PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Wednesday 23 September 2020

REVISED EDITION

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

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

In Committee

Resumed from 17 September 2020 (page 123).

Madam CHAIR - Honourable members, before we consider the remainder of this bill through the Committee stage, I will read some guidelines that we want to keep in mind to remind us where we are up to. Before we recommence the Committee stage of the bill, I remind members that we are proceeding through the remainder of clause 12. As we do that, the Deputy Clerk will read out each subclause to ensure that members have an opportunity to consider each subclause in an orderly and considered fashion.

We will then commence with proposed new section 60ZZM of clause 12, and proceed to the end of the proposed new section and then return to the postponed proposed new section 60B.

Following that, the remainder of the proposed new sections of clause 12 will be read and members will have an opportunity to speak on any of them. Each member will have three speaks on the clauses and subclauses, as read, to ask questions of the Leader if they wish. If they wish to move an amendment, they need to do so within those three speaks.

Some latitude will be provided for members in relation to amendments as the mover of the amendment and members will have three speaks on the amendment as well. A member should use those three speaks to prosecute the reasons or need for the amendment and other members should direct questions to the member proposing the amendment in a timely manner to allow appropriate opportunities for a response or rebuttal to the member's question regarding the amendment.

I ask members not to leave questions about a proposed amendment to the point where the member proposing the amendment has exhausted all opportunities to speak on the matter. I also note there are a number of new clauses to be dealt with and these will be dealt with at the end of the bill.

For clarity, the process for that is the Deputy Clerk will read the text of each new clause and new part separately, and the member will move that the new clause now be read a second time and then speak to the new clause. At this stage, only the member for Nelson has amendments to insert new clauses.

Other members will have three opportunities to contribute to debate on the new clause and, again, members should be mindful that the member for Nelson will have only three speaks

to respond to queries and issues related to the new clauses. The question, after all speaks have been exhausted, is that the new clause will be read the second time. I will be happy to repeat any of these clarifications later in the debate if members require further clarity.

The Leader has the unlimited right of reply, as usual - we cannot gag her - with regard to the amendments and any amendment proposed to subclauses or the new clauses.

Last, I reiterate that the Committee stage is not a forum to discuss broad-ranging matters related to the bill, or wideranging policy issues. Debate should be focused on issues specific to the clause, or reasons for a proposed amendment. Debate must be strictly relevant to the clause under consideration. Debate on clauses is not to be an opportunity to have a free-ranging discussion on the bill generally, but is to remain limited to the actual clause under consideration.

I hope this helps us all move through the scrutiny of this bill in an effective and equitable manner. If the Leader is ready, we will commence on proposed new section 60ZZM.

Proposed new section 60ZZM -
Grant of major project permit

First amendment -

Ms WEBB - Madam Chair, I move -

That proposed new section 60ZZM be amended by:

Subsection (4), after paragraph (g), insert the following paragraph -

(h) where the project is to be situated on land that is -

(i) reserved land, within the meaning of the *Nature Conservation Act 2002*, the project is consistent with the management plan that applies, in relation to the land, under the *National Parks and Reserves Management Act 2002*; or

(ii) within Wellington Park, the project is consistent with the management plan under the *Wellington Park Act 1993*.

I will move through a very structured series of points around this amendment. This amendment is to ensure that where a major project is located on reserved crown land or in Wellington Park, the decision-making criteria require a development assessment panel - DAP - to assess whether the project is consistent with the relevant management plan. This is appropriate because the panel is required to be satisfied that the major project is an effective and appropriate use or development of the land to which the major project relates.

In issuing a major project permit under proposed new section 60ZZM(3) of the bill, that is a requirement. For major projects on public reserved land, it is hard to see how that view could be formed by the DAP without regard to the reserve management plan - the plan that sets the objectives and the outcomes for the management of public land.

The amendment simply articulates that in a way that is explicit and gives public confidence and input into decisions about development on public land. This amendment is important because lands that are reserved and managed under management plans are public lands set aside in recognition of their intrinsic value to all Tasmanians. Management plans are developed by managing authorities, usually requiring detailed planning and assessment, and consultation with the community. They are designed to provide for the management and maintenance of the land in a manner consistent with the purposes for which it has been set aside, or the statutory management objectives for that land.

In the case of the Tasmanian Wilderness World Heritage Area, the management plan gives effect to international obligations under the national Environment Protection and Biodiversity Conservation Act 1999. In the case of Wellington Park, it gives effect to the objectives of Tasmanian legislation, the Wellington Park Act. It stands to reason that any major project to be assessed against those management plans, is a sensible requirement to have. This is what the amendment does.

It is in fact critical that we make this amendment in relation to Wellington Park, because the bill completely replaces the existing public process. In Wellington Park, a development needs two permits: an authority issued by the Wellington Park Management Trust, and a planning permit from the council under the Land Use Planning and Approvals Act. Both require an assessment against the Wellington Park Management Plan.

Only the council planning permit of those two has statutory public notice and review - an opportunity for the public to have input. The Wellington Park Management Trust assesses a proposal through a park's activity assessment process. Under the management plan, that process does not prescribe public comment at all. Because it is an informal process the Trust may seek public comment, but may not do so.

Right now, through existing planning processes for a development in Wellington Park there is the right for the public to comment on whether the project is in accordance with the management plan through the council process, but not necessarily through the Wellington Park Management Trust process.

Under this bill, without the amendment, there could be no process for the public to participate in relation to whether it is in alignment with the management plan because this process will replace the council part of those two elements, the only part that guaranteed public input. In fact, the bill would turn the existing process on its head.

It is inconsistent with section 52A of the Land Use Planning and Approvals Act 1993, the very act we are amending. Section 52A requires that -

> If any land in respect of which an application for a permit is required is in Wellington Park, as defined in the Wellington Park Act 1993, in assessing the application for the permit, the relevant planning authority must take into account the standards, values and conditions set out in each management plan, within the meaning of the Wellington Park Act 1993, in force as at the date of the application for the permit.

That is required in LUPAA. All this amendment does is ensure that it is explicitly required in this process too. It is also inconsistent as it stands with section 23(4) of the

Wellington Park Act, which says that the provisions of a management plan are part of the planning scheme and prevail over any inconsistent provisions of the planning scheme.

Section 23(4) says -

> Where a planning scheme in force under the Land Use Planning and Approvals Act 1993 affects the protection, use, development or management of any land contained in Wellington Park -
>
> (a) the relevant provisions of the management plan are to be taken to be included in that planning scheme; and
>
> (b) in the event of conflict between the management plan and the planning scheme, the management plan is to prevail.

Finally, it is inconsistent with the Hobart Interim Planning Scheme 2015. The Wellington Park Specific Area Plan says in standard F3.2.2 -

> Notwithstanding any other provision of this planning scheme, any use or development of land in Wellington Park must be undertaken in accordance with the provisions of the Wellington Park Management Plan.

This bill, without this amendment, turns off these provisions. It changes the status quo. The problem with this is the major projects process replaces the planning permit from the council. Unlike a planning permit, a major project in Wellington Park will have no public comment, potentially, on the very thing the public will be most concerned about, which is whether it is in accordance with the management plan. Without this amendment, this bill may allow a major project to be approved that is not consistent with the relevant management plan and therefore in a way that is not consistent with the purposes for which it was reserved or the statutory management objectives for the land.

The fact that consent is required from the land manager, the minister or the trust, under proposed new section 60P of this bill is no answer to this lack in the bill. It is also no answer that for reserve land, the Tasmanian Parks and Wildlife Service would also have to issue a lease or a licence. That is because consent is only consent to the making of an application. It is not an assessment of the project in its totality. That assessment is undertaken by the panel in this bill. It would be an unnecessary duplication for the Parks and Wildlife Service, the trust or the minister to undertake that same assessment at the beginning of the process in having to provide their consent for the application to be made.

The major projects bill is the only assessment process where the public is guaranteed a say. Like the Wellington Park Management Trust, the Reserve Activity Assessment process is an informal process with no guaranteed public rights. For major projects on public land, why is there no formal public assessment? Why are they are excluded?

The solution to this problem is simple - ensure that the major projects are measured against the statutory management plans. This amendment will do that. There is nothing to be lost from including this explicit amendment that requires consistency with the management plans that have been consulted on, carefully developed, are supported by the community and are firmly in place on these areas.

Mrs HISCUTT - Madam Chair, in principle the intent of this amendment makes sense. However, introducing this into the bill would duplicate the existing requirements for activity in the reserve area to be consistent with the management plan or would also have a number of other consequences.

Any proposal that receives a permit under the major projects process would also need to get approval under the National Parks and Reserves Management Act - which I can quote to members if they want me to go there - or the Wellington Park Act.

These acts prohibit activity that is not in accordance with the management plan. These management plans themselves can override any other statutory approvals. The panel would have to carry out an additional assessment of a proposal against the relevant management plan in place under an act that is not captured by the scope of the major projects bill. That would be a futile process as the determination of the panel would not have any weight and it would distract the panel from the matters it is required to consider.

Furthermore, what is proposed would create an internal inconsistency between the tests at the stage of granting or not granting the permit with those earlier in the process regarding eligibility or the declaration at 60N(1), and no 'reasonable prospect' test at 60ZI(4) following the panel's early consideration of proposal and the preparation of the assessment criteria set out in 60ZM(7).

To introduce a requirement at the end of the process that has not been flagged early on as a required assessment would deny the applicant and third parties natural justice in providing responses to the management plan through the assessment process.

For clarity, the Wellington Park Management Plan is incorporated into the interim planning scheme as a specific area plan. The major projects process gives particular status to specific area plans in the assessment. The panel must have regard to the management plan for Wellington Park and 60ZZM when granting a permit must have regard to the matters in 60ZM(6). So, members, it is a bit of duplication. It is totally unnecessary because it is already there and for those reasons the amendment is not supported by the Government.

Ms RATTRAY - Madam Chair, obviously we are looking at a really important amendment at this time. I heard what the Leader said in her answer about the Wellington Park. Can the Leader also give me some indication of how this process as it is, without the amendment, works for the Nature Conservation Act and the National Parks and Reserves Management Act because we are talking as well about reserve land there?

