And another one, The social cost of gambling into Victoria, 2017 found that 85 per cent of the aggregate harm caused by gambling arises from people who are considered to be low risk or moderate risk.

The studies also showed the level of harm experienced by people in these groups is not insignificant. For people who are in a low risk category, the extent of the harm experienced is similar to living with moderate anxiety. For those who are in a moderate risk category, the extent of harm experienced is similar to alcohol use disorder. For people in low and moderate risk categories they are more likely to experience depression and anxiety and are more likely to smoke and drink more. People assessed as gambling at low risk and moderate risk believe they are gambling responsibly. That is what that study found. They believe they do not have a gambling problem and are therefore unlikely to seek help. Those studies in categories that are low risk, similar to living with moderate anxiety and moderate risk which is similar to living with an alcohol use disorder, do not identify that they have a gambling problem.

The studies also found collectively that the cost to the community of gambling problems far outweighs the financial benefits. Usually, when assessing the costs of gambling harm, the harm experienced by low-risk gamblers is not included, only the harm from those categorised as moderate-risk or problem gamblers. When, again, we hear claims about the relative benefit and cost of gambling you have to interrogate a bit further and ask - what was included on the side of the ledger to do with the cost of harm? Did they just take into account things related to the problem gambling category, the moderate-risk gambling category? Did they take into account the low risk?

Often and including here when that estimation is made through studies, they do not take into account the low risk and may not take into account the moderate risk. These Victorian studies tell us that 50 per cent of the cost of harm sits in the category of low risk people. 50 per cent.

Again, when you have data presented to you about the harm of gambling, about the costs and benefits of gambling, please think thoughtfully about how you interpret that and understand that you might need to dig in to see whether it is likely to be an accurate representation and whether all the relevant factors are included.

Otherwise, you are putting forward a picture that is inaccurate and if it is a picture that is then used to justify a policy position or a lack of policy position, in terms of harm minimisation, that is particularly problematic. You need to particularly pay attention that you properly understand the data you are using.

I will briefly mention, and not dwell on, the impact of gambling harm on our community.

When I was preparing my remarks, I wondered about the degree to which to spend time talking about the impact of gambling harm. On one hand, when we are talking of our responsibilities as a government and a parliament to making social policy on this issue, the impact and the consequences of that policy, or lack of policy, are something we have to have at the forefront of our understanding.

On that basis, it is worth talking about them. It is worth trying to assist with understanding and clarity for people on those impacts.

There are two things, on the other hand. One is that I do not want to be seen to be sensationalising the impacts of gambling harm or indulging in dramatic stories. I could be accused of presenting dramatic stories. I do not want to do that either.

The other thing on that side of the ledger is that I spent a lot of time over the last six years; Margie Law here has spent a lot of time over the last 18 years; many other advocate service providers in this space have also spent a lot of time, sharing stories, bringing the voice of lived experience and describing in detail the impact of gambling harm - believing that in doing so, in putting that picture in front of people like us, the government, policymakers, and parliamentarians, that we would care.

I have taken the time to do it, as they have, believing that it would trigger a level of care in the humans that we are to then prompt action. I am so sorry to stand here today and say that unfortunately, in my experience, this has never been the case.

I have never seen a politician, government member or parliamentarian hear, understand and engage with the true picture, the stories and the voices of people with lived experience and then decide to act.

I have never seen that happen. It is devastating to attempt to do that, and then to never see that happen.

On some level I am not prepared to put myself through that again today. I am not prepared to stand here and again read into the record in this parliament, extensive stories and extensive first-person voices, from people affected by this issue and have it blatantly ignored; and have the humanity of that entirely disregarded by the decision-makers in this place, again. This links back to what I spoke about earlier. The voices I might bring, the stories I might tell - how do they compete with the influence, the personal relationships, the chummy socialising that can occur on the other side of this policy area?

Mrs HISCUTT - Point of order, Mr President, by way of personal explanation. The member, in her contribution is indicating that every politician in this House does not care. That is totally the furthest thing from the truth. I am offended by that comment.

Members - Hear, hear.

Mrs HISCUTT - Thank you.

Mr PRESIDENT - Member for Nelson, I ask that you watch the terminology that you use, it can be offensive. We do have Standing Orders.

Ms WEBB - Indeed. To clarify, I did say specifically I had not seen those stories change the mind or the decision of any decision-makers. That is what I said. So, will that disregard it? I stand by it. With that in mind, I am going to briefly mention, as a short list, that the impacts of gambling harm in our community mean: significant loss of jobs and employment; many broken families and relationships brought to an end; an impact on parenting and the care given to children; many instances where life savings are absolutely lost and life trajectories changed; the loss of housing and the increasing influence of homelessness; criminal behaviour, including stealing from family and friends; the breakdown of personal relationships, intimate

relationships, familial relationships, workplace relationships, neighbourhood relationships; an increase in domestic abuse; and an increase in broader crime.

Indeed, we can all point, I would think, to recent cases in the media where a link has been made. I would say were we to look in Risdon Prison and assess what the incidence of a gambling addiction, particularly a pokies addiction, looks like in that population, we would see the link made. In fact, South Australia has made this link quite distinctly. It has gambling courts in the same way that we have our drug dependency court with a therapeutic jurisprudence approach to drugs in relation to crime. South Australia recognises the very direct and apparent link between gambling addiction and crime.

That is a short list of impacts in our community which all have a human face, many human faces, in fact. As I said, I have repeatedly presented those stories in first-person voices as illustrations, as have many advocates. In my experience it has never changed a decision, and that is tragic.

I move on to things that we know will work when it comes to harm minimisation and the prevention of harm from gambling addiction. We have had many people already provide material to us and make the claim that a public health approach is the best way to be coming at this issue. I am not going to spend a great deal of time going into that in detail. It is something we have seen in submissions, it is something we have seen in material provided to us, and maybe something that members here might add more to from their experience.

I do wonder, are we taking a public health approach? Are we taking a public health approach that is as comprehensive and as integrated as it could be? One of the reasons I ask that is that I do wonder why this area of policy responsibility, in terms of gambling support and policy development about harm minimisation and prevention, why that does not sit with the ministers for Health, Mental Health and Wellbeing along with other forms of addiction and addictive products? It does not seem very integrated and it does not seem very consistent.

To wrap up this part of the discussion about pokies addiction, because that is where the harm comes from, people who are on their way to or in the midst of having a pokies addiction. We know it is one in six people who regularly use the machines. We know that it is a chemical addiction to the dopamine that is released in the brain in response to the moment of anticipation that occurs while the wheels are spinning. It is not the result that matters, it is the moment of anticipation that releases that dopamine. An addict is not necessarily chasing wins as part of their addiction, although they may chase wins as part of the distress they feel as a result of their addiction.

What they are chasing with the addiction is the hit, the dopamine release, and that is not the result, it is the anticipation. The continual, regular release of dopamine puts the user into a hypnotic-like zone where sense of time and clarity of decision-making becomes hazy. That zone is a place that can be relaxing and peaceful, which is why people who have high stress in their lives or are experiencing trauma or grief are particularly susceptible to becoming addicted. They sit in front of a machine and experience that zone and it is a soothing moment. It provides some relief, albeit relief that ultimately comes at a devastating personal cost if it leads to an addiction to the product.

I still have people regularly ask me and, certainly, I still regularly see on social media and in the letters page of the newspaper people who are wondering, why cannot people just

stop? Why cannot people just get control of themselves, make a sensible decision and stop choosing to go into those pubs and clubs that have them? It is because that is not how an addiction works. Maybe the member for Huon might cast some more light on this in his contribution. He would certainly be qualified to do so. Because a gambling addiction is a diagnosable medical condition.

People who are addicted cannot just stop. People who are addicted are not making a rational choice. People who are addicted are not experiencing that state because they are weak or flawed or deficient in some way. When it comes to pokies they just happen to be one of the one in six who sit down in front of them regularly who end up addicted.

I think it is really interesting because anyone can become addicted to poker machines. That should indicate to us that our first and best option is to make machines universally safer to use. Any harm minimisation or prevention measure should be at that point. How do we make this product safer for everyone? We do not know exactly who may become harmed and addicted. The first priority for consumer protection and harm minimisation should relate to that, prevention, reducing that one in six. Clearly, from the evidence of other countries, it is not an inevitable figure. In other countries that have poker machines, even some that put them out in communities like we do, they do not have that level of addiction and harm in their community.

It is because the thing that drives that are those readily adjusted features of the machines. We can learn from every other country in the world from their comparative lower levels of harm.

There are three key strategies that other countries use that mean that they do not drive harm the way that we drive harm here. The first one is they limit access to machines. It is the most common thing that is done globally. They put the machines only in casinos or destination gambling venues. The second thing they do though for those who are more like us and put machines out into other places in their community is that they, unlike us, program the machine settings to ensure that extreme losses cannot be incurred in short periods of time and that devastating financial harm cannot occur too readily.

The third thing they do is they adjust the programming features that are known to contribute that triggering and promotion of addiction - the dopamine response in the brain. They lessen the volatility and the intensity of the machine through that.

We are all quite familiar, because we have read it in many submissions and in many pieces of literature and in many expert opinions, we have read the list of measures that do those two things. Things like reducing the maximum bet limit from $5 to $1. We already did that once. We reduced it from $10 to $5 in the state a little while back. All evidence tells us is that we should do a similar thing and bring it down to $1.

There is even more compelling evidence to bring it down to $1 because at $1 here is what we know. Virtually every single recreational user of a machine will not even notice that we made the maximum bet limit $1 because recreational users, all evidence tells us, typically and overwhelmingly, bet less than $1 when they bet. So a maximum bet limit of $1 will not impact the use and the enjoyment of recreational users.

It is people who are experiencing a problem with their gambling and being harmed by their gambling who bet higher than that. It just shows you that to reduce the bet limit is so simple. We do not affect the vast majority of people who are using the machines at all but for that proportion who are using the machine who are being harmed by it we are reducing how much they are harmed dramatically. It is literally going from, once you take the calculations into account, being able to lose $600 an hour to being able to lose $60, once you add the spin speeds in too. It is dramatic.

It just means, one, fewer people will probably become addicted in the first place, especially when we put the other measures alongside it because this comes as a suite. Even for those people who are suffering a problem with their gambling on poker machines, they will be dramatically protected from the devastating harm that can come from those financial losses.

Slowing the spin speed - again, it is a really straightforward way to help us ensure that those extreme losses that can be incurred currently are brought down. It is about how often you can press the button; how often you can place the bets. It is every three seconds right now. If we extended that to six seconds - and by the way, Western Australia has five seconds, so it is not unheard of that we can change the spin speed. Other parts of Australia have different spin speeds. It is very straightforward. It makes entire sense. If you can only press the button twice in double the amount of time between button presses you will reduce losses.

Again, all evidence tells us recreational users of the machines will not even notice this because recreational users of the machine do not press the button every three seconds. They press the button every five to six seconds at most. Sometimes, it is actually 10-15 seconds between button presses because if you are a recreational social user of these machines - and some people here have described family members who are, and that is great. Those family members would not even notice that we had slowed down the spin speed or that we had reduced the maximum bet limit. It would not affect their enjoyment and the use of these machines whatsoever.

Another measure is lowering the maximum jackpots. We have quite higher maximum jackpots at the moment. We could bring them right down. What would that mean? It would mean that the machines would pay out more often.

Why is that important? It is important for a couple of reasons. Mostly to do with the fact of the addiction, being in that zone, getting that dopamine hit, which I described to you as being not about the results, about being in the place between the results. Long periods of uninterrupted play without jackpots allow people to be in that zone for longer periods of time and that is where you are susceptible to addiction occurring and that is where, when people are addicted, they will stay.

Anything that interrupts a long period of uninterrupted play is helpful for preventing addiction from taking hold and it is helpful for people who are not addicted, because it gives them a moment to be out of the zone and to potentially reassess what they are doing and potentially walk away from the machine.

For interrupting long periods of play through that measure, bringing down the maximum jackpot and through things like mandated machine shutdowns - if a machine had to shut down for 10 minutes every two hours, it means somebody has to literally if they want to keep playing, get up and move away from the machine and go to another one or get up, move away from the machine and go home.

That is literally providing a relief moment from being in the zone, that space where you are susceptible to becoming addicted and where you can spend hours at a time being harmed if you are addicted. The other simple straightforward things in that list we have all seen and are familiar with that would make poker machines safer for everybody to use are increasing the return to player rate, and another practical one not related to the machines but the venues, is reducing the opening hours of gaming rooms, which can presently be open up to 20 hours a day from 8 a.m. to 4 a.m.

Anybody connected to this industry and certainly, any independent expert, any academic who studies it will tell you there is really nothing good happening in the gaming room before midday or after midnight. There just is not. People are being harmed in those times. Let us close them. We could reduce the opening hours. It could be a generous midday to midnight, 12-hour block of time where those machines are available for people to use for recreation. That is when normal recreation may occur on those machines and we would simply reduce the access people who have a problem with gambling have to the machines and the ability they have to be harmed.

The other simply programming feature that people will be really familiar with is the idea we prohibit a loss disguised as a win. That is where there is any kind of celebration of a net loss. We have done that to some extent because you can celebrate with noises or you can celebrate with visuals on the screen. At the moment we cannot have noises, but we can have visuals. We could mandate neither of those things happen. Why would we celebrate and have encouragement to play when you have in fact made a net loss on that bet?

Similarly, another programming feature that relates is near misses, where the reels come up and same, same, same, almost, but it was really close. It encourages you to stay in that space to keep going. That would be fine if it only happened as often as would randomly occur, but it does not. At the moment it is programmed to happen far more frequently. I would like to see the prohibiting of false near misses, such as more than would randomly occur, from the programming of our machines. Let us just be fair to people. That is an encouraging thing that can happen as part of a play of those machines. If it only happened as often as it would randomly occur, no problem.

To recap, these are straightforward programming changes. All adjustments to the arrangements around the venue are largely straightforward and non-intrusive. None of them would impact on the recreational use of machines. Not one, absolutely none. They would not even notice. What we would notice is fewer people are developing an addiction to poker machines and people who have an addiction to poker machines are less harmed by them in terms of the devastating financial losses.

Globally, measures such as these are entirely normal. They are exactly what is used in other jurisdictions outside Australia. They are proven to be effective in ensuring lower levels of addiction and harm. We entirely have the opportunity in this state, this whole country, really, but in this state, certainly, to contemplate those measures. We have been encouraged to do so by all independent experts, community advocates and by people with lived experience. We have been encouraged to do it.

No-one is claiming any one of those measures is a silver bullet. No-one ever makes those claims. For those who put up straw man arguments or like to pretend that is what is being claimed, it is unnecessary to sink to that level of debate that is really about having to win rather

than having to understand the issue. This is the issue, we know. These will work. We have the option to do them. None of them, in and of themselves, will be silver bullets but some of them will make a considerable meaningful difference. As a suite, they will be really solid in terms of harm prevention and harm reduction. We could do them all as a suite with no negative impact on recreational use and, also, because this is important in our state, no negative impact on jobs. It does not affect the way you staff the venue.

We have had some red herrings thrown up to fob us off, away from those harm minimisation measures we know would work. We are being told, look over here, look over here! One of the things we are being told about is facial recognition. I would like to mention a few things about that.

We heard from Dr Charles Livingstone in our briefings and that was quite useful. He spoke about this. I had sent him an email recently and said to him, can you point us to any good research on the efficacy of the use of facial recognition technology for identifying excluded people? Are you aware if it is also being used by venues for other sorts of activity to identify favoured guests and so forth? Dr Livingstone wrote back to me and he said, I have done a quick literature search and failed to find any peer-reviewed articles that assess the efficacy of facial recognition systems in assisting those who wish to self-exclude. There is some commercial material promoting the concept and arguing that facial recognition would be effective but no actual peer-reviewed evidence that I could discover.

Let us be clear straight off the bat. When we are talking about this measure, we are talking about a measure which has never been successfully demonstrated in a peer-reviewed, credible way, to work. We have to be clear about what it is. Is this prevention of harm? Facial recognition is not prevention of harm. Is this making the machine safer? No, not broadly, potentially for a small, discrete group of people. Let us talk about why we would use facial recognition.

This is what we know about people in the community who are being harmed by gambling. Research tells us of all the people in the community who are being harmed by gambling, one in 10 will seek help. Let us think about that one in 10 as being the tip of the iceberg, who reach out for help. Of those who do reach out, of that tip of the iceberg, some of them will sign up to a self-exclusion scheme. That is the tip of the tip of the iceberg.

Mr Valentine - They are those I read out yesterday, those sorts of people.

Ms WEBB - Yes, that is right. Let us be clear, the one in 10 who seek help generally do that because they have hit absolute rock bottom. They have hit a point of desperation and have been able to recognise they have a problem, and then they seek help. That is that one in ten. Some of those go on to self-exclusion schemes, where they have put themselves forward, or potentially family members have put them forward to say, 'I do not want to be able to enter these venues', in an attempt to control the gambling that has really overtaken them.

It can potentially be hard, I accept, to implement and effectively execute a self-exclusion scheme in a venue. Fair enough. It might be hard; you have to deal with photos and lists of people. But the reality is this -

Mr Valentine - Sheer opprobrium that goes with it, as well. People rocking up, then their mates would be - you know.

Ms WEBB - It does potentially diminish your socialising around it, is what you are saying, I think. I consider it is really important that we have self-exclusion schemes and that schemes work well. We have not yet demonstrated that facial recognition will provide that for us. It only relates to the very tip of the iceberg. We know it is not a universal public health measure, nor is it a universal way to make machines safer. It may be one way to help a self-exclusion scheme work better.

Let us think about who that would apply to, here in Tasmania. Of the approximately 2500 people who are classified as problem gamblers in this state through that prevalence study model, we have 372 people who are on an exclusion list, as at 30 September 2021. Of those 372 people, 257 had put themselves onto the self-exclusion list and 121 had been put on by venues. Great. This leaves more than 2000 people, of what we know is an underestimate, who fit into that problem gambling category, who are experiencing serious harm. Facial recognition provides no protection for them because they are not on the self-exclusion list.

Facial recognition sounds exciting. I can imagine my 13 year-old son getting excited about facial recognition, because it is to do with technology. Young men get excited about technology. However, facial recognition is limited and is not yet proven. We do not know how much it would be to implement, even if it were demonstrated to be worthwhile. We do not know how patrons would generally feel about it. It depends a little bit on how it is implemented, I suppose, and the degree to which it is intrusive, or people feel that it violates their privacy. We have not answered any of those questions. It is worth a look, but is it worth a first-order look? Would it be the thing we put at the top of our list when we contemplate harm minimisation measures? I do not think so.

I suggest that none of the independent experts, community experts, none of those who put views through to the Government, or I presume, to the Opposition on this policy, none of those who work at the industry, suggested this should be a first-order measure. Virtually all them suggested other things, which have already covered that suite of things which makes poker machines universally favoured to use.

The other thing that has been put forward as one of these 'look over here' measures for harm reduction or minimisation is card-based play. This does have more potential benefit and more broad benefit potentially for users of poker machines. Peter Hoult said to us in a briefing that card-based systems could be effective. However, to be effective it needs to be universal, and be centrally monitored with limits assessed for each individual, unique to the person. There is no need for us to conduct research and put reports together on card-based play because it has already been done. There is plenty of information out there, and there are plenty of trials that have occurred or are underway. We can look to those trials, and ask ourselves, is this a measure that we think is worth investigating and reporting? Again, I am not opposed to this being investigated as an option for our state.

I am opposed to it being put into a very tight parameter with that and facial recognition being the only things that will be contemplated for our state.

We should not have to pick and choose between the expert advice list, that suite of proven things that would work, and these two measures. There is no automatic choice that we need to make between these things. We could be contemplating all of them. It may well be that card-based play would become something that we looked at as part of a broader suite of things.

I am looking now at an evaluation of the YourPlay system from Victoria. This is a final report of that evaluation from March 2019. It was undertaken by the South Australian Centre for Economic Studies, which happens to be the same group that did our SEIS for 2020. This evaluation of YourPlay, which is a card-based system, says, at the top of its key findings and recommendations, very prominently on page (i):

> The system has been implemented successfully, but it has not been a success.

That was a quote from someone who participated in the research, and they have highlighted that in their key findings and recommendations section. It is really telling. It is saying you can put it in place, but it doesn't necessarily deliver the outcomes that you had wanted it to deliver.

So, what is it? I am looking at now page (v), where the executive summary tells us:

> YourPlay (the Victorian pre-commitment scheme for electronic gaming machine gambling) was introduced as part of a broader suite of measures aimed at promoting a responsible, sustainable and transparent gambling industry, including the establishment of Victorian Responsible Gambling Foundation, and the Victorian Commission for Gambling and Liquor Regulation.
>
> The policy objectives for YourPlay (as approved by the Minister for Consumer Affairs, Gaming and Liquor Regulation) are to:
> "minimise harm by providing a tool to assist players to control their gambling and avoid escalating into harmful levels of play by enabling players to:
>
> - access information about their gambling activity, and
> - set limits before they start to gamble, and assist them to observe those limits".

Those are nice and clear, quite sensible objectives.

What happened when they trialled this there? You will recall we had some industry folk presenting to us in briefings. It was Danny who talked to us about the YourPlay system, and he described it as a problem of communicating the system. That is why it didn't work. It was implemented; but the uptake and efficacy in actually reducing harm wasn't there, because it wasn't well communicated.

It is interesting because, that is what happens when you make it voluntary. I think that is what this tells us. A voluntary system of card-based play is not going to deliver the outcomes, and Peter Hoult had said that to us. It has to be for everyone, for every machine. Without that, we are just not going to see the results.

Our Liquor and Gaming Commission here, through this bill, is going to be tasked to go off and do a report about facial recognition and card-based play. They are going to come back and tell us what we already know from the research. It will be interesting to see their thoughts on the degree to which it is readily implementable here, and what the impact would be on the industry and on players, if we were to implement it here. I would be interested to see.

As I said, my objection isn't to us looking into this option. I welcome looking into the option of card-based play, in particular. I just don't welcome it to the exclusion of considering a whole range of other options that we have available to us that have been advised by experts, and are evidence-based.

I have some questions for the Government in relation to harm minimisation: does the Government recognise that around 40 percent of the profit gained from poker machines in Tasmania is coming from people who are addicted and experiencing harm?

Knowing that 1 July 2023 would be a clean-slate opportunity for our state when it comes to poker machine regulation, why has a comprehensive review of Tasmania's harm minimisation approach not been undertaken? Do not point to the mandatory code review that is due next year because you know very well the review of that code will not be allowed to include any of the suite of measures I discussed earlier, the expert-advised, evidence-based measures. They will not be allowed to be included in a review of the mandatory code unless the minister says they can be. If you are going to tell me that the minister will - there is a commitment that the minister will allow the review of the mandatory code to contemplate the inclusion of measures like that, fine. If you are not going to tell me that, do not point to the mandatory code review as some kind of comprehensive review of Tasmania's harm minimisation approach that is coming up. Do not bother.

Did the Tasmanian Liquor and Gaming Commission advise the Government to conduct a comprehensive review of harm minimisation to inform the reform model being brought forward? In the commission's evidence to the joint select committee in 2016-17, it sounded like they did. It sounded like it. The language was, this is a 'once in a generation' opportunity to provide a safer product to Tasmanian people. That is the wording they used - once in a generation, to provide a safer product. It sounds like they might have been advising the Government to conduct a comprehensive review to inform what comes next. Was that advice something that did formally come through? I wonder. I am asking.

Why does the Gutwein Government persist in ignoring the independent, evidence-informed advice provided by the commission on effective harm minimisation measures that could be readily implemented, such as that presented in that inquiry, which the Government set up to inform themselves on what comes next?

What modelling has the Government done on its proposed policy and regulatory framework to gauge the likely impact on levels of harm caused by poker machines in the Tasmanian community? Given that the commission said it could easily drive levels of harm higher, what modelling has been done?

What level of social and economic harm is the Gutwein Government prepared to accept under this proposed model and how much harm is it prepared to tolerate in the Tasmanian community before acting to put Tasmanian people's lives and wellbeing ahead of industry profits?

What evidence does the Government have that suggests that facial recognition and card-based play were the only two harm minimisation measures that could and should be contemplated for our Tasmanian community?

I note there was some language in the other place about this, how we should be using measures that are good instead of measures that make us feel good. That was being thrown out

by the Government towards those who are suggesting that list of expert-advised, evidence-informed measures, that somehow those measures are measures that are being called for in order to feel good instead of do good, which is unusual.

Normally, evidence-informed and expert-advised recommendations would be regarded as those we could rely on to do good. The things being put forward by the Government, facial recognition and card-based play, since we do not have good, clear evidence that they are implementable and will readily work, they sound to me like they are about putting things forward to feel good, maybe even to look good, rather than to do good. That would be my assessment of it.

I know people like slogans. Some politicians like slogans very much, and you can get on a roll throwing your slogans around, that is great. Again, if what you are saying is the complete opposite of reality and you are trying to convince people that black is white and white is black, it sounds remarkably like gaslighting.

Mr PRESIDENT - I will remind the member of standing order 99(3), which is allusion to debate in the other House. We have to be careful.

Ms WEBB - Sorry, it was one phrase I pulled out, Mr President, my apologies. It may have been a phrase that was used outside the Chamber, too. I will be careful not to do that again.

I would like to address now a few problematic assertions I that I find are made in relation to harm minimisation when it comes to poker machines. The first one of those, maybe we can call it a furphy or at least it is misleading as an assertion, and that is we have the best harm minimisation nationally. Hands up if we have all heard that. Every hand would go up. We have all heard that. It is an assertion made by government, by industry and by many others.

Let us put that one to bed right now. That is only true for a start if you pretend that Western Australia is not part of our country. That is fine. Western Australia might be quite happy to not be considered as part of Australia.

We do not have the nationally best harm minimisation. We do not. WA does. The reason they do is that they put their machines only in a casino and they have slower spin speeds than the rest of us. That means their harm is dramatically lower and the member for Mersey spoke about that in some detail and provided some very good figures about WA and the lower harm that occurs there and why. For a start, let us stop claiming that. If you want to be accurate the best you can say is we have the best harm minimisation of say, the eastern seaboards states, or something like that.

Let us interrogate that a little further. Peter Hoult, the former chair of the Liquor and Gaming Commission in his evidence to the Joint Select Committee of Inquiry back in 2016-17 observed in relation to this claim that we are the best nationally in terms of harm minimisation measures. His observation was this: given the laissez-faire approach taken in other jurisdictions this is not a massive achievement.

The eastern seaboard states of Australia are the globally worst jurisdictions for poker machine addiction and harm by a massive margin. None of the globally normal harm minimisation measures are in place in those Australian states so our claim to be better than the

globally worst states is a very low bar and far less than the Tasmanian people deserve from a responsible government.

The Tasmanian Liquor and Gaming Commission has indicated that our single licence model has been the key factor in maintaining lower levels of pokies harm in Tasmania compared to other states, so let us just be clear about that.

It has been our single licence model that has kept our harm lower and it has been part of our harm minimisation effectiveness compared to those globally worse states. It is expected that under the reforms proposed by the Government and in this bill, in changing that model, we will drive higher levels of harm unless something else is done to improve the current consumer protections and harm minimisations that are there in place.

Another assertion that I would like to deconstruct a little bit is the idea that under this model the Community Support Levy has been doubled so that we are looking after problem gamblers.

Firstly, let us deal with the practicalities of it for a minute. There is no reason for poker machines in different venue types should contribute different rates of the Community Support Levy, as proposed in this reform. It has been historically different. It was wrong then; it is wrong now under this reform too that we would apply a Community Support Levy of a different rate across different venue types. In particular, there is no reason for casino-based poker machines to have a lower Community Support Levy rate than hotel poker machines. The discounted rate of 3 per cent for casino pokies compared to 5 per cent for hotel pokies is yet another gift in this policy to Federal Group at the expense of the Tasmanian people.

The stated objective of the Community Support Levy is to improve harm minimisation and address issues of problem gambling in our community, however, this is already applied broadly in distributing the fund to allow for funding of a wide range of initiatives and programs, many of which are not directly related to gambling. In addition to increasing the level of the CSL, the Government also proposes to further broaden the categories, initiatives and projects which can be allocated funding under this levy. The Government has provided no guarantee the proposed changes in any of the amounts or the allocation of the CSL would deliver better outcomes or more effectively achieve the stated aims and objectives of the CSL. We have heard concerns raised about this in our briefings from TasCOSS.

In its analysis for the joint select committee of the Federal Group/THA proposal the commission expressed the view the grant from the CSL should be directed more closely to organisations and groups that assist directly with problem gambling. In response to an industry suggestion it should get funding from the CSL, the commission stated this in the committee report on page 203:

> An industry responsible gambling product might well be an asset in assisting with harm minimisation. The TLGC sees no reason why this should not be funded by industry itself. As per the TLGC's previous representation it seems appropriate that those profiting from gambling, including casinos, be required to contribute to the costs of alleviating the harm caused by some gambling.

The clear risk is the CSL becomes a bucket of funding utilised for pork-barrelling by the government of the day at the discretion of the minister responsible. There is no targeted support focus on supporting Tasmanians with a gambling problem and no material improvement in the level of gambling harm then. While increasing the CSL pool of funding has the potential to fund further support for people affected by gambling, in and of itself it does not amount to a meaningful improvement in consumer protection, or harm minimisation. That requires evidence-based expert-informed measures. It can be applied to the machines themselves to make them safer to use.

My question for the Government on the doubling of the CSL, will the Government commit to allocating all additional funds collected under the CSL to harm minimisation efforts, specifically gambling harm prevention, support for problem and at-risk gamblers, community education and gambling research? Next, what guarantee can the Government provide the proportion of the CSL allocated to gambling-specific services, education and research will not be smaller than under the current arrangements? Next, what guarantee can the Government provide the introduction of flexibility for the allocation of CSL funding will not simply create a handy bucket of funding for pet projects or filling budget gaps instead of delivering a genuine increase in protections?

Another claim or assertion I would like to discuss is the idea venues look after patrons. We know this claim is made by industry. We have heard it from them. We heard it in our briefings yesterday. They say, 'why would we want people harmed in our venues? These are our communities, these are our friends and families. These are people we need as patrons. We do not want them harmed, we look after them'. It is fair enough they make that claim. I can see why they would want to make that claim, for sure. They are basically saying, we are not bad people. We do not like the idea of people being harmed. Of course, none of us would like to think we are bad people and want to see people harmed, none of us. I am sure they are not.

But being good people is not enough when it comes to regulating a dangerous product. With poker machines particularly, we know it is demonstrably a potentially dangerous product and we are offering it to people in these environments and these venues. We know that. Now, when it comes to regulating that product and helping people who are being harmed by it, we know without a specific requirement for a venue to intervene when they see evidence-informed observable signs of someone demonstrating a gambling problem, it is unlikely that will happen.

One of the things we could look at to help us understand, is the fact under Responsible Service of Alcohol, we have a requirement a venue intervenes and stops service under certain circumstances. If a patron is showing visible and observable signs of being intoxicated, a venue has to stop serving them alcohol.

That has not always been the case. I do not know when this change came about - when that requirement was not there. There was probably a stated expectation a venue would act as good custodians and caretakers of their patrons and be careful not to serve people who were drunk. There was probably that stated expectation and hope at some point. At some point, we realised that was not quite enough, because venues still served people who were intoxicated. We brought in a rule about it and said it is not enough to expect good people to do the right thing all the time in these venues and stop serving alcohol to people who are intoxicated, we will need to make a rule about it, and we did.

We are in a similar position here. Yes, staff receive some training in how to identify people who are having a problem with gambling. There is every encouragement that staff should provide some level of interaction or support to that person, perhaps pointing them to some assistance services. That is an expectation there, it is a stated opportunity that could happen, but does it happen? Venues would like to think so, I am sure they do and I think that is genuine, but the reality is that it does not often happen. The reality is, it is not enough for people to be good people.

It is not enough we do not have a requirement to intervene when there are observable signs of a gambling addiction. One of the ways we know it is not enough is the Liquor and Gaming Commission tells us it is not. I quoted earlier, I will read it again because it is quite relevant. I quoted from evidence the commission gave to the committee of inquiry back in 2016-17. When talking about whether or not the proposed model by industry, the fact it did not provide enhanced harm minimisation initiatives and would not protect vulnerable people, they said this:

> At best, that model would not increase the incidence of problem gambling …

This is the important part:

> … however, the Tasmanian Liquor and Gaming Commission has a long record of dealing with compliance breaches in hotel venues and nothing in this model provides comfort that would not continue and, in fact, increase.