I am particularly interested in knowing if the same applies to that particular part of the amendment as it does for what has been identified as the Wellington Park Act 1993. Thank you.

Mrs HISCUTT - It is because it occurs separately through the RAA, the Reserve Activity Assessment process. It is a separate process under the National Parks and Reserves Management Act, and they will be carried out by the RAA, so they are covered in another process for approvals.

Mr VALENTINE - Quite a number of us received a briefing from the Auditor-General in relation to the way things are handled on reserve land. I think it would be fair to say that

members came away not totally convinced that it is a robust process. My concern is that with regard to specific area plans the panel 'must have regard to'. It does not say that it has to measure it up and make sure it is consistent with. The panel basically can, if you like, set aside some aspects if it believes the major project is of benefit to Tasmania, I suppose, or the general community. That is my concern. The panel 'must have regard to' - I do not think that is tight enough. I support the amendment.

Mrs HISCUTT - Just for clarity, the Auditor-General looked at the expression of interest process - EOI - not the RAA process.

Mr Valentine - No, but RAA was mentioned in there.

Mrs HISCUTT - It was mentioned in there but it is covered.

Ms RATTRAY - I appreciated the member for Hobart's question because I also attended that briefing. We heard yesterday about the weighting and the aspects of the weighting. We also heard that a proposal could get through the system by meeting one only of the three criteria if the weighting on that criterion was quite high.

Can the Leader walk me through how a proposed project that only meets one criterion which has that high rating would not be perhaps - not compromised but would not necessarily meet the three lots of criteria? I am interested because this amendment would, I believe - and correct me if I am wrong because that is why I am asking the question - actually tighten up that process. I am just working through this as slowly as I possibly can because it is such an important aspect.

Mrs HISCUTT - We are sure that the Auditor-General was talking about the EOI process, not meeting -

Ms Rattray - That is correct.

Mrs HISCUTT - not meeting criteria, not necessarily the RAA process. The Auditor-General was looking at the EOI process. He may have mentioned - because I was there for most of it, too - some of the processes where the EOI could be changed in any way but he did not particularly talk about the RAA deficiencies or benefits thereof.

Ms WEBB - This amendment is pretty straightforward, really. It just says that if a major project coming through this process is to be on reserve land in the Wellington Park area, it has to be consistent with the management plan in place for that area. Having heard the Leader suggest it is duplication - that it is already covered; it is in there already - I am going to ask only this fundamental question: can a major project on reserved land, or in Wellington Park, that is not consistent with the management plan for that area make it through this process and be approved?

If the answer to that question is yes, this amendment is not duplication. This amendment is absolutely and explicitly filling a loophole that allowed a development not to be consistent with reserved land management plans and the Wellington Park Management Plan.

Mrs HISCUTT - It has to end up going through the management plan assessment and the RAA process before it can be declared, but it could make it to point A. It still has all these

other criteria that they have to go through after that. The panel would have to carry out an additional assessment of the proposal against the relevant management plan that is in place, under the act, that is not captured by the scope of the major projects bill. This would be a futile process, as a determination of the panel would not have any weight, and it would distract the panel from the matters it is required to consider.

Ms RATTRAY - Again, fleshing out this reference to the relevant management plan, I want to place on the record that I support development - certainly if it complies, it is sensitive, and it goes through all those processes. However, if a relevant management plan is in place, I do not see why you would not have to comply with that, or at least be consistent with that, through a development process. As I said, a relevant management plan has been undertaken and put in place. We know it does not necessarily take a very short time to put a management plan together; these are lengthy processes. Why would you not want to have consistency with the relevant management plan?

I am leaning towards supporting the member's amendment, given that it is not - I do not believe - as much duplication as what has been presented to us here.

Mrs HISCUTT - Already in the bill, in proposed new section 60B, project-associated acts include the Aboriginal Heritage Act, the Environmental Management and Pollution Control Act, the Historic Cultural Heritage Act, the Nature Conservation Act and the Threatened Species Protection Act. It is already there, and it does not include the national parks and reserves because that is under the RAA. They are all ticked off; they are all there.

Ms Rattray - Again, that RAA process - the one where you would look under the national parks and reserves management - sits aside of those other five.

Mrs HISCUTT - Yes, that is correct, it is there.

Ms WEBB - Just a final one to pick up on a few things. The other processes you mentioned - Aboriginal heritage, threatened species and so on - come into play earlier. The regulators in those areas need to be part of this process, and in some cases may put forward conditions into the process. For some of those regulators, it is a requirement those conditions are picked up and applied; for others it is not necessarily a requirement that they are. They can be considered and may or may not be adopted. The rigour of the role those regulators play with the particular lenses they bring is limited, important and part of the process. What we are talking here is not those individual issue areas. With this amendment we are talking management plans in place for reserve land in Wellington Park and those management plans, as the member for McIntyre rightly pointed out, have been put in place through rigorous processes that involved consulting with communities and experts, establishing a community view about what is and is not appropriate for that area. Those management plans express and document all that.

Ms Rattray - They take a long time.

Ms WEBB - They do take a long time. There would be an expectation in the community that having gone through those processes to put those management plans in place, they would be seen to be overarching requirements of being met in terms of consideration of any activity or development in those areas. There would be an expectation in the community, and rightly so, that any project coming through this major project process that is located on reserved land

or Wellington Park would be measured against, and shown to be consistent with, the management plan for that area.

If, as the Leader suggested, that somehow puts an onerous requirement on the DAP to consider that as part of its assessment of the project before arriving at final approval for it, I say, 'So be it.'. The community would expect such an assessment, measurement and determination to be there as part of that process if the project is on reserve land or Wellington Park. This is publicly owned land. It is public areas and the public have already given thought to, and engaged in, determination of what is the appropriate use and function of that land.

This amendment is important. It does not duplicate because it is the only way we can ensure no project will come through this process on those particular sorts of land - reserved or in Wellington Park - and be consistent with the management plans. If we do not put this amendment in place, we will have left the door open for projects to come through which are not consistent with those areas and there would be nothing local communities could do about it, particularly in the absence of a merits appeal process.

Mrs HISCUTT - This major project process cannot give permits or approval under those acts. These acts prohibit activity that is not in accordance with the management plan and these management plans can themselves override any other statutory appeals. To introduce a requirement at the end of the process that has not been flagged early in a required assessment would deny the applicant and third parties natural justice in providing responses to the management plan through the assessment process.

Members, this process in front of us cannot give permits or approval under these acts in this amendment.

Ms WEBB - It is not going to jump out and bite them at the end. We are going to know it is there if it is in the bill.

Mrs HISCUTT - The Government is not supporting this amendment for those reasons.

Mr VALENTINE - Looking at plans such as reserve plans and Wellington Park Management Trust plans and the like, I do know exactly how much work goes into them because I have been involved in some of them in the past in some form through my local government experience. When you look at the objectives of the planning process under LUPAA, Schedule 1, Part 2, Objectives of the Planning Process Established by this Act, it says -

> (c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land …

I cannot think of any more rigorous process than putting a plan like the Wellington Park Management Plan in place. I am only drawing on that as an example; obviously, there are other plans.

It still brings me back to the fact that with specific area plans, the panel only has to have regard to them. This does inject that extra mile, the extra process, of making sure it is consistent with that, and I have to support the amendment.

Mrs HISCUTT - LUPAA does not pick up everything under every other act, but section 27(6) of the National Parks and Reserves Management Act 2002 talks about contents of management plans -

> A management plan for any land within a conservation area, nature recreation area, regional reserve, private nature reserve or private sanctuary may prohibit or restrict the exercise in relation to that land of any statutory powers.

Section 30 goes on to say -

> **Functions and powers of managing authority in relation to reserved land**
>
> (1) Subject to this Act, the managing authority -
>
> …
>
> (b) for any other reserved land is to manage that land -
>
> (i) in a manner that is consistent with the purposes for which the land was reserved; and …

It is there in other acts. This is duplication putting this in here. There is no need for it. It is covered everywhere else. There is not much more I can say.

Ms WEBB - I do not believe I had an answer to the question I posed in my second speak, and I wonder if I could redirect the Leader to that and seek an answer.

The question was very succinct. It was specific. It was: Can a major project on reserved land or in Wellington Park that is not consistent with the management plan for that area come through this process and be approved? Is that possible?

Mrs HISCUTT - The answer is yes, but it has no effect because it still needs the other approvals.

Ms Webb - The answer is yes.

The Committee divided -

AYES 4	**NOES 7**
Ms Armitage	Mr Dean
Ms Rattray	Mrs Hiscutt
Mr Valentine	Ms Lovell (Teller)
Ms Webb (Teller)	Ms Palmer

Dr Seidel
Ms Siejka
Mr Willie

PAIRS

Mr Gaffney — Ms Howlett

Amendment negatived.

Proposed new section 60ZZN -
Final assessment report to be prepared

Ms RATTRAY - Madam Chair, this is regarding the final assessment report to be prepared. It just says -

> The Panel must, after making a decision under the section 60ZZM(1) in relation to a major project, prepare a report …

It then sets out reasons for the decision -

> if the decision is to grant a major project permit in relation to the project on conditions or restrictions, those conditions or restrictions and the reasons for imposing them on the permit.

How and where will the community actually find that decision and the accompanying documentation? That will obviously be of interest to our communities. I would like that on the *Hansard*.

Mrs HISCUTT - If I draw the member's attention to proposed new section 60ZZQ, it says, 'Notice to be given of grant of, or refusal to grant, major project permit'. It then goes through that.

Proposed new section 60ZZN agreed to.

Proposed new sections 60ZZO and 60ZZP agreed to.

Proposed new section 60ZZQ -
Notice to be given of grant of, or refusal to grant, major project permit

Ms RATTRAY - I thank the Leader for focusing my attention on 60ZZQ and to answer the question I posed then. This proposed new section talks about publication in the *Gazette* and newspapers that circulate. It also talks about 'the electronic address' of the commission's website. The community will be able to access that information in a number of ways. Am I correct, Leader? I know we need a question.