We already know from the commission venues already regularly breach the rules they have. In terms of restricting the service of gambling to someone who is observably suffering a gambling problem, we do not even have a rule for them, we just have an expectation that something positive will happen or some positive response will be given. We know it is not likely, from the commission.

We also know, when we look at what the data tells us about the losses to poker machines in this state, the SEIS told us 28 per cent of the losses to pokies in Tasmania come from people in the problem gambler and moderate-risk gambler categories, those extreme ends. 28 per cent of the money being lost to poker machines in these venues is coming from people who would be sitting there with observable signs of a gambling problem and difficulty controlling their gambling. In a gambling sense, they are sitting there, observably intoxicated, if you will. We do not require venues to intervene. One of the ways we know they do not is from the SEIS conservative estimate that 28 per cent of losses going into the machines come from people in that situation. Yes, venue owners, I think, are good people. Yes, we provide training to staff, some of which points and alerts them to signs of a gambling problem. That is a good thing to do. But without an obligation to respond or intervene, and probably without any record of the degree to which that is occurring in venues, how often do staff interact with patrons they have observed to be having a problem? What do they do in response to that? We do not know, it is not collected, it is invisible.

I will just say a few things about the visibility of a gambling problem. It is very hard to believe or imagine that staff in a pokies venue would not know who is having a problem. Beyond the fact that they are trained, it is part of their training, beyond that even though just through simple common sense and observation. A person who has a problem with gambling comes in very often. It might be in bursts relating to certain things like paydays or pension

days, or maybe it is multiple times every week. It might even be every day, but it is often. They are the people there before the place opens in the morning. They are the people who, when using the machines, do not stop to eat or drink and do not go to the toilet. They are the people who are sitting there who do not show any satisfaction from a win and just put the win back into the machine and keep going until it has all gone. But they are also the people who show signs of distress potentially when they lose.

The staff in these venues, they know the people they see exhibiting those behaviours, then they see it again the next day when they come back, or the next week after that. The staff can tell these people have a problem, and 28 per cent of the money getting lost to those machines is coming from those people. As I did when we debated the poker machine motion last year, I am going to very briefly share stories that illustrate that. I think it is important to illustrate this point on what it looks like in a venue.

One Tasmanian described it really well. These are direct quotes from Tasmanians affected by gambling harm. This person says, '[We would arrive] at 10 o'clock and go home about 4 or 5.00 p.m. Sometimes we would play pokies for five to seven hours, depends on how much money we had. We did not even eat or drink tea, coffee or alcohol. I do not drink. The majority of them sit there for hours.'

Another woman said, 'No, we would not even go to the toilet. We would have kept playing the pokies if we had sold things in our houses to get the money.' A man described spending many hours at a venue: 'I have been there when it opens at 9.00 a.m. and there until it closes at night. I just keep going back.' Another man who described how he would go to gaming venues as often as he could, sometimes three times a day. He would drink an occasional glass of water, but never eat. He would try to last up to four hours without going to the toilet.

When he was skipping work, this man would stay at the venue for only a short time. However, he said he was often surprised at how long he was at the venue for. This is what he says about it: '[I would play the pokies] until my fingers got sore. You think you have worked out the system because you are watching them for so long, but that is absolute rubbish. I could do up to $400 in one session, but then I would stop because I would be physically exhausted. … You think you have been there for 30 minutes but you will have been there for about 3 or 4 hours, it is really strange.'

In all of those stories there were venue staff who could see what was going on. They should have intervened. We should require them to intervene, just like we do with Responsible Service of Alcohol. If these patrons had staggered to the bar and slurringly asked for a drink, they would not have been served. Yet, what they were seeing every day was the gambling equivalent of intoxication.

Currently, we do not effectively hold venues to account for responsible service of gambling. We give it lip-service. It is part of training, it is in the mandatory code, it is supposed to happen. But when you hear stories like that, when you hear descriptions from people about their use of poker machines in that way, and they would be replicated all over the state, attached to every venue, we know for sure that it is not working.

We are not holding them accountable enough when it can be seen so very clearly. As I said, this is not about people being bad people. I think venue owners are good people. It is our failure to put the appropriate requirements in place, just like we did with alcohol.

Another one I want to deconstruct a little bit which comes up when you are talking about this topic - like clockwork actually - with such regularity. We hear it again, we have heard it in this debate already. It particularly comes up in relation to harm. It is a part of a conversation and it is a distraction and, in some cases, people might throw it out there because they feel uncomfortable. In other times I think it is quite deliberately thrown out there as a bit of a red herring and it is online gambling. Here is the thing: people like to focus in on online gambling at the moment when we are in the midst of a conversation about poker machines.

Let us be clear about that. There is a time and a place where we absolutely should and could talk about online gambling but it is not in the middle of a conversation about poker machines and the regulation we might put around poker machines or the harm minimisation we might discuss in relation to poker machines. That is not the context for a conversation about online gambling.

The only purpose of bringing that into the conversation when we are in the midst of talking about poker machines is to be distracting or to make yourself feel more comfortable, more charitable. Let us imagine that is one reason.

This is why what we know from our local SEIS research that is done - and we know it from our local gambling support providers, that the vast majority of gambling addiction and harm in this state is associated with poker machines. They are the clear and present danger to people in our community when it comes to gambling harm. Over 70 per cent of the people who present to our gambling support services do so with poker machines as their main form of gambling. That is why we are talking about poker machines primarily and there are a lot of matters relating to poker machines and their regulation in this bill and in the reforms that we are proposing. They are central, particularly when we are talking about gambling harm.

When we talk about what opportunity we have to do better with harm minimisation and regulation of poker machines, we can and do, and we have talked through many of them already even here, in this context. We could talk about that thoroughly. We have lots of options open to us. We have a whole suite of things that we could be contemplating that are expert-advised and evidence-based.

What we do not need though, and is entirely irrelevant, is a suggestion that online gambling and its presence in our community should somehow have any bearing on or impact on what we do in relation to poker machines. It should not. It is not necessary. They are two completely separate things and their validity should be contemplated in their own right. We actually do not have to pick and choose between regulating effectively and putting harm minimisation measures in place on both those forms of gambling, on online gambling and on poker machines.

There is no false choice here. People appear to like suggesting there is as if taking action in one space means we take away action in another.

I do not think it is a zero-sum game when it comes to regulation of different products. We have the time and attention to devote to both of them and the reality is they exist in terms of regulation in different jurisdictions.

Online gambling is regulated at a federal level. Poker machines, lo and behold, are a state government responsibility of ours here at this level.

While we are talking about that responsibility here at this level of government, any suggestion to bring in the idea of online gambling and in some way hold it up to be a reason we should stop talking about poker machines or this level of gambling, is just ridiculous. It is unnecessary and purposefully trying to be distracting.

We can more than effectively have a conversation about online gambling at another time in the context within which it is regulated and that conversation is ongoing and there are active advocates in it. I personally fully endorse advocacy on that issue. I hope to see much better and more effective regulation in that area through the federal government. We can do much better. It is concerning. It is increasing. Let us do something about it. Absolutely nothing to do though with this debate on this bill, or any conversation.

Madam DEPUTY PRESIDENT - Maybe you should get back to this bill then, because you are just doing what you have criticised others for doing, bringing that into the debate. Just name it and move on.

Ms WEBB - Thank you. I will do that.

Here some questions for the Government:

(1) Does the state Government understand it has responsibility for the licensing, regulation and harm minimisation in relation to poker machines and the federal government has regulatory responsibility for online gambling, and we do not need to choose between them when making good policy on one or the other?

(2) Does the Government acknowledge that poker machine gambling is a form of gambling that causes the most harm in the Tasmanian community?

One of the things we also hear in this debate and from the industry in their briefing paper they provided - there was a quote in that briefing paper that suggested from one business they would go out of business if we were to regulate in certain ways.

It is interesting. The idea of the business model is one worth contemplating. It comes up because there still seems to be drawn into our discussion around this bill, a suggestion somehow people are looking to remove pokies from hotels and clubs. Let us be really clear. There is no suggestion of that anywhere in relation to this bill and we do not have to talk about it. If we are talking about the business model of having poker machines in hotels and clubs, and contemplating reforming it substantially, what we do know is that 40 per cent of the profit - via the losses - come from people who are addicted and being harmed. Even our SEIS tells us those people who are in the problem gambler and moderate-risk gambling category, at those extreme ends of who is being harmed, make up 28 per cent of the losses in our state.

The harm minimisations advocated for, and that do not affect recreational gambling, would not affect the profit made by this industry on the genuine use of the product that is supposedly there for recreation and for people to have an enjoyable time. That is what I gather to be the intent. We have heard people describe that is the way people they know interact with this product.

Let us say conservatively, from the research and what the evidence suggests, around 60 per cent of the profit that is coming now through these machines is coming from those recreational gamblers. That is great, that profit they acknowledge as being the valid profit coming from the non-harmful use of that product. Do we think venues are entitled to the profit from addicted gamblers we see now under the current arrangements with the current levels of harm minimisation? If we do think that, how much of their profit do we think they are entitled to? Do we think that they are entitled to that 40 per cent of the profit from addicted people? Do we think it is okay if a venue's viability - if they say we will go out of business if you put harm minimisation in place - do we think it is okay if a venue's viability depends on people who are addicted to providing them with that profit?

I am not sure we would see that as an okay business model. A business model that we should not just allow but actually facilitate by choosing to not put in place evidence-based expert advice measures that will reduce the chance of addiction and harm that are caused - that does not sound like a business model we would endorse. Do we think if we fail to do everything we can to reduce the addictive nature of the machines it would then be okay to allow venues to profit from the addiction we are failing to ameliorate? What level is that? Where do we set the bar? To be honest, we know no measure, even a suite of measures is not going to be a silver bullet that solves everything. These are harmful products. There may still be some level of harm even if we were to do everything we could.

But that is not an excuse not to do everything we could. That is not an excuse to allow the harm that occurs in failing to do everything we should. The industry people who spoke to us in briefings really explicitly articulated they want to do harm minimisation. They want evidence-based things put in front of them. That was the phrasing used, put in front of them. I find it puzzling. Evidence-based measures have been put in front of industry, government and the community for a very, very long time. I spoke about the fact that even, say, the $1 bet limits have been explicitly put into the conversation here since 2008 at least, if not before, through evidence-based independent experts, the commission, the Productivity Commission in 2010, then through the parliamentary committee.

I do not understand what mechanism of putting in front of industry is required for them to contemplate the effective measures all non-industry experts and independent evidence bases say would work. I would like to put it in front of them, to understand how to do that effectively. It is an invitation to industry to engage with that. Those measures are there.

I am going to move on now to some financial aspects around this bill. It is interesting for us to contemplate what government's job is when it comes to taxation. Taxation is a key measure in this bill. I note that John Lawrence, in his submission to the July 2021 consultation on the exposure draft of the bill, noted his paper would focus on a particular one of the aims of the FGM policy - that being to ensure returns from the gaming industry are shared appropriately amongst the industry players and the government representing the community. He said this, and I quote, from page 3 of his submission:

> It's the third of these aims, that returns are shared appropriately, which is the focus of this paper. The comments need to be viewed against a backdrop of the State government's fiscal sustainability challenges and policies for industry developments across sectors. The inescapable nagging question that needs to be answered is why does an industry with as few redeeming features as the gaming industry receive gold star government assistance?

He also made this important overarching point. He said this:

> The existing gaming arrangements [in pubs and clubs] are about to expire. EGM Operators have more than fully recouped investment in EGM facilities. The government is proposing to mandate future EGM rights by way of a gift. Any taxes that need to be paid will reduce the value of the gift. The burden of taxes is borne by players. It is the government/community's right, in fact responsibility, to determine what is appropriate. Current operators do not have any inalienable or residual rights to dictate the size of the gift. That would be akin to allowing a spoiled child to bully Santa.

That is on page 16 of his submission.

The proposed model that the Federal Group and THA put forward in 2017 stated, and I quote:

> These tax rates and licence fees would also ensure that returns to the Tasmanian Government are no less than current levels.

In what they proposed, which subsequently became Government policy and resulted in this bill, industry had generously - how kind of them - put forward a model where the Government did not get any less. The community, therefore, did not get any less than our current arrangement. They were prepared to design a new system that provided about the same financial returns to the Tasmanian people that the old system provided. The old system that was likely, I would assert, the most obscenely irresponsible design, providing the most disadvantageous returns to our state that could be imagined; the old system which allocated a highly lucrative, exclusive public licence for free to a private business.

The industry's proposed model promised the Tasmanian Government would receive no less revenue than under the current model. My goodness. That is basically what we have seen borne through into government policy and into this bill. It is a slight improvement on return to government under this proposed bill. I will come back to that.

Again, that proposed model that was the genesis of this policy and this bill from the Federal Group and the THA in 2017 claimed that, and I quote:

> Strengthening the hotel sector will deliver a range of community benefits including increased employment, investment and development.

That was page 1 of their submission to the committee.

The submission presented absolutely no evidence, no rationale, no modelling to support that claim; yet the Government accepted it. Having adopted the model, the Government has presented absolutely no evidence, no rationale and no modelling to support that claim made about the model. Where is our modelling to say how this will increase employment, how it will drive investment and development, so we can assess how well it does that and we could weigh it against other options?

The proposed model from Federal Group and the THA in 2017 suggested that, and I quote:

> … tax, levy and fee arrangements should be locked in place for a long period. While tax rates cannot be perpetual, both parties believe that a minimum 20 year period of tax certainty would be appropriate and necessary for the industry.

That is page 9 of the submission back then.

The submission presented no evidence, rationale or modelling to support that claim, yet it appears the Government accepted it; because having adopted the model the Government has presented no evidence, rationale or modelling to justify this aspect of the policy coming forward in the bill.

Peter Hoult, former gaming commissioner, had sent to us one briefing paper that included some overarching comments around various aspects of this bill and this model. He then sent an addendum, which are comments on the market design aspects of this EGM policy, as he has described it. He noted that the comments that he has provided in this paper were developed in association with persons with relevant qualifications and experience who, for personal and professional reasons, have asked for the material to be part of his briefing papers provided through to us as members for briefings ahead of this bill.

Some of the things in this briefing paper that we received as an addendum from Peter Hoult are quite astonishing. It focuses on the financial aspects of the arrangement given effect in the bill. It talks about the policy context and the responsibilities of government; clarity on market rules; taxation and government revenue; raises questions on this model; and talks about private property values and termination date and venue viability.

I am very tempted to read this in as part of my contribution; noting it is nearly six pages long. I am certainly going to table it so that it becomes part of the public record. I hope all members read this ahead of the briefings that we had, and ahead of their consideration of this bill. It calls into serious question the financial aspects of this deal.

To hark back to what I spoke about earlier: when we ask ourselves the question, is this the best possible deal for our state? If you read this, the answer is a resounding, no. I would be very interested in any member who read this and did not have questions about the financial aspects of this policy and did not believe that more investigation and scrutiny were needed as a result of the questions that it raised with them.

I will mention a couple of things from it. It says this:

> Governments regulate certain economic activities because of undesirable externalities created in the wider community that would arise from the activity in the absence of government regulations. In this case regulation is required to remove, minimise or control the undesirable impact on the wider community of certain forms of gambling. When a government creates a regulatory framework for an industry such as gambling, it effectively creates the market and the market rules under which participants, licensed venue operators, compete for the services they provide to consumers, gambling customers. It effectively determines the profitability of the participants.
>
> In creating this market design through the rules and regulations set out in the primary and subordinate legislation, the Government needs to ensure that firstly, the detailed market will be both comprehensive and clear to the market participants, the consumers and the community. Secondly, there is adequate return to the taxpayer from the benefits and rights conferred on the market participants, with the level of tax set, having regard to the income stream created for the participants, but no less than the social cost to the community and the cost of regulation with the structure of taxation, i.e., the tax rate, playing an appropriate role in the management of the adverse impacts of the activity being regulated.
>
> The market is a level playing field for all market participants so that they can compete with each other on their merits without unintended consequences for themselves or for the consumers to whom they provide gambling services.

That is one of the things that were listed in this paper as a requirement.

> Further, the Government needs to ensure that the market and regulatory design does not create risk to taxpayers, or the opportunity for windfall private property rights, ie, venue capital/sales value generated by virtue of the market design alone. Further, the Government needs to ensure that there is a clear end and clearly communicated public process to end the regulatory arrangements at a point in the future in order to ensure future taxpayers are not exposed to significant future compensation when a future government decides to change the regulatory arrangements and market design, and to minimise sovereign risk for the participants, ie, when the regulatory arrangements are changed after participants have invested in business based on a regulation.

This paper asserts the Government's policy framework for the electronic gaming machine industry fails on every one of these key tenets or requirements of regulatory policy. The paper asserts that the Government has failed on every one of those elements that I just listed, that it needed to ensure was part of this policy. There are points on failure on the clarity of the market rules; failure on taxation and government revenue; failure on private property values; failure on a termination date; and failure on venue viability.

This is a paper that I will shortly seek to table. I suggest that it becomes something that members re-read ahead of our continued debate on this bill.

If nothing else with this focus on the financial aspects of the bill and the policy that underpins it, and the questions that it raises, and concerns it should raise, if nothing else, that should suggest further scrutiny is required. If not through a committee of inquiry in this place, perhaps through the Public Accounts Committee (PAC) would be an appropriate place to send it for examination of these financial arrangements.

I seek leave to table the paper.

Leave granted.

Ms WEBB - Who will be most affected by the transfer of financial risk under this model? No detail has been provided on what consultation process, if any, has been undertaken on the policy with poker machine industry stakeholders beyond the dominant players.

We would take it as read that you would hope a representative body, like the THA, would have done that consultation with all stakeholders. I do wonder about the small and single venue owners and their connection to consultation on this policy and its implementation. We have heard a number of stakeholders raise concerns about rural and regional venue owners. I wonder whether clubs were consulted? Perhaps they were.

There remains a large number of matters identified as unknown financial risks for venue operators. We heard that too when we interacted in the briefings that there are still a lot of unknowns for venue operators.

John Lawrence, in his submission on the exposure draft of the bill, certainly raised questions on the impact of the FGM model on variously sized venues. Here is what he had to say, and there is a dot point list:

> The full effect on smaller venues is highly conditional on a few factors.
>
> - The outlays required to satisfy all the monitoring requirements.
> - The costs to perform the regulated fee functions, such as installing, servicing and updating EGMs.
> - The costs of the market-based functions currently provided by Network Gaming such as signage, training selection and financing of EGMs. The smaller, more remote venues will probably face higher costs.
> - Higher costs to finance EGMs then would be the case for larger operators is likely. The same will apply to leasehold operators. Clubs will also find financing EGMs challenging. There was a suggestion that the new network operator might assist, but whether that will eventuate is uncertain.
> - Management time to oversee all of the above.

That was from page 14 of his submission.

All of those services are currently provided, I think, through Network Gaming, owned by the Federal Group, and there are no current providers of such services in the state.

Under the current model, the cost of those services is fixed as part of the overall service package provided through Network Gaming. Under the new model, every venue operator will have to source and fund some of those services from their own initiative.

Some will have regulator fees attached to them. Some will have commercial fees attached to them. It is potentially quite likely Network Gaming will be successful in winning the tender to be the LMO under the new model, or an associate, some sort of entity that has an association with the Federal Group but with appropriate ring fencing, I think is the phrase, between the two, the operations of the different parts of the business.

It might be that we see that they remain the only option for the provision of, not just the regulated fee services, but also the market-based services provided under the new model.

It does make me wonder, if that does play out, then as the LMO operator and if there is still a connection, even a ring-fenced connection, to Federal Group, that is going to be an interesting situation arise when market-based pricing rolls out for some of these services that were previously things that the venues never had to think about.

We heard from industry that they believe a guarantee has been given that no venue will be worse off. It is a guarantee that we asked if they have written somewhere or in an arrangement but apparently that guarantee has been given clearly in the public domain through the media and the like. They feel confident that that is a commitment that will be upheld by the Government. That is fine; I am pleased that the industry feels confident in that. That must be reassuring to them but for our purposes, in assessing this model, we would surely want to know what modelling has been done to demonstrate where this licensing model will leave the venue operators financially compared to the current model or compared to other possible models.

Given the stratified nature of the poker machine hotel industry in Tasmania, we have some people who just own the one venue or operate the one venue; we have multi-venue owners and we have some very large operators across many venues. Where are the case studies and the modelling to demonstrate the expected overall financial picture? That may well have been done and been shared with industry itself but it has not been clearly put into the public domain in detail so it has not been able to be assessed by non-industry stakeholders or by the community or even by us as parliamentarians. Without that detailed modelling publicly available and able to be assessed, how are we to know the appropriateness of these proposed arrangements and their likely impact?

Some questions for the Government.

(1) Can the Gutwein Government demonstrate that single-venue operators, small regional rural ones particularly, will not be worse off under this new model and that this model does not constitute a more burdensome but not more financially beneficial arrangement for those single-venue operators than they have now?

(2) What guarantee can the Government provide that the model will not put current clubs with poker machines at risk, for example, as they are generally small?

(3) What guarantee can the Government provide that this model will not put small and regional hotel venues at risk?

(4) Does the Government expect poker machines to disappear from hotels within some small regional communities and become more concentrated in larger urban areas under the model?

(5) If so, which urban areas would be most at risk of an increased concentration of the machines?

I would like to speak a little bit about implications for ownership within the industry under the model in the bill. In five, 10 or 20 years time, I am interested to know what changes the Government expects in venue ownership and venue location in Tasmania. What has been modelled? We can begin to guess what the Government may expect to happen in venue ownership by noting that it has included an overall maximum cap on ownership of poker machine authorities. It has set that cap at 587 as the maximum total number that any one operator or associated operators can own and that number is a quarter of the number of machines under the statewide cap outside casinos.

There is a pretty big clue right there as to what the Government expects to play out. Under this arrangement, it looks like we could expect to see a consolidation of ownership, potentially down to only four very large operators.

John Lawrence in his submission on the draft exposure bill explains this:

> Legislators need to be aware that with more profits in a given industry the more you will see aggregators moving in to try to capture those profits. Just as large bottleshop chains such as BWS, Dan Murphy and Federal Hotels' 9/11 now dominate bottleshop operations, so too will you see aggregators moving into gaming. Gaming will become even more attractive because of the super profits from a government mandated activity and the surety of perpetual licences.
>
> The FGM Bill preempts this inevitability by proposing a new section 101D which will limit EGMs in common ownership to a maximum of 587 - one-quarter of the proposed statewide mandated cap.
>
> The biggest winner will be the sellers who will reap windfall gains from licences gifted to them because they happen to be at the front of the queue when they were handed out. The other winner will be the aggregators who will muscle their way into a lucrative government-protected racket. It needs to be remembered that an aggregator will not necessarily need to acquire a freehold interest in a targeted venue. Obtaining a leasehold interest over a designated area will be sufficient.

> Given the huge super profits that have been generated by EGMs over the past 25 years there is scant evidence the community has received lasting benefits.

Further, from John Lawrence in his submission on page 13, there is a break-out box where he says this:

> Love Your Local was a marketing slogan that helped win the 2018 State election. It's unlikely to be invoked as a guiding principle when cashed up aggregators looking for suitable milking cows come knocking on the door trying to gain access to government mandated revenue streams.

This model has been specifically designed to suit the economies of scale that can be achieved through owning multiple venues and subsidising lower earning venues with super profits of inner urban higher earning venues. The lack of a stepped tax rate certainly allows for this. The questions I have are about the ownership and shape of this industry. Based on the current ownership of venues and numbers of poker machines in each (upon which EGM authorities will be allocated), what is the current proportion held by each current owner and ownership group? What is the largest proportion currently held by any one owner or ownership group? Noting the cap that has been imposed, why was 25 per cent decided to be an appropriate percentage of the EGM authorities that could be held by any one owner or ownership group?

Will the Government provide a guarantee that the model will not result in a concentration of ownership which would see the Tasmanian industry become an oligopoly under four owners or ownership groups? What guarantee can the Government provide this model will not result in majority, or even entire, interstate ownership of a Tasmanian hotel poker machine industry over time?

Within a short period of time, after switching to the proposed model, we could see our state transition from a pokies monopoly to a pokies oligopoly, that is what it looks like. The exact same inappropriate features of our current monopoly would still exist, in some cases, even more harmfully under an oligopoly of that sort. As the Liquor and Gaming Commission always asserted, the problem with the current arrangement was never the single licence model itself, it was the fact the licence was given away for free instead of being market-tested, resulting in far lower returns to the state and super profits to the licence holder. Further, that appropriate regulatory and harm minimisation measures were never put in place, leading to unacceptably high levels of harm in our community. This is exactly the same criticism that can be made of the proposed model and the oligopoly it could readily create. It, too, will see licences given away for free instead of being market-tested, resulting in far lower returns to the state and super profits to the licence holders. By lower returns, I mean in terms of comparative to what we could achieve. It, too, will see a lack of appropriate regulatory and harm minimisation put in place, which experts say will likely lead to even higher levels of harm in our community.

Same, same. The audacity we see when there is crowing about breaking a monopoly only to be putting in place a model that retains all the problematic features of the monopoly and more, trusting in the power of simplistic three-word slogans for the masses. It takes a special kind of arrogance and disregard for your responsibility to be a good policymaker in the best interests of your community that elected you. While it may serve a short-term self-interested goal of garnering popular support through the deployment of misleading jingoistic slogans, history will tell us another story. What this Government is doing with these proposed

reforms and what the Opposition appears weak enough and bereft of values enough to support will be judged in the political history of this state.

I can guarantee you judgment will not be favourable. This will be looked back on, be written about, studied and codified in history as a shameful failure of government and governance. All of us here will have our name attached to some side of this story.

I would like to speak for a while about the casino licences and other matters relating to casinos in this bill. I am going to note some recommendations that came out of the joint select committee of inquiry in 2016-17. One of the recommendations was if the casino licence is to be exclusive, it should not be in perpetuity. The annual licence fee should be reassessed and should reflect the value and worth of the licence if it was put on the open market. What is the Government's assessment of the value or worth of the casino licence if it was to be put on the open market?

In considering the renewal of casino licences, or indeed the introduction of new high-roller casinos in the state, did the Government undertake a complete review of licensing and regulatory arrangements for casinos in Tasmania? If not, why not? If such a review was conducted, who was involved in the review? What modelling was done to indicate this policy is in the best interests and delivers the best outcomes to the Tasmanian people?

I am going to speak a bit about the pokies tax rate in casinos now. Tasmania has never had different levels of poker machine taxation between casinos and hotels, CSL aside. Given that poker machines in casinos are cheaper to operate due to economies of scale and make higher profits for the operators due to regulatory privileges, there is no basis on which casinos should be gifted a lower taxation rate on their poker machines. Other than Federal Group and the THA, I believe - and I am willing to be corrected - no other individual or other organisation giving evidence to the joint committee of inquiry in 2016-17 made the case for different tax rates to be introduced for casinos as opposed to hotels.

No objective independent evidence was presented to justify that kind of change in the committee process when we were looking ahead and asking what could come next. The government policy taken to the 2018 election agreed with the Federal Group and THA proposal the tax rate should be differentiated. It became a matter of speculation the Government would set a lower tax rate on casinos than those applying to hotels. The Government's election policy certainly departed from the original Hodgman Liberal Government post-2023 Gaming Structural Framework document, which stated that, and I quote:

> … the tax rate and licence fees for casino gaming (table gaming and EGMs) and keno are to be reviewed against the **broader Australian market**.

I have emphasised, as I said that, broader Australian market.

This was in line with the recommendations from the committee and it was an expectation reviewing Tasmanian casino tax rates against the broader Australian market would see them increase. That was the expectation at the time. However, the Government then moved, without explanation, to the different position that casino poker machine taxes will be benchmarked against comparable casino operations interstate to ensure the returns are competitive and fair for the community, players and the casino operator.

Inexplicably, limiting the comparison then even further to regional casinos in north Queensland, appears to be the justification without any further detail the Government has used to reduce the casino pokies tax rate and the casino tax rate more broadly. John Lawrence, in his submission on the draft exposure bill, questioned this. He said this:

> When releasing the draft FGM Bill, Minister Michael Ferguson told us the release of the reform package followed "an extensive body of work, with licence fees and tax rates that apply for Far North Queensland casinos (a comparable market) used as a benchmark".
>
> It is not clear why the government needed to go on a voyage of discovery to North Queensland to find a benchmark. There is no sound public policy basis why casinos in regional areas currently need assistance and why this benchmark was adopted. We don't need to attract more capital from new casinos packed with EGMs as they're prohibited. Tourists don't come to Tassie to play EGMs. The latest SEIS report estimates tourists possibly only contribute 1.5 per cent to total gambling losses in Tasmania. Even if they came to Tasmania to play the pokies, the tax rate is irrelevant.

Page 16 of John Lawrence's submission on the draft exposure bill notes:

> Players play regardless of the tax rate. It's locals who play casino EGMs so why should casino EGM be taxed (tax plus CSL) at a rate of 22 cents in the $ less than EGMs in the community.

The proposed model from Federal Group and the THA in 2017 claimed that, and I quote:

> This model is only sustainable if EGM tax rates in casinos are aligned to those that apply to regional casinos in other Australian states and territories.

The Federal Group/THA submission outlining their model presented absolutely no evidence, rationale, or modelling to support the claim. However, Federal Group's earlier individual submission to the committee, which had also proposed discounting casino pokies tax rates in the event of a venue licence model, did say this:

> At present, the current model essentially means that there is an internal cross-subsidisation for both EGM taxes and gaming licence fees from Wrest Point and Country Club to the hotel and club network.

Synergies Economic Consulting, however, in its analysis of the Federal Group/THA model that underpins this Government policy and this bill, notes the justifications made by Federal Group then on the matter of a discounted tax rate for casino pokies and states that:

> Synergies does not regard the above to constitute a compelling case to change the current taxation arrangements applying in Tasmanian casinos.

That is on page 5 of the Synergies analysis of that model and you should find it on page 195 of the joint select committee report.

I am going to read from page 5 from that Synergies analysis, that is the list of justifications from the Federal Group about why a discounted tax rate on casinos was required, remembering that these points are the ones that Synergies did not find compelling. They were that:

- In jurisdictions, other than Tasmania, EGMs are taxed at a lower rate in casinos than they are in hotels and clubs

Not compelling to Synergies.

- The reasons for this include the major investments that casinos make in the community and tourism infrastructure, responsible gambling, and compliance activity

This dot point is not compelling, according to Synergies.

- The lower level of EGM taxation makes casinos more competitive with the generally smaller hotels and clubs.

Not compelling to Synergies.

- Federal Group contends that removing the model of one licensed gaming operator in Tasmania (ie moving to a venue operator model) will require a reform of EGM taxation to meet principals of "fairness and comparability".

Not compelling to Synergies.

- Taxing EGMs in the casinos at a lower rate than those in hotels and clubs would bring Tasmania into line with arrangements in other key comparable states and territories, and allow all of the gaming licence holders to effectively compete with their counterparts in other jurisdictions.

Not compelling, according to Synergies.

Quite frankly, I find that one completely laughable because I do not think that our casinos here with the EGMs are competing with counterparts in other jurisdictions.

My questions to the Government then are:

(1) Do you disagree with the independent analysis provided by Synergies Independent Economic Consulting on these claims about the need for a discounted casino pokies tax rate - a heavily discounted, exactly-as-requested discount on the tax rate being applied to Federal Group's casino poker machines?'

(2) Why is the Government, and why did the Government, no longer review casino tax rates against the broader Australian market?

(3) What specifically did the Government find compelling about the industry's arguments that Synergies did not?

(4) Why would casino poker machine taxes be set lower than hotel poker machine taxes, given casino poker machines are cheaper to operate due to economies of scale and higher profits due to regulatory privileges?

Mr President, tellingly, while the Liberal Government was happy to publicly adopt the industry-written model as its policy in late 2017, it remained very coy about confirming some details of its policy - most starkly in this matter of the casino pokies tax rate, which was kept hidden from the Tasmanian people until the exposure draft of this bill was made public in July this year. When this Government likes to say that matters relating to this policy were dealt with at the 2018 election, they are not telling the truth. The crucial financial plank of this policy has never been taken to an election by the Liberal government. Worse than that, the Liberal government has deliberately withheld this crucial information about this policy from Tasmanian voters through not one, but two elections. To quote James Boyce from his *Tasmanian Inquirer* article in October this year:

> The reason the tax cut was kept secret appears obvious - prioritising a public subsidy to wealthy Liberal donors who own casinos over health, housing and education spending would not have been popular with the electorate.