Mrs HISCUTT - You are correct; it also has to be published in the newspaper.

Proposed new section 60ZZQ agreed to.

Proposed new sections 60ZZR to 60ZZW agreed to.

Proposed new section 60ZZX -
Limitations on ability to make minor amendments to permits

Ms RATTRAY - In regard to limitations on the ability to make minor amendments to permits, it says -

> at least 14 days before amending the permit, the relevant decision-maker has made a reasonable attempt …

I would like some clarification of that process. A minor amendment is always interesting. How do you choose what is a minor amendment, a medium amendment and a major amendment? I am interested in exploring that a little further. A minor amendment may have a significant impact on a particular project or on a community. How would this look, Leader?

Mrs HISCUTT - I draw the member's attention to proposed new section 60ZZX(3) -

> (3) The relevant decision-maker may only amend under section 60ZZW(1) or (2) a major project permit if the amendment -
>
> (a) will not cause an increase in detriment to any person other than the proponent; and
>
> (b) does not change the use or development for which the permit was issued, other than by changing in a minor way the description of the use or development.

Ms RATTRAY - I was really looking for an example of a minor amendment. Is it the fact that if you have two buildings, and you are moving one to another place, but it does not impact particularly on the project itself - is that the type of minor amendment we were looking at? I was looking for an example. I did know that was further over the page in that particular matter.

Mrs HISCUTT - It could be a very minor one. It could be an extra metre needed for setback from a boundary line.

Proposed new section 60ZZX agreed to.

Proposed new section 60ZZY -
Amendment of permits to ensure consistency with EPN

Mr VALENTINE - It may well have been earlier in the bill, but I just want to clarify the following. If the Hobart City Council or TasWater are trying to protect their water supply with works that may be intended to happen on council land - for instance, in Wellington Park - at what point does TasWater, for example, have an opportunity to put certain strictures on a

project that might get through to protect the water supply? Is that catered for under this proposed new section, or under some other component of the bill?

Mrs HISCUTT - Basically this section relates to whether there is an Environment Protection Authority notification that needs adjusting; that is where it is picked up.

Mr Valentine - An environmental protection notice, we are talking about?

Mrs HISCUTT - EPN and EPA notice. Does that answer your question?

Mr Valentine - Is it handled somewhere else?

Mrs HISCUTT - We are struggling a little to understand what you mean with regards to 60ZZY.

Mr Valentine - I want to make sure that TasWater, for instance, has the opportunity to ensure it can protect the water supply in relation to major projects that might occur in, say, Wellington Park. It might be some other reserve somewhere else and some other authority.

Mrs HISCUTT - I think I understand what you mean. They are a regulator and they are involved in the process all the way through. They would be onto it straightaway.

Mr Valentine - They could stipulate that, and be -

Mrs HISCUTT - They would certainly be onto it, looking after their assets.

Proposed new section 60ZZY agreed to.

Proposed new sections 60ZZZ to 60ZZZI agreed to.

Clause 12 - postponed proposed new sections

Proposed new section 60B -
Interpretation: Division 2A

Ms FORREST - Madam Deputy Chair, I move -

That proposed new section 60B be amended by -

After the definition of *relevant regulator*, insert the following definition:

relevant state entity means -

(a) a State Service Agency; and

(b) a Government Business Enterprise within the meaning of the Government Business Enterprises Act 1995; and

(c) a State-owned Company within the meaning of the Audit Act 2008.

I prosecuted the case in support of this amendment when I dealt with amendments in later proposed new sections while this proposed new section was postponed, to enable government businesses and state-owned companies to be considered at the front end of the process. We need this to be consistent with the rest of the amendments that were supported earlier.

Mrs HISCUTT - I reiterate the Government's support of that amendment, as I said earlier.

Amendment agreed to.

Proposed new section, as amended, agreed to.

Clause 12, as amended, agreed to.

Clauses 13 to 28 agreed to.

Clause 29 -
Section 42B amended (Interpretation of Division 8)

Ms RATTRAY - Obviously, this is an interpretation of Division 8, but clause 29(a) talks about -

by omitting 'or a special permit' from paragraph (a) of the definition of *existing authorisation*;

I would like some clarification around why that needs to be 'or a special permit'. We have not talked much about special permits through this journey.

Mrs HISCUTT - The term 'special permit' relates to the projects of regional significance - PORS - process.

Mrs Rattray - That is why it is going out; thank you.

Clause 29 agreed to.

Clauses 30 to 32 agreed to.

Clause 33 -
Section 42I amended (Applications for environmental licences)

Ms RATTRAY - In regard to clause 33, regarding applications for environmental licences. It says 'Section 42I amended (Applications for environmental licences)'. Again, a clarification about the relevance of that clause would be very much appreciated, Leader.

Mrs HISCUTT - I think it is 42I. In the clause notes, section 42I will be amended to delete references to the former clause process. The environmental licence activities will no longer be eligible to be declared a major project.

Ms Rattray - Can you flesh that out a little more?

Mrs HISCUTT - The environmental licence process will be dealt with through the EPA process as opposed to the bill in front of us. There is a mechanism for it; it is just not here.

Ms RATTRAY - Madam Chair, the community would be horrified to think we have not had some environmental licence process. That is comforting, thank you.

Clause 33 agreed to.

Clauses 34 to 47 agreed to.

New clause A -
To follow clause 12

Ms WEBB - Madam Chair, I move -

That new clause A be now read the second time.

A. Section 61 amended (Appeals against planning decisions)

Section 61 of the Principal Act is amended as follows:

(a) by inserting before subsection (3) the following subsection:

(1) In this section -

'**Panel**' has the same meaning as in section 60B;

'**proponent**' has the same meaning as in section 60B.

(b) by inserting after subsection 3(A) the following subsection:

(3B) If the Panel -

(a) refuses to grant under section 60ZZM(1)(b) a major project permit in relation to a major project; or

(b) grants under section 60ZZM(1)(a), in relation to a major project, a major project permit subject to conditions or restrictions -

the proponent in relation to the major project may appeal to the Appeal Tribunal against the decision of the Panel within 14 days after the relevant day in relation to the major project.

(3C) For the purposes of subsection 3(B), the relevant day in relation to the major project is whichever is the latter of the following days:

(a) the day on which notice in relation to the major project is given under section 60ZZQ(1) or (2);

(b) the day on which the final assessment report in relation to the major project is given to the proponent under section 60ZZQ(3);

(c) by inserting after subsection (5) the following subsection:

(5) If the Panel grants under section 60ZZM(1)(a) a major project permit in relation to a major project -

(a) a person who made representation under section 60ZZD(1) in relation to the major project; and

(b) a participating regulator in relation to the major project -

may appeal to the Appeal Tribunal against the decision to grant the permit (including a decision to impose, or not impose, conditions or restrictions on the permit), within 14 days after the Panel gives notice to the person or regulator, respectively, under section 60ZZQ(4).

Ms WEBB - Madam Chair, this amendment relates to merits review. To establish clearly what that is, I will refer to the Australian Administrative Review Council, an independent advisory body of the Commonwealth Administrative Appeals Tribunal. It says that a merits review is a review by any person other than the primary decision-maker. In fact it is broken down into three parts -

The purpose of a merits review is to -

(a) ensure administrative decisions are the correct and preferable decision;

(b) to improve the consistency and quality of primary decision-makers; and

(c) to enhance openness and accountability by ensuring all primary decisions can be reviewed.

I can refer members to where that is documented; it is from the Australian Administrative Review Council's definition for a merits review. It is important we have an understanding of that a merits review is a review by any person 'other than the primary decision-maker' because

the decision of the development assessment panel in this process should be able to be reviewed under that understanding of merits review.

It is the primary decision-maker in this process and, like all primary decision-makers, a DAP could get it wrong. A development assessment panel's decision may not be in accordance with law. It may not be the correct and preferable one as defined in that outline. Like all decisions of a primary decision-maker, it should be subject to review as a part of good governance and justice.

There are only two reasons why an administrative decision should not be reviewed on its merit. The Administrative Review Council outlines this, saying that it could happen where a decision is legislative in character or where a decision follows automatically from the happening of a set of circumstances.

The important thing here is distinguishing that first bit: what is legislative in character? It is a decision of broad application like passing a bill or regulations. In planning, those are decisions that are legislative in character. Those are decisions to make planning schemes or amendments to planning schemes.

The commission's decisions, the TPC's decisions, have not been subject to review largely because they are largely legislative in character. By definition from the Australian Administrative Review Council, most functions of the TPC and decisions taken would not have to have a merits review applied.

However, the DAP decision in this process would do. The Government says the panel's decision should not be subject to review by the tribunal because it is like a peer-to-peer review and that it would upset the existing arrangements in place in our planning system.

First, a development assessment panel is appointed for a particular project at a particular time. It is not the commission. It is a body of people appointed by the commission to assess a particular project and it does not even necessarily contain any members of the commission.

Second, the commission's usual decision-making functions are quite different to those of the DAP. The TPC's usual decision-making functions are legislative in character, which is why the decisions of that body would not ordinarily be subject to merits review.

Given there is a robust and established principle that primary decision-makers should be able to be subject to merits review, the tribunal is the right body to review a decision of the DAP. It is not the point whether it is a peer-to-peer review. The Administrative Review Council tells us that merits review is review by any person other than the primary decision-maker.

We have examples. We could point to what could be seen as peer-to-peer review already occurring in other circumstances - for example, our right to information system in Tasmania. There are two stages of review - an internal review and then review by the Ombudsman.

Internal review is a review of a peer of the decision-maker. That is the system already in operation and yet it is a robust one, and one we point to. The important decision here is not should there be a merits review, because undoubtedly according to accepted standards and good

governance and according to the Australian Administrative Review Council, there should be merits review available on any decision by a primary decision-maker.

The question is not should there be merits review. The important question is: who is the right body to conduct that review? In Tasmania, in answering that question, we would say the right body is the Resource Management and Planning Appeal Tribunal. The tribunal conducts merits reviews every day of the week. It is the expert body for that function. Review in this instance could be performed by the Supreme Court; however, the Supreme Court does not ever perform merits reviews in planning or environment decisions. It is not the right body.

The tribunal is the right body. It is the appropriate body. It is equipped to undertake that review function and it is not inconsistent that it would undertake a review of a decision by a DAP in this process.

This amendment effectively gives merits review rights to all involved - merits review rights to the proponent and to any person who makes a representation to a participating regulator. It is worth noting that in planning most often the developer seeks merits review.

The tribunal is a quick method of resolving disputes. It has a 90-day statutory time frame in which decisions are to be made. That can be extended, but with the agreement of the proponent and other parties.

The tribunal's success rate on mediating disputes is consistently 80 per cent. That points to its effectiveness and expertise in this function. As it stands, in this bill there is no equivalent to the tribunal's mediation processes that could be delivered through this process. The tribunal is expert at procedurally fair hearing processes and its task is to reach the correct and preferable decision as per our understanding of the function of a merits review to ensure administrative decisions are correct and preferable.

I have to say here, and I am sure it is true of all of us, that this the number one issue in this bill for community groups. This is the key issue with this process for members of the community and representative groups from all around the state who have contacted us. The highest priority is the absence of a merits review. The fear of not having access to the tribunal for a review on this major projects process is causing enormously widespread concern.

We have just had it confirmed here today why that concern is potentially warranted because we heard a short while ago that, for example, it will be possible for a major project to be approved under this process on reserved land or in Wellington Park that is not consistent with the management plan for that land. That in itself is enough to justify community concern about the subsequent lack of any merits appeal process. Merits review of planning decisions is an absolutely fundamental part of our planning system and of public participation. It is recognised internationally as good governance practice. Merits review of administrative decisions to a court or tribunal is a fundamental part of the rule of law and, as it stands, is entirely missing from this bill.

Mrs HISCUTT - I feel I need to add, before I launch into the Government's response, that the member is quoting from the Commonwealth of Australia Administrative Review Council's 'What decisions should be subject to merit review?' There were a couple of things in there you did not quote that I would like to expand on. For start, they talk about 'Factors lying in the cost of review of the decision'; section 4.52 says -

> Factors that may exclude merits review that lie in the costs of review of the decision include instances of:
>
> - decisions involving extensive inquiry processes; and
>
> - decisions which have such limited impact that the costs of review cannot be justified.

This is what the panel does and will be doing. It holds hearings in this way. The member is quoting from the review, which at section 4.54 says -

> Such processes include public inquiries and consultations that require the participation of many people. If review of the subsequent decisions was undertaken, the nature of the review process would be changed from the normal adjudicative decision-making process … to a greatly expanded and time-consuming one.

That is in the review the member is quoting. There are allowances for consideration to that. The Government has prepared quite a lengthy response to this. It is all relevant; it covers the nature of appeals and the impacts of RMPAT introducing appeals, so I ask members listen carefully as they go.

Ms Rattray - We always listen.

Mrs HISCUTT - It seems that part of the reason an appeal to RMPAT on merit has been suggested is there was doubt as to the make-up of the panel and concern the procedures of the panel were not the same as those the TPC conducts. The appeal was there to ensure an independent and publicly accessible assessment of the evidence and submissions without political interference. It is now clear to everyone, that those characteristics are built into the bill and, in fact, the amendments passed in the other place and here have reinforced that.

It is clear that, in effect, the TPC will make the decision through an open, fair and accessible process. The TPC has long been regarded as the independent decision-maker and has the respect of the community. Its decisions under LUPAA had never been subject to merit appeals, giving them the status as the pre-eminent body in the planning system.

The TPC will act independently; it will give everyone a chance to have their say in the public hearings; and it will ensure the proponent and the regulators provide all the relevant information for it before a final decision is made. The TPC is renowned for its thorough assessments and can be relied upon to ensure no stone is left unturned before a final decision is made. On this basis, if there was previously any case for an appeal, that case no longer exists and it does not work just to include it for safety, because it would bring the TPC's decision and process into doubt and create significant uncertainty, delays and costs, and set a precedent of the right to appeal other decisions by the TPC.

We have had briefings from LGAT, the TPC itself and the Department of Justice, all of which made the case against adding an appeal to the process. Yesterday I circulated an email sent to the minister from the former executive commissioner of the TPC, Mr Greg Alomes, raising serious concerns about any such appeal being introduced. I will not read all of Mr

Alomes' letter in, just the parts here. He started by saying he felt compelled to write this letter because TPC members may be constrained. So, he has written this letter -

> The role of the Commission is paramount in the Tasmanian planning system and its scope of independent statutory functions are quite separate and different to those of RMPAT.

Then he goes on to say -

> The suggestion that decisions of the Commission, or its panels, on regionally significant or State significant projects, should be appealed to RMPAT would substantially undermine the status of the pre-eminent planning body in the State. It would create a nonsensical situation where one independent statutory authority would have its decisions reviewed by another independent body. The repercussions of such a move would be to cast doubt over all of the transparent, open and independent processes that the Commission carries out with the potential of seeking to introduce an appeal against all of its determinations, or at least any which include a specific development proposal …

That is at section 43A on POSS, projects of state significance. He goes on to say -

> Notwithstanding the extraordinary precedence that this would create for all Commission work, the functional arrangements of such an appeal would also need to be carefully considered.

Just one other thing I would like to highlight from his letter -

> The implications of such an appeal would be some members of one expert panel justifying their decision to another expert panel. The time taken to carry out such a review would be substantial if all of the evidence and considerations of the first Panel are to be revisited. The standard 90 day time for RMPAT to conclude its deliberations would, I suspect, never be achieved and it is far more likely that the time taken to carry out the original assessment will be matched if not exceeded.

I will not read the other reasons because members have that and can make their own -

Mr Dean - The last paragraph was interesting, if you could read that in.

Mrs HISCUTT - It is as follows -

> While I appreciate the current level of scepticism in the community and the perhaps well intentioned attempts of some to mollify those concerns by introducing such an appeal to RMPAT following the Panel's determination, I am dismayed that the fundamental structure and roles of the planning system would be the undermined in the process. The ramifications for the Commission's status in the future could be substantial. This apparent minor addition to the Major Projects Bill to assuage concerns of some in the

community, has the potential to fundamentally undermine the foundations of the long standing, tried and tested planning system.

It is signed 'Yours faithfully, Greg Alomes'.

On the other hand, we, the members, were briefed by the Environmental Defenders Office, arguing for an appeal to RMPAT. What was not evident in that briefing was a significant shift in the EDO's views over the consultation phase. The EDO did not raise the lack of appeal as an issue in its submission on the second round of consultation in January 2018. However, in May this year it had changed its mind, even though the bill was largely unchanged. In fact, in 2018 the EDO congratulated the department for making adjustments and suggested a few minor amendments, some of which were made to the final version of the bill.

The relevant parts of the EDO advice from 2018 state -

15 January 2018

Thank you for the opportunity to comment on the revised draft *Land Use Planning and Approvals Amendment (Major Projects) Bill 2018 (**revised draft Bill**)*. We commend the Government for its efforts to address in the revised draft the many concerns identified in earlier representations, and for allowing further representations on the significantly amended draft Bill.

In particular, we support the tightening of the eligibility criteria, the removal of Ministerial involvement in the development of determination guidelines, the additional opportunity to seek information from the relevant planning authority / authorities before declaring a major project, and the lengthening of timeframes across the assessment process. We also support the clarification regarding the application of the *Tasmanian Planning Commission Act 1997*, the requirement to prepare and publish procedures to guide the hearing process, and the new consequences for a proponent providing false or misleading information.

In the briefing members had with the TCT, EDO and PMAT, they suggested that a decision on the major project permit was similar in nature to a decision on any ordinary development application - DA - by a council, and that an appeal is there to remedy bad decisions.

The process for DAs is that they are initially considered by council against the planning scheme, they go on public exhibition, submissions are made by the public, a report is prepared, a final decision is made by the council, and then an appeal can occur. That appeal allows for written submissions and the testing of evidence by an independent panel of experts. With the major projects process, after all the process in setting the criteria, the proponent prepares a major projects impact statement and the panel prepares an initial assessment report.

The major projects impact statement, assessment criteria and initial report are placed on public exhibition. Submissions are then made by the public, and the TPC convenes public

hearings at which evidence is tested by an independent panel. That is the same sort of process the appeal provides before a final report is prepared and a final decision is made.

The major projects process embeds the characteristics of the appeal into the assessment process before a decision is made. This is one of the fundamental reasons that an appeal is not needed. The nature of the major projects process - which includes the open testing of evidence, the right to be heard and cross-examine other parties, and the non-political arms-length assessment - are exactly those that an appeal would give.

Additionally, the decisions under the major projects process are also similar to those made under the POSS - projects of state significance - process, the current PORS process - which this process is replacing - and also combined amendment and development applications with the TPC assessors. All these processes are considered by the TPC, or a panel appointed by the TPC. None of these has merit appeal rights.

As was also made clear in the briefing and in the email from Mr Greg Alomes, the Tasmanian planning system is built around the TPC as the pre-eminent and most important body. It is not subservient to RMPAT, and the introduction of such an appeal against a decision of the TPC would fundamentally rewrite the planning system and reconfigure the roles and powers of the independent bodies within it. The tried-and-trusted TPC would suddenly be doubted as to its competency and decisions.

Adding an appeal to a decision on a major project permit would alter the policy settings for LUPAA for when decisions can be appealed, and create an inconsistency within the act. It would effectively alter the current settings by removing from the TPC the status of being the final decision-maker.

The question would then be raised as to why other actions of the TPC should not also be subject to appeal. This would logically follow for at least the decisions that the TPC makes, which also include a development application, such as the projects of state significance, and especially the section 43A combined amendments with DAs. It might also lead to suggestions that there should be appeals to RMPAT against rezoning applications refused by the TPC.