Simple as that, Mr President. The Premier, Mr Ferguson and likely the whole Liberal Cabinet neglected to be honest with the Tasmanian people leading into the May 2021 election about the intended discounted casino pokies tax rate. Leading into, and after calling, the election in March 2021, the Premier refused to answer direct questions on what the casino based pokies tax rate would be under these reforms.

Documents that I obtained through RTI showed that the Premier absolutely knew what the intended tax rate was, because he confirmed it in correspondence with Federal Group in December 2020. I will bring that out. The RTI brought to light - for some reason I do not have that document with me. I cannot read from it directly, my apologies, I didn't bring it to the table. But that RTI showed, and it is readily available in the public domain, an exchange of correspondence between the Premier and Treasurer, and Federal Group in December 2020 confirming that casino pokies tax rate and other tax rates applicable under this policy which we now see in this bill.

Then, in budget Estimates in September this year, Mr Ferguson confirmed that he also knew what the tax rate was in December 2020, when the Premier wrote to Federal Group to confirm it. It is very interesting, Mr President, because last year in budget Estimates, which you recall was in November, the Premier, when questioned on the progress of determining the casino pokies tax rate, said that negotiations were still underway with Federal Group and were expected to conclude at the end of the year.

Now we know that the Premier was literally on the verge of writing to Federal Group to confirm the rate in December, mere weeks after saying that in Estimates. There are a number of things that I wonder about in the Premier's answer in Estimates last year. One of the things I find most puzzling is this suggestion that there were negotiations on this matter still on foot in November last year. I am very interested in these negotiations. The Government adopted this policy, this industry written model - the same one tabled by the industry at the parliamentary select committee - at the end of 2017. That industry written model had in it a casino pokies tax rate of 10 per cent and a rationale that it was based on northern Queensland.

Federal Group and the THA had slightly messed up their maths. They thought that once you took out the GST from the 20 per cent tax rate applied in Townsville and Cairns casino pokies, you were left with a flat 10 per cent of state government tax rate. I would probably have made the same assumption, because I do not understand these things well; but once you take the GST out of a 20 per cent overall tax rate, you get 10.91 per cent.

We get the idea. In the Federal Group/THA model they wanted the same state government tax rate as that applied in Townsville and Cairns to casino pokies. That is what was in the industry model in 2017, adopted by the Government. In November 2020, fully three years later, Premier Gutwein tells us in Estimates that negotiations on the casino pokies tax rate are just wrapping up.

The next month, in December 2020, the Premier writes to Federal Group confirming the casino pokies tax rates to be, wait for it, Mr President, 10.91 percent.

The same rate Federal Group and THA had written into their model in 2017. Small maths mistake aside.

It would appear that three long years of tough, presumably hard-nosed negotiations on the behalf of the Tasmanian community, on behalf of Tasmanian hospitals, schools, on behalf of Tasmanians on waiting lists for healthcare, and social housing, our budget-savvy Premier delivered the best deal he could possibly extract. Yes. Goodness me.

I wonder if Premier Gutwein is negotiating that hard and successfully for us all when it comes to other aspects of our state Government. Our state budget and economy.

It is not hard to have questions for the Government on this one. My questions are:

(1) Did the Premier/Treasurer actually engage in negotiation with Federal Group on casino pokies tax rates, or had the rate in the Federal Group THA model in fact been agreed to from the start by the Government when it first adopted the model as government policy in 2017?

(2) If the Premier/Treasurer did actually engage in negotiation with Federal Group on the casino pokies tax rate, how did he so spectacularly fail to gain any more favourable rate for the benefit of our community than the exact rate the industry first muted in their model?

This is astonishing to me and yet there is still another part of it that bugs me.

It is because one of the things I find most abhorrent is when a government misleads its citizens. That is what this Government did when it refused to tell the people of Tasmania, the casino pokies tax rate.

Mrs Hiscutt - Point of order, that is your opinion.

Ms WEBB - I put it forward as an opinion.

Mr PRESIDENT - We have to be careful of the gifted privilege in this space and we can say all of manner of things, but we should make sure any of our comments are appropriately measured and we use privilege wisely.

Ms WEBB - I am making a point of a matter of fact. By omission this Government did not tell that. Let me just establish the matter of fact that I am asserting.

This Government went to the 2021 Election this year knowing what the casino pokies tax rate would be. They had confirmed it in December with Federal Group and they omitted to tell the Tasmanian people what that was, even under direct questioning in the media and the public domain. That omission is what I am suggesting I believe is a misleading of the public. It is as simple as that. Both the Premier and the minister, Mr Ferguson confirmed they knew what the tax rate would be before that election was called. What both the Premier and Mr Ferguson have refused to confirm, though, is when the whole of Cabinet first considered an approved intended tax rate. They have stuck mantra-like to insisting the final approval of the draft bill by Cabinet, occurred after the May 2021 election. I accept that is true and that would have been the case.

Clearly, the final date of approval of the draft of legislation is irrelevant here. It is a smokescreen. It is an obfuscation. A desperate attempt to continue to deflect the question of when Cabinet first consider and tick off on the policy that sets the casino pokies tax rate at 10.91 per cent.

The question could be clarified simply and honestly here today. When was it? Confirming the date on which Cabinet can sit and approve something is in no way in breach of Cabinet confidentiality. The Government comes out of Cabinet meetings all the time and announces decisions they have made.

When was it? Did all Liberal Cabinet members go to this year's election knowing what that rate was and being party to it not being disclosed to the Tasmanian people? It looks to me like they did. It looks to me like they did because of another RTI request that I put in and information that I received. I requested documents relating to the drafting instructions provided to OPC for the drafting of this bill, the Gaming Control Amendment (Future Gaming Market) Bill. That RTI came back to me identifying that nine records relevant to my request had been found, but contents of those documents could not be released to me due to the fact that the Government drafting instructions are covered, quite rightly, by legal professional privilege. That was to be expected.

However, I did receive a list of the documents, including their title and their date. The list shows that all nine documents which - because I requested - comprise the entirety of the email and letter correspondence from the Government to OPC relating to the drafting instructions for this gaming bill, every single one of those documents was sent in September or December 2019.

I have checked. I have asked retired senior public servants, retired ministers of the Crown, I have had it confirmed that with the drafting instructions to be issued by the Government to OPC for a piece of legislation, it would be entirely expected that Cabinet consideration and sign-off would have been required. On every appearance then, the Liberal Cabinet must have considered and signed off on the drafting instructions for the bill, presumably including casino pokies tax rates, in 2019. If that is not the case, it is on the

Government to flatly deny it or provide an accurate date at which the Liberal Cabinet first considered and approved the policy, including the casino pokies tax rate.

If it is the case, every single member of the Gutwein Liberal Cabinet went to the 2021 election neglecting to tell the Tasmanian people a key piece of information about this policy in this bill, omitting to tell its citizens what its policy was, omitting to tell on a piece of information for which they could be held to account. It is important because it has a role to play in our assessment of whether this policy and this legislation is in the best interests of our state and does deliver the best outcomes and the best deal that we could hope to get. That has never been assessed by the Tasmanian people fully because they never had that piece of information when they went to an election.

We have to ask ourselves then, what is the impact of the casino pokies tax rate being set so low? Tasmanian poker machines are currently taxed at the same rate, hotels and casinos. There is no adequate justification for favouring one section of the industry over another. In fact, as James Boyce points out in his *Tasmanian Inquirer* article, 'The great Tasmanian gambling tax giveaway', it was titled, published on 11 October this year - he said this:

> Pokies in casinos are the least-cost and most profitable in the state due to economies of scale and because they face less regulation than those in hotels. Historically, they account for nearly half of all poker machine losses, a higher proportion than in other jurisdictions.

He then goes on to note and ask:

> Casino poker machines are so profitable that since the mid-1990s, they have accounted for more than 90 per cent of casino gambling losses. On what basis, then, could it be argued that taxes on these machines should be set at a lower level than those in hotels?
>
> The industry's argument was that a lower casino tax revenue was necessary to make Tasmanian casinos 'competitive' with those in Cairns and Townsville, where taxes had been set low from the outset as part of deals to ensure the construction of these facilities oriented to tourism from overseas. How long established Tasmanian casinos with business models based on collecting losses from local poker machine players would face competitive pressure from venues at the other end of the continent has never been explained.

The current taxation rate for poker machines in all venues is 25.88 per cent, plus 4 per cent CSL for hotels and no CSL for casinos. Under the new legislation the taxation rate for poker machines in casinos is set at 13.91 per cent, that is inclusive of a 3 per cent CSL, compared to hotels at 38.91 per cent, that is inclusive of a 5 per cent CSL.

So, when we include CSL in both figures, the difference is 13.91 per cent at casinos, 38.91 per cent in hotels. Just for clarity for those listening, the reason I am not discussing the levels for clubs is that clubs are a very tiny part of our market here. I am just setting them aside for the moment so that we can make a clear comparison between the two large parts of our market - casinos and hotels.

With this difference that we see between 13.91 per cent and 38.91 per cent for the same product, simply located in different venue types, I wondered what the impact would be in our potential to collect state revenue. I engaged an independent economic group called ACIL Allen to estimate the tax, the impacts of aspects including this one of the future gaming markets proposal and the impact on our state revenue. The analysis was initially undertaken in April 2021 but then I updated it because in April, of course, we had not had the casino pokies tax rate disclosed to us. We had it disclosed in July so I had the analysis updated then in July/August to take into account the confirmed rate.

The impact of adopting the 13.91 per cent tax rate rather the same 38.91 per cent tax rate in hotels, assuming all else remains constant is $14.9 million less in government tax revenue in 2024 and over the 20-year licence period it would be $248 million. Those are the figures that that difference means that I have obtained through independent modelling. If the figures are different through the Government's modelling I would be very keen to see them.

When we ask ourselves what would happen if we chose to tax casinos in this model at the same rate we are choosing to tax poker machines - and I mean the poker machine aspect of casinos at the same rate we are taxing the poker machines in hotels, the answer to that question is in 2024 there would be $14.9 million more in our state budget to use on services. Over 20 years it would be close to a quarter of a billion dollars for our state. That is a lot of money to go to Tasmanian hospitals and schools and social housing and anything else the community needed.

I modelled this too through that independent modelling, even if under the proposed new model rather than drop the current rate applied to casino poker machines from the 25.88 per cent down to the 13.91 per cent, even if we kept it at the same rate - 25.88 per cent - what would the difference be for our state revenue? This is what that independent modelling told me. It told me that over that 20-year licence it is still $119 million that we are failing to collect in revenue for our state by giving that discount just from the current level. Again, if those figures are not correct, I am happy for it to be corrected by government modelling if it is different.

With my modelling the proposed casino pokies tax rate is at best a tax concession to the Federal Group of $119 million compared to what it would be under current levels over the next 20 years, and at worst a total of $248 million of state revenue foregone because we failed to set the rate at the same level as hotel pokies.

I note that John Lawrence in his submission on the draft exposure bill had also modelled the concession provided to Federal Group under the discounted casino pokies tax rate. I was surprised because he puts it even higher. His modelling shows an even greater discrepancy and I invite people, rather than read it out, to go to your submissions to see that.

He does note though, in a break-out box on page 17, and I quote:

> There is no economic basis for giving Federal Hotels a tax concession of $16.4 million for EGMs which happen to be located in casinos. It's locals who incur almost all losses. Any concession simply gives Federal Hotels an unfair advantage over other providers in the increasingly competitive accommodation market in Hobart and Launceston.

Part of that tax rate is of course the CSL rate and I would like to mention the casino CSL rate that has been set in this bill. As TasCOSS, in its submission on the draft exposure bill, pointed out, and I will quote from page 5 of their submission:

> EGMs cause the same harms no matter where they are located. The lack of sound rationale for the differential rates raises the question of probity. The solution is to ensure that pubs, clubs and casinos pay the same rate of tax as CSL.

Applying the CSL to poker machines in casinos is a positive move. It is absolutely a positive move. It corrects an aberration that should never have been allowed in the first place where casinos have not had that applied over the past 25 years where we have had poker machines in both casinos and community locations. However, having made the positive move of applying a Community Support Levy to casinos, we see no rationale presented as to why it should be less than the 5 per cent rate that will be applied to hotels.

Why should poker machines in casinos attract a CSL that is only 60 per cent of the CSL levied on a poker machine in a hotel? Under the individual licensing model, Tasmanian venues with poker machines would be in a newly competitive environment. In this environment a discounted CSL rate to casinos provides an even more unlevel playing field. Given the casinos are already provided with economies of scale advantage with up to 20 times the number of machines of any individual hotel, on what basis do they warrant a profit advantage on top of that from a discounted CSL rate?

This, coupled with heavily discounted casino tax rate for both poker machines and keno, which we will come to in a minute, looks like a very special deal indeed for Federal Group. It is incumbent on the Government to explain how the lower rates for the casino CSL is anything other than an unwarranted gift of public money to a private business who yes, does happen to be a significant party donor. I also wonder in relation to that discrepancy of CSL rates, how the hotel venues feel about that. We heard a little bit about it in our briefings and I imagine they do not think that is very fair, the unlevel playing field being applied in that case.

I would like to talk now about the keno licence and the keno tax rates in this bill. The joint select committee in 2016-17 had some findings and recommendations relevant to this. One joint select committee's report findings, number 66 in fact, is this:

> There is an opportunity for the rights to operate Keno in Tasmania to be tendered.

And finding 67 said:

> Keno tax rates in Tasmania are comparatively low to some other States and Territories.

And finding 68 was:

> If the right to operate Keno is subject to a competitive tender, then the tax rate for Keno in Tasmania could be raised to match the average of those applied to Keno interstate to ensure that the Tasmanian Government receive a sufficient share of revenues from Keno.

Those were the findings and that then fed through, I imagine, to recommendation 16 in the joint select committee report and that was:

> If a tender process is not followed, then the Federal Group, as the sole licensed operator of Keno in the State, should incur an increase in the tax rates payable.

What happened next after that select committee made those findings and that recommendation? The industry proposal, beyond asserting Federal Group would retain the overall keno licence for the apparently unjustified licence fee of $500 000, did not actually specify a taxation rate for keno. Interesting. The model put forward by industry then and adopted by Government did not have in it the keno tax rate. The consultation paper for stage one on this bill, back in March 2020, about the implementation framework did state this on page 13:

> Keno in hotels and clubs will not change, with Federal Group conducting keno games as the keno operator and hotels and clubs selling tickets in return for a commission. However, the licence to conduct keno will change from a Gaming Operator licence to a new Keno Operator licence.

Nice and straightforward except the consultation paper provides no detail on how the keno licence fee of $500 000 per annum was determined and no evidence or modelling to confirm this represents market value for such a licence, with no tender process as had been recommended by the joint select committee.

Further, no rationale is provided for the 20-year keno licence period. Importantly, the stage one consultation paper presented as a foregone conclusion the keno licence will be awarded for a new 20-year period to Federal Group with no acknowledgment that the end of a licence period, such as we are facing in 2023, presents an ideal time to put the new licence to tender in order to gain best market value for the Tasmanian people and no justification for why the Government is choosing not to do so.

Some questions for the Government on the keno licensing: What is the rationale for the keno licence period of 20 years? Was the market value of the keno licence modelled? If so, what is the likely market value of that licence? If it was not modelled, why not? Why is the Government not putting the keno licence out to tender to gain a market-based return on it, as recommended by the joint select committee? How did the Government arrive at the casino licence fee?

What advice or recommendation was provided by Treasury or the Liquor and Gaming Commission to the Government regarding the length of the keno licence? Will the keno licence fee be static over the 20 years or will it increase? I think it increases with CPI. However, what I wonder is why wouldn't we potentially link an increase with something other than CPI, like the market value of the licence, or the revenues of the previous year or determined in some way to be representative of the value that licence holds.

It was notable the consultation paper also contained no mention back then in March 2020 of the keno tax rates. The industry-written model in 2017 was silent on casino taxes and the Government's consultation paper in 2020 maintained that silence. What could have been going

on behind closed doors in relation to keno taxes? We do know that evidence indicates the Tasmanian keno tax rate is currently low by national standards.

The SEIS confirms this and in fact it was confirmed in the committee process - the committee inquiry process - by the representative from Treasury and Finance who gave evidence that said:

> Keno remains a popular product in Tasmania. The tax rate … is low on a national comparison.

The current rate we have is low on a national comparison, it is 5.88 per cent in all venue types. This bill proposes to increase the hotel keno tax rate to 20.91 per cent - almost a quadrupling and much closer to a nationally normal rate of taxation for keno. As it turns out, it is this element of the policy - the hotel keno tax rate - that delivers the modestly higher return for the state from this policy overall. As James Boyce reflects on this in his analysis, which was sent to all members, I believe, of this place in correspondence ahead of this debate, he says:

> The argument that public revenue will increase under the legislation is equally weak.
>
> As the government's own documents show, apart from the CSL change, well over 90% of the small revenue increase comes from a quadrupling in hotel keno taxation, which just happens to be the one area of tax not specified by the industry in their 2017 submission, and thus not copied by the Liberal Party in this legislation.
> This was the one area of tax independently set by the Treasury and has served to highlight just how low taxes currently are.
>
> The Federal Group has reluctantly accepted this increase - despite their protests, they still want the keno contract.
>
> Exactly the same outcome would apply to other taxes if they were to be set by market principles, not secret party deals.

The one financial policy detail the Treasury got to apply policy development to, by the sound of it, and implement a recommendation from the joint select committee, was the hotel keno tax rate which they have increased to be more nationally normal. That was the detail that the industry writers of the policy had neglected to specify in their model. Look what happened when Treasury were able to do that job unencumbered by an external dictate. They got a demonstrably better financial outcome for state without which, this policy would not have delivered a more favourable outcome than current arrangements. I have not modelled this personally. Is that the case? I would like to know from the Government.

If we were delivering a particular increase in revenue through that increase of hotel keno tax rates, would we in fact have come out square or maybe even behind compared to the rest of the policy? Interesting to contemplate if that is the case.

On the matter of keno tax rates, my questions are these:

(1) how was the proposed hotel keno tax at 20.91 per cent arrived at?

(2) What modelling was undertaken to indicate that was the optimal rate?

I do not ask that question because I think it is the wrong rate, I am interested to understand the process. I am particularly interested to understand whether that process is a similar process applied to consideration of other tax rates in the bill or a different one perhaps.

In the first year after implementation on modelling from the Government, how much revenue would be collected on hotel keno under that tax rate of 20.91 per cent and how does that compare to the revenue collected under this current model with the rate of 5.88 per cent? I am trying to get a sense from what the Government confirmed, what that increase revenue looks like when we apply the different tax rate - what boon it provides via this bill.

Then of course, if we move on from hotel keno tax rates and look at casino keno tax rates, we see a whole other story. We discovered that sadly, on the matter of keno tax, we have not entirely escaped the dictate of the industry masters after all. While it would appear Treasury were allowed to do their proper policy job on the hotel keno tax rate, it was clearly much too scary to risk the wrath of Federal Group and set an appropriate casino keno tax rate. It looks like this Government caved on that one.

For that, they then appear to have gone weak at the knees and offered up yet another gift to keep a major party donor happy. That gift to Federal Group is here in the legislation where you will find the taxation rate for keno in casinos is set, not at 20.91 per cent - the same rate as hotel keno, not even at the current rate of 5.88 per cent - but is actually being dropped to 0.91 per cent.

I am a bit dodgy with maths but my calculation would indicate the hotel keno tax rate is something in the vicinity of over 2000 per cent more than the casino keno tax rate. How on earth could we be contemplating that? Perhaps I have exaggerated, but when I compare 0.91 per cent to 20.91 per cent that is magnitudes of an increase. This is what it means financially, on the modelling I had done.

The impact of adopting the casino keno tax rate is 0.91 per cent. Instead of applying the rate of 20.91 per cent to be consistent with hotel keno, is about $520 000 less in taxation revenue in 2024 and about $10.5 million less in taxation revenue over the 20-year period. This is just another gift. It is an outright gift to Federal Group from the Gutwein Government in this bill. It is directly at the expense of Tasmanian revenue that could be applied to our much-needed services in this state. It might not seem like a consequential amount, but really it is a cherry on top of the sundae of concessions provided to Federal Group under this model.

I have further questions for the Government on the casino keno tax rate in this bill:

(1) What is the rationale for providing a tax concession to casino-based keno in the current rate of 5.88 percent dropping it to 0.91 percent?

(2) Is my modelling correct in suggesting that the impact, in 2024, of adopting a casino keno tax rate of 0.91 percent, compared to the casino keno tax rate consistent with hotel keno of 20.91 percent, will be a difference of $520 000?

The story does not even end there on keno tax rates. If we were starting with a blank slate - spoiler alert, we are - then we could ask ourselves what would be the best deal we could get for the Tasmanian people, when it comes to keno tax arrangements.

John Lawrence shares his thoughts and questions on that in his submission on the draft exposure bill. This is what he says. It is a long quote:

> There is no economic basis for giving Federal Hotels a tax concession of $16.4 million for EGMs which happen to be located in casinos. It's locals who incur almost all losses.

Sorry I am repeating a quote from earlier. I will skip to the new part.

Ms Rattray - That is good.

Ms WEBB - It is only one paragraph, I am afraid to tell the member.

I will start the quote again slightly down:

> It is reasonable to assume Keno in pubs and clubs is considerably cheaper to operate than EGMs. By its very nature it's run by a sole operator specifically Network Gaming. Keno is for all intents and purposes a lottery. Keno like lotteries such as Tattslotto, Powerball, etc are games owned by the listed gambling behemoth Tabcorp. TasKeno is believed to be licensed by Tabcorp to Network Gaming.
>
> In South Australia, a statutory body called the Lotteries Commission of South Australia run Tattslotto, Keno and other games licensed by Tabcorp. Gambling taxes and profits are paid to the owner, the SA government. Keno taxes of 46 per cent are hypothecated into a Hospitals Fund.
>
> It is not clear why the FGM proposes to raise EGM taxes to 20.31 percent.
>
> Based on 2018/19 player losses for Keno in pubs of $33 million a tax concession for pub Keno compared to pub EGMs of 18.5 percent amounts to $6 million. It wouldn't be difficult to identify a hundred worthy causes for that amount of money.
>
> However, it's the proposed lowering of tax on Keno losses in casinos that leaves most observers searching for words. A proposed tax rate of 0.91 per cent is 38 percentage points lower than for EGMs in pubs. Admittedly the foregone amount is only small beer as Keno in casinos is not a big earner. The amount foregone may not be much more than $1 million. Regardless, shouldn't any tax be soundly based? Is this another benchmark discovered in the Far North? Keno is a little different from a lottery, yet lotteries are taxed in Tasmania at around 80 per cent.

That is from Page 17 of John Lawrence's submission.

He also has a breakout box on Page 17 which says this:

> Why is the tax rate for Keno in pubs and clubs lower than for EGMs in pubs, when the net profit percentage must be considerably higher? Did the government's discovery trip to North Queensland investigate gambling rates involve any side trips to other states, South Australia for instance, to check stepped tax rates or search for a benchmark rate of tax for Keno?

Then he had a breakout box on the following page, page 18 that said this:

> The unjustifiably low rate of tax proposed for Keno in casinos highlights the dog's breakfast nature of the entire suite of proposed FGM changes. It is impossible to discern consistently applied principles which should underpin all public policy decisions, let alone one with such far reaching and long-lasting effects as FGM policy.

So, my question for the Government is this: what principles have been consistently applied across the entire suite of proposed taxation rates in the FGM policy that we see in this bill?

Mr President, we have quite a long history in this state of providing special deals to Federal Group when it comes to gambling, especially poker machine policy. Until now there generally has been at least the pretence of extracting some form of commitment or promise of investment or development to point to and justify what other people might characterise as a sellout.

Ms Rattray - Does the member acknowledge that these deals, sweetheart deals or whatever, were actually passed by the parliaments at the time?

Ms WEBB - Yes, absolutely.

Ms Rattray - The blame cannot all be put on the Federal Group.

Ms WEBB - If the member is listening, I am not putting the blame on the Federal Group, I am blaming the deals that were made by this place. We cannot escape the fact the Federal Group benefitted from those deals.

Ms Rattray - And so did all of Tasmania, honourable member.

Ms WEBB - I addressed that earlier in my remarks today. Perhaps the member missed it. I do not necessarily want to repeat it.

Ms Rattray - I have been doing my best to listen, but it must be about five hours. There you go, four and a half hours. Longest in my time. I have been here 17 years, Mr President, and I have never had to sit through a four-and-a-half-hour speech yet. And here I am now. I am not impressed.

Ms WEBB - I will continue. Until now, there has genuinely been that pretence of extracting a promise, a commitment to development. Those commitments and promises were never fully delivered on. But, briefly at those sticky moments when the new deals were being negotiated and signed, they did provide a threadbare modesty wrap to unsuccessfully hide the

way that our state was being disadvantaged or at least certainly not maximising an advantage through the deals.

Yet this time around, with this model and this new proposal in this bill, we have not even seen that. Apparently, there is no need to even pull that threadbare pretence out of the vested interest glory box. No promises or commitments of investment or development from Federal Group. None at all. You know who got really mad, back in 2003 at the poor quality of the deal for our state and the thought that an insufficient commitment of investment had been extracted from Federal Group by the then Bacon government in return for the secret, very favourable rushed - through early deal for a new pokies licence period? At that time, there was a person who got really mad at that thought in 2003, and this is what he said:

> Spokesman, as your deal includes a Coles Bay hotel that was already announced 12 months ago, and no public commitment to ongoing marketing, is it not a fact that your secret noncompetitive dealings on this matter have robbed the battling Tasmania taxpayer and starved future budgets of health and education funds that could have provided significant benefits to Tasmanians …

The quote was Peter Gutwein, MP, on 16 April 2003, I believe, a member of the opposition holding the government to account for the highly dodgy deal being done with the Federal Group at that time. Then he went on:

> Is it not true that you have starved future health and education budgets of the significant benefit that they could rightly have expected to flow from such a lucrative 15-year deal?

What would Peter Gutwein, opposition member in 2003, have made of Premier Peter Gutwein in 2021 and this future gaming market deal, I wonder? We cannot speculate.

I do think that those factors there that we can turn our mind to and contemplate - $248 million foregone in tax state revenue from that discounted concession on casino pokies tax. A cherry on top of that of $10.5 million foregone in state tax revenue for casino keno tax concessions. That is well over a quarter of a billion dollars over the 20-year licence and not even a re-announced tourism development on a lovely bit of coast somewhere to paper it over. 2003 Peter Gutwein MP would have been livid. If he was here I am sure he would have pointed us to the projections for 2024, the year after this special new deal comes into play.

In 2024 we will be giving Federal Group a $15.42 million tax concession. That is $15.42 million in 2024, that instead, on my calculations, could have been used for any of the following: we could employ in that year 154 nurses or 123 practice paramedics, or perhaps 154 allied health professionals.

Or perhaps we could have chosen to bring down the elective surgery waitlist in 2024 by providing an additional 2698 procedures. Is that potentially what 2003 Peter Gutwein, MP, was referring to when he spoke of starving future health and education budgets of the significant benefits they could rightly have expected to flow from such a lucrative deal? I think it was what he was talking about. I think there is a good chance 2003 Peter Gutwein MP would have said, 'shame!'.

The next amendment of the bill that I am going to speak about is the EGM licence periods and what that has for us in terms of implications for the future. In relation to licence periods to be granted, the proposed model in 2017 from the industry that fed through into the bill we see in front of us today stated that, 'both parties strongly believe that perpetual licences should be granted to existing venues that have EGMs on 30 June 2023'. That was in the submission, page 9. In its analysis for that joint select committee - which is remembering the only independent analysis we have of the policy that we see before us in the bill from that time - in its analysis for the joint select committee of the Federal Group/THA proposal, the Tasmanian Liquor and Gaming Commission expressed the view that, and I quote:

> … the duration of licences should align more closely to machine turnover times of around seven years.

That is page 203 of the committee report.
I note that a finding from that committee was actually this. They had a finding that said:

> Synergies Economic Consulting advice to the Committee was that adopting a fixed term for an EGM licence to align with the operational life of the machine would provide investment certainty for the entitlement holder.

That is interesting, an independent economic consulting firm was indicating that from their view a licence period tied to the operational life of the machine, which we know to be five to seven years, would provide investment certainty for the entitlement holder. The industry's fondness for linking the need for lengthy licence periods to this idea of investment certainty. These businesses exist in an industry where they are at a significant advantage over other non-pokies businesses in their same industry. This policy and this aspect of the policy, a 20-year licence gifted for free, put those pokies hotels at even greater advantage to, for example, non-pokies hotels, who are operating in the same market for other parts of their business.

We do not often see a government so actively interfering with the competitive market within an industry and tilting the playing field so substantially towards particular businesses. I find it astonishing really, and we have even had some of those industry stakeholders telling us they will go broke without the super profits from their poker machines, which seems an extraordinary admission. It seems like an admission of poor business acumen, but I do not think that is the case, I think they are smart businesspeople. It is much easier to say your business is at risk from change, rather than more plainly making the case for why you want to hold onto super profits that come -

Ms Rattray - I do not recall anyone saying they would go broke.

Ms WEBB - It is in the briefing paper we received from the industry fellows who saw us yesterday. If you read the briefing paper, there is a quote.

Ms Rattray - They certainly said they would be able to have a higher valuation in their businesses and that would help capital investment and the like, but -

Ms WEBB - Yes, that was in the verbal evidence they provided. If you look at the written material and find the quote -

Ms Rattray - I do not recall, 'going broke'.

Ms WEBB - I could dig it out of my case and I will stand corrected if you would like to correct me later, but there is a quote in inverted commas from a business, I assume, in that briefing paper provided to us.

Ms Rattray - I will check that, Mr President. Certainly, no-one said they would go broke yesterday.

Ms WEBB - No, it was not in the verbal evidence they provided, it was written.

TasCOSS, in its submission on the exposure draft of the bill, agreed with the recommendations that had come through from the commission and Synergies Economic Consulting in 2017, for a licence period of seven years. TasCOSS said, on page 4 :

> Also unclear is how the Govt decided on a 20-year duration for licences. A duration of this length could be expected in return for a payment of a licence fee, under a sovereign risk model. In the absence of a licence fee, however, a 20-year licence is excessive.

In another finding from the joint select committee, from the evidence they received in that committee of inquiry, was:

> A fixed-term licence would allow scope for policy flexibility to reduce the number of EGMs in the market over time.

I note that in their recommendations, recommendation 5 is that EGM licences are not issued in perpetuity. Recommendation 6 is that further investigation is needed by the government to ascertain an appropriate duration of EGM licence that is of sufficient length to create investment certainty for the industry.

In addition to the previously discussed failure to achieve the financial returns these licences should generate for our state, were they to be put out to market as originally intended by this Government back in 2016, I have two other concerns relating to venue licences. The inappropriately and ill-advised length that has been set on the licence by my estimation is the first concern. The Government appears to have ignored that expert advice on the length of licence period. I note the Liquor and Gaming Commission, their advice of seven years, Treasury indicated the length of a machine life of five years. There are interstate jurisdictions with fixed licence periods, including Victoria at 10.

John Lawrence, in his submission on the exposure draft, noted this:

> An asset based on a government mandated revenue stream is extremely valuable. The longer the term of the mandated income stream, the more valuable is the asset.
>
> The alleged reason for granting 20-year licences is to give the industry certainty. This may have been a reasonable proposition, had venues been required to pay a market price for the licence, for it would be reasonable to allow them time to recoup their investment. But licences will be gifted to

> venues. Disposing of a licence that has been gifted would be akin to ticket scalping. The government shouldn't repeat its failure to institute a suitable market mechanism for the allocation of the licenses, by allowing licences received as gifts to be sold as perpetual assets. The only certainty a venue operator needs is to be able to pay any contracted commitments for EGMs, lease payments etc. A five year term is all that is required.

In a breakout box on page 12 of his submission, he says this:

> The gambling industry says profits earned by venues will be reinvested back into local communities to make them stronger. Giving untied grants is a policy without merit. Providing untied handouts in perpetuity would be reckless.

He also summarised this in his earlier submission to the stage 1 consultation in March in 2020. This is the way he put it:

> Issuing a licence for a long term, say, 20 years, or even in perpetuity, satisfies the sovereign risk argument - the need to protect a licencee where an up-front payment has been made to secure a licence.
>
> Where there is no up-front fee there is no compelling need for a quid pro quo in the form of a long-term licence. A long-term licence and fixed tax rates for the term, as per the PCP proposals is a luxury not granted to other businesses.

That is on page 4. My questions to the Government are these:

(1) Given the Liquor and Gaming Commission advised a licence period of seven years, Treasury indicated it should be related to the length of machine life, five years, and interstate jurisdictions with fixed licence periods include Victoria at ten years, why did the Government decide on a 20-year licence period for Tasmania?