If these processes were not changed to introduce an appeal, they would then provide a far more attractive pathway than the major projects process, and proponents would avoid any appeal prospects by choosing those. Potentially, no projects would go through the new process, despite it representing an improvement on that in the bill, when tabled, and over the PORS process.

It is also important to remember, as LGAT pointed out, that the membership of the TPC and RMPAT panels does sometimes overlap. According to the RMPAT 2018-19 annual report, the list of RMPAT members included, during that year, the current acting executive commissioner of the TPC; another commissioner of the TPC; a previous executive commissioner of the TPC's predecessor, the RPDC; and other previous commissioners of the RPDC.

I might add it also included a previous member of the Planning Reform Taskforce. We should not forget that the TPC membership is set in legislation, and appointments are approved by the Governor. This simply reinforces that the proposed amendments would not only

duplicate the assessment process, but would be carried out by the peers of those who first assessed it.

If members are considering voting for this amendment, it is worth carefully thinking through how such an appeal would work. RMPAT deals with appeals as de novo - meaning they review the matter afresh and work through all the same issues the first decision-maker has carried out.

Part (3C)(b) of the amendment widely turns off those parts in section 62 of LUPAA that instruct RMPAT to act as if it were the council that made the first decision, and to assess the proposal against the same rules that applied at that time under the planning scheme.

But the amendment does not provide alternatives to that. It leaves RMPAT with no instructions to its task. It does not say that it must carry out the assessments as though it is the panel. It is not clear if the appeal replaces the regulators and overrides any of the regulator's final advice. Proposed clause (1A)(ca) does not appear to suggest that RMPAT can direct new conditions, which implies that those required by the regulator, Aboriginal heritage and threatened species, will be overridden.

These are binding on the panel under the current bill. It is not even clear if the appeal extends to reviewing the assessment criteria and resetting those. There is also a genuine issue around the cost and accessibility to RMPAT compared to the TPC. The current model for public hearings conducted by the TPC is less expensive, and more open to community members being able to express their personal views than the adversarial legal nature of the RMPAT appeals process.

The RMPAT appeal will involve the submissions of multiple complex legal documents by all parties to the appeal, which will take longer and be more expensive for all parties than appeals to development applications, because of the nature of the project and the large range of matters included in the assessment criteria and required under the act, such as compliance with state policies, regional land use strategies, Tasmanian planning policies, and others - all of which RMPAT generally does not deal with.

As Greg Alomes has suggested in his email, it would be highly unlikely that such an appeal could be determined within 90 days, as the legislation requires. In reality, appeals take longer than the original decisions. Under LUPAA, a DA is required to be determined in 42 days, and the appeal on that has 90 days - so if the original major project process is over 270 days, an appeal would likely be at least that long again.

It would also be likely that these appeals would run to higher than normal costs, and potentially exclude community members from wanting to participate - especially if they could be subject to paying the costs of the appeal. Currently, costs of appeal to RMPAT are generally covered by each party. Occasionally, the costs of an appeal are contested and awarded against one party over another.

In contrast, the TPC does not make orders on costs. Adding an appeal to the major projects process would add a substantial cost to both the public, the proponent and the government to conduct. Given that a RMPAT appeal will consider the same matters by similar people in a similar process, effectively repeating what the TPC panel does, will the cost of such

a lengthy process provide a notable benefit to the overall quality of the final decision on a major project permit?

Madam Chair, in conclusion, the Government's view is that an appeal to a major projects decision is clearly unwarranted, particularly in the context of clarification and improvements around the decision-making process carried out by the TPC-appointed panel. To suggest such a change to the TPC operations would be nothing short of a vote of no-confidence in our most trusted independent planning body, with all sorts of consequences. It would diminish the status of the TPC and render the major projects process unusable. For the reasons I have outlined, we will not be supporting the amendment.

Mr VALENTINE - Madam Chair, it was very interesting to hear the summation provided by the Leader. I can see that the Leader has raised some considerations in her comments. However, I think one of the Leader's final statements was that it was unwarranted, but the problem for me is that it is definitely wanted by the community. In my second reading contribution to this bill, I referred to the Planning Matters Alliance as having 70 groups. I will correct that for the record - I think it is 62 groups. I have been told that it represents in the vicinity of 20 000 people. The number of submissions received in regard to this particular bill were way up there. I think 98 per cent or 99 per cent basically did not want the bill.

Quite clearly the people have spoken. I am concerned there is no proper process for them to be able to challenge any decision that is made. The fact that it does not fit within the scheme of things is not really the fault of the people on the street who are concerned about this. It is not - the fact that our system, in bringing this bill in, ends up providing a system that is basically unchallengeable, except on a point of law to the Supreme Court, is a concern.

It happens all the time in the legal circles where a judge provides a decision, and then somebody appeals that decision to the Full Court. Then you have a number of judges who sit in judgment on that judge's decision.

I do not think having an appeals tribunal sit in judgment on the decision of a development assessment panel is necessarily all that different. It is not the TPC, it is the development assessment panel we have here. I do not think it brings into question the TPC or its credibility. It is a separate panel, yes, appointed by the TPC, but it does not necessarily mean that it is totally bringing into question the TPC; it is it is questioning the DAP's decision.

I hear all that the Leader provided to us about how this might upset the apple cart, if I can put it that way, with the decision-making processes, but the fundamental fact remains that the people in the community really want the opportunity to be able to appeal decisions on their merits. How that is satisfied, or how that is provided for, remains the question, I suppose. If the Leader is saying that the process the member for Nelson is trying to put into this bill is not appropriate - if it is not put in, it is still a negative, as far as I am concerned, in regard to the bill not having provision for people to challenge a decision on its merits, not on a point of law.

Mrs HISCUTT - I would like to quote another paragraph from Greg Alomes' email. In one of his paragraphs, he says -

> Finally, I would like to also pass comment on the apparent concerns about the process for selecting the Panel that is set out in the Major Projects Bill. The process is reflective of the normal method that the Commission follows

> for selecting panels to hear and determine matters. While there appears to be a general view that the Commission 'proper' carries out the bulk of the work, this is not so. The Commission acts by delegating its functions to a range of other people deemed by it to be appropriate for the task. The majority of these are drawn from the Commission itself and from the ranks of the senior staff that are assigned to work for the Commission. Generally the panels may consist of a Commissioner and one or two of the senior staff, or perhaps two Commissioners and one of the senior staff. My reading of the process for establishing the panel under the Major Projects Bill is consistent with this practice.

I also add that this bill has been broadly consulted on. There has been no industry advice. There has been no local council advice. There have been no broad community opinions. Nothing like this has been raised over three years of the consultation until now.

Everybody has been happy with it or they have not - and I have quoted from EPA's submission before so I will not go through it all again, but for the reasons I have already given, the Government is not in favour of this at all.

Ms ARMITAGE - Madam Chair, I actually agree with the member for Hobart. It probably comes back to much of our local government background, but I am concerned about the lack of appeal and merit review.

I am leaning towards supporting the amendment. I believe in all the submissions received the lack of appeal rights, as mentioned by the member for Hobart, was likely of most concern. While I appreciated the briefings regarding this and I listened to the Leader's reasons, I do not believe there is any actual legal impediment to including appeals in this bill.

As a representative of the community, while I accept the community can put in submissions, I believe the process of appeal is a fundamental right. Living in a democracy I am concerned there would not be a process of a merits review and appeal as a check of measured protocols as a community right so I am leaning towards supporting to it. I listened to the many reasons the Leader had put forward and the concerns about the bill, and I thought it was very clearly elucidated by the member for Hobart.

Mrs HISCUTT - Madam Chair, I do not think there is anything more I can add. I could read this again for clarity, if you like, but I will not.

The Government feels this is totally unwarranted. There have been plenty of opportunities for consultation throughout the process, and we certainly are very much not in favour of this amendment. I urge members to vote with the Government on this.

Ms RATTRAY - Madam Chair, I certainly appreciated the information the Leader has provided to us. I listened as well to the member for Hobart.

The concern is in the community. As members, we have had a barrage of emails regarding the lack of an appeal process for this particular piece of legislation, and whether there has not been that input prior to the bill coming to the parliament. I expect that has much to do with the Mount Wellington situation and, particularly, in regard to the proposed northern

correctional facility. You can understand that members of the community are looking at every avenue they possibly can to have input into what they consider are possible major projects.

Perhaps the Leader can assure me, for instance, that there are enough protections or opportunities for the community to have input into major projects - and we know through the process that communities can have their councils now represent them with the changes put and approved through this bill. There is a concern that people will not have a place to go should they feel a proposal does not in their view and in the view of the community have the merits it requires for their support.

It is a fair and reasonable request to know they can have input into a process, whether it is through the amendment the member for Nelson has gone to a lot effort to put together or whether it is through some other path. That may be something the Leader and her team can address: is there way to allay the fears and concerns of people we represent in this place?

Ms Webb - Potentially a lot of other amendments could have.

Ms RATTRAY - We did not get there with those, but we are still not through the bill, and so an opportunity is still possible. The community has valid concerns; they keep coming in and we cannot say, 'It will be fine, it will be okay.'. If we decide here, and I am prepared to do that, I want to make sure we have every stick of information possible on the public record so the people we represent can be absolutely assured they will have an opportunity to put their views forward and be heard.

Mrs HISCUTT - I have been assured the bill is jam-packed with opportunities for the public to have consultation. I will rattle off a couple of them. Subdivision 12 - Exhibitions and hearings - you have sections 60ZZB, 60ZZC, 60ZZD and 60ZZE. I can go through them if the member likes but they are there.

Ms Rattray - I would appreciate that, and this is one of the reasons I did not want to proceed last Thursday - this is important and we need to do it when we are all fresh.

Mrs HISCUTT - It starts at page 135 of the bill and goes through to page 142. I hope the member does not mind if I read it not word for word but give you a summary of the breakdown? Is that okay?

The assessment criteria, the project impact statement and the panel and regulator's initial response are publicly advertised and exhibited for 28 days. This provides for greater transparency and scrutiny as the public will be able to not only review and comment on the proponent's response to the assessment criteria, but also the panel and regulator's initial considerations and response. Once the public exhibition period has concluded, the panel then holds hearings in the same manner that the commission does in regard to a planning scheme amendment or a section 43A development application and planning scheme amendment.