(2) What rationale or evidence informed the Government's proposal to set the licence period at 20 years?

(3) Does the Government believe that the licence period must be 20 years to deliver investment certainty - if so, what modelling suggests that to be true and how will we measure that it has been successful in doing that?

(4) Exactly what investment do we expect to be undertaken by the industry as a result of the 20-year licence period, as opposed to, say, a seven-year licence period?

(5) What commitments has the Government extracted that investment would actually occur?

My second concern is the fact the end dates of the individual venue licences proposed in this bill will inevitably become unaligned over time through sales and renegotiated renewals.

Key to this moment is the fact that in the design of what comes next, we will also have the power to define whether there will ever again be a moment in time like this for our state. A single-moment-in-time opportunity for reform and change such as the one this Government is utilising now to make these reforms, or alternatively, whether we will lock ourselves in like most other eastern seaboard states of Australia to never again have that chance for a clean slate, and industry-wide reform. There has been no public discussion of the implications of this.

In giving evidence to the parliamentary committee in 2017, then Premier, Will Hodgman, said:

> It is within our capabilities to do what we think is in the best interests of the people of Tasmania and future generations.

Under the current model of a single licence with a set duration, Tasmania has had the opportunity to deeply consider its public policy approach to poker machines at particular moments in time.

In light of developments in evidence, data and local conditions, that opportunity has been available to Tasmania to reassess, consider changes, adjustments or improvements to the policy and regulatory approach. That is why the Liquor and Gaming Commission favoured shorter licence periods. That is why the independent economic consultants to the joint select committee advised it also.

The change proposed by the Government under this new individual venue licensing model will establish all the initial licences for a 20-year period through 2043. But, as the industry shifts and changes in the intervening years; as venues are bought and sold; as new venues emerge, potentially; it is absolutely guaranteed individual licence periods will become unaligned. It is a complete nonsense really to think we are locking ourselves into this model until 2043, as some people will have had it which to be honest was a prospect for many that was already disturbing enough. Instead under this model, under this bill, once licence periods become non-aligned as they inevitably will, what we have effectively done is to create a near permanent model for our state. Like mainland states, Tasmania will be locked into this approach without any future single aligned moment when all licences are up for renewal.

My questions for the Government are these:

(1) Does the Government acknowledge that individual venue licences will become unaligned and that there will never be a future point in time, similar to that in which we now find ourselves, when industry-wide reform will be able to be contemplated and implemented, or put another way, has the Government purposefully designed or adopted a model that will prevent all future Tasmanian governments from every having the same opportunity to consider the Tasmanian community's best interests and enact industry-wide reform?

(2) If so, how did that factor into the specific details of the policy, particularly in terms of revenue for the government and the Tasmanian community? Given the changes proposed by this Government policy, this may be the final time Tasmanians have the opportunity to reconsider the overall, basic model and shape of this industry. I will say that again, because I have been speaking for a long time and some people may no longer be listening as carefully. Given

> the changes proposed by this Government policy, this may be the final time Tasmanians have the opportunity to reconsider the overall, basic model and shape of this industry.

With that in mind, can it be said that the Gutwein Government has indeed provided Tasmanians with a genuine opportunity to have their say in that? Can it be claimed without a doubt, that in the passage of this bill we will have acted in the best interests of the people of Tasmania and future generations? My answer to that question, Mr President, is a resounding no, and I challenge anyone to stand in this place and say differently to that, and show why they can claim it.

I will now talk a little bit about the model that is in the bill around EGM tax rates. In its analysis of the Federal Group THA proposal in 2017, the genesis of this bill, Synergies Economic Consulting said this -

> … we believe that there is significant merit in adopting progressive tax rates for EGMs in hotels and clubs. Synergies considers the Government should identify options that achieve this outcome whilst leaving hotels and clubs (in aggregate) no worse off from the change.

That is on page 5 of their advice provided, page 195 of the report from the committee.

Ms Rattray - Through you, Mr President, that advice from Synergies was considered by the joint House select committee.

Ms WEBB - I know. I am about to quote the findings and recommendations that came from it. I have been doing that all the way along. My problem, so the member understands, is that the bill and the policy we see before us do not reflect what the committee found or recommended.

Ms Forrest - It rarely happens anyway, governments always ignore committee reports.

Ms Rattray - I have been around here a long time and it is not very often that they -

Ms WEBB - I am just pointing that out.

Ms Forrest - It is not news to me.

Ms WEBB - One interesting thing though about this instance of a government ignoring the recommendations of a committee, is that that committee was set up on the Government's instigation. The Government put the term of reference and instigated that joint select committee of both Chambers with the specific purpose of informing the model of what may come next, around gambling in our state.

That is the difference. That is the reason I consider we should expect to have seen a Government policy, and legislation to give it effect, that was reflective of findings and compatible with recommendations from that committee. My assertion is that what we see here is very far from that. It is a very dramatic departure from what the committee found and what the committee recommended. That is my issue here. Unless we are applying scrutiny and looking at those connections and asking ourselves, is this a model that was properly considered

and had community input, when I look at it and I see how far it departs from what the committee arrived at, and I see the deficiencies, in that it was never then put to the community for input on the policy -

Ms Rattray - It has been in the community since 2017.

Ms WEBB - It has not. The community has never been invited to have input on it or help shape it.

Ms Rattray - It is a public document, member for Nelson.

Ms WEBB - I do not think I will get into an exchange in the Chamber because that is probably not going to be fruitful for us. I will keep going with my remarks.

Ms Rattray - I am doing my best to stay engaged.

Ms Forrest - It might be good to have an exchange.

Ms WEBB - I mentioned the finding from the joint select committee on the matter of tax rates for EGMs in hotels and clubs. The joint select committee, in their findings (Number 63) said this:

> There is merit in adopting progressive tax rates for EGMs in hotels and clubs.

The recommendations, I think, that followed from that were:

> Recommendation 17. A progressive (sliding scale) tax be introduced for EGMs in hotels and clubs.
>
> Recommendation 18. The Government identify options that maintain the profitability of Hotels, Clubs and Casinos (in aggregate) if a progressive (sliding scale) tax is introduced.

It is my basic understanding of these matters that what that means is, take about the same amount of tax overall from the whole pokies hotel and club sector, but do it more fairly by taxing higher earning machines and venues more than lower-earning machines and venues.

Interestingly, John Lawrence, independent economist, said the same thing in page 4 of his submission to the stage 1 consultation in March 2020. John Lawrence said this:

> A system of stepped tax rates is the only way, in the absence of a market-based tender for licences, for the community to get an appropriate return.

In his submission on the exposure draft of the bill, he outlined the argument for stepped tax rates.

> Other States have stepped rates of tax which remove some of the super profits. As player losses increase, the tax rate also increases, just like stepped tax rates which apply to income tax for individuals. It would be an

> appropriate way to remove super profits given that a market tender for EGM licenses, once the government's cornerstone policy, was abandoned prior to the 2018 election.
>
> Stepped rates are included in the proposed section 150AK covering tax rates on the high roller casino(s). They have been used before for pub EGMs. In fact, Section 150 of the current Gaming Control Act 1993 contains a twostep system of taxes but they haven't been applied since 2013 (Section 150(3)). The Section also contains grouping provisions similar to payroll tax (Section 150(4)) which operated in conjunction with the two-step tax system.
>
> Stepped tax rates with grouping provisions will restore progressivity and fairness needed in a system that has grown into an unbalanced money operation for the benefit of a few.
>
> The FGM proposals include the repeal of section 150. Section 150AK is proposed to allow for a flat rate of EGM tax across all pubs. As mentioned above the FGM proposals contain a hint of progressivity with slightly higher fees per EGM for venues with more EGMs. Section 148 proposes EGM fees payable per EGM be prescribed by Regulation. At least the government has provided an opportunity for fees to increase by Regulation should the community feel the need to claw back some of the super profits from the industry. This could be done, for instance, with stepped fees based on the previous year's player losses for a venue rather than by the number of EGMs licensed to that particular venue.

That is from page 10 of John Lawrence's submission.

On page 11, in a breakout box, he says this:

> As an alternative to stepped tax rates, or perhaps as a complementary measure, super profits can be clawed back via EGM fees which will be set by Regulation. This will allow the community to more appropriately share returns from gaming which, after all, is one of the aims of the FGM policy.

My questions for the Government are these: What consideration and modelling of stepped tax rates was undertaken in the development of the FGM policy? If consideration was given and modelling undertaken, what was the rationale for not adopting a stepped tax regime in this policy?

I am going to mention now a couple of things briefly - or maybe not - of things in the bill that have not been discussed, I believe, sufficiently in the public domain. Even though, as other members have mentioned, this policy to some extent has been in the public domain for quite a while, the focus of that has only really focused on what is going to happen with the poker machine licence, the monopoly changing to venue licences. Many aspects of this policy are absolutely not part of public conversation. Input has not been sought on them actively from the Government to help shape them and ensure that they are in fact in the best interests of our state.

Some of those things I am going to mention here briefly, or not. Fully automated table games and simulated racing. Have the Tasmanian people been asked if they are happy to have two gaming products introduced into our state? The bill introduces fully automated table games to Tasmania and expands simulated racing games into community hotel venues. Now, the joint select committee in 2017, recommended this, number 15 recommendation, 'the casino-based gaming products in Tasmania be reviewed against the product range permissible in other States'.

Noting that recommendation and in light of the appearance of fully automated table games and the expansion of simulated racing in this bill, I have a few questions to put to the Government. Was a formal review of casino-based gaming products conducted by the Government to inform the policy? If so, when and conducted by whom? How was the review undertaken? Has it been documented? Could it be shared? How did the Government make the assessment that there would be introduction of new gaming products to the state and expansion of venues where some gambling products are permitted? Fully automated table gaming is also another fast gambling product. Concerns about this have also been raised in a number of submissions and in some public discussion between engaged stakeholders.

Fully automated table games are, by some people's measure, not good for industry or consumers. There is no ceiling for maximum bets. They do not require a human operator. They are proposed to be taxed at a lower rate than pokies, even though they are just a random number generator and there is no limit to the number of terminals that may be permitted, it would appear. I have many questions about the intention to introduce fully automated table games and expand simulated racing into hotel venues. They are not questions that should be answered on the fly during debate in this Chamber. They are questions that deserve close examination and evidence such as they would get through a committee of inquiry process or similar.

I note that the Department of Communities Tasmania, in its submission to stage 1 consultation in March 2020 said this:

> Communities Tasmania notes that the introduction of fully automated table games (FATGs) in Tasmanian casinos may potentially cause gambling harms. As FATGs do not require a dealer, the opportunities for appropriately trained staff to identify and address signs of problematic gambling behaviour amongst players are reduced. Additionally, the introduction of FATGs provides the potential to increase the rate of play, thereby intensifying gambling engagement and increasing the potential for gambling harms.

That was from page 1 of the submission from the Department of Communities Tasmania.

I have questions on fully automated table games. Where did the proposal for fully automated table games come from? How is a fully automated table game different to a poker machine? Is there agreement that they are both random number generators? What does a fully automated table game look like and how does it operate? What is the proposed maximum bet limit on a fully automated table game? What will be the allowable event frequency? Will parliament have any control over the number of fully automated table games and the number of terminals each game has? How many jobs will be lost potentially in the casino if fully automated table games replace human-operated tables? Why should fully automated table games be taxed at a lower rate than poker machines?

Simulated racing is another fast gambling product. We have not properly had this raised for public discussion in terms of its proposed expansion into hotel environments and other community environments. An example of a simulated racing game is Trackside. I have had a look at it. It is animated pretend horse and dog races. It is controlled, again, by a random number generator but it looks like a real race, it is very realistic. Again, the Department of Communities Tasmania's submission to that consultation in March 2020 had this to say about simulated racing

> Communities Tasmania notes that the introduction of simulated racing games (e.g. Trackside/Racetrax) into hotels, clubs and other gaming venues has the potential to cause gambling harms. Communities Tasmania has previously expressed concern regarding the visibility of Keno in family sections of hotels and clubs. The introduction of simulated racing games in similar areas may have similar impacts in terms of normalising gambling for children and minors. Even if restricted to the gambling areas of venues, the introduction of any new product may also result in some community harms.

That was from page 1 of the Department of Communities Tasmania's submission.

It is talked about that simulated racing occurs in other jurisdictions and that consultation has occurred with these jurisdictions on this and that no additional harm is caused by simulated racing in those jurisdictions. I would like more information about that.

Who was consulted in what other jurisdictions? What evidence base was provided for these statements and will it be put in the public domain? Where did the proposal for the expansion of simulated racing come from? Is it expected to influence live racing? Where are the simulated racing monitors proposed to be located in hotels and clubs? Will the screens be allowed to be visible to children in dining areas? How would simulated racing be controlled and monitored, and by whom? What regulations would be imposed? What event frequency would be allowed? Who would own the licences for simulated racing, the individual venue or a central organisation?

Again, these are not questions that will be particularly well accountably or comprehensively dealt with and answered in the context of debate on the Floor of parliament. They should be examined in a committee. If the Government had not wanted us to be in this position of trying to find out details and understand impacts of this policy and this bill, it would have been fruitful and appropriate to more openly and fully consult with the public broadly on this policy at a much earlier date.

For example, the Government could have released a discussion paper on its proposed policy, included the evidence base and the rationale for the policy and included questions posed for input by submitters. This could have happened at any point from March 2018. Through such a process, the Government could have received significant input, expert advice, community views and actually been prepared to shape this policy from that process. That would have been basic, good policy development practice. We see it all the time, but we did not see it with this policy and this bill.

The only reason not to follow that process is because you are not interested in developing, necessarily, what would be regarded as good policy. You are not even interested in being seen to undertake good policy development. It is a failure of good, basic policy practice and I think

it sends a message to Tasmanians and to expert stakeholders involved in this space, that their input is not wanted because it would not make a difference.

High-roller casinos are in this bill. I wonder what level of confidence the Tasmanian people can have that our state has the capacity to regulate and ensure compliance in two new high-roller casinos. We know there are a number of other states having royal commissions into the operations of their casinos at this time and finding significant failures of regulation and enforcement, especially in relation to high-roller aspects of their operations.

The joint select committee in 2017 had a finding and that was that the committee has been unable to form a view on the merits or otherwise of the MONA casino proposal mentioned in the framework, which was part of the terms of reference. The recommendations from the committee in 2017 included these:

> (13) Any future casino licence will be limited to high-roller, non-resident casinos through a market-based process; and
>
> (14) A cost-benefit analysis for casinos should be undertaken by Government before any additional licence(s) in the North and the South of the State be approved

Did the Government follow that recommendation from the committee in 2017? Did it do a cost-benefit analysis for casinos in the north and the south of the state, before including them in this policy and this bill and will the high-roller non-resident casinos flagged in this bill be licensed on a market-based process?

Moving on, one thing that has come up in a number of submissions and in our briefing discussions, and I think the Government can comment on this quite effectively, is will the appropriate regulatory capacity be established and funded required to give effect to this policy and this bill? In its analysis for the joint select committee of that Federal Group THA proposal, the commission itself said this:

> There would be an increased regulatory costs for venues and the Commission (Government) under the multi-owner operator model.

That is page 202 of the committee report. The Government's stage 1 consultation paper in March 2020 acknowledged increased regulatory presence will be required under this framework, but it indicated no increase to the capacity of the Liquor and Gaming Commission or the Liquor and Gaming Branch of Treasury to engage in that oversight and monitoring.

Looking to other Australian jurisdictions to inform our expectations, it is clear that under this policy there would be a need for closer monitoring and enforcement in an environment of increased competition between venues. These jurisdictions show similar models encourage noncompliance to some extent with harm minimisation and underinvestment in staff training and other measures. That is what is being seen in those other jurisdictions. But looking to that we would need to be arming ourselves to manage that better here.

The move to individual venue licences introduces considerably more complexity to the communications, monitoring and enforcement functions of the Liquor and Gaming Commission. Neither the consultation papers nor the other public commentary on this policy

provide any detailed commitment to increasing the capacity of the Liquor and Gaming Commission. We did see in the budget papers this year there is about $560 000 allocated for extra staffing within the Liquor and Gaming Branch to assist with the implementation of this policy and this bill.

My understanding is for the implementation to be done as we do the transition into this potential new model. I am interested to know about a commitment that might be there for beyond that, if this model comes to pass. Under that model what do we know about what will be required in terms of the capacity of the Liquor and Gaming Commission?

Some very important questions are: What consideration has the Government given to the regulatory criticisms and concerns relating to this model raised by the commission at the time of the parliamentary inquiry? How have those concerns been addressed in the policy and implementation? What modelling and quantification has the Government undertaken on the increase in regulatory presence that will be required under this proposed policy and framework? What additional funding and capacity will be required by the Tasmanian Liquor and Gaming Commission and the Liquor and Gaming Branch of Treasury to meet the needs for an increased regulatory presence? Can the Government demonstrate through modelling the annual venue licence fee to be charged under the model will meet the anticipated regulatory costs? Will the Government commit to providing additional funding and capacity required under this model to the commission and the Liquor and Gaming Branch of Treasury?

There is one aspect of this I wanted to speak about a little bit to deconstruct and that is we have been given a sense of urgency about passing this bill in order for it to be implemented in a certain time frame. It has even been suggested that voting against this bill is somehow voting to continue the monopoly, especially when it is thrown about at anyone who is either not supporting this bill or is seeking to take time to examine it properly.

That is problematic trying to encourage us to not do our jobs as thoroughly as we would regard they must be done.

Voting against this bill or voting to have it carefully and accountable scrutinised is a responsible way to ensure that what comes next is the best option we can provide for the state. It is a decision to give the gravity of this moment its due, in full acknowledgement the current arrangements in place are and always have been a scandalously harmful model and so far from the best deal we could have been achieving for our state these past 25 years.

We are in no way beholden to throwing our support behind an equally problematic and potentially more harmful model. At least some of us are not. In fact, it should be our full awareness when we look back at that appalling history where the gambling policy in this state has not delivered the best outcomes we could hope for. It should be that look back that gives us the most pause. Just because we are moving away from something that was, in my view, malignant in this state, does not mean anything and everything else will be better. And it certainly does not mean this policy and this bill the Government has presented us with here is the right or the best option.

Voting against this bill or voting to send it to a committee for proper accountable scrutiny is nothing to do with our view on the current arrangements. Nothing whatsoever. Certainly, not in my case.

I invite the Government not to perpetuate suggestions against any of the people in this Chamber who might be seeking to properly scrutinise this bill and seeking to take the time that may be required to do that and paint them in any way as being somehow in support of the current monopoly deal in place. It absolutely will not wash. Voting against a policy or a bill that are indefensible and have not been subject to appropriate accountable scrutiny is the right thing to do. And do you know what, I think back in the day in 2003, there would have been agreement on that from members of the current Government.

To suggest somehow if this bill is delayed for scrutiny through, say, a committee process, or the reforms themselves were rejected and the Government would need to then go back to square one and begin again or re-enter this process in a way more accountable and more involving of the community - it is hardly the end of the world. To suggest otherwise is at worst profound ignorance and at best a profound lack of imagination.

Of course we could manage a delay. There could be transition and bridging arrangements put in place. If we do not pass this bill, if we take slightly longer to properly scrutinise it, so be it.

I flagged with members there are a number of amendments I will be proposing. Noting that the Government regards this deal and this policy to be primarily about structural reform, none of what I am proposing, I do not believe, affect the fundamental structural reform being attempted to be put in place. None of them would mean we would need to delay the implementation of the structural reforms' aspects of this bill.

All of the amendments I will put forward, if we get to that stage, all of them are aligned with objectives and the principles of this bill. Many of them, many, are not at odds with the Government's policy position, because they relate to areas that the Government has not provided a policy position on.

One of the ones that I do want to highlight - I focus on this one because the member for Mersey spoke about it in his contribution, and he linked it back to the committee process that was undertaken that he chaired.

It relates to the first four recommendations that came out that committee process, which are all related to a meaningful reduction in poker machines in this state and providing Tasmanian communities with an opportunity to have a say.

What that looked like, in the joint select committee report, was a finding that said this:

> Any new arrangements could have mechanism(s) that allow for the reduction in the EGM cap over time.

The first four recommendations that flow from the committee are these:

(1) The Government revisit the number of EGMs (150) which are to be removed from circulation, as stated in the then Hodgman/Liberal Government post 2023, Gaming Structural Framework.

(2) The Government adopt strategies to facilitate the reduction of a significant number of EGMs from Tasmanian Hotels and Clubs by the 1 July 2023.

(3) The Government devise a mechanism to facilitate a reduction of the number of EGMs in Tasmania post 1 July 2023 as required.

(4) The Government work actively with communities that are concerned with the density of EGMs in their local area to enable voluntary mechanisms to reduce the number of EGMs.

That finding, and those four recommendations were arrived at through the valuable committee process that was undertaken, initiated by the Government to inform their way forward.

They were based on the totality of evidence presented to that committee and must have been agreed on and supported by a majority of committee members.

They are listed as the first four recommendations in that report, so I infer from that, that the committee believed them to be important, and yet, in the advancing of the reform agenda, the Government has, on all appearances, ignored them. This would have been an excellent opportunity to explore and develop a mechanism to give effect to those recommendations from the committee.

I am sure that many expert stakeholders and many in the community itself, would have welcomed the opportunity to provide ideas and insights to a policy development process on this potential aspect of reform, if they had been invited to do so. Sadly, that did not occur.

In the absence of that, and for the purposes of trying to honour those recommendations in the joint select committee, and more importantly, the many submissions to the committee that had called for the community to be provided with a way to have a say and for a reduction in overall numbers, I have come up with a model that I will be bringing as an amendment, a new clause to the bill if we get to the Committee stage. I am going to mention it briefly here now.

The model that does not take away anything from anyone who has it now. It is a model that is based on providing for there to be natural attrition over time in poker machine numbers. It is a model also allows state governments, now or into the future, to potentially provide incentive schemes for the relinquishment of poker machines to assist with lowering the numbers in community. It is pretty straightforward but I think it ticks the boxes that were the intent behind the joint select committee recommendations. I put the bones of it in a new clause that I hope, if we get there, to be moving on this bill.

The mechanism I am proposing would not apply to the initial allocation of gaming machine authorities to existing hotels and clubs. It is to provide a mechanism for future change in local areas. It would allow a local council to request the Liquor and Gaming Commission to undertake a process to determine a maximum number of gaming machine authorities for its LGA.

At the request of the local council, and in making that determination, the commission would then be required to consult with local communities and the relevant council in coming up with that maximum number of poker machine authorities for their LGA. That maximum number sits there as an indicator. There is nothing consequential that happens as a result of it at that point in time but here is where it comes into play. If the maximum total number of

gaming machine authorities determined by the commission for a particular LGA is less than the number of authorities that are currently in that LGA, less than the number that were given out at the start of this policy, then any future gaming machine authorities that might be relinquished from that LGA could not be reallocated back into it, to other venues under this model. Similarly, gaming machine authorities that were relinquished from other parts of the state in other LGAs could not be allocated into the LGA in excess of the maximum number that had been determined by the commission in consultation with the community.

That would create the potential, I think, in a very mild way, for EGM numbers to drop over time towards the maximum number that had been determined by the community and the commission for that LGA.

It also means that a future state government of any stripe could provide incentives if it wished venues to relinquish machines in local government areas where numbers exceeded the determination that had been made by the commission and the community on the maximum they would like to see in their community. Through those incentives, a future government could be assisting a community to more actively bring down the numbers to meet community expectations and preference.

This model is a very light touch that imposes no disadvantage to any industry interests while allowing communities and councils, local governments at the grassroots, to have a formal say on the numbers of poker machines that they believe is appropriate for their community.

I hope this model is something that people will give some careful consideration to. I do not think it is necessarily perfect. It is certainly the bare bones but it is my effort to give effect to the intent of the committee in those first four recommendations and it is my effort to do so in a way that does not actively or aggressively impact anyone's current interests but provides for an opportunity over time.

In my contribution so far, I have discussed many matters on this reform and this bill. I have touched on things that I believe have not been sufficiently publicly discussed and examined and I have asked a number of questions throughout the contribution that I believe need to be answered so that we may all appropriately consider and assess this bill.

I appreciate that there are lot of questions for the Government to respond to in the second reading summing up. It is a shame really that the Government have placed themselves in the position of having such an extensive and broad range of concerns and questions relating to this bill still at large concerning the bill. It is a great shame the Government chose not to engage in a robust and comprehensive policy development and consultation process in the first place on this matter of such complexity and consequence for our state. We certainly would not have found ourselves in this position if they had.

Clearly, in the absence of an appropriate process to date in which they may have been addressed, the questions that are now here before us belong, I think, to be answered in a committee of inquiry on this bill. There is simply no way that we will be able to be provided with answers today or during a Committee stage of debate with sufficient detail and supporting evidence in answer to those questions. Even if it were to be attempted today in the summing up or during debate in the Committee stage, if we get to it, members will not have that full and comprehensive opportunity to seek clarification and interrogate answers and test evidence.

That is why I think a committee of inquiry is something that is the only consideration when it comes to doing our job on this bill.

Having said that and given the uncertainty that this bill will be sent to a committee of inquiry, I do hope to hear many answers from the Government to the questions I have posed in the summing up. If that has been done fair, I point the Government to the fact the vast bulk of the questions I have asked in this speech are virtually the self-same questions I posed in my submission to that stage 1 consultation on the framework for this policy in March 2020. Many other questions have been repeatedly put by other stakeholders since 2017, and the Government have had plenty of notice to turn their minds to the answers.

Coming towards a conclusion, I did want to touch on an aspect which is regarding whether this policy and bill, which I have already discussed in terms of not meeting the best outcomes for our state or delivering the best deal for our state - particularly from the question of whether it is something has been properly consulted on or something that Tasmanians have subscribed to to some extent, I want to speak a little bit about what Tasmanians want on this in terms of this reform.

Now, we know from historical polling in our state over many years and undertaken by a number of different entities, sometimes not for profit, sometimes in the context of research, sometimes by the Government, that when Tasmanians are asked about whether they want more or less or about the same poker machines in their state, the vast majority of them say less or none. The vast majority, more than three-quarters, up around the 80 per cent, sometimes more. Looking back at historical polling, I looked to one in 2016 I was involved in. This is where we were attempting to find a different way of trying to illustrate the presence of gambling harm in our community.

I was working at Anglicare at the time. We did polling on one question. It was through the EMRS omnibus poll that was a representative sample of 1000 Tasmanians statewide. The simple question was, do you personally know someone with a serious problem gambling on poker machines? What came back through that survey, was one in three Tasmanians personally know someone with a serious problem gambling on poker machines. The thing about these historical polls sometimes pass the ones that indicate people's preference to what should happen with poker machines and how many there should be, then the ones that indicate that one in three personally know someone.

Those have never surprised me, those figures. That is because I have talked to a lot of people all around our state over the past six years of advocacy on the issue. What I have observed is that there is a consistency of view and wherever I go and have gone to speak to people about this issue, there will always be somebody present who has personal experience of some kind of gambling harm. Whether that is themselves, family members, friends or workmates. When, at the beginning of my speech today, I acknowledged there would be people present potentially here and certainly potentially in those listening or engaging with this later, who would be experiencing gambling harm. I did not do that as a kind of gimmick or some form of theatre. I included it because I know for a fact there will be people listening to this debate today or later who are experiencing gambling harm for themselves or from others.

They might need to seek help, that is why I put that helpline number and the website at the start of my speech. In the context of this policy developing, coming through from the Government, and this bill coming to us this year, I did want to update my understanding of

what the Tasmanian people may think about key elements of it. I did specifically want to present some questions to the Tasmanian people through a reputable independent polling organisation. Again, it was EMRS I engaged to do this so we could get a sense of whether some very straightforward parts of this policy and legislation were actually aligned with community view. In August, just a couple of months ago, I contracted EMRS as part of their omnibus poll, to ask some questions of the 1000 Tasmanians they have in their omnibus survey.

I am going to pull out so I can find the report. It is interesting, it is expensive doing polling. It was expensive when I was at Anglicare and we had to find the money for it. It is expensive doing it as a parliamentarian too and I did not do it on my own; I got help to fund this polling to actually find out about the community view on some key aspects of this bill. I had to do that because I could not self-fund it.

I got financial support specifically to do the polling from Sir Max Bingham, previous Liberal Party deputy premier of this state and attorney-general of this state. Max contacted me directly to ask in what ways could he assist with efforts to do with advocacy on poker machine reform and working for positive outcomes for this state. He contacted me and we had many long chats over recent times - the last year or so, I guess. We have not spoken for a few months now since the polling.

Sir Max was very keen to support efforts and he assisted financially in two ways. He assisted financially to be able to do that economic modelling I mentioned earlier in my speech and he assisted to be able to do this polling.

Then, in addition to the resources I had from that assistance, I was also provided with assistance from two other people who provided donations and I was quite open about that in the public domain when I released this polling. They were Tim Jacobson from HACSU and a member of the public who has got a keen interest in this topic area, Greg James.

With funding cobbled together from those people who provided assistance and from myself, we were able to afford three questions - four, actually, if you count an extra demographic question we put in to be able to cut the data. The three questions we asked were pretty straightforward. The three questions in the omnibus poll that were put to the 1000 representative Tasmanians were these. The first one was:

> Poker machines currently have a maximum bet limit of $5 per bet. Would you support or oppose lowering the limit from $5 per bet to a maximum of $1 per bet?

As it turned out through this polling, 73 per cent of Tasmanians supporting lowering the maximum bet limit on poker machines from $5 to $1 - 73 per cent. We also asked -

Mr Valentine - What was the sample?

Ms WEBB - One thousand representative Tasmanians. I am going to table it - the report is on my website. For the record, I have sent every member in this place a tailored compilation and summary of results of this polling not just for the statewide results but for relevant to their electorate so they can see.

I will get to the other two questions in a minute - the remarkable thing comes from that fourth question I mentioned we put in there related to how people had voted in the last election. So we could cut the data to see what differences there were, if any, between people's voting support and what they thought about some of these elements.

The striking thing about this polling is the absolute consistency. It is not just the consistency between people who voted Liberal or people who voted Labor at the 2021 election this year, there is consistency around regions of the state, there is consistency by electorates, there is consistency by gender, by age, by economic status, by employment status. All the results are there in the report. It is available on my website and I will table it in a moment.

There is consistency of opinion on these three questions. The first was about whether the maximum bet limit should be lowered. Close to three-quarters of Tasmanians believe that it should be. The next question was, do you think that legislation for poker machine licensing changes should include consumer protection harm minimisation? 85 per cent of Tasmanians supported that.

Finally - and it was a very interesting question and I am going to be careful to quote it properly. The first question was, do you think that poker machines in casinos and hotels should be taxed at the same rate? In answer to that, 81 per cent of respondents said, yes. Four in five Tasmanians said, yes. From memory, it was strikingly similar between Labor and Liberal voters in answer to that.

The other interesting thing about it is that 81 per cent said, yes; 7 per cent said, no; and 11 per cent were unsure. What we then designed in this survey was that the people who said no or unsure, that 18 per cent, were then asked a supplementary question, because they had indicated that they either did not believe they should be taxed the same or were unsure about it. They were then asked the supplementary question.

They were asked, would you support or oppose poker machines in casinos being taxed at a lower rate than poker machines in hotels? In answer to that question, only 17 per cent of those who were asked that following the first question supported that. Only 17 per cent of that smaller sample supported a lower tax for casino pokies, compared to hotels. 54 per cent opposed it.

What that meant, when you crunched the numbers - and I had them crunched by a professional - is that overall, 91 per cent of Tasmanians do not think casino-based poker machines should be taxed at a lower rate than hotel-based poker machines. It is the key feature of this policy and of this bill that was kept hidden until the very last moment. It is a key feature of this policy and this bill that was kept hidden through two elections in this state. As it turns out, I would say - based on these figures - that was a canny decision from the Government and the Premier, Mr Gutwein, given that 91 per cent of Tasmanians would not have agreed with the policy position being taken.

Mr President, I seek leave to table this report.

Leave granted.

[6:59 p.m.]

Ms WEBB - That polling categorically says that there are some very key features of this Government policy, and this legislation that gives it effect, that Tasmanians overwhelmingly do not agree with. They simply do not agree that casinos should be taxed lower than hotel pokies. They think that consumer protection and harm minimisation should be in this legislation. When it comes to maximum bet limits, close to around three-quarters of them think that they should be lowered to $1 maximum bet limits - overwhelming support. How wonderful to be able to garner overwhelming support. If the Tasmanian people had been given a say on this in an open and transparent way, we could have discovered the support for those elements.