Following the hearings, the panel and the regulators finalise their advice and the decision as to whether to issue a major project permit or not and the conditions to be attached to the permit is made. That happens after the consultation period.

The fact sheet that comes with the bill states -

> The broader Tasmanian community has the opportunity to make submissions in response to the exhibition of the draft assessment criteria and the major project proposal itself (including the major impact statement).
>
> This may also include attendance at the public hearings held by the Panel.
>
> The Bill also provides for consultation with land owners, lessees or occupiers of adjoining land at each stage of the process. That is a summary of these 10 pages in the bill. As you can see, there are plenty of opportunities for community involvement -

Ms RATTRAY - I thank the Leader; that certainly articulates the opportunity to have input.

Going to what the amendment will do - it is about the appeal process and was useful. I will continue to listen to other members' contributions on this. I am not set on where I am going on this particular amendment yet. Greg Alomes, being a former chair of the TPC was compelling in his email to members last night, and with his local background he understands aspects of the planning processing system. I will continue to listen to the discussion, but appreciate what the Leader has put on the public record in that abridged version.

Ms WEBB - I have a few things to mention here. Beginning with a few clearing matters, the requirement or the need for an appeal process to be available when an administrative decision is made is a fundamental one. It is accepted and regarded as part of the rule of law. It is regarded as part of delivering natural justice and good governance.

This is a fundamental understanding, quite universal really, of how such processes with administrative decisions made should work. The call for such an appeal mechanism to be available in this bill is not related necessarily to other deficiencies people identified in the bill, but other deficiencies people were concerned about heightened concern about the lack of an available merit review.

In working our way through this bill and, in all the amendments we have discussed, we have not addressed a whole raft of those other concerns - they remain. That does not take away from, minimise or reduce the alarm and the real cry-out from the community for this appropriate and universally accepted rule of law process to be in place. The member quoting from EDO submissions is quite disingenuous to bring into this.

It seems to be, to some extent, holding the EDO's participation in the consultation processes made available in this bill against it. The fact it did provide earlier input, did acknowledge where input had been acted on or incorporated and applauded or congratulated certain elements being in the bill, absolutely in no way has any bearing on the fact it has now raised this issue in relation to merit appeal.

I imagine groups have participated in and out of those consultations over time. What we have now is a situation, as others have pointed out, where we have been hearing overwhelmingly not just from the EDO but also from a range of groups and community

members on this matter. There is an overwhelming call for a merit appeal process to be a fundamental inclusion in this process.

We can think about this, and it is not about questioning the decisions of anyone. We actually know that good and fair process, the rule of law, natural justice, is not about 'Oh, my goodness, we cannot question the decisions of this body', it is about the fact any decision made by an administrative body should be able to be defended.

It should be able to be tested. Issues with it should be able to be raised and tested, defended and then determined. That is what a merit appeal process allows for. There is literally nobody at all, no entity, that should be able to make an administrative decision and not have to face the capacity for their decision to have issues raised, to be tested, defended and then to determined one way or another. What we have heard clearly is that this is a fundamental element that is missing.

I am going talk a little about some of the matters that have come up, and many of them have been linked into the email from Greg Alomes so I will also speak -

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

LEAVE OF ABSENCE

Member for Prosser

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

> That the honourable member for Prosser, Ms Howlett, be granted leave of absence from the service of the Council for the remainder of today's sitting and tomorrow's sitting.

Motion agreed to.

QUESTIONS

Screen Tasmania - *Wild Things*

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

[2.32 p.m.]

Mr President, this question follows one from the member for Windermere, and also from the question I asked yesterday in regard to Screen Tasmania and funding. At that time, I was advised by the Leader that the third part of my question would be answered at a later time and a later time has arrived.

(3) The *Wild Things* funding website indicates it has partnered with the US-funded The Sunrise Project and Cool Australia to produce a curriculum based on the film to be

delivered to Australian classrooms to inspire a new generation of climate action leaders and to encourage activism amongst our students. Does the Government support the use of such material in Tasmanian schools?

ANSWER

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

(3) Climate is addressed as part of the Australian Science curriculum, with learners focusing on established and agreed science to explore the impact and the influence it has on other systems. Climate change is one global issue that may be chosen for investigation within the Humanities and Social Sciences - HASS - curriculum. Where points of view differ about global issues such as climate change, learners are encouraged to explore different perspectives and reasons to make informed decisions.

Tasmanian government schools use a range of resources to engage students. Decisions about which resources they use to support the curriculum are made by schools, based on their individual context and needs.

Ms Rattray - Is that a yes or a no?

Government Business Enterprises - Membership

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

[2.34 p.m.]

Mr President, further to the answers provided by the Leader on 15 September 2020, regarding board membership of government business enterprises, state-owned corporations and other government boards, will the Leader please advise -

(1) The Women on Boards database was cited as containing the data for 101 government boards and committees excluding GBEs and SOCs. Is this data available and accessible to the public?

(2) Is the Women on Boards database the appropriate repository to contain information on 101 government boards and committees? What is the rationale for this?

(3) Regarding the selection process for board appointments, the guidelines for Tasmanian government businesses board appointments were cited as the approach taken to appointing candidates. Of the six principles these guidelines listed, with diversity being one of them, can the Leader expand on how these principles are applied in practice to the appointment process? Are each of these principles given equal weight when considering a candidate's suitability?

(4) The aforementioned board appointments guidelines refer to executive search agencies being used as a way to vet and seek out candidates. Can the Leader advise

who the executive search agencies are, and how much they are costing the taxpayer for these services?

(5) Additionally, can the Leader provide more information on the function of executive search agencies and what their search methodology is? In other words, how are the executive search agencies applying the board appointment guidelines to the search process, and what value do they add to finding and vetting potential board candidates?

(6) Are the executive search agencies Tasmanian enterprises? If not, why is the Government not purchasing these services from a Tasmanian firm?

ANSWER

Mr President, I thank the member for McIntyre for her questions.

(1) The Tasmanian Government's Women on Boards database is not accessible to the public. The database is the mechanism to correlate relevant government board and community information provided by agencies on a quarterly basis to monitor the Government's efforts to increase equity across its boards and committees, and progress against the Government's target of 50 per cent female representation on government boards and committees. Progress is reported to Cabinet quarterly, and an annual report is published and publicly available.

(2) The Department of Premier and Cabinet does not maintain a database of government boards and committees. As such, the Department of Communities Tasmania is required to undertake quarterly data collection to report on efforts to increase equity across government boards and committees, and progress against the Government's target of 50 per cent female representation on government boards and committees. Agencies are the primary custodians for information on the structure, composition and operation of government boards and committees that they administer. The Department of Communities Tasmania is responsible for correlating relevant information to meet its reporting obligations.

(3) Experienced director selection advisory panels are appointed for each board vacancy, and are required to take into account a range of criteria to ensure that board directors have a range of skills, experience, qualifications, expertise and vision appropriate to the business. The specific process is designed to provide flexibility, so it can vary depending on the needs of the particular businesses.

(4) Five executive search agencies were appointed to the Government's list of preferred suppliers following a tender process in 2019. The current approved suppliers are: Chapman Executive, Cordiner King, Alan Wilson Consulting, Watermark Search International, Searchlight Group. Costs range from approximately $13 000 to $25 000 on average, depending on the size of the business and the nature of the appointment.

(5) Executive search agencies have the experience to undertake the work involved in the director selection process, to ensure that high-quality candidates are identified. This includes broad-ranging search capabilities and networks of potential

candidates, as well as extensive recruitment knowledge and experience, including the capacity to undertake appropriate due diligence. Once again, the specific process undertaken would depend on the relevant board's requirements and the agency chosen.

(6) The list of preferred executive search agencies includes a combination of Tasmanian and interstate agencies, following a tender process that incorporated the Buy Local Policy.

Executive Search Agencies

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

[2.40 p.m.]

As a follow-up question: of the six search agencies, how many are Tasmanian and how many are from the mainland? Not just a combination of the two, please.

Mrs Hiscutt - I do not have that information here.

Ms ARMITAGE - Could you find that out for me because there might be five from the mainland and one from Tasmania?

Mrs Hiscutt - If the member would like to clarify the question by email, that would be appreciated, thank you.

Ms ARMITAGE - I will have it this afternoon.

Huon Electorate - Full-Time Equivalent Palliative Care Staff

Dr SEIDEL to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.40 p.m.]

Honourable Leader, the Government's Tasmanian Palliative Care Community Charter outlines a commitment to choice and control over the place of care and the place of death. A strong community-based health work force is absolutely essential to enable that choice.

Can the Government please provide an update on how many full-time equivalent - FTE - community palliative nurse practitioners, registered nurses and enrolled nurses are employed by the Tasmanian Health Service in my electorate of Huon?

ANSWER

Mr President, I thank the member for Huon for his first question.

Palliative care services are provided to the Huon electorate through a specialist outreach service based in Hobart. This service provides both direct care and support to patients in the Huon electorate, as well as specialist service and support to the locally based community nursing teams that are integral to supporting these patients. The palliative care and community-based teams work with the local Huon-based general practitioners as well as Hobart-based palliative care medical specialists to provide an integrated service.

The palliative care nursing is a team of 12 FTE registered nurses, which includes specialist roles within the team. The local community nursing teams are based at Kingborough, Huonville and Bruny Island, and consist of 14.63 FTE registered nurses and 1.03 FTE enrolled nurse.

Tasmanian Health Service - Procurement Policy

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

[2.42 p.m.]

Regarding products and services utilised by the Tasmanian Health Service, would the Leader please advise -

(1) How common is it for business services, such as conducting surveys used by the Tasmanian Health Service, to be purchased from non-Tasmanian companies?

(2) Does the THS have any internal policies to purchase goods and services that are Tasmanian? If so, can the Leader please expand on these?

(3) Does the Government plan to apply the Premier's Economic and Social Recovery Advisory Council's - PESRAC's - recommendation No. 18 - namely, that the state Government should require agencies to purchase from Tasmanian business on an 'if not, why not' basis for at least the next two years, to the THS?

(4) With regard to question (3), if not, why not?

I should point out I have just received the survey from the Launceston General Hospital with regard to my admittance.

ANSWER

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

(1) In relation to the procurement of services, THS complies with the requirements of the Treasurer's Instructions and whole-of-government procurement policies and procedures, including:

- For procurements under $100 000, where agencies directly select a supplier, they should approach Tasmanian businesses first where there is local capacity, capability and value for money in local offerings.

- For all procurements over $100 000, included in the evaluation criteria is a local Economic and Social Benefits Test, which carries a 25 per cent weighting.

- For procurements under $250 000 where quotations are sought, agencies are required to invite two Tasmanian businesses to quote where there is local capacity and capability.

- For all procurements over $250 000, agencies must prepare a formal, pre-procurement local impact assessment to ensure Tasmanian suppliers are given every opportunity to participate in a procurement and be successful.

- For all procurements over $250 000, all procurement opportunities must be disaggregated unless an exemption has been granted where the benefits of aggregation clearly outweigh any potential negative impact on local suppliers or the local economy.

The Department of Health, including the THS, has an internal procurement unit and review mechanism, through a procurement review committee to ensure compliance with the Treasurer's Instructions and procurement policies and procedures.

(2) The department does not have separate internal policies in respect of the purchase of goods and services and complies with all requirements of the Treasurer's Instructions and whole-of-government procurement policies and procedures as detailed under question (1).

(3) The Premier announced on 18 August 2020 that the Government would implement all recommendations from the PESRAC interim report. The Government has taken action to strengthen 'buy local' policies and has raised the low-value procurement threshold from $50 000 to $100 000, meaning more opportunities for Tasmanian businesses.

An economic and social benefits test and associated statement have also replaced the local benefits test and local SME industry impact statement to allow a greater focus on Tasmanian social and economic factors when government agencies evaluate the competitive procurements.

Tasmanian Health Service - Procurement Policy

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

To follow-up to that answer - and I will put it in writing - why is the Launceston General Hospital using a Queensland firm to send out surveys? I think it is worth a question.

ANSWER

Mr President, I thank the member for Launceston for her very direct question and good point.

Built Heritage Tourism in Tasmania - Report

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

My questions relate to the Built Heritage Tourism in Tasmania report tabled in 2016; the committee was chaired very well by the member for Hobart.

In responding to the report, the Government was complimentary of it and said that all recommendations would be considered. The report made 55 findings and 26 recommendations. Will the Leader please advise -

(1) What particular recommendations, if any, have been implemented? I think we were told that some certainly would be.

(2) In what areas have those recommendations, if any, been implemented?

(3) What gains or changes have been made regarding built heritage tourism in the state from the recommendations implemented?

(4) If applicable, are any remaining recommendations still being considered?

There is quite a lot of interest still in this matter.

ANSWER

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

(1) to (4)

The Tasmanian Government provided its official response to the inquiry in 2017. Good progress has continued to be made against a number of these recommendations and work is continuing in other areas.

The minister is pleased to provide this update in response to the four questions asked and to provide feedback on some of the most noteworthy highlights.

The Tasmanian Government recognises the importance that historic cultural heritage will play in rebuilding the visitor economy as we recover from COVID-19. Sensible steps are being taken to foster interstate visitation and prepare to open up our borders when it is safe to do so. The T30 Recovery Plan is an important part of this effort.

Three recent initiatives that warrant special mention are the nearly $7 million for new visitor facilities for the Cascades Female Factory and Royal Tasmanian Botanical Gardens, and urgent and essential capital works at the National Trust-owned Clarendon House.

The redevelopment of the Health building in Davey Street, Hobart into a hotel reflects the commitment by this Government to be open to the adaptive reuse of Crown assets. At the same time, the Public Buildings Maintenance Fund is helping to maintain, enhance and develop public assets across the state.

The Heritage Places Renewal Loan Scheme was launched in 2018. It has recently been incorporated in the new $60 million Business Growth Loan Scheme. The guidelines provide broader access to this funding and now enable a wider range of heritage property owners to develop, refurbish or adapt their heritage-based businesses.

We are also continuing to fund the National Trust to deliver a tax-deductible gift program enabling locals to attract donations to conserve and adapt heritage buildings across Tasmania.

The Heritage Council is continuing to ensure that places of greatest heritage significance are recognised, protected and developed in accordance with the principles in the Burra Charter. Last year, it gave its consent to more than $250 million in approvals, helping to grow the economy. The Heritage Council has also developed a five-year plan to evolve the Tasmanian Heritage Register.

It is pleasing to note that in the area of vocational education and training Heritage Tasmania is continuing to support the Centre for Heritage. The current focus is on assisting with the development of curriculum components to upskill tradespeople working with heritage. Tasmania has a strong reputation for being innovative in the heritage space. The Heritage Council has celebrated this innovation for several years by sponsoring the Tasmanian Architecture Award. In 2020 the awards were streamed live, allowing this innovation to be shared across the world, despite the restrictions imposed by COVID-19.

In the tourism space, solid gains have been made in establishing new touring routes, including the Great Eastern Drive and the Western Wilds. Government investment has helped to facilitate the restoration of features like the iconic Kelvedon Boatshed south of Swansea.

The Port Arthur Historic Site Management Authority continues to fulfil an important role, delivering internationally regarded experiences to visitors at the Cascades Female Factory, Coal Mines Historic Site and Port Arthur Historic Site.

It is not envisaged it should assume responsibility for any additional sites at this time.

The uniqueness of each of our sites included in the World Heritage-listed Australian Convict Sites has also been demonstrated in a national video project that provides a compelling visual overview of each of these unique sites and highlights the Australian convict history.

This is just a sample of the many good things happening across Tasmania's heritage sector and tourism industry. While neither the final report nor its recommendations were adopted in full, the Government appreciates the work done to highlight the importance of built heritage tourism.

I am sure members are aware of many other important initiatives that are being pursued at a local or regional level in their own electorates.

Primary Care in the Community - Feasibility Study

Dr SEIDEL to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

[2.52 p.m.]

Primary care in the community is absolutely essential to take the pressure off our public hospitals. The Government awarded $240 000 of taxpayers' money to an external consultant for a feasibility study on urgent care centres. According to the Department of Health annual report in Tasmania, the study concluded before Christmas 2018 -

Does the Government, after paying almost $250 000 for a feasibility study, ever intend to release the report to the public and, if so, when?

ANSWER

Mr President, I thank the member for Huon for his second question.

The Government acknowledges the vital role that general practitioners and primary care services play in our health system, with the Tasmanian Health Service always considering and exploring opportunities to increase and improve after-hours and community-based services provided outside hospitals and acute care settings.

This focus resulted in our commitment to conduct a study into the feasibility of urgent care centres in Tasmania, similar to those in operation in other jurisdictions. The feasibility study report has been completed, and the Department of Health will be engaging with key medical stakeholders and publicly releasing the report shortly.

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

In Committee

Resumed from above.

Proposed new clause A -
Section 61 amended (Appeals against planning decisions)

Ms WEBB - Madam Deputy Chair, in my final comment before the break, I said I would pick up on some of matters being discussed that were drawn from an email from Mr Greg Alomes to the minister, which has been quite central in this discussion. It gives us a useful framework to talk about the issues that have been raised. I will do the same as some other members have done.

Looking at the issues raised in that email, in the first instance Mr Alomes discusses the scope of the independent statutory functions between the TPC and RMPAT. The first page of his email lists a series of dot points about the commission's roles. I want to be careful to distinguish how those functions relate to the amendment and the merit review at the heart of it. I believe we have tabled this letter: is that correct? Given we have been already referring extensively to it and may continue to, it may be worthwhile to table that letter so it is part of the record and is able to be connected to the matters discussed. Would that be possible?

Madam DEPUTY CHAIR - I certainly will not give advice to the Leader, but I expect that would need to be permitted by the author of that letter.

Ms WEBB - I do not physically have it here in a plain form to do, could you potentially do it? Anyway, I am going to refer to matters from that letter. We have a list of the commission's roles. Except for the third dot point on that list, which reads, 'considering draft planning scheme amendments, and combined permits', all the other points, which are functions of the commission are legislative in character. We know, as I already mentioned, that the Administrative Review Council has advised no merits review would lie from legislative decisions made under these functions.

The planning scheme amendments, the management plan, planning directives and the like on this list are legislative because they apply rules to broad areas of land, or types of use or development. They are distinct from decisions on particular developments, assessment decisions. The exception in the list, the third dot point, is the TPC function considering draft planning scheme amendments and combined permits, because the LUPA act allows for a developer to make a concurrent or combined planning scheme amendment and permit application - that is in LUPAA at Part 3B, Division 4 - Combined permit and amendment process.

In such a process the commission is performing both the legislative function and a review function. However, it is not performing a primary decision-maker function on the permit. This process applies under Part 3B, Division 4 of the act. I will not go into the detail because it takes us too far from the central matter here. The key point is that in none of the dot points in

that list is the TPC acting as a primary decision-maker, which would warrant it having a merits review brought against it. Its decisions there are legislative and review in nature.

So far, no issue: the impact of the functions listed there are not impacted by the inclusion of a merits review here. The letter then sets out the commission's main responsibilities in a list of acts, pieces of legislation. With the exception of the second dot point on the list, which is the State Policies and Projects Act 1993, the role of the commission set out in those acts is legislative. Looking at the State Policies and Projects Act, the role of the commission in that act is an exception to the others in that it is not legislative, but nor is it the primary decision-maker. In that one, the role under the State Policies and Projects Act, the commission assesses projects of state significance. It conducts the hearing and makes a recommendation to the premier as to whether the project should be approved and on what conditions. The premier must make a decision on whether the project should proceed. That decision is given effect by the premier making a recommendation to the Governor. If the Governor accepts the recommendation, the Governor makes an order. The difference here is that the Governor's order does not take effect until both Houses of parliament approve that order by resolution. The minister's decision is effectively reviewed by both the Governor and the parliament.