I have mentioned his name here today as providing financial support, which of course I also declare on my website, and I want to read the statement that was provided to me by Sir Max Bingham for use in some media and public statements around that polling, because it explains why he made that assistance available. It says this and it is signed by him at the bottom:

> Back in 1969 when I entered State Parliament the Labor Party was led by Eric Reece and the Liberal Party by Angus Bethune - two men who were in politics to do something to make Tasmania better and between whom there was a high level of mutual respect.
>
> I came to admire both of them. In 2009 I had the chance to pay tribute to Eric by helping financially to get published a splendid biography which Jillian Koshin had written about him, but so far, a similar opportunity to pay tribute to Angus has not come my way.
>
> I have now decided that to make a contribution to the improved regulation of the gaming machine industry would be a way to even up with a tribute to Angus. I am sure he would approve of action to help give Tasmanian punters a more nearly fair go which the present level of sophistication of the machines currently denies them.
>
> I confess to another motive. The performance of both Liberal and Labor parties and the gaming machine industry in the 2018 and 2021 elections has caused me great concern and has seriously imperiled democracy in Tasmania. It is a matter of regret to me that old age and failing health preclude me from a more active role in the debate.
>
> In the circumstances I am happy to support the efforts of Meg Webb in this matter. Signed, Max Bingham.

I thanked Max, and gave him heartfelt thanks for that support and his efforts. I think he was pleased to make efforts towards what he saw as better public policy in the interests of Tasmanians and strengthening of our democracy. As an elder of the Liberal party, he was, clearly from his statement, disappointed about the trajectory of where things were going. I would not like to put thoughts or words into his mouth or state something that he would not support; but I think he would support us doing a robust job here when we consider this legislation in this policy.

Mr President, I am going to conclude with another reflection from somebody who has been alongside me in my advocacy journey on this topic and has been the source of expert advice and information on it, and that is Margie Law. She has been here in both Chambers throughout the whole debate. I am going to read into *Hansard* a reflection from Margie.

> Margie Law, my observations.
> Since March 2003 I have been involved in monitoring the effects of the gambling industry and advocating for effective consumer protection. It started for me when I commenced work at Anglicare Tasmania as its gambling policy officer.
>
> Like many people, I thought at the time that gambling problems arose out of personal failures. It is not that I totally blamed individuals, but I thought counselling could help and people needed to take responsibility. I could see how easy it would get to be taken in by a poker machine but still I had not thought about the broader picture.
>
> It did not take me long in looking into the issue to see how government and industry work together to protect the industry at the expense of Tasmanians, the consumers. I started at the time that the government did the secret deal with Federals to to re-sign their control over the gambling industry in Tasmania. I was surprised that the secretary of Treasury and Finance was allowed to sign the new deed with Federal while he also chaired the gaming commission.
>
> I did not think that this was corruption. I thought it was a failure of public policy.
>
> I participated in raising concerns about the Deed, speaking at PAC, writing submissions and discussion papers, meeting politicians and industry. I sat in the upper House as the legislation was debated. Debated is too strong a term for what went on in there.
>
> Greg Farrell was also in the House. He had been invited in as a guest of the then president. I watched the members speak to Greg Farrell, grovelling to his so-called wonderful support of Tasmania. The bill went through. I was not surprised. The Legislative Council did manage to make some changes but the bulk of what the industry wanted got through, while nothing that the community sector called for in terms of consumer protection did.
>
> Will the same thing happen now, some 18 years later? In that time, we have had inquiries and social and economic reports that show the harm caused by gambling. Every time the community sector asked for consumer protection, the industry fought and mostly got its way. We tried to get $1 bet limits, which for a short time was supported by Will Hodgman's Liberal team, but which were rapidly dropped by them after a phone call from Greg Farrell.
>
> We tried to get mandatory pre-commitment in but this failed after the gambling industry warned Australians that it was un-Australian.

We tried to restrict pokies to the two casinos, but the industry threw millions into an advertising campaign that saw huge banners on prime real estate and employees forced to wear t-shirts warning people not to vote for Labor or the Greens. It was easy for me to feel like a complete policy advocacy failure.

Year after year of research-led advocacy could not match the industry-funded lobbying. We did manage to get clocks into venues, but the industry fought even against digital clocks, so they are analogue.

This year, while I no longer work at Anglicare, I have again put effort into providing research-backed advocacy to Tasmania's parliamentarians. I sat in the lower House for nearly the entire debate in recent weeks. Again, debate is too strong a word for what went on. Yes, there were some issues discussed and debated but it was like a tennis match, with issues being raised and the Government smashing them down because they did not like them.

Each time, the Government failed to provide evidence as to why they chose that particular route, they ridiculed the independent, Kristie Johnston and the two Greens, Cassie O'Connor and Rosalie Woodruff. I invite you to read *Hansard*. Of particular concern to me was that most of the debate was held with only a few people in the Chamber.

Mr PRESIDENT - Order. I know you are reading a reflection in but we really must be careful when we are alluding to other debates in the other House. If you could just temper it.

Ms WEBB - Just to clarify then, separate to reading this in, I can read reflections that are straightforward?

Mr PRESIDENT - That follow our Standing Orders. Even though it is not your words, we still have to follow our Standing Orders.

Ms WEBB - Sure. I think I am going to be okay, but I am happy to be directed.

Of particular concern to me was that most of the debate was held with only a few people in the Chamber. Members were out of the Chamber doing other work or eating and drinking while the issues were debated.

Mrs HISCUTT - Point of order. That is a reflection on the other House.

Mr PRESIDENT - We need to be very careful.

Ms WEBB - My apologies for that sentence, it was just meant having dinner.

On the occasion that a division was called, members would return, not having listened to what had been debated perhaps and they would simply move with the rest of their team for the vote. Again, I was not surprised. I have sat in the House on numerous occasions. But how can issues be taken seriously if members are not present, if they are not paying attention?

Mr PRESIDENT - Order. I think that is making a reflection on the debate in the other place. One person's recollection -

Ms WEBB - I will come to the latter part of my conclusion that does not relate to that.

> Eighteen years later my expectation for good outcomes from Tasmanians at risk of being harmed by a product that only exists in a way that we regulate it is very low. I hope that the Legislative Council can prove me wrong.
>
> Margie Law, 7 November 2021

I know this has been a lengthy contribution. Clearly members have found it lengthy and it was lengthy to deliver too. My purpose in that and my reason that I believe it was warranted is that I can see the writing on the wall with this bill, both from looking back at what has happened in previous times and from sentiment in the Chamber. It is my expectation that we may not get a chance to look at this bill in more detail in a committee of inquiry mechanism or through it being sent potentially to PAC. I do not think we are going to get a closer look necessarily at this bill than the one we are having now as it goes through this Chamber during the second reading stage and then potentially if it moves into the Committee stage.

From my estimation, in the absence of a committee of inquiry or an examination by PAC, many matters to do with this bill would never be looked at properly and scrutinised on the public record and I cannot replicate that in a second reading speech contribution. What I can do and what I have attempted to do in my second reading speech contribution is, to the best of my ability, give at least some discussion and some hearing to the numerous concerns and questions that arise from this policy and this bill.

I wanted to ensure that having made my contribution, onto the public record for anyone who wished to engage with it, there could never be then an opportunity to say there were no grounds for us to properly and thoroughly scrutinise this in a more comprehensive way. It is my view, that in this contribution, and from the contribution of many other members here, and from the contribution of submissions made and of public concerns that were raised, that ample evidence has been given that this deserves a closer look.

I come back to that question, right at the beginning, that actually was not my question, but one that I looked back in time, to find, from 2003. There is one question here that has to be asked about the whole process that has gone on: did Tasmanians get the best deal?

If we cannot say yes categorically and absolutely, then it is our duty to continue to examine and scrutinise this legislation.

[7.15 p.m.]

Dr SEIDEL (Huon) - Mr President, I commend the member for Nelson for her extensive contribution. She started just after 12.00 p.m. and it is now after 7.00 p.m. in the evening. Her contribution surely must have been one of the longest second reading speeches -

Mrs Hiscutt - Just a little over six hours -

Dr SEIDEL - in the history of the Tasmanian parliament.

Mr PRESIDENT - There is some folklore that one went over a two-day period, before *Hansard* but I am not sure if that is true.

Ms Webb - I am here for three-and-a-half more years, Mr President.

Dr SEIDEL - Either way, for medical reasons, I believe it is time for a break. I move -

That the debate be adjourned.

Motion agreed to.

Debate adjourned.

SUSPENSION OF SITTING

[11.07 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 a dinner break. We will probably ring the bells at about 8.15 p.m.

Motion agreed to.

Sitting suspended from 7.14 p.m. to 8.19 p.m.

GAMING CONTROL AMENDMENT (FUTURE GAMING MARKET) BILL 2021 (No. 45)

Second Reading

Resumed from above.

[8.21 p.m.]

Dr SEIDEL (Huon) - Mr President, I will begin by thanking the Leader of the Government for facilitating the briefings on this bill and for allowing for sufficient time for asking questions. I note the compromise the Leader had to make for allowing the briefings to be recorded for later viewing if needed. That is indeed very helpful, I very much appreciate it.

It is not clear who said laws are like sausages, it is better not to see them being made. But clearly, the Gaming Control Amendment Bill is the prime case in point. This was meant to be the cornerstone of the Liberal Government's reform agenda. At least, that is what the public has been told for years. But what we have is an amendment bill of over 240 pages that aims to amend the principal act with over 180 clauses. It is a thing that is quite complex and that in itself is not necessarily bad. However, it is also incohesive and despite its volume, anything but comprehensive. If that is the best the Government can come up with at its

perceived peak, we really have to wonder what kind of bill will reach this Chamber in a couple of years.

As the member for Hobart mentioned yesterday, even the Solicitor-General cannot make sense of the Government legislation now, which is quite extraordinary.

Ms Forrest - One piece of it.

Mrs Hiscutt - Not this one in particular.

Dr SEIDEL - Still quite extraordinary to do this publicly. But that is exactly what happens when the Government spends more time and resources on its media unit than on a policy team. Legislation must have substance, legislation must be clear and concise, and legislation must have a genuine purpose. This bill however, as we heard in the briefings, is an omnibus amendment act. It actually has been described as being disrespectful to parliament. We heard in the briefing we received, it would be entirely possible to have a bill of just 50 pages long informing a strong regulatory framework. We also heard from the department that a principal stage overarching framework and two separate acts would have reflected what the Government actually promised to deliver - meaningful reform.

We were told this could have been achieved with existing resources over four to five years; even sooner if a commitment for better resources would have been given at the time. However, this Government proposed a Joint Select Committee on Future Gaming Markets in 2016 instead and - wait for it - rejected the recommendations of the committee. What was the point, I wonder, of proposing the select committee in the first place?

I did sense the genuine disappointment when the member for Mersey made his contribution to this bill yesterday as he was the chair of the select committee at the time. That report is essential reading for all members of parliament and I do like to thank the member for Mersey for his outstanding work and also for the contribution the member for Murchison made in that committee.

Ms Rattray - McIntyre.

Dr SEIDEL - McIntyre, I am sorry, on that committee. Yesterday we also heard from the member for Mersey the THA Federal Group presented a model on the final day of the committee hearings. We heard evidence from the former Tasmanian gaming commissioner, Peter Hoult, that the current bill before us represents 'the exact model favoured by industry.'

I read the *Hansard* of the debate in the other place carefully to better understand the rationale for this bill. If I had done a thematic analysis and the follow-up in the media then one theme would have stood out - smashing the Federal monopoly. The exact phrase was repeated multiple times - smashing the Federal monopoly. Yet, when I look at the objects of the act, clause 33, page 45, the Government's media-crafted objective does not feature. The clause does read, though, 2A, Object of Act:

> The object of this Act is to provide for the licensing, supervision, and control of gambling in Tasmania and, in particular, to -

(a) ensure that gambling is conducted in a fair, honest and transparent way and is free from criminal influence; and

(b) Protect people, particularly people who are vulnerable, from being -
(i) harmed by gambling; or,
(ii) exploited by gaming operators; and

(c) ensure that the returns from gambling are shared appropriately (including by being invested in services to support those harmed by, or at risk of harm from gambling) amongst the gaming industry consumers in the State.

That is where the problem is with this bill because the bill over 244 pages does not address its own object. It does not ensure that gambling is conducted in a fair, honest and transparent way. It does not protect vulnerable people from being harmed by gambling. It does not ensure, as the member for Murchison pointed out, the returns from gambling are shared appropriately.

However, this bill does legislate new forms of gambling, transitions a monopoly to a cartel and introduces a new definition of what it means to be a Tasmanian resident. We here in this Chamber are now meant to be going through this bill clause by clause with a fine comb because the Government has not done the work over the last five years; they just passed it in the lower House because, yes, they have the numbers there. It is a mess. It is not actually a complex bill, no. This bill is not fit for purpose.

If we pass this bill in the current form, not only will the Solicitor-General wonder what the point of parliament actually is. This is not going to be easy. If the Government wants to enact cohesive legislation that meets its own stated objective, then further systematic inquiry or specific detailed amendments will be required. I trust the Government wants to do the right thing here.

After all the legislation is meant to be a cornerstone of this Government's ambitious reform agenda. Please give it the attention it deserves.

In a speech yesterday the member for Hobart reminded me, that we, in this House, could only deal with legislation put before us. But I would like to put on the record my personal view on gaming control. I have played pokies once and I lost $10, and I promised myself never to lose that much money so quickly on anything ever again.

Mr Valentine - It does not take long.

Dr SEIDEL - That is right. But it is my view, though, that recreational gaming including pokies should be legal, but appropriately regulated.

I am actually very much agnostic regarding an individual licensing model. I tend to be supportive of any model that ensures an appropriate return from recreational gambling to the Tasmanian community and the state. Best practice in that regard may change over time. However, what should not change is legislative certainty of an appropriate return. This is not really about modelling here. This is about collaboration towards optimal community and state benefit.

This is, in fact, no different to all other recreational products or services that are potentially harmful or addictive, yet legal. Nicotine and alcohol come to mind. We have come a long way from the height of recreational use of nicotine, for example. Only decades ago nicotine was praised for its medicinal purposes. Its recreational use was even encouraged. Turns out nicotine is addictive and can do harm. Based on rigorous study and informed by scientific evidence, appropriate harm reduction methods have been introduced, while the recreational use of some, not all, tobacco products remain legal here in Australia.

I talked about product safety and consumer protection and tobacco use, when we debated the T21 bill as introduced by the former member for Windermere. Cigarettes and other tobacco products are available for recreational use. They are subject to very tight product specifications as I outlined in my speech then. But the use is also restricted in certain areas. One cannot smoke in pubs or clubs for example. Members may recall the public and vocal discussion of potential implications for the hospitality industry in 2005 and 2006.

Then the Government followed a best practice harm minimisation approach regardless of the outrage at the time and see what happened. Nothing.

Ms Webb - Sorry to interrupt you. I have to tell you at that time, as the best harm minimisation for pokies as well, the loss dropped dramatically for a brief period, interestingly enough.

Dr SEIDEL - So again, see what happened, nothing. No Armageddon, no mass sackings of staff, no bankruptcy, no venue closures.

But, we have actually reduced the incidence of lung cancer and emphysema. The only professional groups affected by legislating, regulating and implementing measures to protect vulnerable people from the harm of tobacco use, were - wait for it - lung cancer specialists and chest physicians. Work force modelling suggests we need less of them, yet I do not hear the AMA agitating we need to make smoking more accessible again.

The focus on product safety is universally accepted in other areas. The car industry is given little option but to continually, continually improve the product safety of their cars. If a manufacturer's latest car does not meet the required and current safety standards, that car cannot be sold in Australia. It cannot be driven in Tasmania. Members of parliament are only entitled to a vehicle with a 5-star NCAP rating. Members are not entitled to anything that does not meet the gold standard in safety. It is almost as if the Treasury wants to protect members of parliament from harm.

Ms Forrest - Sometimes they probably wonder about that.

Dr SEIDEL - You cannot, you are not entitled to a car that does not meet the gold standard for safety. There is no choice for you.

Going back to the object of the act, clause 33(2A)(b) is quite explicit. The object of this act is to protect people, particularly people who are vulnerable, from being harmed by gambling. It is explicit, yet I am confused by this. I am confused because Professor Charles Livingstone who gave evidence yesterday stated: 'This bill is characterised by woeful omission of harm minimisation'. I have no reason to believe that

Professor Livingstone was intending to mislead members of this House with his statement. He did not have parliamentary privilege when he made the statement.

I have reason to believe the Professor Livingstone was indeed stating a fact. So, what are we doing now? We either amend the object of the act because it is really quite confusing to pretend the legislation is stating something in fact it does not cover after all or we introduce and enshrine sound, meaningful, scientifically appraised, accepted and evidence-based harm minimisation in this legislation. Protecting people from being harmed by gambling is the object of this act and protecting them we must.

Anglicare CEO, the Right Reverend Dr Chris Jones, said yesterday that his and other organisations care for over 2000 Tasmanians who suffer from gambling addiction. He stated: 'The current bill will do nothing to improve that'.

That is not a prophecy, that is a hard reality of Tasmania in 2021, but it is of course not too late. We are here in this Chamber to amend sloppy legislation all the time. They are all Government bills, all part of the Government's agenda or indeed the Government's mandate to put it on the agenda. We are to improve legislation and it is indeed amazing what can be achieved if one does not have to take credit for it. So, I am urging the Government to consider the next steps forward.

Is the Government willing to consider further amendments that strengthen the legislation when it comes to protecting people from being harmed by gambling? If the answer is yes, let us get right into it. If the answer is no, is the Government willing to consider referring the bill to a parliamentary inquiry for a review and report, as suggested by the member for Mersey. There is no rush and I thank the Leader of the Government for agreeing to adjourn the debate on this bill after the summing up of members' second reading speeches.

There will be time for reflection, consideration and review over the weekend before we come back to the debate next week.

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I have quite a lengthy response here, probably another hour's worth of words. Just in light of what the member for Huon has just said there will be time for reflection and reading over the weekend. Mr President, I will take the unusual step of seeking leave to table the responses and have them incorporated into *Hansard.* There is quite a lengthy response here for the member for Nelson. Other members have had their answers incorporated into this other lengthy response. I have two documents.

Mr President, I seek leave -

To table these documents and have them incorporated into *Hansard*.

Mr GAFFNEY (Mersey) - I am supportive of that action. The only thing I want to know is the process. If some of the questions that were asked have not been answered, if this was verbalised and the Leader had read out the answers, we could have said, well, hang on, you have not answered one of those ones. What is the process if some of the questions we asked on the Floor and in second reading speeches have not been answered? I would like to know that.

Ms Forrest - It always happens.

Mr GAFFNEY - But usually we would be able to say, well, you have not answered this or this. Is there a process in case that occurs?

Mr PRESIDENT - The normal process would be that once it goes into Committee stage, there is the opportunity to ask the questions through that process. I do not know if the Leader would broaden that out to responding to requests for answers in another fashion. I will ask the Leader.

Ms LOVELL (Rumney) - It is a little unusual. My question, and I guess, a point of clarification is to see if the Leader can clarify whether her intention - perhaps this is also a process question - is to put the question and call for the vote on the second reading tonight?

Mrs Hiscutt - Yes.

Ms LOVELL - Okay. My concern is that people will not have had a chance to consider the answers to their questions before they cast their vote on the second reading. I am interested in hearing what other members think.

Ms FORREST (Murchison) - I am happy to support the granting of leave for that to occur. It has been a long day and we still have a lot of work to do. Also, I could almost guarantee and bet on it, that all the answers will not be there. A lot of questions have been asked during this debate. But this happens with a lot of bills and the Leader does her best to get the answers at the time. But often there are things that still require further questioning in the Committee stage. We also need to be cognisant that where the answers have been provided, we do not need to reprosecute all those through the Committee stage.

It will be incorporated into *Hansard*. I am sure the Leader will have them emailed to us almost immediately, as soon as they can be done by the very efficient Mandy; then we will have them to go through. I take the point made by both members who have spoken, that it is unusual. However, if we have another hour, and people possibly think that some of their answers have not been provided, then it is going to be a lot of toing and froing when it is just as efficient to let her read it, if she has to, then call for the vote. Outstanding questions could then be addressed through the other process.

Mrs Hiscutt - While the member is on her feet, and through you, Mr President, a lot of the questions were similar. They have been generalised into one specific document addressing the member for Nelson's concerns. I hope, and I think, that they are all there. I have not set it out for each member.

Ms FORREST - From sitting in the President's chair at times, I have noticed how hard her advisers have been working, noting down questions and either sending them to other people or responding themselves.

Mrs Hiscutt - People in the back room.

Ms FORREST - Yes, people in the back room who are doing it. I am sure they have done their best. I believe no-one in this place, by agreeing to this motion, absolves themselves. It does not suggest in any way that there will not be further questions that may need answering.

There may be questions that flow from those answers anyway, regardless. On that basis I will support it and know that there are further opportunities to ask questions.

Leave granted; see Appendix 1 for incorporated document (page 144).

Mr PRESIDENT - The question is that the bill be now read the second time.

The Council divided -

AYES 10	**NOES 3**
Ms Armitage	Mr Gaffney (Teller)
Mr Duigan (Teller)	Mr Valentine
Ms Forrest	Ms Webb
Mrs Hiscutt	
Ms Howlett	
Ms Lovell	
Ms Palmer	
Ms Rattray	
Dr Seidel	
Mr Willie	

Motion agreed to.

Bill read the second time.

[8.49 p.m.]

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

> That the Council does resolve itself into a Committee tomorrow to further consider the bill.

Mr President, I move that motion in such a way, as I said, that we will do the committee work next week and I thank members for their persistence with this bill.

Motion agreed to.

OPCAT IMPLEMENTATION BILL 2021 (No. 49)

Second Reading

[8.49 p.m.]

Ms PALMER (Rosevear - Deputy Leader of the Government in the Legislative Council - 2R) - Mr President, I move -

> That the bill now be read the second time.

On 17 December 2017 the Australian Government ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment known commonly as OPCAT.

OPCAT establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

As the then minister for Foreign Affairs, the Hon Julie Bishop MP, aptly noted at the time, this ratification was a significant victory for human rights in Australia. It will improve oversight of places of detention, including immigration detention facilities, prisons, juvenile detention centres and various psychiatric facilities.

OPCAT supplements and expands existing mechanisms that states and territories may have for inspections and monitoring of standards of facilities, such as the custodial inspector regime, chief psychiatrist, official visitor functions, health complaints and others.

Ratification was the beginning of an ongoing discussion about OPCAT oversight and monitoring of places of detention across our country. This is because it is the responsibility of all state and territory governments to ensure our OPCAT obligations are fulfilled, not just the Commonwealth.

In compliance with our international obligations, this bill delivers on our Government's commitment to be OPCAT-compliant by January 2022, which is the time frame by which Australia is required to be OPCAT-compliant.

OPCAT sets two overarching responsibilities for every Australian state and territory, namely:

- to allow monitoring visits by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (of the Committee against Torture) - commonly known as the Subcommittee; and

- to designate an independent monitoring body for the prevention of torture and ill-treatment at the domestic level – which the protocol names the 'National Preventive Mechanism', or NPM for short.

I note that a standalone act for OPCAT is one of the important outcomes of the extensive consultation. It was first proposed to include OPCAT provisions in a separate part of the Custodial Inspector Act 2016 because the framework of that act was designed in 2016 in consideration of future OPCAT requirements.

In response to feedback on the draft bill, however, the decision was made to further strengthen our framework for OPCAT in a standalone act. This clarifies and supports the independent operation of the NPM in relation to a broader class of places of detention. The revised bill was provided to stakeholders for further comment, and minor further adjustments were made. The input from our stakeholders is greatly appreciated.

Turning first to the subcommittee, and to provide a brief overview, its mandate under OPCAT is to:

- visit places under Australia's jurisdiction and control where persons are or may be deprived of their liberty;
- advise and assist Australia and its NPMs on their establishment and functioning; and
- co-operate with other international, regional and national organisations and institutions working to strengthen protections against torture and ill-treatment.

The subcommittee is comprised of 25 experts from countries party to OPCAT, elected for four-year terms. Visits to Australia by the subcommittee will typically comprise of at least two members, depending on the nature of the visit, who may be accompanied by experts selected from a roster maintained by the United Nations. After a visit, the subcommittee will report to the relevant government on action to be taken to improve the treatment of detainees, including conditions of detention.

I note that the subcommittee had intended to visit Australia last year, but that visit was understandably postponed due to the COVID-19 pandemic.

Within the bill, Part 3 creates a framework to enable these subcommittee visits to places of detention. Consistent with OPCAT, it establishes a general rule of enabling the subcommittee to have unrestricted access to places of detention to interview detainees and other persons and access relevant information. The ability to object to these functions is provided for in very limited circumstances consistent with the protocol.

For example, Article 14 (2) provides for objection to an SPT visit only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder, that temporarily prevent the carrying out of a visit.

Notably, a state of emergency by itself is not a reason for objection. However, public safety issues arising from the emergency could be an objection if necessary. As the Commonwealth is the OPCAT signatory, objections are made by the Attorney-General of the Commonwealth.

It is expected that during a visit, the subcommittee will also meet with government officials, our NPM and relevant stakeholders including from non-governmental organisations. This subcommittee framework is based on model law developed by jurisdictions and the Commonwealth and in that regard, I note that the Australian Capital Territory and Northern Territory have also passed legislation following this model. I understand that other jurisdictions' frameworks are still in development.

I will now move to the National Prevention Mechanism known as the NPM, under part 2 of the bill. This will be a new permanent monitoring body for Tasmania.

The bill provides that the Governor may appoint a person or more than one person, as a Tasmanian NPM. The primary function of the NPM will be to undertake regular, unannounced

inspections of places of detention to examine the treatment of detainees with a view to strengthening, if necessary, their protection against torture and other cruel, inhumane, or degrading treatment, or punishment.

Associated with this function, the bill provides that the NPM will have power to:

(1) require the provision of, or access to, information about detainees, including the number and treatment of such detainees, and the conditions of their detention;

(2) require the provision of, or access to, information about places of detention, including the number of such places, and their location;

(3) to access, inspect and review places of detention;

(4) to interview detainees confidentially, and any other person who the NPM believes may supply relevant information; and

(5) to contact, meet and exchange information obtained under its functions with the subcommittee or other jurisdictions' NPMs.

Under OPCAT, 'places of detention' is defined in open terms and this is appropriately reflected in the bill. It is any place under Tasmania's jurisdiction and control where persons are, or may be deprived of their liberty, either by virtue of an order given by a public authority, or at their own instigation, or with their consent, or acquiescence.

For clarity, the bill provides a list of places of detention that the Government has assessed to be within the scope of this definition. These include a correctional centre, prison, detention centre, or similar; a hospital or similar; a closed psychiatric facility; a police station or court cell complex, and a vehicle used or operated to convey detainees.

I want to highlight that the NPM will complement, and not replace, existing oversight and investigatory bodies in Tasmania, such as the Health Complaints Commissioner, Custodial Inspector, or our Official Visitors.

Indeed, it is expected that the NPM will liaise with, and seek involvement from these existing bodies.

As has occurred in other countries, we anticipate that implementation of the NPM will be an interactive process and that its monitoring functions will evolve over time. Across Australia, jurisdictional NPMs will operate independently under the coordination of the Commonwealth Ombudsman.

In addition to its inspection function, the bill provides the NPM may also make referrals for consideration or action; receive information in relation to a detainee or place of detention; make recommendations and provide advice to the relevant authorities, particularly the Government; develop and publish guidelines and standards in respect of detainees or places of detention; submit proposals and observations concerning existing or draft legislation that relates to detainees or places of detention; publish reports, recommendations, advice or findings in relation to detainees or places of detention, including to parliament and through an annual

report to the Commonwealth Ombudsman; and engage in consultation in relation to policy relating to detainees or places of detention with a responsible departmental secretary or a responsible minister.

To protect persons who communicate with or intend to communicate with the NPM from sanction, reprisal or other prejudice, the bill also creates a new protection of reprisal offfence. The bill rightly provides that the NPM is to exercise its functions independently and impartially and with complete discretion. To ensure this independence the NPM will be appointed by the Governor. The NPM will be required to identify any conflicts of interest directly to the Governor and the NPM must address any conflicts as they arise.

As the Government has announced previously, we intend to recommend the Custodial Inspector, Richard Connock, to the Governor for appointment as Tasmania's inaugural NPM. Mr Connock will bring a wealth of collective expertise and experience to this new body which will be necessary for its establishment and effective functioning. The NPM will have the power to delegate to competent experts and to hire staff or utilise staff of the Department of Justice. Experts and staff will also exercise independence and impartiality in their work.

The bill ensures the confidential information acquired in the course of the NPMs work is protected and not disclosed unless the specified circumstances apply. I am pleased to say the Australian Government has committed to contributing some funding to jurisdiction's NPMs implementation. The minister's department is in discussion with the Commonwealth on this matter as part of a commitment to ensuring appropriate resourcing of additional resources for the NPM through both Commonwealth contributions and our own budget process.

I mentioned earlier that Australia's ratification of OPCAT was the beginning of an ongoing discussion for Tasmania. That has unquestionably been the case. This bill is a product of extensive consultations with a wide range of stakeholders within government, within Tasmania, across Australia, and internationally. I want to acknowledge and thank in particular the many stakeholders who provided consultation submissions, for taking the time to meet with the Premier's department and for writing to the minister personally.

I also express my sincere thanks to the Custodial Inspector, Richard Connock, and the Commonwealth Ombudsman, Michael Manthorpe, and Deputy Penny McKay, for their assistance. The Government is committed to ensuring that people in places of detention are treated humanely, appropriately and in accordance with international law. The Premier looks forward to working with the NPM in this new role that independently provides oversight and an important responsibility.

I would also like to acknowledge the work of the Office of Parliamentary Counsel in drafting and finalising this substantial piece of legislation.

Mr President, I commend the bill to the House.

[9.04 p.m.]

Mr GAFFNEY (Mersey) - Mr President, I wish to commend the honourable Justice on the redraft of the proposed OPCAT Implementation Bill. I also appreciate he ordered the briefings and discussion we had regarding the bill.

This is a standalone act that operates independently of other legislation. It is essential for creating robust and comprehensive protection of the OPCAT provisions. This is an

incredibly important step in ensuring Tasmanians are protected from mistreatment in our state, no matter their circumstances.

Internationally, OPCAT seeks to provide a means of monitoring how countries are performing in protecting their citizens and facilitate the subcommittee on torture, to visit places of detention to ensure human rights are being respected and upheld. The focus of the proposed legislation is not only responding to instances of abuse treatment and torture but on preventing it from occurring in the first place.

In their 2020 report on implementing OPCAT in Australia, the Australian Human Rights Commissioner described the primary aim as identifying and addressing harm in detention, before this harm becomes more serious, widespread or systemic. To fully understand the gravity of this bill and the harm it seeks to prevent, it is necessary to briefly address how we reached this position.

The federal government ratified the OPCAT in December 2017. In doing so they agreed to be bound by international law and to subsequently begin the process of meaningfully implementing it in Australia. However, at the time the federal government postponed fulfilling the obligation by three years as permitted under article 24 of OPCAT. It is now nearly four years on that we are practically engaging with this issue. It is predominantly about those who are most vulnerable in our community that are in places where there may be restricted liberty, hospitals, correctional centres, police stations and so on.

Vulnerable members of our community include children, Aboriginal and Torres Islander people and people with disability. There is significant evidence across a variety of sectors it is these groups who are at increased risk of exploitation and degrading treatment. To this end clause 12 of the proposed legislation is a welcome addition, specifically requiring the consideration of cultural and ethnic groups and people living with disability in the hiring of staff for the National Preventive Mechanism.

The OPCAT Implementation Bill offers a new lens of oversight we have not previously seen in Tasmania. Community stakeholders such as Australian Lawyers for Human Rights, People with Disability Australia, the Australian Psychological Association, all note many current inspectorate mechanisms only respond to complaints after the fact. The OPCAT will aim to prevent mistreatment in the first instance. It is proposed this would occur through a National Preventive Mechanism.

As summarised by the Minister for Justice the primary function of the NPM will be to undertake regular unannounced inspections of places of detention to examine the treatment of detainees with a view to strengthening, if necessary, their protection against torture and other cruel, inhumane or degrading treatment or punishment. The proposed legislation will give the nominated NPM access to information regarding persons deprived of their liberty and the place at which they are detained.

Under article 4, the OPCAT protocol defines any place under Tasmania's jurisdiction and control where persons are, or may be, deprived of their liberty. This has been qualified as a facility such as correctional centres, prisons, detention centres, hospitals and police stations or cells. For clarity an important distinction must be drawn here. The NPM does not appear to purport to replace other oversight and investigative bodies that already exist in Tasmania such as the Custodial Inspector or the Health Complaints Commissioner, but instead it will actively

source information from confidential interviews with detainees and have the opportunity to provide any information they gather from these processes back to the United Nations Subcommittee on Prevention of Torture.

As with any function that aims to investigate wrongdoings in our systems, it is critical the NPM operates independently and impartially to allow for complete transparency. To this end, the protection from reprisal provision in clause 36 of the bill is an especially notable provision allowing Tasmanians the freedom to report instances of abuse without fear of reprisal, and is essential to ensuring this mechanism functions to its full potential.

As has been noted previously, the NPM is not expected to be a static mechanism. It will be an iterative process that is expected to evolve and change with community needs and best practice as they emerge. A significant concern that emerged from community consultation is the proposal that we will have a single NPM as opposed to an integrated multibody. This is perhaps evidence of how we expect the NPM to change allowing the appointment of multiple NPMs in the future to create better expertise across all sectors.

Implementation on a state-by-state by basis is going to be an integral part of ensuring OPCAT is effectively entrenched in Australia. The learnings we may identify under the proposed framework would not just improve detention practices in Tasmania, but offer an opportunity to share these practices nationwide.

However, changes such as these cannot occur without significant resourcing. The administration of the bill will require adequate support to ensure financial and operational autonomy. Legislation such as this always poses the risk it will not receive enough funding to perform its most crucial operations, particularly in an area as complex as this. I wish to stress that it is our responsibility to ensure this legislation is not relegated to the background.

Stakeholders such as the Tasmanian Institute of Law Enforcement Studies and the Tasmanian Council of Social Services have raised concerns about the Custodial Inspector being designated as the single NPM for this very reason. We must ensure that the NPM, in whatever form, is the most effective, multi-faceted and have the necessary expertise to cater for the unique demographic is Tasmania.

As the Australian Human Rights Commission concluded in their 2020 implementation report, the changes required by OPCAT should be pursued in a way that promotes stronger and more consistent human rights protections for people who are detained across all jurisdictions.

Mr President, I am confident that the OPCAT Implementation Bill 2021 is a sound, robust proposal which serves not just Tasmanians who are directly affected by detainment but their families, their carers and the wider community.

I look forward to seeing it come to fruition.

[9.11 p.m.]

Ms FORREST (Murchison) - Mr President, I note the comments made by the member for Mersey on this. I will make some comments but I will speak broadly first.

It has been noted the Australian Government ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment known as OPCAT in December 2017.

I know there is a body of work being done around the country to bring in similar state-based mechanisms to focus on meeting their obligations under this convention.

I also acknowledge from our briefing today and from discussions I have had regarding this bill, that it has been well consulted with the appropriate stakeholders. As we heard in the briefing today, the consultation was very much welcomed. There was great appreciation for the way it had been undertaken. There was significant commendation of staff who have been involved in that, and particularly in the development of a standalone piece of legislation. As the Deputy Leader said in her second reading speech, an outcome from the consultation was that it be a standalone piece of legislation.

In the past, I think it was in the Public Accounts Committee review of the Ombudsman's office - I have forgotten what year that was but the member for McIntyre might know, because she referred it to us.

Mrs Hiscutt - We have only just spoken about it.

Ms FORREST - We have. Richard Connock, as the Ombudsman and Custodial Inspector at the time (as he still is), raised this matter as being of great concern to him, about the necessary resourcing being put into it once it became legislated in the state. I would like the Deputy Leader to address her mind more clearly to the funding arrangements.

In the briefing we were informed that there is a requirement in the protocol that the funding be a separate stream of funding with its own budget line item. That was to ensure it is not just being done off the side of someone's desk and not just funds being shifted from an appropriation to the Ombudsman's office, for example; but that there is a separate allocation, a separate line item, with a separate accountability around the funding for and the reporting back related to the spending of that funding.

If the Deputy Leader could address her mind to that in the reply, because I think that is a pretty crucial point and potentially we would be in breach of our obligations if we do not do that, as I understand it.

I absolutely agree that the clear intention of these sorts of approaches should always be prevention.

It is hard to believe what actually happens to some people who find themselves in less than fortunate circumstances - sometimes by no fault of their own. Sometimes it is deliberate actions that result in people being detained; but sometimes it can be for a range of reasons, not necessarily a matter that they entirely brought upon themselves. That would particularly be the case for people with particular vulnerabilities such as severe mental illness, people with disability, people in aged care facilities - those people who are vulnerable and can be subject to these inspections and processes that fit under this.

In the briefing, there was also a degree of discussion about under whose responsibility different aspects of the work of the NPM falls. We were informed that the Commonwealth has

responsibility for people who are NDIS clients and people who are engaged in aged care, because these are basically aged and disability care. These people come under the jurisdiction of the Commonwealth in terms of the funding arrangements, and the Commonwealth has the responsibility for funding that aspect of the preventive mechanisms under this arrangement.

It seems that there is still a bit of argy-bargy going on around this, and there hasn't been a commitment from the federal government to either fund it properly themselves to ensure a very vulnerable cohort of the Australian community is adequately supported through this mechanism in the prevention of torture and other degrading and inhuman practices. The Royal Commission into Aged Care has shone a light on that. It is the federal government's responsibility. They either have to fund it, and make sure that they put in place the framework to facilitate that, or they clearly delegate that responsibility to the states with the necessary funding to do it.

I would like the Deputy Leader to clarify what progress is being made in that. It would be awful to think that there is a sector of our community who live in Tasmania and whilst they may be the responsibility of the Commonwealth, they cannot be afforded the same actions to prevent these circumstances that could happen to them because they are an NDIS client or because they are in an aged care facility or in that system. I consider those are particularly important mechanisms.

I think it was the department members who briefed us that said that some of the work that has been done on the Tasmanian legislation is such that now South Australia is looking to the Tasmanian legislation to pick up some of our provisions. That is always good, isn't it? To see that the work that Tasmania is doing is perhaps being recognised by others.

There are two particular points here: financial independence of the NPM with the funding needed being quarantined and ensuring there is adequate resourcing; and the differing responsibilities between the federal government's responsibilities and the state's responsibilities.

The member for Mersey also touched on this. Some concern has been raised about having a single person as the NPM in Tasmania. I note that the bill basically does say one or more; that might not be the exact wording. The Government may appoint a person or more than one person as Tasmanian National Preventive Mechanism. We were informed at the briefing that it really isn't expected and particularly part of the agreement, that it won't be one person; and that other jurisdictions, including the ACT which is also quite small in geographic size, have three and they are utilising others of their commissioners and that sort of person, that is already engaged in these spaces.

One would think in Tasmania, we could and probably should do the same, because the Commissioner for Children and Young People would definitely have the skills, expertise and interest in protecting children and preventing harm to children. She has a very strong interest in that and has a very active role.

In the ACT the NPM includes the Ombudsman, the Human Rights Commissioner and the ACT Inspector of Correctional Services. They don't have their children's commissioner, but they have three others.

I note that the bill was drafted in such a way that the NPM, whether it be one person or more, can engage staff and pull in other resources that they may need. However, I want to be sure if there is an expectation or indeed, a requirement, for it to be more than one person, that it is seen to and this is a provision to get OPCAT up and operational and at least get the framework and staff engaged. Then we see other people or person at least appointed as NPNs to comply with what I understand may be parts of our obligations.

I also wanted to raise a couple of the points raised in the briefing. I note the subcommittee on prevention of torture was intending to visit Tasmania last year, but we all know that COVID-19 put a kibosh on all international travel. That is a reasonable expectation, they would not come. I expect that will happen fairly soon. That would be the plan after our borders open on the 16 December when we open up to everyone, as I understand the mechanism. One would hope that would happen soon in terms of meeting your obligations.

In terms of the parliamentary oversight or other oversight of the work of the NPN, there are a number of mechanisms that could be utilised by the parliament to oversee the actions and work of the NPN. One is obviously the delivery of their annual report. As I understand from the briefing, the annual reports of the states go to the Commonwealth for publication, and if for some reason the Commonwealth did not publish theirs on a website or somewhere, that Tasmania could still publish theirs. I wonder what the mechanism is for members of parliament to be aware that had been done. I assume it will be an annual report in line with the financial year.

This is not nationally consistent legislation and I accept that, but it is a similar sort of thing where we are relying on another body when reports are published or amendments made to national law or to national regulations that sit in other jurisdictions. We have repeatedly asserted, and now the Government has just done it, after having argued the point a few times, that the amendments to national law or regulations be tabled in the parliament, just so the parliament knows.

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Will there be any notification that the annual report is available or will it be tabled in parliament or will we have to go searching for it if we want to see it. The tribunal's annual report, the Ombudsman's annual report and the Custodial Inspector's report are all tabled in this place. I would like to think this would happen and do we need it in the legislation to make it happen, or should we amend it to ensure it does? I particularly asked that because when you are relying on the Commonwealth to do it, even though there is the power for the state to do it, to table the state annual report, there is no guarantee it will occur. It is very important work being done.

That could then trigger, regardless of whether it is tabled in this parliament or not - any member of parliament can pick that report up, print it off the website if they could find it and if they felt they wanted to note it by way of notice of motion in the parliament, we could. I would also expect during the budget Estimates process if this has a separate line item then I imagine it will be over to committee B, under Justice, and there could be questioning about expenditure, especially about the budgetary matters to it. That is a key aspect of whether it will have separate funding, a separate line item scrutinised during the budget process.

A question I have with regard to the definitions, it is not meant to be an exhaustive list, but they are the most likely places a person will be deprived, or maybe, of their liberty. Obviously, corrections centre, prison detention centre or similar place is quite to be expected.

Hospital or other similar place, you would expect this to only really occur if someone was under police guard in a hospital. They definitely may be able to clarify this, the NPN would not just go into the hospital on the off-chance of finding someone there who may not be allowed to leave their room. I assume that is only when someone is under police guard or being detained there. Maybe they are being detained under a mental health order in a regular hospital, but you would expect them to be in the psychiatric ward of that hospital. When you talk about a closed psychiatric facility, I assume this means somewhere like Wilfred Lopes.

Mrs Hiscutt - The answer is yes.

Ms FORREST - Spencer Clinic in Burnie is not a closed facility. It is the psychiatric ward of a hospital. People can be on orders there that prevent them leaving. That would fit under the hospital category and the closed psychiatric facility is Wilfred Lopes, for example.

Mrs Hiscutt - That is correct.

Ms FORREST - Okay, that is fine. That has clarified those questions, thank you.

I do not think there were many other points raised in the briefing that need a bit more explanation. I think I have covered them all - I hope I have. The funding the NPM will get is important and we know that the current Ombudsman has a lot on his plate in terms of all the responsibility he has.

I think the departmental staff said in the briefing it was not so much a matter of funding, the challenge was more staffing.

Mrs Hiscutt - I think we answered a question through questions without notice from a previous member a while ago and that was the way it was stipulated in that answer. It was more of a staffing issue than a money issue.

Ms FORREST - What was the answer?

Mrs Hiscutt - It was the member for Launceston who may have asked that, I am not sure. I cannot really remember, but it was indicated it was more of a staffing issue than finance issue.

Ms FORREST - Yes, my question is in relation to that. Is that because it is difficult to attract the adequately trained and qualified staff? The money is there but they do not have the staff?

Mrs Hiscutt - I do not have that answer to repeat it back to you on my person at the moment.

Ms FORREST - That is all right. I will go back and read *Hansard* on that one. I must not have been paying attention.

I want to read from the briefing note. The Deputy Leader may wish to address these matters in her reply. I will provide this document to *Hansard*:

> Stakeholders also asked the Government to strengthen the reporting role of the TNPM more broadly and in more detail to strengthen scrutiny of the ministerial and departmental compliance with OPCAT in accordance with Tasmania's system of representative and responsible government.

TLRI was that stakeholder.

> Replace the detainee with a person or persons deprived of their liberty with language which was consistent with the full scope of OPCAT oversight, TasCOSS, Tas OPCAT and/AON.

Some of it has been addressed but I am wanting to clarify they all have been. If they haven't, why not?

> Annex the full text of OPCAT as a schedule in the bill.

TasCOSS asked for that but I note that has not been done.

> Acknowledge functional and financial independence is key to securing the necessary expertise, which means stating a position that there will be adequate resourcing for the NPM even though this will not be an enforceable duty on Government and strengthen the reporting role of the TNPM more broadly and in more detail to ensure scrutiny of the ministerial and departmental compliance with OPCAT in accordance with the Tasmanian system of representative and responsible government.

I know some of those things should be covered in some of the other matters I have raised but I would appreciate it if the Leader or the Deputy Leader could address our mind to those.

Most people would welcome this legislation. It is designed to be preventive. We have seen far too many examples in the media over recent years of highly inappropriate treatment of our fellow human being, regardless of whether they have committed crime or not. You do not have to look too far. The Don Dale Youth Detention Centre, our own Ashley Youth Detention Centre, the aged care royal commission, the royal commission into people with disability. All those have shone a light on some of the awful conditions that these people have experienced that no human being should. The most important focus we can have is on prevention and that is what this is designed to do.

I commend the Government for getting on with it and getting it done and for listening to the stakeholders and bringing forward what appears to be, from the evidence I have sought from key stakeholders, very welcome. There are just some of those outstanding matters that they want clarified or explanations for why they have not been adopted in the way that it has been suggested. But I do support the bill.

[9.30 p.m.]

Ms WEBB (Nelson) - Who knew she had more words in her?

Mr President, I start by thanking the Leader and the department for the briefings that we have had on this bill and for organising for some other stakeholders to provide briefings for us

on it also. It is a very interesting bill currently before us, the OPCAT Implementation Bill 2021.

At the outset I need to state that despite supporting its intent in principle, I do feel considerably conflicted about the mechanisms it contains purportedly to deliver on its important international obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

It is what the bill does not contain that is also contributing to my sense of confliction. First, it is necessary to consider the purpose of the bill and the context in which it was developed. According to the Australian Human Rights Commission 2020 report, Implementing OPCAT in Australia, and I quote:

> OPCAT embodies a preventive approach. It does not rely on affected individuals first making complaints of torture or ill-treatment. Instead, OPCAT focuses on identifying and addressing problems at an early stage. It operates through a proactive and regular system of inspections and recommendations. A primary aim is to identify and address harm in detention before this harm becomes more serious, widespread or systemic.

Hence, OPCAT is aimed at ensuring the independent proactive monitoring of all places of detention, criminal and civil, in order to prevent ill-treatment. This monitoring is important because these are closed environments where people are out of sight and, at times, out of mind and, hence, more vulnerable to ill-treatment.

Pre-OPCAT, detention monitoring has been predominantly reactive, focused on responding to harms or, sadly, deaths after their occurrence rather than focused on reducing and preventing risks at the systemic level. This is a crucial element for evaluation of the bill before us.

How well will it deliver on that crucial preventive goal? The national context for this bill is that Australia ratified the Optional Protocol to the Convention against Torture (OPCAT) in 2017. This protocol aims to prevent torture and other forms of mistreatment in places where people are deprived of their liberty such as prisons, immigration detention centres, police detention facilities, psychiatric wards and care facilities.

The Australian Government is meant to have implemented OPCAT by January 2022, quite imminently. OPCAT establishes the National Preventive Mechanisms (NPMs). NPMs are independent visiting bodies coordinated by the Commonwealth, as we note from our reading of the bill and the associated materials. These are coordinated by the Commonwealth Ombudsman and established at a domestic level within each state and territory.

NPMs focus on proactive, preventive measures to limit deprivation of liberty. NPM functions include independent visits, advice, education, cooperation. OPCAT provides that signatories will also receive visits from the United Nations Subcommittee on Prevention of Torture, the SPT. As reiterated by the Commonwealth Ombudsman in February last year, I quote:

> It is important to note that OPCAT does not create any new rights for people in detention. It does, however, place an onus on signatory states that they will seek to uphold basic rights for people in that situation.

Apparently, Tasmania is the first state to have progressed the creation of our National Preventive Mechanism, the TNPM, to the extent of debating the establishment legislation, I understand. However, as is often the case, this simplified overview of the process does not quite tell the whole story.

The Optional Protocol to the Convention against Torture was adopted by the General Assembly of the United Nations on 18 December 2002, yet Australia did not ratify it until 15 years later in 2017. This eventual decision to do so by the Commonwealth came after the shocking revelations, as has been already mentioned here in this place, of abuses that were occurring in the Northern Territory's Don Dale Youth Detention Centre which received international attention.

It has taken another four years for state legislation to be presented to this parliament. Barely three months, counting from when it was tabled in the other place, in October, before that national deadline of January 2022.

A quick survey at this state context level of the key stakeholders who contributed to the two consultation stages in the development of exposure draft bills, culminating in the version we have before us now, shows there is a common thread of broad welcome for the creation of legislative instruments to ensure our state, Tasmania, assists in Australia's delivery of its obligations of the signatory to this protocol.

To recap, those contributing stakeholders have particular legal, and law reform expertise, such as the Tasmania Law Reform Institute (TLRI), and international law, as well as expertise as advocates for those sectors of our community who are the most vulnerable to finding themselves deprived of their liberty for one reason or another.

Let us be clear, it is as detainees deprived of our liberty that we are at our most powerless and our most vulnerable. So, the general position of these stakeholders is one of welcome for the fact that we are a signatory to a protocol, and here is the bill to implement those commitments and obligations at a domestic level.

What could be the problem? Why would I be feeling conflicted when considering this bill? To put it simply, this bill before us reads, to some extent, as the most minimalist option possible. It is hard to shake the worrying perception. I have tried to shake the feeling that our state Government has decided it may not have any choice as to whether it moves to legislate in accordance with the national agreement. It does not need to do anything more than the absolute minimum in order to comply in that way.

If it can make these required measures look good on paper, and do, then that will do. But, that is a problem. When examined closely this attempt to implement measures to prevent the torture and other cruel, inhuman and degrading treatment, or punishment of Tasmanians, who are, or may be detained, does not look that good on paper, perhaps, as they may first wish it to appear.

While close in some areas, in others it is not, I do not think, on my estimation, all it is cracked up to be. On that point, I think it is worth clarifying that the bulk of my comments will focus upon the bill's provisions relating to the establishment and operations of the Tasmanian National Preventive Mechanism (TNPM). My understanding is that the provisions relating to the facilitation and the monitoring of the UN subcommittee is based on the model framework negotiations between the Commonwealth, states and the territories. That seems fairly straightforward.

To get back to my concern in regard to establishing a Tasmanian entity charged with the specific task of monitoring, and I quote:

> The treatment of persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman and degrading treatment or punishment.

That is from the bill.

Why would I believe that this bill looks like it is potentially falling short? Might I say it is not just necessarily me who fears this to be the case. Those key stakeholders who welcomed Tasmania's move to develop legislative instruments to implement our responsibilities and obligations under the protocol, these who should be celebrating the arrival of the bill, are the very entities that are also still raising some red flags on some elements of it.

I would like to touch on a couple of those, so they are noted here as we consider the bill. The member for Murchison has mentioned some of them already, I acknowledge. I would just like to mention them in my contribution also.

The first flag that I see raised there is about the single Tasmanian NPM. A key flag on the stakeholder's concern is the definition of the new Tasmanian National Preventive Mechanism. As a person appointed under clause 4(1), page 9 of the bill - despite advice and requests to ensure that this new role is a multi-bodied entity, the clear request. As Doctor Val Kitchener of the TasOPCAT Network states, in one of those contributions:

> It is problematic to define the NPM a person when good practice is for a multi-body NPM.

I take a moment to detail to the House the TasOPCAT Network is a collaboration of the Tasmanian Institute of Law Enforcement Studies, the UTAS School of Law, the Tasmania Law Reform Institute and RMIT University Melbourne. This impressive legal and law reform collective's objectives include sharing information about OPCAT with Tasmanian stakeholders, promoting the benefit of preventive monitoring and implementing of OPCAT in Tasmania and Australia.

That collective, consisting of such relevant expertise, is stating in no uncertain terms in their contributions to consultation that this bill does not reflect best or perhaps even necessarily, good practice when it comes to a key component of the bill, which is the make-up of the NPM.

To be clear, the crux of this problem is the Government's intention to recommend to the Governor to appoint one person to fulfil the function's role and responsibilities of the TNPM. In contrast, stakeholders are advocating a multi-member be established. This is a critical and

serious role which may best serve Tasmanians if it is created as a multi-member entity, to share the specific focus in areas of oversight jurisdiction.

I acknowledge the Government has clarified for us that clause 8 does provide for the Governor to appoint one or more persons as the TNPM, but there is nothing in the bill precluding a multi-member entity, that this provision apparently helps to futureproof the legislation, so we could go in that direction in future, potentially.

Respectfully though, that misses the point being made by the stakeholders when they raised this. They feel it necessary for continuity purposes, for workload, for duty of care, accessibility and diligence among other reasons that the bill stipulates the TNPM must be a two or more member entity, a multi-entity, rather than an optional choice of the government of the day.

Western Australia has announced it has identified two NPMs, the Western Australian Ombudsman for mental health and other secure facilities and the office of the Inspector of Custodial Services for justice-related facilities, including police lock-ups.

The South Australian bill also designates two NPMs. Stakeholders, including the TLRI point out that the Government's proposed inaugural TNPM, Mr Richard Connock, currently holds seven significant statutory roles. Additional to being the Ombudsman, he is the Health Complaints Commissioner as has been noted, Energy Ombudsman, de facto privacy commissioner, public interest disclosure and RTI, Mental Health, Official Visitors and Prison Official Visitors, not to mention other roles resolving complaints made under the Water and Sewerage Industry Act plus reviewing police interception and surveillance order compliance.

I acknowledge the bill makes provision for the TNPM to delegate and appoint people as necessary. However, at the end of the day, there are certain responsibilities that cannot be delegated such as signing official documents and investigation reports.

In the first round of consultations, the Anti-Discrimination Commissioner included in their submission, the following:

> I submit that the Tasmanian Government has the opportunity to provide a new benchmark for treatment of significant vulnerable population groups in our state, many of whom are detained in the list of places set out above.
>
> If the Government were to extend the scope of this legislative development and establish other NPMs, this would demonstrate leadership and a commitment to upholding and protecting the human rights of all Tasmanians who are deprived of their liberty.

In a speech entitled 'Implementation of OPCAT in Australia' which was delivered to a Future Justice and Corrections Summit in February last year, the Commonwealth Ombudsman said:

> First, as I said earlier, to be OPCAT compliant that the scope of inspections will need to broaden over time to encompass more places of detention. As this expansion occurs, each jurisdiction will need to consider how best to do this.

> Second, a regular preventive inspection regimen, especially in places where there has been little or no oversight will require substantial resources to be effective. As NPMs are nominated they will require new expanded methods of operation which will need commensurate increases in resourcing over time, in most if not all jurisdictions.
>
> Third, the governments will need to consider the extent to which new or updated legislation will be required to be introduced to meet the tests imposed by OPCAT and to put their NPMs, once nominated, on an appropriate footing.

There is a clear warning - to expect a workload increase.

This next statement by the Commonwealth Ombudsman from that same speech helps place into context the potential workload for NPMs. The Ombudsman's speech said this:

> We identified over 1000 facilities across the country that could be defined as 'primary places of detention'. These include closed mental health facilities, police lock-ups, juvenile justice facilities, adult correctional facilities, closed disability units, immigration detention facilities and military cells or corrective facilities.
>
> Our initial focus is on the primary places of detention as the Australian Government considers the challenges posed by the deprivation of people's liberty to be at their most acute in these places and, therefore, these will be the first focus of Australia's NPM bodies.

Over 1000 facilities across the nation. Clearly, they are not all within Tasmania. However, as many people have picked up from the information provided to us in the bill package in the briefing, the Commonwealth's definition of 'primary places of detention' is much narrower than the more deliberately broad definition this bill contains. May I say on that point, I do want to acknowledge the state's definition we have in this bill is a clear positive of the bill and the broadening of the definition is to be congratulated from the choice made at the Commonwealth level.

This Commonwealth Ombudsman's quote also spells out the range of facilities that will become captured under the definition and the different sector expertise they throw up for a single TNPM to provide oversight of.

It makes logistical common sense to stipulate immediately in the bill the TNPM must be a two-member model as a minimum right from the word go. It would make this fundamental mechanism more robust and present-ready rather than just futureproofing.

We should start as we intend to continue. In fact, we have not really been provided with any good reason why we should not, nor why we cannot. As food for thought, potentially the second TNPM could be the Commissioner for Children and Young People or the Anti-Discrimination Commission. There are appropriate options currently available to us.

Such an amendment, if it was made to the bill, along those lines, does not risk making Tasmania noncompliant with OPCAT or the Commonwealth implementation guidelines but it would clearly further the intent and the spirit of OPCAT.

The second flag I see that still remains from the process of consultations and concerns raised by stakeholders is around the lack of parliamentary oversight. Stakeholders including the TLRI, TasOPCAT and others on my reading were shocked at the virtually non-existent parliamentary oversight of the NPM and have called for these provisions to be strengthened.

They are not calling for anything drastic when they raise these concerns. This could be addressed if the standard independent statutory officer provisions detailing the entity reports to parliament by annual reports as a stipulated minimum and the parliamentary committees were included.

Again, I note the Government's position is there is nothing that precludes the TNPM from publishing reports to parliament or otherwise as they consider appropriate. I am not suggesting for that capacity to be changed, but instead, additional to the TNPM to be able to choose to provide these other forms of report, it would be my preference to see in the bill a requirement for annual reports to be provided.

In legislative speak. the annual reports tabling in state parliament is a must provision, additional to the optional discretionary reports which the TNPM may undertake and publish and/or table. Just as the Auditor-General has required reporting to parliament as an obligation and optional scope as well, as does the Electoral Commission, the Integrity Commission and ironically, the Ombudsman.

In the 2019 discussion series regarding the implementation of OPCAT in Australia, UN Special Rapporteur on Torture, Manfred Nowak, included in a list of required NNPM responsibilities the following:

- Have the authority to publish their reports and make recommendations to the competent legislative and executive bodies that are taken seriously in practice

Again, having the bill provide for this does not risk making Tasmania noncompliant with OPCAT but, importantly, would clearly further the intent and the spirit of OPCAT.

The third flag that I see raised and that remains unaddressed from those consultations and those stakeholders is the need for specified involvement of civil society. Another significant area of concern raised by these stakeholders involved over the two consultation stages, is about that commitment that they would want to see in the bill for the TNPM to engage and work with civil society when undertaking its functions. For example, the TasOPCAT Network recommends the bill include requirements for engagement with civil society, organisations with specific inclusions to the Tasmanian Aboriginal and Torres Strait Islander First Nation people.

The network states the need to engage with civil society is central in the guidelines in the SPT presentations and will be taken into account during SPT visits. The need for the bill to provide for formal engagement with civil society stakeholders is a very important point, I

believe, and it echoes a contribution made by another advocacy stakeholder organisation - Change the Record - during the initial consultation stage. I quote from them:

> For any NPM to be effective, particularly as a mechanism designed to prevent torture and human rights abuses, it must have the trust of the community and affected persons.

Sadly, we know the Tasmanian Aboriginal community is a sector of the community that is overly affected within the context of detention and deprivation of liberty. A 2018 Australian Law Reform Commission report details that in Tasmania Aboriginal and Torres Strait Islander persons comprise 5 per cent of the adult population, but 16 per cent of the adult prison population.

Further, the Australian Institute of Health and Welfare (AIHW) tells us that people with a disability make up 29 per cent of Australia's prison population, despite only forming 18 per cent of our general population. I only have scope to flag a few groups within our community who are over-represented within places of detention, but these are also some of our most vulnerable groups.

If we are to heed the advice of Change the Record in order for these sectors of the community to trust any new oversight body, again I acknowledge the Government's stated position that this bill does not preclude a TNPM to enter into formal and informal arrangements with civil society as they deem appropriate.

However, it is worth placing on the record, Mr President, that making this an optional and discretionary choice of the TNPM of the day does risk it potentially not occurring, just due to people's workload or perhaps competing priorities, et cetera. I think it is a missed opportunity to not enshrine in the bill a requirement that the TNPM enters into formal arrangements with civil society representatives in order to forge the trust necessary to ensure and maximise the TNPM's capacity to prevent the identified abuse.

Clearly, ensuring the bill provides for this does not risk making Tasmania noncompliant with OPCAT but, importantly, would clearly further the intent and the spirit of OPCAT. It will come as no surprise to many here that I am a staunch supporter of, and advocate for, the need for a Tasmanian human rights act. I campaigned for such an act before I was elected to this place and I have continued to do so since, and will continue to do so. Clearly, OPCAT is designed to strengthen human rights protections for people in situations where they are deprived of their liberty and potentially vulnerable to mistreatment and abuse.

A particular potential area of threat to people's human rights in Tasmania is a core focus here - those who have been deprived of their liberty. Of course, that category of those who are or may be deprived of their liberty has further human rights implications, as we know that certain vulnerable groups within our community are over-represented in those places of detention where liberty is deprived.

On one hand, this specific recognition of a real potential threat to Tasmanians' human rights and the introduction of measures to protect our human rights should we find ourselves or our loved ones in a place of detention, is welcome. This is where I begin to feel conflicted, Mr President. I want to be able to welcome this bill wholeheartedly and without reservation, as someone who is passionate about human rights in this state. But when examined against the

intent of OPCAT and other key stakeholders' expectations and aspirations, that is where my reservations arise, particularly in the sense that the bill seeks to reflect the letter of OPCAT but not necessarily, as I have mentioned as I have progressed through my speech today, to enshrine the spirit of OPCAT**.**

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Those key flag issues that have come up that I have mentioned serve to highlight that worrying pattern, and the themes that are also contained in the Government's response that, well it could happen, it doesn't say it can't. To me, that is not quite in the spirit of OPCAT.

One trend is to attempt to counter any query or attempts to improve the bill as somehow risking noncompliance with the OPCAT protocol. I am fairly puzzled by this. Requests, for example, to stipulate that the TNPM must report to parliament at least by annual reports and the suggestion that this is somehow undermining the independence of this TNPM, according to some statements I have seen from the minister.

This assertion seems quite bizarre to me, quite extraordinary. It makes me consider how on earth we could imagine that stipulating regular annual reports to a state parliament by a TNPM somehow risks their independence. I am having difficulty in computing that, and I do not think it is just my tiredness today.

This October, we are at that time of year, the month where there is that tsunami of annual reports being tabled in both Chambers of this place, among them those from independent statutory bodies. Does it risk or undermine the independence of the Auditor-General by being required to report to the parliament by submitting reports for tabling as well as reporting to parliament to the Public Accounts Committee? Does it risk or undermine the independence of the Anti-Discrimination Commissioner being required to report to parliament via annual reports? Does it risk or undermine the independence of the Integrity Commission being required to report to parliament via annual reports and also via a joint house committee?

There are other examples but the critical one I wish to highlight is currently the requirement for the Tasmanian Ombudsman to report to parliament by submitting annual reports. Ironically, it is the Ombudsman who the Government has already announced will be the nominated, inaugural, TNPM recommendation for the Governor to appoint. Does the Government seriously expect us to accept that when wearing the independent Ombudsman's hat, it is perfectly reasonable and accountable and transparent requirement for that statutory independent office to report to parliament; but when wearing the shiny new hat at the TNPM, that independent role would somehow be seriously compromised if subject to equivalent parliamentary oversight?

I note that the minister stated that there is nothing in the bill that precludes the TNPM from choosing to submit a report to parliament as they so wish. That is all well and good, and I do not have an issue with that. All those other independent entities, such as the Auditor-General, demonstrate similar proactive reporting options as they deem appropriate. However, the key point here is there has not been a coherent justification for the omission of legislating the standard bare minimum requirement of an annual report tabled in parliament.

The omission is of grave concern, and is another major flag that has been hoisted by key stakeholders and other experts. I find the attempts by government to justify the omission on spurious grounds, on a disingenuous basis, are concerning.

In conclusion, despite my reservations outlined above, my commitment to furthering the implementation of real and meaningful human rights protection mechanisms and legislative instruments in Tasmania, means I will have to support this bill, absolutely into the Committee stage. However, I will reserve my right to make my final determination after listening to the Committee debate and considerations of any amendments. I believe we do potentially have some prepared to be proposed.

I probably would have looked to move amendments myself but I do not have those prepared at this stage. I will certainly give consideration to any others that are being moved, particularly in those areas of concern that I have stated in my second reading speech.

The TasOPCAT Network states:

> OPCAT has the potential to touch the lives of many Tasmanians, not only those who may be in detention somewhere or in mental health and care facilities, but their families and carers.
>
> TasOPCAT is a new opportunity to look at human rights for Tasmanian citizens. This is an approach of negotiation that brings government and civil society together to respect, protect and fulfill human rights and the liberty of all citizens.

That is too important to cut corners, I feel. We have a responsibility to ensure that we are not just doing the bare minimum, not only demonstrating in our words, but also that we are living the spirit and the intent of this important move forward.

I look forward to the next stage of debating this bill.

[10.00 p.m.]

Ms LOVELL (Rumney) - Mr President, I will make a brief contribution. Much has already been said tonight on this bill and I concur with many of the comments of members who have spoken before me. I do want to say from the outset that I will be supporting this bill and I also commend the Government, as other members have done, on acting swiftly on this - I understand that Tasmania is one of the first states to be moving in this direction and it may still be some time before the rest of Australia becomes compliant. Also, on the comprehensive consultation process that has taken place and that has taken into account much of the feedback that was received through that process.

I do have a couple of concerns with the bill and I will flag with members that I do have two amendments that I will be moving. I will speak to those more in a moment.

As other members have raised already, there are still some unanswered questions about funding. This is a very important piece of legislation. It is a very important process that we are establishing here in Tasmania and we need to ensure that we get it right, not only in terms of the legislation and the process but that we adequately resource those who will be implementing it. I know that it has been flagged that Richard Connock will be our first NPM.

I understand that in terms of funding and discussions about funding that the only commitment that has been made so far is that the department has engaged with Mr Connock and he is scoping what funding and resources might be required to be able to meet his obligations.

I have to say that I am a little cynical. I do not have a great deal of confidence in a commitment like that when we know that Mr Connock already carries a great deal of work and a great deal of responsibility in a number of different roles. When you look at the reporting that he does through those roles - the Ombudsman annual report in 2020-21 outlines that no training was delivered in that year because of inadequate staffing and resourcing, primarily.

In his annual report as Custodial Inspector, those annual reports have consistently reported that it is overwhelmingly apparent that additional staff are required and that that is reflected in the long delays between onsite inspections and reports being produced.

Ms Forrest - Through you, Mr President, at least he was consulted this time which is an improvement from when we gave him the unregulated health practitioners to deal with.

Ms LOVELL - That is correct. That is a step in the right direction.

In the Health Complaints Commissioner jurisdiction, this was established 25 years ago next year and almost every annual report has outlined an inability to properly perform its functions due to inadequate resourcing. Since his appointment in 2014, Mr Connock has stated that every annual report has noted a particularly acute lack of resourcing. I know these concerns have been echoed in many submissions.

I understand that the minister in the lower House did address some of these concerns and has pointed to some funding commitments that have been made to a number of those jurisdictions but we are yet to see the outcome of that and whether those funding commitments will deliver the level of resourcing that Mr Connock requires.

I do not have an amendment about this. I want to put on record, as other members have done, that we do need to see something fairly substantial and a much stronger commitment in resourcing and actual funding that will be provided.

Ms Forrest - A separate line item in the budget.

Ms LOVELL - Absolutely, a separate line item in the budget. I do have an amendment to attempt to address the concern that has been raised by other members in terms of parliamentary oversight, particularly in the annual reports that are a requirement to be produced under this bill, under clause 24.

I will be moving an amendment to require those annual reports to be tabled in the parliament. I think that is a sensible measure. It is not an onerous requirement by any stretch, but it does allow us to be aware that these annual reports have been produced and have been submitted.

My second amendment is in relation to a statutory review of the legislation. As a one-off, I will speak in more detail to this when I move the amendment, but so members are aware, what I would like to propose is a one-off review four years after commencement of the act. Again, I believe that that would be a sensible measure considering this is a very important piece of legislation.

There have been a number of concerns raised. The rest of Australia is not yet in compliance and there may be implications when that becomes the situation. So, it makes sense to me that we would review the operation of the act.

I know I asked a question about this in the briefing, and a thank you to the Leader and the advisers for the briefing that was provided. I understand that there are some mechanisms in the bill that the Government feels confident will provide that level of oversight.

As an example, one of those that was pointed to was visits by the SPT, the subcommittee on the prevention of torture. We have all just lived through 18 months more of a pretty unprecedented time where there were significant restrictions on travel. We cannot rely on those things any more in the future. We do not know that people will be able to visit the state and conduct those inspections. Hopefully they will. Hopefully that will work as it is intended, but, we have all just lived through a time that has demonstrated that that might not always be the case.

Mr Valentine - With such a review, given it is nationally-focused legislation, I suppose you could say, each state has to do their own. What do you see actually being reviewed? Is it just the state components?

Ms LOVELL - The operation of the state legislation primarily. I will speak to that in more detail when I move the amendment, but it would be an independent review of the operation of the act.

Another concern raised by other members is in relation to the decision to appoint just a single NPM. A number of submissions have flagged that the preferred model is a multi-body NPM but I understand that the bill does provide for multiple NPMs to be appointed in the future. So, I am provided some comfort via that provision but again that is why I would like to propose a review, so that we can ensure that in four years time it is operating -

Ms Forrest - There is a genuine intent that it not just one person, that will be picked up.

Ms LOVELL - Yes, that is right. So, we can have an opportunity to go back and look at that and see whether that was a decision that was made or whether it is operating okay with just the one NPM. These are the types of things that a review would capture.

I will end on that. I will support the bill into Committee and we will move those amendments when we come to the clauses.

[10.08 p.m.]

Mr VALENTINE (Hobart) - Mr President, I was pleased to see this bill come before us. I think that we, as a state, could do with a bill of human rights as well.

But to see this come forward, I think is great, because it was nationally based. That is a very good thing. As others have said, it is important that we get it right.

We have to make sure that indeed those who are charged with reviewing, if you like, and visiting and being able to visit these places of detention, that they are able to undertake their function in an independent manner. That is very important, and that they are not in any way stilted or confined. It is important the legislation is correct. It is interesting we are leading the

nation in some ways in putting this legislation through, if it goes through. I certainly listened to the offerings been made by people that have been more active in this area than I have. It seems there are some issues to resolve or to have addressed. I will be listening intently in the Committee stage. I do want to congratulate the Government for moving quickly on this as long as moving quickly does not mean we get a product not fit for purpose. It is important we do it right. Thank you for your indulgence.

Ms PALMER (Rosevears - Deputy Leader of the Government in the Legislative Council) - Mr President, I will do my best to answer some of the questions that have been put forward, starting with the questions for the member for Murchison. Looking at the issue of funding and will federal government funding be provided. The Tasmanian Government, other states and territories are in discussion with the Commonwealth on its announcement to provide jurisdictions with the NPM funding under the Closing the Gap strategy. OPCAT implementation has been included in the drafted agenda for the Meeting of Attorneys-General, in November 2021 and discussions on funding are expected to continue ahead of the January 2022 commencement date.

At this stage, the Commonwealth has proposed contributing funding to assist jurisdictions with NPM establishment only. The Commonwealth will cover costs associated with subcommittee visits.

Ms Forrest - You might not be able to answer this but is it just the set-up, not the actual undertaking of work in relation to the people -

Ms PALMER - I have more.

Ms Forrest - Okay sure.

Ms PALMER - Looking at why the bill does not guarantee funding to the NPM or oblige the Government to provide funding. Article 18(3) of OPCAT provides that an NPM must be provided with the necessary resources to perform its functions.

The Tasmanian Government, other states and territories are in discussion with the Commonwealth on its announcement to provide jurisdictions with NPM funding under the Closing the Gap strategy. The Tasmanian Government has also committed to funding the NPM through the state budget. OPCAT implementation has been included in the draft agenda for the Attorney-Generals' meeting in November 2021.

In the other place the minister has committed to providing the necessary funding for the NPM to operate effectively and I can confirm there will be a separate line item in the budget.

Ms Forrest - Just to clarify the people who are NDIS clients in aged care recipients, there are still ongoing discussions about who is going to fund the actual NPM related to them.

Ms PALMER - In relation to aged care I note such facilities are covered by the Commonwealth rather than state legislation. The relevant Commonwealth minister would be responsible for this area for the purposes of OPCAT and that falls under the jurisdiction of the Commonwealth NPM. These matters will continue to be discussed between the state and the Commonwealth.

Ms Forrest - I will not say anything else.

Ms PALMER - Looking at your question contemplating multiple NPMs. Article 3 of OPCAT provides one or several NPMs may be appointed. It is observed countries have differed in their approach to having one or multiple NPMs appointed. As a small jurisdiction it was not considered necessary that Tasmania appoint more than one NPM at this stage. However, clause 8 of the bill provides for multiple NPMs to be appointed which will futureproof the bill.

Clause 11 of the bill, Delegation, also provides the NPM may delegate any of his or her functions to any person or body that is, in the opinion of the Tasmanian NPM, competent to perform that function. This will allow the NPM to delegate certain functions to appropriate persons, where appropriate, in addition to the staff of the offices necessary. This is similar to the process with the Custodial Inspector who can, and does, engage experts to undertake various assessments and reports on his behalf.

Then the member spoke about when we could expect the next SPT visit. The SPT does not advise when visits will occur, so we will just have to wait and see when that next visit does happen.

I do have some additional information around funding for the member.

It is getting better and better. Article 18(3) of OPCAT provides that an NPM must be provided with the necessary resources to perform its function. The Tasmanian Government and other states and territories are in discussion with the Commonwealth on its announcement to provide jurisdictions with NPM funding under the Closing the Gap strategy, and the Tasmanian Government, as I have already said, has also committed to funding the NPM through the state budget process.

Ms Webb - Can I ask for a clarification on that on the funding from the federal government because I think it is only committed to for 2021-22, so for that financial year; is that correct?

Ms PALMER - I will just seek some advice on that for you, member. In answer to your question, the funding is only for those dates at this stage and beyond that it will become state funding.

Ms Webb - So beyond 2021-22 will it be entirely reliant on the state for funding?

Ms PALMER - I will just seek some advice on that. At this stage that is correct but there are still ongoing negotiations. With regard to the member for Murchison's question around annual reporting, clause 24(1) of the bill will require the Tasmanian NPM to provide an annual report to the Commonwealth Ombudsman as NPM coordinator, and OPCAT, article 23 requires Australia to publish an annual report of its NPMs. These are also published by the United Nations High Commissioner for Human Rights on its website. Clause 19 also enables Tasmania's NPM to publish its submission to the annual report.

The member for Murchison also asked why does the final bill not include, 'or may be', as it relates to detainees. That is in clause 4. Tasmania has sought to reflect in its bill the relevant definitions existing under OPCAT without modification. OPCAT provides, at article 4(1),

definition for places of detention which for Tasmania is any place under Tasmania's jurisdiction and control where persons are, or may be, deprived of their liberty either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. This definition is complemented at article 4(2) by a definition of deprivation of liberty which is 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative, or other authority'.

Turning to the bill, clause 5 provides a definition of place of detention that directly imports this article for definition. It, therefore, imports the 'or maybe' with respect to places. This is ultimately a question for the NPM and the bill does not limit the flexibility provided under OPCAT.

To identify who a person in a place of detention is, at clause 4 of the bill a definition of detainee is provided as 'a person in a place of detention who is deprived of his or her liberty'.

I note the linkage here in the use of words is 'deprived of his or her liberty' in this definition, as it is expressly defined under article 4 of OPCAT as imported in the bill through clause 5. Notably, article 4 (2) of OPCAT does not contain the words 'or maybe'.

It is intended under the bill that the NPM can inspect any place of detention provided by OPCAT article 4 and exercise their functions in respect of any person deprived of their liberty in article 4.

If the NPM inspects a place of detention and there is person in that place who it considers meets the OPCAT definition of being deprived of their liberty, then the NPM may exercise their functions in respect of that person, such as to interview them or otherwise monitor their treatment.

Inserting into the definition of 'detainee' the words 'or maybe' would create an obligation not provided under OPCAT.

The member for Murchison asked why does the bill not include the text of OPCAT, such as in the schedule.

It is acknowledged that a number of stakeholders made this request in relation to the first draft of the bill released for consultation. It is not in alignment with Tasmania's legislative drafting practice to include the text of international agreements as schedules or in notes of legislation. However, the final bill contains substantive provisions that include or reflect relevant text from OPCAT to address this issue.

Ms Forrest - You have done very well.

Ms PALMER - Thank you.

Member for Nelson, there was some overlap in your questions with the member for Murchison and I think that some of those questions have been answered already; but I may repeat a few things.

In response to the member for Nelson's comment that this bill is the bare minimum - that is simply not the case. This is the most comprehensive bill for OPCAT in Australia and is wholly compliant with OPCAT. It reflects the letter of OPCAT and the spirit, as you say, of OPCAT.

Talking about multiple NPMs, it is observed that some jurisdictions have nominated more than one NPM. It is noted that these appointments have a thematic focus, for instance, justice and mental health. We observe that these narrowly focused appointments will leave many places unmonitored.

In South Australia, for instance, their legislation specifies national preventive mechanisms for specified places of detention. It does not provide the scope of application of Tasmania's bill with regard to places of detention.

Also, for the member for the Nelson, the involvement of stakeholders -

Ms Webb - Can I just clarify that last answer? Was the rationale there - our scope is broader so we only need one, whereas other states their scope is narrower and therefore they picked more than one?

Ms PALMER - Would you like me to re-read the answer?

Ms Webb - No, that is okay. I will check it later on *Hansard*.

Ms PALMER - Involvement of stakeholders including civil society with the NPM. OPCAT does not expressly require the establishment of formal partnerships with civil society during ratification. The Government is required to establish a framework that is compatible with OPCAT. It is observed generally that other NPMs and the subcommittee have expressed support for civil society collaboration.

The Government is aware that certain states' NPMs have implemented a so-called 'Ombuds-plus' or 'NPM-plus' model that formalises civil society collaboration and it acknowledges that certain stakeholders recommended this approach for Tasmania. The Government observes that, for example, in Denmark where this model has been implemented it was the Danish NPM that concluded stakeholder agreements with two stakeholder groups - Dignity, and the Danish Institute for Human Rights, a national human rights institution.

The bill does not preclude the NPM from engaging with civil society or from establishing collaborative arrangements similar to that found in Denmark. It is open for them to do so, acting independently of Government, and to decide on the modalities of that engagement. The bill does not mandate civil society collaboration or prescribe a particular mode of civil society engagement.

It is considered that doing so prior to the NPM's establishment would amount to the Government making a decision on its behalf, impacting its functional independence to make such a decision itself.

Member for Rumney, I need to state very clearly that this bill is here to enable our commitments to an international treaty as part of Australia's ratification process. It needs to reflect the obligations set by OPCAT. This bill, as it stands without amendment, is assessed as

OPCAT-compliant and meets what the Government is required to do to make OPCAT operational in this state.

This place cannot make changes to reflect what it would prefer OPCAT oblige. That would be bad practice. With respect to the number of NPMs appointed under Tasmania's NPM framework, clause 8 of the bill has been drafted to reflect articles 3 and 17 of OPCAT which relevantly provide that:

> Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhumane or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Accordingly, clause 8 provides for the appointment of one or several NPMs by the Governor. The Government has announced that it intends to nominate the Custodial Inspector as its inaugural NPM. It is important to note that around the world NPMs operate differently, responding to their environment and resources available at a given time. Of the 74 states that have designated an NPM, most have a single NPM which is often designated to an Ombudsman or human rights-type institution.

This does not mean, however, that the NPM will act on its own, or that it is precluded from leveraging other statutory bodies or private sector and civil society experts from assisting in the operational or ongoing functions of the NPM. Indeed, the bill does not preclude the NPM from engaging with civil society or from establishing formalised collaborative arrangements similar to those found in many jurisdictions where these activities have been initiated by the respective NPM, such as the Danish Ombuds-plus model through which its NPM - the Ombudsman - has developed a civil society engagement framework.

The bill further provides a power to delegate functions. In exercising this power or through the inclusion of experts or similar in its activities, it is expected that the NPM will take on a coordinating role overseeing what might in practice appear similar in practice to a multi-NPM model. If the NPM, or subcommittee, recommends the future appointment of additional NPMs then the Government would consider and respond to that request and, if the Government did not, then the bill provides under clause 19(2) that this may be tabled in parliament.

It, of course, would also be open to the NPM to publish these recommendations. With respect to the NPMs reporting obligations, article 19 of OPCAT provides in material part that the NPM is to:

> (b) to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment …

This function is reflected at subclauses 9(1)(j) and (l) of the bill, while at the receiving end article 22 of OPCAT imposes a positive obligation on government to consider these recommendations and enter into dialogue. This process of dialogue is a key feature of OPCAT, and the Association for the Prevention of Torture relevantly outlines that a report should then

form the basis for constructive dialogue between the NPM and local, regional and national government officials about implementation.

Under clause 19 of the bill, it is open for the NPM to table a report provided to government in each House of parliament and consistent with OPCAT, clause 19 does not set a time frame or an obligation for reports to be published. Rightly so, it provides the NPM may table a report in parliament if it considers it necessary or appropriate to do so.

This links into clause 20 of the bill which provides an opportunity to be heard before publication occurs. This reflects another recommendation of the Association for the Prevention of Torture, which is the legislation empowering the NPM should also allow the NPM to set a defined period within which it expects a response and dialogue with the competent officials.

If no response is received or corrective measures are insufficient, the law authorises the defender to inform superiors, the government itself and/or the public including by publicly naming the responsible officials.

If we were to force a report to be tabled, it would limit the application of clause 20 and insert an obligation not contemplated under OPCAT. It may also affect the way in which the NPM communicates with government through its reporting.

OPCAT provides a strict limitation on publication of identifying information. Article 21(2) states 'confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned'.

This is reflected at clause 25(2) of the bill. If reports to government are to be tabled in parliament compulsorily, it would require any report provided to government to be screened against this obligation, potentially limiting the way in which the NPM engages with government in its reporting.

By contrast, the bill is intended to provide an opportunity for open dialogue to occur in private between the NPM and government, prior to any publication. This is intended to promote proactive information flows and provide an opportunity for government to respond. With respect to public flows of information, it is expected the NPM will consult and publish regularly on its activities.

Accordingly, the bill provides at clause 9(1)(k) that it is a function of the NPM to publish reports, recommendations, advice or findings in relation to detainees or places of detention. The government expects this will occur regularly. For instance, where issues arise across a number of institutions, it is anticipated the NPM may publish a schematic report.

In connection with this, the NPM has not been obligated to report to parliament directly because this is not provided under OPCAT. Article 23 of the protocol instead provides the state's parties to the present protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Australia is the state party and accordingly, it will have an obligation to publish and disseminate an annual report. In accordance with this obligation, clause 24 provides the

Tasmanian NPM is required to submit an annual report to the National Preventive Mechanism Coordinator within the period of four months after 30 June in each year.

It will be the Commonwealth Ombudsman, as NPM coordinator who will collate and provide the Commonwealth Government with an annual report to disseminate. This does not limit the NPM however, who may also choose to publish or table this annual report as a matter of course at a time of their choosing. For instance, it may be appropriate jurisdictions' NPMs refrain from publishing their individual submissions to the annual report until the Australian Government has published its national report.

Turning to a statutory review position, OPCAT requires state parties to guarantee the functional independence of the National Preventive Mechanism, as well as the independence of their personnel. The inclusion of the review provision would conflict with this obligation. OPCAT envisages a process of continuous review of its framework and processes and related dialogue with the government that is led squarely by the NPM. It builds in a process of ongoing feedback and dialogue between the NPM, subcommittee and government on the operation of legislation, including its own and other matters relevant to the NPM function.

This is reflected in the bill where it is a function of the NPM at clause 9(1)(j) to submit proposals and observations concerning existing or draft legislation that relates to detainees or places of detention. This includes with respect to its own legislation. Relevantly, the subcommittee provides, in its guidelines, the NPM, its members and its staff should be required to regularly review their working methods. Additionally, United Nations Office of the High Commissioner on Human Rights provides in its practical guide on the role of NPMs in order to maximise their effectiveness and impact, that NPMs should develop long-term and short-term strategies and continuous assessment.

NPMs should monitor and assess their activities and the outcomes thereof on an ongoing basis. Such strategies should be subject to periodic evaluation and improvement and may also include other partners, including the subcommittee. Clauses 18 and 19 facilitate dialogue between the NPM and government which may occur in private or, should the NPM wish to do so in public, through the publication of its reports, which includes the NPM being able to table these reports in parliament. This reflects article 22 of OPCAT. The government expect that this is how the Tasmanian NPM will comport itself.

I need to state again very clearly this bill is here to enable our commitments to an international treaty. This bill, as it stands without amendment, is OPCAT-compliant and meets what we are required to do to make OPCAT operational in this state. This place cannot at whim make changes to a bill that has been carefully crafted to ensure compliance with OPCAT. That would be bad practice and we cannot support amendments that will make our bill noncompliant with OPCAT.

Clause 24(2)(c) requires as part of the annual report to the National Preventive Mechanism Coordinator is to include any recommendations for changes in the laws of the state or for administrative action the Tasmanian NPM considers shall be made as a result of the exercise of his or her functions. In effect this requires continuous review of Tasmania's legislative framework which will be published Australia-wide and internationally.

Bill read the second time.

OPCAT IMPLEMENTATION BILL 2021 (No. 49)

In Committee

Clauses 1, 2 and 3 agreed to.

Clauses 4, 5, 6 and 7 agreed to.

Clauses 8, 9, 10, 11 and 12 agreed to.

Clauses 13, 14, 15 and 16 agreed to.

Clauses 17, 18, 19 and 20 agreed to.

Clauses 21, 22 and 23 agreed to.

Clause 24 -
Annual Report

Ms LOVELL - Madam Chair, I move -

> That clause 24, page 27, be amended; after subsection (2) insert the following subsection:
>
> (3) Each Tasmanian national preventive mechanism that submits an annual report to the National Preventive Mechanism Coordinator under subsection (1) is to cause a copy of the annual report to be tabled in each House of Parliament within 15 sitting days after the report is so submitted.

I spoke a little to this in my second reading speech and I listened to what the Deputy Leader said in her reply. I have to admit that I am a bit confused because when the member for Murchison was speaking and she was asking questions about these annual reports and asked whether they would be public, I am confident that the response was that they would be public. I fail to see how a public report could not be tabled in parliament and there was reference to that, potentially, making the bill noncompliant. I fail to see how that could be when the report is going to be public anyway.

I am going to move this amendment and I encourage members to support it. The reports, as I understand it, are going to be public unless we hear otherwise from the Leader now. They will be available to members of parliament. It is not an onerous requirement to table them in the parliament so I do not see why this amendment would cause any significant problems with the bill.

I move the amendment and urge members to support it.

Mrs HISCUTT - This bill forms part of Australia's OPCAT ratification process. The purpose of ratification is to ensure at the domestic level that we enact any legislation necessary to give domestic effect to international obligations that Australia has agreed to and to be bound by under the treaty.

It is vital that our framework reflects these international obligations. Article 23 provides that the state parties to the present protocol undertake to publish and disseminate the annual reports of the National Preventive Mechanisms, article 23 says that. Australia is the state party and accordingly it will have an obligation to publish and disseminate an annual report. They must publish that report annually, they must do it.

The bill seeks to facilitate this commitment by providing at clause 24 that the Tasmania NPM is required to submit an annual report to the National Preventive Mechanism Coordinator within the period of four months after 30 June in each year. It is expected that the annual report will comprise reports provided by the NPM counterparts in each jurisdiction. It will be the Commonwealth Ombudsman as NPM coordinator who will collate and provide the Commonwealth Government with an annual report to disseminate. As noted, these are also published by the UN. The NPM may also choose to publish or table this annual report as a matter of course should it wish to do so.

In practice, the amendment sought would likely cause the report to be tabled in Tasmania before its national and international release. Again, the current bill gives the power to the NPM to independently choose to take that approach if they wish to and we should not be imposing requirements on them that they have the ability to independently enact themselves.

Honourable members I think there is already a mechanism there for annual reports and there is no need to put it in again because according to article 23 it will be done anyway and you will have access to it. Members, I urge you to vote against this amendment.

Ms WEBB - I am interested about that then because one of the things I think I skipped over from tiredness in my second reading speech was noting that, I believe, in South Australia with the bill there that is yet to be debated in their parliament, their bill specifically includes provisions stipulating that their two NPMs must report to their parliament on an annual basis additional to the right to choose to submit other reports and report to the national.

That is what it appears to say from what I can see in their legislation. I am wondering, are you suggesting that on the basis of the argument against this being considered here that the South Australian bill is likely to be in contravention of OPCAT? Or is it just that some jurisdictions are interpreting it differently? I am interested to understand how the South Australian situation then casts light on this.

Mrs HISCUTT - Bearing in mind the South Australian legislation has not gone through yet and they are looking at what we are doing here today, it is not necessary to put that in there because article 23 already stipulates that it has to be produced. So, no, I do not know what the South Australians will end up doing because they have not done their bill yet. It is still a draft bill.

Ms WEBB - Presuming that the Liberal Government in South Australia has prepared this draft bill, as our Government by its own assertion, to be compliant with OPCAT, presuming the government has drafted it to be compliant in their view, they have drafted it, it is there to be debated. They have drafted it to have a provision in it, annual reporting by the NPMs, each NPM must, not later than the 31 October in each year, provide a report to the responsible minister for the NPM on the work of the NPM during the previous financial year. They seem to have that squarely in there.

It seems like you have made two arguments, one is that it makes it noncompliant and it is problematic and the other is that it is already covered by what is in there. I do not find either of those convincing, and if there is another jurisdiction that is doing something very similar and they obviously believe that it is compliant, I seriously want to understand properly our advice on compliance and whether it is on that hand. Then there is this other argument that, well, it is not needed because it is already there.

Does it do any harm having it there, is the key question. If it is an additional reporting responsibility to our jurisdiction, because it is in our jurisdiction, as well as the reporting that is done to the national that we could access and see later, that is fine. What is wrong with putting an additional requirement in reporting to our parliament?

Mrs HISCUTT - Irrespective of what South Australia is considering - it has not been done yet - we do not consider it to be necessary to be putting it in there. Nothing stops the NPM from doing it already themselves.

Ms Webb - So it is not even compliant.

Mrs HISCUTT - I think we will be getting down to repetition if I have to go through it all again, Madam Chair. It is not necessary to be there.

Ms Webb - No compliance issue?

Mrs HISCUTT - We have looked at it. South Australia have not passed their legislation. We consider it not necessary to be there. It will be done under article 23 as it is. Members, we consider it not necessary and I urge you to vote against this motion.

Ms LOVELL - I have a question for the Leader and this is to clear up my understanding of these annual reports. It has been described in a couple of different ways and I want to be very clear about the annual report the Tasmanian NPM will be required to submit.

Is the report a standalone annual report of the Tasmanian NPM that will be public or is it purely a submission to a national annual report that may not be made public but will form part of a public national annual report?

Because, if it is a standalone Tasmanian NPM national annual report, that will be public anyway. Then I fail to see how requiring it to be tabled in parliament will impact on the compliance of Tasmania in relation to our OPCAT obligations.

Mrs HISCUTT - I think we have already answered this question. I am just looking for the answer again.

Ms Lovell - I am asking for clarification, because I did not understand the previous answer.

Mrs HISCUTT - Clause 24 that we are discussing at the minute, as it is in the bill, sets out exactly how a report will be done. There will be an annual report and it will be done four months after 30 June each year. This is the annual national report and Tasmania is part of that. This is available. It brings me back to my original statement that we consider it totally unnecessary for repetitive work.

Ms Lovell - Okay. That does not answer my question. My question was, is there a separate standalone Tasmanian NPM annual report in addition to the national annual report?

Mrs HISCUTT - You mean two? You want two? You want to know if there are two?

Ms Lovell - No, no, no. Well, yes, I do want to know if there are two. Is there a standalone Tasmanian annual report or is that only a confidential submission, say, to the national?

Mrs HISCUTT - It says: 'Each Tasmanian national preventive mechanism is required to submit an annual report to the National Preventive Mechanism Coordinator' so that report goes to them and then they publish that as a whole.

Ms Lovell - Tasmania submits to the national report - the Tasmanian part of that that Tasmania submits, will that be public?

Mrs HISCUTT - That is where it is. That will be public when it is done four months after 30 June in each year.

Ms Lovell - The Tasmanian -

Mrs HISCUTT - The whole lot.

Mr Valentine - Yes, the Tasmanian component.

Ms Lovell - Thank you, Madam Chair. I still did not - I hear you saying the whole lot will be made public, the national report will be made public, but my question is will the Tasmanian report on its own be a public report? On its own, standalone, separate to the national report?

Ms Webb - It is fairly clear what you are asking.

Mrs HISCUTT - The NPM can choose to publish that report as a standalone if they wish, but it is there.

Madam DEPUTY CHAIR - The question is that the amendment be agreed to.

The Committee divided -

AYES - 5	**NOES - 7**
Ms Lovell	Ms Armitage
Dr Seidel	Mr Duigan
Mr Valentine	Mr Gaffney
Ms Webb	Mrs Hiscutt
Mr Willie (Teller)	Ms Howlett
	Ms Palmer (Teller)
	Ms Rattray

Amendment negatived.

Clause 24 agreed.

Clause 25 to 40 agreed to.

New Clause A
Regulations

Ms LOVELL - Madam Chair, I move the following amendment to follow clause 39 -

1. **Review of Act**

(1) In this section –

"**civil society organisation**" means a non-profit, non-government voluntary organisation organised on a local, national or international level;

"**independent review**" means a review carried out by a person or persons -

(a) appointed by the Minister who, in the Minister's opinion, are appropriately qualified for that task; and

(b) that include one or more persons who are not State Service employees or State Service officers or employees of any agency of the State.

(2) The Minister is to cause an independent review of the operation of this Act to be carried out as soon as practicable after the fourth anniversary of the commencement of this section.

(3) In carrying out an independent review under this section, a person is to -

(a) consult with -

(i) any civil society organisations the person considers relevant; and

(ii) the public; and

(b) examine the extent to which the Tasmanian national preventive mechanism is fulfilling its purpose and functions under the Optional Protocol; and

(c) examine the extent to which the purpose of this Act is being fulfilled; and

(d) consider whether or not any specific appointment or appointments, as a Tasmanian national preventive mechanism, under section 8 is the most desirable approach for Tasmania to meet its obligations under the Optional Protocol; and

(e) examine such other matters, requested by the Minister, as the Minister may consider relevant to the review.

(4) A person who carries out a review under this section is to give the Minister a written report on the outcome of the review.

(5) The Minister is to -

(a) cause a copy of a report, given to the Minister under this section, to be tabled in each House of Parliament within 10 sitting-days of the House after it is given to the Minister; and

(b) provide a copy of the report to the National Preventive Mechanism Coordinator.

I spoke to this in my second reading speech as well, and I know other members raised this as a concern. Again, I listened to the Deputy Leader in her reply as to the reasons why the Government would oppose this provision.

Pull me up if I go too far reflecting debating in the other place; but a similar review provision for amendment was moved in the House of Assembly. It was also opposed by the Government, but for some quite different reasons. In preparing this amendment, we have tried to address the reasons as to why the amendment moved in the other place was deemed to be unsuitable.

I heard the Deputy Leader say, again, the concerns around compliance and that having a statutory review would perhaps compromise the independence of the NPM. However, I point out that the South Australian bill, which has passed their House of Assembly, in part 4, section 18 contains a provision for a review of the act to be conducted by the minister and tabled in parliament.

I also point to a recommendation to Germany where, after a part of the review conducted by the SPT in Germany, they stated that this supports the inclusion of a statutory review to be included in the bill. I am not convinced that there is a question of compliance, because this clause is not seeking a review of the obligations under OPCAT. What it is seeking is a review of our state-based legislation. I would find it quite extraordinary to think that a parliament was for some reason not able to review its own legislation, that was passed by this parliament. I urge members to support this amendment because I believe that it addresses a number of

concerns that other members have raised. It has been drafted in a way that I believe does not call into question compliance. To look at whether the bill that we are passing today -which we have all acknowledged is a very significant and important piece of legislation - whether the decision that we are making today in the bill that we are passing into law is the best possible bill for Tasmania, to ensure that we are meeting our obligations and complying with OPCAT. I urge members to support the new clause A.

Mrs HISCUTT - Madam Chair, I have some fresh notes to deliver on your proposed amendment. However, I reiterate that clause 24(2)(c) requires that as part of the annual report to the National Preventive Mechanism Coordinator it is to include 'any recommendations for changes in the laws of the State, or for administrative action, that the Tasmanian national preventive mechanism considers should be made as a result of the exercise of his or her functions'. In effect, members, this requires continuous review of Tasmania's legislative framework which will be published Australia-wide and internationally.

To speak specifically to the proposed new clause, an amendment to the bill has been sought to introduce an independent statutory review provision. It is considered that such a process under the terms outlined in the amendment may not be OPCAT-compliant. The provision provides, in summary, that an external review would be completed focusing on the NPM's operations after about three years from the date on which the act commenced. The amendment provides the review's terms of reference. I note that the review mechanism process proposed will require an evaluation of whether the NPM is fulfilling its purpose and functions under OPCAT through a process completed by a third-party reviewer.

It requested the government consider whether the NPM should be reformed and assess its interactions with a view to amending legislation to address these matters. While general statutory review provisions are included in legislation from time to time, the detail in this proposed amendment is uncommon. The bill forms part of Australia's OPCAT ratification process. The purpose of ratification is to ensure, at the domestic level, that we enact any legislation necessary to give domestic effect to international obligations Australia has agreed to and bound by under the treaty.

Critically, OPCAT requires state parties to guarantee the functional independence of the national preventive mechanism as well as the independence of their personnel. In the context of OPCAT, it is considered that the inclusion of the review provision may conflict with this obligation which is to be legislated under clause 10. A statutory review mechanism could inappropriately infringe on the NPM's independence with discretion to disclose or keep confidential this interactions report, its duty of confidentiality and the operation of OPCAT in Tasmania. For instance, it may be difficult for the NPM to operate with complete discretion and independence if it were aware that its activities would be probed by an unknown third party in the near future, through a process not contemplated under OPCAT. It would not be compliant.

The intention in not supporting this proposed amendment is to ensure that review of the NPM is an ongoing process that occurs in a way envisaged by OPCAT. In short, OPCAT envisages a process of continuous review of its framework and processes and related dialogue with government that is led by the NPM. Practically, it is also observed that NPMs around the world operate differently. There is no set model. Each NPM responds to its environment. A constant throughout all state parties and NPMs, however, is their communication with the

subcommittee. It is therefore considered that the entities most appropriately qualified to provide feedback on Tasmania's NPMs are itself and the subcommittee.

Consistent with OPCAT, the Tasmanian Government will engage proactively with the NPM with a view to reinforcing and strengthening the framework and operations as and when necessary by engaging with it on a continuous basis and by taking into account the views of the subcommittee. The Government will also engage with the Commonwealth NPM in its capacity as the NPM coordinator.

I think the biggest take out of that, members, is by inserting this amendment into this bill, it will make the bill noncompliant.

Ms LOVELL - I am finding myself getting a little frustrated because when I raised this in the briefing and I asked the question about a statutory review, I was given information about there being other mechanisms in place, and the Government was confident that there was no need for a review because the operation of the NPM would be reviewed through these other mechanisms. At no point was compliance mentioned.

Now here we are at 11 o'clock at night trying to debate this important piece of legislation after a long week and we are trying to deal with these matters on the Floor. I just do not accept that having a statutory review of any description would make this bill noncompliant because the South Australian bill has it so are you arguing that the South Australian bill is noncompliant?

The ACT Inspector of Correctional Services Act 2017 was designed to be OPCAT-compliant in anticipation of ratification of OPCAT and it also contains a review provision at part 6, section 39. There are explanatory notes to this bill to explain that it was designed to be OPCAT-compliant.

There are two examples of legislation from other states in Australia that contain a statutory review that are OPCAT-compliant. If it is the content of this amendment - if it is the way the amendment was drafted - sure, I am happy to look at a different amendment but it is difficult to do that when we are here after 11 o'clock at night trying to get this done on the Floor. OPC, I know, are on standby but that is not easy for them either.

I could seek leave to report progress and go away to work with OPC and the advisers to draft another amendment but that means we are all going to be sitting here longer and later. I guess I am looking for some guidance from the Leader on whether that would be an option that the Government would be open to because I know I am not the only person in the room who has concerns about the lack of a review. I guess the options are that we push ahead with this amendment as it is -

Madam CHAIR - A couple of points you might like to consider, you will have to withdraw it before you can report progress. There are other members who are keen to speak on it and you still have one call left.

Ms LOVELL - Yes. My intention is that I will wait for a response from the Leader to what I have said now and listen to what other members have to say. I do want to make the point that it is very difficult to be dealing with these new and very significant objections to

amendments here on the Floor this late at night. There was plenty of opportunity throughout the day for those issues to be raised.

Mrs HISCUTT - I will go back a step. There was a little bit of a typo in here so I want to clarify that these amendments as proposed by the member for Rumney may very well make the bill noncompliant.

The amendment that is being proposed is quite different to the South Australian bill. The amendment asks that the NPM is fulfilling its functions and other matters whereas South Australia requires review of the operations of the act.

Members, we will not labour this much further. I do ask members not to vote for this amendment. It may very well - I use that word 'may' very well - make this bill noncompliant. The Attorney-General is very concerned that this amendment might go in and she really urges members that it has a strong possibility that it may make the bill noncompliant. They spent a lot of time getting it right, making sure that fits with where it is supposed to be.

Members, the bill is right to go as it is and I urge members not to vote for this amendment.

Ms RATTRAY - A question to the member proposing the amendment, if it is 3(b) that is the issue for the National Preventive Mechanism in fulfilling its purpose, if the member would consider taking out (b). I also have a question around 3(a) too because it talks about in carrying out an independent review under this section, a person is to -

(a) consult with -

(i) any civil society organisations the person considers relevant;

and there is the explanation or the -

Ms Lovell - While the member is on her feet, I have one call left but I am happy to say that yes, I am very willing to consider whatever the amendment needs. I am happy to have something as broad as what is in the South Australian bill if that will address the problem with compliance.

Ms RATTRAY - I can see where the Leader is coming from. If the national preventive mechanism is concerned about a review into its purpose and functions, I can see a problem with that but if it is line with the South Australian review regarding examining the extent to which the purpose of this act is being fulfilled, then I see a different approach there.

I have a question about the public. 'The public' is as broad as it comes. I am interested in how you would consult with the public? Who are you looking for to be consulted with 'the public'? That probably needs some explanation and I will stand on my feet while the member responds.

Ms Lovell - I would expect that it would operate by way of calling for submissions from the public and the public would then have a say in the review if they wished to because it has been drafted in consultation with people who have been involved with the OPCAT committee.

Ms RATTRAY - Thank you. I appreciate the responses to those queries that I had.

Mrs HISCUTT - What the member for McIntyre is saying about changing the amendment and in light of the time of night, I respectfully request the member for Rumney withdraw her amendment and we will report progress and we might organise a meeting to sort out something later.

Ms LOVELL - Thank you, Leader. That is a sensible way forward and I am very happy to do that. Madam Chair, I seek leave to withdraw the amendment.

Leave granted.

Motion agreed to.

Mrs HISCUTT - Madam Chair, I seek leave to report progress.

Leave granted; progress reported.

JUSTICES (VALIDATION) BILL 2021 (No. 52)
REPEAL OF REGULATIONS POSTPONEMENT BILL 2021 (No. 59)
WASTE AND RESOURCE RECOVERY BILL 2021 (No. 55)
EDUCATION LEGISLATION AMENDMENTS (EDUCATION REGULATION) BILL 2021 (No. 53)

First Reading

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

ADJOURNMENT

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I thank members for their diligence and persistence, I think they have had enough. You do not want to do another one?

Ms Lovell - I think your advisers have had enough.

Mrs HISCUTT - As you can see members, the four bills I was waiting on for the quorum call tomorrow have arrived and they are done and dusted. We will not be requiring a quorum call in the morning.

Mr President, I move -

> That at its rising the Council adjourn until 11 a.m. on Tuesday 16 November 2021.

Motion agreed to.

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

That the Council do now adjourn.

The Council adjourned at 11.23 p.m.

Appendix 1

Incorporated Document 1

tabled and incorporated into Hansard
L. Hiscutt
11 NOV 2021

Response to Legislative Council Second Reading Debate

Mr President

A range of issues were raised through the second reading debate. The majority of these were addressed in my second reading speech. There were some additional matters raised, which I will respond to now.

Firstly, a number of comments were made in relation to the form of the Bill, stating that a complete new Bill would have been preferred to an amendment Bill and questions were asked as to why this could not occur.

The changes to the gaming industry in Tasmania, outlined in the Government's policy, impact primarily on terrestrial gaming operations within Tasmania. While, it is agreed that there are a large number of amendments, some of which are complex, they are capable of being addressed through changes to the Act rather than a complete re-write. A complete re-write would likely take 4 to 5 years.

Following this, a further period of time would be required to implement the reforms. This would require more than 5 years for a complete re-write and implementation. With a commencement date of 2023, this approach was not possible.

Mr President

There has been a lot of discussion and questions surrounding development of the Government's policy.

The Government's policy development took into account the Joint Select Committee on Future Gaming Markets inquiry and report. While the Government's policy may look different in some areas to the JSC's recommendations, the JSC provided an opportunity for all major issues to be considered and included input by experts, stakeholders and the general public.

The Government's subsequent policy reflects a number of the JSC's recommendations.

Given the extensive public comment and consultation through the JSC and 2018 election debate, the issues surrounding the restructure of Tasmania's gaming market are well understood and have been considered during implementation of the policy.

Discussions and consultation with the Tasmanian Liquor and Gaming Commission took place throughout development of the regulatory model and Bill to implement the Government's Future Gaming Market policy.

The Commission was provided with both formal and informal opportunities to provide its views and feedback on the proposed regulatory model and draft legislation and the Bill reflects these discussions.

A key area of discussion has been the decision not to place venue licences on the market. In addition to giving certainty to existing venues, when considered in detail, it would have meant that EGM authorities would have been sold and the Government would have lost control over their future allocation.

The Government's approach not only provides certainty for investment, but balances an ongoing increased revenue stream against controlling the future allocation of EGMs in the State.

Mr President

Mr President, in relation to questions raised around the ending of the Deed with Federal Group and potential sovereign risk, I can advise that the Bill revokes the Deed on 1 July 2023 and provides that no compensation will be payable.

The Government considers that there has been clear and adequate advice that changes to the Tasmanian gaming market would occur from 1 July 2023.

In fact, Government wrote to Federal Group in March 2019 advising of its intention to end the Deed through legislation. This correspondence has been released by Government and has previously been the subject of public discussion.

Mr President

The distribution of returns from gaming was raised in a number of ~~responses~~ contributions. Under the new arrangements, the State and Community will be approximately $8.5 million per year better off through increased taxes and community support levy, hotels and clubs will receive approximately $17 million extra per year, while the Federal Group will be worse off by around $20 million dollars per annum.

The Government has consistently stated that breaking the Federal Group's monopoly over EGMs in hotels and clubs would result in both venues and the Government, representing the community, capturing a greater share of returns.

Through its policy, Government signalled its intention to bring the State into line with comparable gaming markets interstate and retain around 48% of hotel and club EGM revenue, with venues to receive no less than 50% of gross returns. The Bill before the Council delivers this.

This will facilitate and enable greater investment in hotels and clubs, lift economic activity and employment and also provide Government with greater flexibility to address harm minimisation and invest in essential services.

Mr President

There were also comments about the venue licence fee. In particular, I note that one proposal is to change the fee to a rate based on EGM gross profits. While I acknowledge the intent of this, it would effectively create a tax rather than a licence fee. The Government has set a progressive per EGM rate which will effectively require those with a higher number of EGMs and therefore higher opportunity for earnings, to pay a higher annual licence fee.

Mr President

The Government has consistently stated that Federal Group's casino gaming activities would be benchmarked against comparable casino operations interstate to ensure that the returns are competitive and fair for the community, players and casino operators.

Similarly, in considering an appropriate tax rate for keno, the rates applied in other keno markets within Australia were examined. The regional Queensland market is considered to most closely resemble the Tasmanian market and therefore the proposed tax rates for keno are in line with the keno tax rates in regional Queensland.

Mr President

I note concerns raised in relation to the equity of the distribution of returns amongst hotels and clubs and the ability of smaller venues to operate under the new model. As noted in briefings, the Government is advised that, following the new tax rates and licence fees and proposed core monitoring operator fees, venues will be better off than under the current model.

In the current model, some venues receive greater returns from gaming than others and this situation will continue in any future market. As some members of this Chamber noted, it is the nature of business, that businesses will have differing returns.

While, ultimately, the outcome for each venue will be dependent on a range of business choices that they make, it is Government's expectation that with this additional revenue and flexibility, venues will be better off.

Mr President

A number of comments have been made about transitional matters including the transfer of EGMs from the existing operator to venues. This is a matter to be resolved between these two parties, however venues will be allowed to purchase/hire/obtain EGMs from other suppliers in the 12 months prior to commencement of the new model. Businesses will have the option to come to an arrangement with the existing operator or to source EGMs from other providers.

There have also been questions around the ability of the industry, the regulator and the Government to do what is necessary to transition to the new model by 1 July 2023.

You have heard yesterday in the briefings that the industry is confident that it will be ready for the commencement of these reforms. Likewise, the Government has committed to providing the additional funds necessary for the Liquor and Gaming Branch of Treasury to implement the reforms.

Mr President

The timing and process for the tender of the Monitoring Operator licence was also the subject of debate. I am advised that if the Bill passes the Parliament this year, there is sufficient time. It is worth noting that the Tasmanian and the Victorian contexts are very different. While Victoria may have taken 3 and a half years to undertake its tender, it is worth noting that in New South Wales, its tender process took approximately 10 months. Tasmania is in the fortunate position to take on board the learnings from these jurisdictions.

The Government is comfortable that the transitional arrangements in the Bill sufficiently provide for the changeover to the new model.

Mr President

The focus of many discussions and briefings has been harm minimisation. As noted in my second reading speech, the structure of the regulatory model for gaming in Tasmania means that harm minimisation measures are empowered through the Act, but the measures are delivered through a range of mechanisms including regulations, rules, standards and codes, the majority of

which are oversighted by the independent Tasmanian Liquor and Gaming Commission.

The Government firmly believes that this is the appropriate structure and provides the greatest flexibility and agility for the Commission to respond to issues as they arise, whereas setting provisions in the Act would require a significantly longer lead time to respond to issues.

Card based play and facial recognition are the two harm minimisation measures that the Government believes could have the largest impact on reducing and preventing harm from gambling.

Both the Productivity Commission Report (2010) and recent Royal Commission Inquiry into the Melbourne Crown findings show that card-based gaming (with mandatory pre-commitment) would significantly reduce the incidence of problem gambling.

As members heard in the briefings, a card based system and pre-commitment could deliver significant harm minimisation benefits. The system needs to be set up correctly and in order to make sure this occurs, the Government is directing the Commission to thoroughly investigate this option and provide detailed advice and options.

In relation to facial recognition, there is acknowledgement that this would benefit a small number of gamblers, but could provide benefit to that group and will add to the current extensive suite of existing list of measures. Again, directing the Commission to investigate this will ensure the fulsome consideration of this option.

A question was asked regarding the Government's statement in the 2020 Consultation paper for this Bill. I can say that this Government does stand by this comment. The steps taken regarding facial recognition, card based gaming and pre-commitment reflect this and we will certainly address any problems that may arise under the new framework appropriately.

tabled and incorporated into Hansard
L. Hiscutt
11 NOV 2021

Response to Member for Nelson background paper on pokies reforms

I thank the Member for Nelson for providing me with information setting out her views on the Governments Future Gaming Market policy and proposed legislative reforms, of which other members may be aware.

Mr President, I understand that these are the personal views of the Member for Nelson and that such views may not align with those of the Government, however there are a number of assertions and claims with which the Government disagrees with and I would like to respond to these.

Response

Mr President, the Government's policy focusses on the structure of the market rather than the way gaming services are provided. As Tasmania has a strong harm minimisation framework, the policy provides greater funding for harm minimisation through increases to the Community Support Levy.

The Member for Nelson and others have suggested that the Government should have included in legislation what they consider to be straight forward, evidence-based harm minimisation measures relating to EGMs such as lower spin rates; $1 maximum bet limits; no 'losses disguised as wins'; reduced operating hours; regular machine shutdowns; lower maximum jackpots; no 'false near wins';.

Mr President measures of this nature can be considered by the Government and the Commission separately from the Bill and it is more appropriate and effective for harm minimisation measures to be contained in other instruments that are more agile such as regulations, codes, rules and standards. This is the case with the Act as it is currently.

However, Mr President, I should also point out that introducing some of these measures might not be as straight forward as the Member for Nelson or others may think.

Tasmania is a very small participant in the national gaming machine market. Its share of machines is less than 2 per cent of the national total, making its demands less likely to be met than those of larger jurisdictions.

The *Productivity Commission Inquiry Report into Gambling* (2010), while supportive of lower maximum bet limits for EGMs, acknowledged that moving to them would take time, given the impact on gaming machine manufacturers, regulators and venues.

A detailed assessment of the costs and benefits would be required to inform any consideration of lower maximum bet limits on EGMs in Tasmania, including how this might impact the State in the context of the national market.

Mr President, the Government does not agree that the measures proposed by the Member for Nelson are the most effective approach and has instead included in the Bill that Minister will direct the Commission to investigate options for the use of facial recognition technology, card-based gaming and pre-commitment in Tasmania and, following consultation with relevant stakeholders, to provide advice to Government on the model most appropriate for Tasmania.

Without wanting to pre-empt the outcomes, it is the Government's expectation that introduction of these measures will further improve harm minimisation through better identification of excluded players and the ability for players to set limits on their EGM gaming time and expenditure.

Mr President the Government is doing this as it considers such measures will be more effective than those being proposed by the Member for Nelson and others. In fact, this is supported by the Productivity Commission which concluded in its 2010 Report that measures to restrict the accessibility of EGMs (such as EGM caps, reduced operating hours etc) are unlikely to be as effective as introducing a full pre-commitment system. A key point raised was that implementation of an effective full pre-commitment system could make redundant some other regulatory harm minimisation measures (such as bans on ATMs or cash withdrawal limits).

In addition to the Productivity Commission findings on this matter, the most recent and relevant review into the harm caused by EGMs has found that card-based gaming would significantly reduce the incidence of problem gambling.

The use of cards to collect player data and to introduce mandatory limit settings are both findings of the Royal Commission Inquiry into the Melbourne Crown Casino.

Mr President, following its 2016 policy statement and the Joint Select Committee process and report, the Government considered its final policy position and determined to seek an increased and ongoing revenue stream over time rather than a one-off payment.

To achieve this, the Government decided to introduce increased licence fees and tax rates for hotels and clubs rather than an upfront sale of the rights to operate EGMs.

Importantly Mr President, while it is recognised that Victoria received large upfront payments for EGM entitlements when it decentralised its industry, the Tasmanian Government decided to keep control of EGM authorities in the State, allowing it to control the future allocation of EGMs rather than creating an asset that could be traded by venues.

It is worth noting Mr President that comments made to the Joint Select Committee about the value of licences and additional capital value to individual venues would most likely have been based on the creation of a tradable asset purchased upfront by venues through a market-based approach.

In order to retain greater control over the future allocation of EGMs in the State, the Government has not created an asset to be sold in the form of EGM entitlements but has developed an ongoing increased revenue stream through a progressive licence fee, higher tax rates and increased community support levy payments.

The new framework, Mr President, will ensure that the returns from gaming are shared appropriately, with the Government capturing a greater share of revenue to invest in community services as well as hotels and clubs retaining a greater share, enabling them to invest more into their businesses and employ more Tasmanians.

Mr President, the Member for Nelson has also questioned the different tax rates on EGMs and keno in casinos compared to hotels and clubs. Mr President, the Government has consistently stated that Federal Group's licensed gaming activities would be benchmarked

against comparable casino operations interstate to ensure that the returns are competitive and fair for the community, players and casino operators.

While it is recognised that financial arrangements of gaming markets in other jurisdictions are complex and variable, from a demographic and casino operation perspective, the Queensland regional casino and keno model is an appropriate benchmark for the financial arrangements in Tasmania.

Mr President, the Member for Nelson claims that taxing casino EGMs at the same rate as hotel EGMs would collect an additional $248 million in revenue over the licence period. However, the Government's policy clearly established the basis on which casino and hotel EGM tax rates were to be determined. This did not include taxing casino EGMs at the proposed hotel EGM tax rate and therefore this modelling has not been undertaken by Treasury. As such, I am unable to comment on the modelling quoted by the Member for Nelson.

What I can say however is that it is common throughout Australia for casino tax rates to be lower than those in hotels and clubs and this is usually because casinos are considered to be destination venues which rely predominately on gambling as their main source of revenue. Casinos represent a significant capital investment requiring an appropriate return.

Mr President, the Government has continually stated that its policy means more money for essential services such as health and education, certainty and security for jobs in pubs and clubs, more support for problem gamblers and less money for the Federal Group.

Under the new arrangements, the State and Community will be $8.5 million per year better off through increased taxes and community support levy, hotels and clubs will receive approximately $17 million extra per year, while the Federal Group will be worse off by around $20 million dollars per annum.

Mr President, the Government's policy states that the returns to the Government and therefore the community from the Federal Group's licensed gaming activities would be benchmarked against comparable casino operations interstate to ensure that the returns are competitive and fair for the community, players and casino operators.

Mr President, all other jurisdictions in Australia that conduct EGM gaming in hotels and clubs, do so under an individual venue operator model.

The Joint Select Committee on Future Gaming Markets recommendations include, among other things, that a venue operator model was desirable for EGMs in Tasmania.

Mr President, the criticism and concerns raised to date about a single venue operator model relate mainly to a potential increase in competition between venues and the advertising and promotions that might occur from such competition.

The Tasmanian Liquor and Gaming Commission, through the Mandatory Code of Practice, has oversight of the advertising and promotion of gaming in Tasmania and will be in a position to closely observe and monitor the operation of EGMs in Tasmania under the restructured gaming market and can act quickly to address any issues that may arise

Mr President, Tasmania's gambling harm minimisation framework is extensive and regarded as one of the leading in Australia. It includes:

- a mandatory code of practice for industry, which includes best practice measures designed to minimise gambling harm;
- a legislated exclusion scheme, supported by a secure real-time online database;
- gambling help services, gambling research, community education and support to community organisations (financed through the Community Support Levy); and
- compulsory training for gaming staff in the responsible conduct of gaming.

The Commission's functions under the Act include that it is to foster responsible gambling and minimise the harm from problem gambling. The Commission's functions are not affected by this Bill and this focus will remain in the future gaming market model.

In addition, Mr President, section 127 of the Gaming Control Act allows the Minister (within some limits) to give any direction that the Minister considers to be necessary or desirable with respect to the performance or exercise by the Commission of its functions or powers, including harm minimisation.

I note that Western Australia is often cited as an example of a jurisdiction with less harmful gaming machines, in part due to its slower spin rates, however I am advised that the Western Australian machines are now able to have faster spin rates up to 3 seconds per spin. Recent reports from the Crown Perth casino royal commission raise questions as to whether these machines are any less harmful and addictive than EGMs on the Eastern Seaboard.

Mr President, the Government is satisfied that the current harm minimisation framework will continue to evolve as new information, opportunities and technology become available and, together with the work to be undertaken by the Commission in relation to facial recognition, card based gaming and pre-commitment, will allow Tasmania to maintain a leading harm minimisation framework.

Mr President, the Member for Nelson considers that there is no reason that fundamental elements of consumer protection and harm minimisation can't be included in legislation. The Government does not agree with the Member for Nelson on this issue.

A key function of the Tasmanian Liquor and Gaming Commission is to foster responsible gambling and minimise harm from problem gambling. One of the ways the Commission does this is through the mandatory code, standards, rules and licence conditions.

The Commission is considered best placed to keep abreast of gaming trends and harm minimisation approaches and has been able to maintain an agile harm minimisation framework through current arrangements.

Mr President, by placing specific harm minimisation measures in the Act, the parliament would be reducing the scope of the Commission's function and its ability to react quickly to any changes in the environment.

Mr President, the Member for Nelson has raised concerns in relation to the rate of CSL that will be levied in casinos compared to that in hotels. Mr President, the reason the CSL rate will be lower in casinos is, as I mentioned earlier, casinos are considered to be destination venues which rely predominately on gambling as their main source of revenue. Casinos

represent a significant capital investment requiring an appropriate return and need to remain competitive.

Mr President, in respect to the Member for Nelsons concerns about the proposed changes to the funding arrangements for the Community Support Levy, I can advise that the Government's aim of any change to the arrangements for allocation of the CSL is to ensure its continued relevance and greater effectiveness, noting that there will be a significant increase in funds available through the CSL.

Mr President, the Gambling Support Program (GSP), which is responsible for planning initiatives and programs to respond to gambling harm in the Tasmanian community and manages expenditure of 75% of the CSL, has indicated in its response to consultation on the future expenditure of CSL funds that it supports the increased funding being provided to a range of categories.

Of note, GSP commented that while additional funding would be welcome, based on potential CSL returns of over $8 million, a 25 per cent allocation of more than $2 million per annum would be significantly more funding than required to meet the current and likely future service demand for direct support services.

Mr President, the objective of the CSL to improve harm minimisation and address issues of problem gambling in our community will not change.

I can also advise that the Government has recently undertaken additional consultation with relevant stakeholders on the distribution of CSL funds. The responses to this consultation will lead to further refinement of the framework, advice to Government and the drafting of Regulations to be tabled before Parliament. Further consultation will be undertaken through this process.

Mr President, the Government took the opportunity presented by the end of the initial 15 year term of the Deed between the State and Federal Group in 2018 to consider options for the structure of, and distribution of returns from, gaming in Tasmania.

In the lead up to Government making a decision on the Deed, it was recognised that there were a broad range of interested stakeholders that had strong and competing views on the future of gaming in Tasmania beyond 2023.

Mr President, Government set out its views on the future of gaming in its Ministerial Statement on Gaming (2016) and to further inform these views it established a Joint Select Committee on Future Gaming Markets to undertake a public consultation process in 2017. The JSC provided an opportunity for all major issues to be considered and included input by experts, stakeholders and the general public.

Government finalised its *Future of Gaming in Tasmania* policy following careful consideration of the outcomes from the Joint Select Committee process, with the resulting policy responding positively to the majority of the JSC's recommendations.

Mr President, the Government's policy was a key policy position taken to the 2018 State election, where it was returned in a clear majority.

Given the extensive public comment and consultation through the JSC and 2018 election debate, the issues surrounding the restructure of Tasmania's gaming market are well understood and have been considered during implementation of the policy.

The Member for Nelson and others have raised concerns over the timing of decision making by Government on the tax rates to be applied to casinos and statewide keno and when that decision was made public.

The Government has released tax rates under its Future Gaming Market policy soon after Cabinet's decisions on those rates. The tax rates and licence fees to apply to hotels and clubs were announced in December 2019, soon after Cabinet agreed to them. Similarly, the tax rates and licence fees to apply to casinos and keno were announced in July 2021, soon after Cabinet provided final approval.

In relation to the tax rate discussions with Federal Group, both the Premier and Minister for Finance have been clear about the process and the timing of Cabinet's approval of the financial model.

The Government's policy was to put the keno licence to tender if Federal Group did not accept the Government's proposed rates. The letters exchanged reference acceptance of the Government's proposed keno arrangements.

The comments about acceptance by Federal Group have been mis-characterised. This related to acceptance of the keno licence on the basis of the tax rates proposed, otherwise we would have put that licence to market.

In relation to the timing of the issuing of drafting instructions, with the drafting of a Bill as extensive as this, it is common to provide early instructions to the Office of Parliamentary Counsel to enable drafting to commence. These instructions may indicate that some provisions, such as the final tax rates and licence fees, are yet to be finalised but that provision for including these should be made.

The fact that drafting instructions relating to the components of the regulatory model that were known were issued prior to the final decision and public announcement of the tax rates is not evidence of anything other than the normal operation of legislative development.

Again, I can confirm that the Government determined the final tax rates after the 2021 election.

Mr President, in addition to the extensive public comment and consultation on the policy through the JSC and 2018 election debate, two rounds of public consultation have been undertaken by the Department of Treasury and Finance:

- public consultation on the proposed Future Gaming Market regulatory model occurred in 2020; and.
- further public consultation was conducted in July 2021 on the Exposure Draft of the *Gaming Control Amendment (Future Gaming Market) Bill 2021* (the Bill).

Mr President, Treasury has undertaken targeted consultation with key stakeholders impacted by the gaming reforms. These stakeholders include Federal Group, the Tasmanian Hospitality Association, MONA and the Tasmanian Liquor and Gaming Commission.

Mr President, Treasury has also conducted further targeted consultation with social services and local government sectors in relation to the expenditure of the Community Support Levy. This included consultation with organisations such as Anglicare, Salvation Army, TasCOSS, THA, Uniting Church, Neighbourhood Houses, Tailrace Community Church, Gambling Support Program, Communities Tasmania, LGAT and various local councils.

Mr President, the Member for Nelson raises some specific concerns in relation to consultation on simulated gaming and fully automated table games. I can advise that simulated racing and fully automated table games were included in both rounds of public consultation and both are currently able to be approved to operate in Tasmania.

The Bill seeks to remove simulated racing from the current casino monopoly and allow it to be operated in authorised TAB locations.

The Bill also provides a definition and separate tax rate for Fully Automated Table Games (FATGs) to deliver clearer and more effective regulation of these games.

Treasury considered the operation of these gaming products, the likely amount of player expenditure and the experiences in other jurisdictions.

Both products are considered to be at a similar risk level to keno. The level of player expenditure on each is also predicted to be low, with around $1 million per annum estimated for simulated racing and around $1.5 million per annum estimated for FATGs.

Further, during the several years simulated racing operated in Tasmania there has been no evidence of harm occurring. Treasury consulted with other jurisdictions (ACT, NSW, Vic, WA, Qld) where simulated racing operates to gain evidence of impacts. These jurisdictions have not experienced any indications or evidence of increased harm from simulated racing, and there have also been no concerns with respect to compliance.

Mr President, the Member for Nelson also questions the ability of the State to regulate two new high roller casinos.

The Gaming Control Act provides the independent Tasmanian Liquor and Gaming Commission with extensive powers to safeguard the integrity of gaming. Specific measures are in place in Tasmanian casinos to detect suspicious activity and transactions, and to provide an accurate record of winnings. Junkets (ie gambling tours) must be approved by the Commission. Junkets to Tasmanian casinos are rare.

In relation to the regulation of high roller casino operations, I can advise that the Government and the Tasmanian Liquor and Gaming Commission continues to monitor the outcome of inquiries into the integrity of casino gaming operations in other jurisdictions.

The Commission is reviewing the 19 recommendations contained in the Bergin Report to determine if they have any application in our state. It is noted that recommendations, including anti-money laundering measures, may have application not just in individual states but across jurisdictions and perhaps nationally and will have greater impact if consistently applied.

These inquiries are providing insights into the effectiveness of casino regulation. No urgent changes are required in Tasmania.

Mr President, the Member for Nelson also questions what the future ownership arrangements under the proposed changes may look like and whether smaller regional venues will be

financially viable under the new arrangements. Mr President, neither myself nor the Government are the owners of a crystal ball, so I cannot comment on what the future EGM ownership arrangements may look like in hotels and clubs. However, Mr President I can say that the Bill will impose restrictions on the overall number of EGM authorities that can be held by any one licence holder or an associated group of licence holders.

To prevent larger operators from dominating the Tasmanian market and potentially gaining an unfair advantage over smaller venues, the Act will prevent any one owner or associated group of owners from holding more than 587 EGM authorities. This represents approximately 25% of the authorities that will be available under the new arrangements.

Mr President, as for the Member for Nelson's concerns about the financial viability of venues under the proposed arrangements, I am advised that taking into account the new tax and licence fee regime, no venue will be worse off than they are under the current arrangements.

Mr President, the Government has determined that venue licences will be issued for 20 year periods and licence renewals will be for the same period.

Any new licence that is issued after 1 July 2023 will not expire until 20 years after they are issued (ie beyond 2043).

Mr President, as the changes to the legislation for the future gaming market arrangements are not governed by a Deed it will continue until such time as the legislation is again amended.

However, regardless of the licence expiry date, the Commission will have the power to review the suitability of any licence holder at any time.

Mr President, in relation to the investigation into the introduction of facial recognition in venues, the Government recognises that this technology will not prevent all harm, however it would help to make sure that people who have recognised that they are at risk of harm and are on the exclusion list don't gamble.

Facial recognition is not the whole answer to minimising harm from gambling, however the Government considers that it could form a useful part of the harm minimisation framework and has committed to seeking advice on this from the Commission.