To be clear, the commission's role in that process is therefore not the primary decision-maker in relation to projects of state significance and therefore would not warrant a merits review. So far, the inclusion of merits review here in this process does not jeopardise or have impact on decisions or action or functions of the TPC in any of those set out so far.

The projects of state significance process itself we could understand not to be without a merit review-like process entirely because that is dealt with by the role of both the Governor and the parliament. Importantly, I am sure that at the time the projects of state significance process was developed and legislated, the inclusion of a function of review in relation to the primary decision by the premier was highlighted and purposefully included. I was not here at the time, but I suspect that was part of those discussions.

The next matter dealt with that I will pick up on is around the roles of RMPAT and its responsibilities under various acts in relation to planning review functions, and the assertion in the letter from Mr Alomes that RMPAT does not engage in assessments of strategic or policy-based matters. It is limited to review of development assessments. I will pick up on that. Although referenced here in the letter, the PORS process can be put aside. It has never been used. It is superseded. We are replacing it with fresh consideration with this major projects' process -

I am not going into that area. We see here an emphasis or reiteration of RMPAT being precisely accustomed to and expert in dealing with the merit review of decisions taken by a primary decision-maker in a planning assessment decision. In the combined planning scheme amendment and development application process, the commission is performing both a legislative function and a review function. It is not a primary decision-maker on the permit. That is the council that is involved in that process. A RMPAT review is available on those processes.

The major projects assessment should be distinguished from combined permit and amendment processes because a major project is defined as 'use or development'. It may result in a planning scheme amendment, but the process itself outlined in the major projects bill is, in effect, simply a development application. The development assessment panel - DAP - is not

setting the rules in the major projects process, it is applying them. It is assessing whether the use and development proposed is a reasonable and appropriate use for development of the land. DAP is a primary decision-maker, and primary decision-makers warrant merits appeal and review.

On a daily basis, the tribunal assesses developments against the rules. That is its function. That is its expertise. It is the right body to be doing that. The suggestion we have heard - and we heard it in briefings and we read it in this email - is that the inclusion of a merits review by the tribunal would somehow undermine the status of the TPC as the pre-eminent planning body in the state, and that it is problematic to have an independent statutory authority having its decisions reviewed by another independent body because that would somehow then cast even further doubt over all the independent processes the commission carries out. That is fairly hyperbolic and not entirely accurate.

Let us look at some of those assertions. I have already outlined here that most of the functions and roles of the TPC are not functions and roles that would be subject to merits appeal and review because they are legislative in character, or they are review in character in and of themselves. They do not constitute primary decision-making roles; therefore, they would not be undermined by this process because they would not be similar to what is being asked for here.

When we talk about having the pre-eminent planning body of the state somehow undermined by this, I think we can understand that all administrative decisions according to principles of good governance, according to principles of justice and according to the rule of law, should be available for a merits appeal and review. That is all that is being asked for here. There is nothing undermining about appropriate process being applied.

Next, I will pick up on the suggestion that has been made that applying a process of merits review here, or making available a process of merits review, would somehow create a precedent and call in to question all the commission's work. It absolutely would not. That work lies outside primary decision-making functions.

The DAP in this process is who would be named as a respondent in an appeal process. It would be up to the DAP how it would then participates or not in that process, the merits review process. The TPC more broadly would not participate.

In the review, the tribunal hears from parties who wish to participate in the hearing. If the DAP decided to participate, it would then come and participate in the hearing. The purpose of an administrative review is to ensure that the correct and preferable decision - that is the word for it - the correct and preferable decision is made.

The Administrative Review Council recommends that any decision-maker who is a primary decision-maker should be subject to that. One expert panel justifying their decision to another expert panel is a problematic way to frame this. I think the member for Hobart used quite a useful comparison when he spoke about the fact that in many instances you would see the determination of one judge being assessed and reviewed by other judges in a court process. This is not an unusual thing or an unacceptable thing for a primary decision to be reviewed in a secondary sense by people who are of a similar expertise.

The time taken around this process has been raised in detail, and I think it is worth just breaking that down a little bit. We have had an assertion that including a merits review, if it were to be then taken up and applied to a particular project that was coming through this process, would potentially double the time frames of the process in total.

That is a problematic assertion. It is somewhat misleading, I think. There is almost no way you could double the time frames of this process through a merits review, the reason being the tribunal if it is undertaking that review, does not repeat the entire assessment process. That is not what a review is.

All the steps leading up to and including the public notice in this process that is outlined are done and not revisited. That is all the steps and when I say that, I mean I am using the Government's planning reform website, which lists 18 steps in this assessment process for major projects. Twelve of the steps are completed before public notice is given. Those steps include the declaration of the major project, the appointment of the panel, the panel scoping for the project impact statement, the proponent preparing project impact statements, the panel and the regulators considering the adequacy of the project impact statement, and then we get to public notice.

At that point, there are the three stages - that is in stage 3 and we have already gone past stage 1, which may have been about 56 days. We have gone past stage 2, which might have been about 98 days, according to the Government's website, and we are in stage 3, which has pegged about 195 days as potentially the time it would take. We are 105 days into that 195 days at this point of public notice so we have 90 days left to go in this process.

Everything that happened through to then does not get repeated in a review. The tribunal, further, has a statutory time frame to then apply here. It must make its determination of the appeal within 90 days. The issues that come to the tribunal for review on appeal are defined by the parties, and they are constrained to issues truly in dispute. So, again, to reiterate, it does not replicate or duplicate the entire assessment process of the primary decision-maker for DAP. It does not do that. That is mistaking the role of a merits review.

What the tribunal would do is hold hearings. It would hear from any party to the appeal, and this would include the proponent. It may include a member of the public affected by this decision, or a participating regulator. It may include the DAP, but it does not have to if the DAP chooses not to. We must remember that the proponent and the regulators are also entitled to appeal under this amendment. The tribunal's decision is required, as I said, to be made within 90 days.

That time frame can be extended with consent, but there must be a reason to extend it - and it does not normally get extended out by more than a month or two. It could not possibly double the entire time frame that this 18-stage process has taken, especially given that the vast majority of those steps in the process happen well before the point at which merits review can become applicable and of relevance.

To the extent that there could be said to be a replication of time, it is only from the end of the notice period to the date of the DAP's decision that could be seen to be replicable. That is a period of 90 days. We have 90 days for the tribunal to make its determination.

I think there is some confusion or some conflation of the hearing processes that we are referring to when we are having this discussion, because there are hearings held as part of the DAP process during the assessment, and there are hearings held as part of a merits review by the tribunal. These are not the same sorts of hearings. Some of the people involved may be the same, some of the particular matters that are covered in those hearings may be the same, but the functions of the hearings are quite different.

The function of the hearings during the assessment process is for the DAP to, having invited input from the public and external parties - in its broad consideration of the project and the proposal, in its broad consideration towards making a decision or an assessment - hold hearings to further elucidate, understand and draw down on the input provided from the public. That is part of an assessment process; it is part of the gathering of information and consideration of information. That is the hearings and the assessment process.

The hearings in a review process, in an appeal process, with the tribunal are quite different.

The scope of the tribunal's hearings depends entirely on the issues that are taken by the parties. It does not necessitate all of the evidence and considerations presented to the panel, or maybe dealt with in those assessment hearings, being revisited. In fact, the only issues that are heard and determined in the tribunal hearing are those put before the tribunal by the parties, and that can be as narrow as one issue; it can be as narrow as the wording in one condition.

In the tribunal, parties are required to prepare statements of agreed facts; experts are required to conference to limit the scope of issues. It is only the issues in dispute that are heard and determined in the hearings process by tribunals.

A comment in the letter here, in this section, also refers to the potential increase in time that has been alleged could occur. The proponents would anticipate the obvious outcome, and this would push them to believe that they should take their project through another process that did not have such a merits appeal attached to it, because it would be less burdensome and less time.

Now, if we think that through, would including a merits appeal here push proponents to take their projects to another process? Well, all our normal and regular planning processes have merits appeal available, so presumably it is not going to push them in that direction, because that is the same thing they would apparently be running from here.

The only other process it might push them to would be a projects of state significance process. That would be the only other available option to them that did not have, in this same way, a merits review and appeal available.

But as I talked about earlier, the projects of state significance process does have something that gestures towards a review, in that the decision taken there by the primary decision-maker - the premier in that instance, on advice from the TPC, but by the premier - that process has to come to parliament. It has to go via the Governor to parliament, and it has to pass by resolution through both Houses.

If we feel that the inclusion of a merits review here would look so unappetising to proponents, and they will potentially fear the time impost or the cost impost so much they

would feel driven to use a different process, their only option is POSS. That has its own challenges, and its own ways that it allows for review and for greater public accountability. If that is the case, that is the case. I do not think we lose anything in that.

I think there are two options there: this process with a robust merits appeal review available, or the POSS process - if that is an appropriate process for them to use too - that has the parliamentary avenue available.

We have talked about the relationship between the commission and the DAP, and whether those two things are one and the same. In the letter it refers to the commission delegating its functions. The reality here is this process, this major projects process, sets up a decision-maker called the DAP. It is empowered with some of the functions and powers of the commission, but not all of them. In fact, the powers of the TPC are not delegated to the DAP, some of the functions are delegated to the DAP. It is performing those functions in this process as a primary decision-maker, and a primary decision-maker only. As such, it warrants merits appeal.

In the closing parts of this email from Mr Alomes, he talks about attempts to mollify and assuage concerns of the community as being a motivator behind the potential inclusion in this amendment of a merits review process. That is unfortunate. I think absolutely first and foremost, yes, we recognise that this has been brought to our attention again and again by members of the community who hold concerns. That might be encouragement for including it, but it is not the motivation for including it.

The motivation and the unassailable reason for including it here is that it is the right thing to do. It is the appropriate thing to do. It is the universally recognised and accepted good governance rule-of-law process to apply to an administrative decision that is made by a primary decision-maker.

That is the reason we contemplate it today. That is the basis of the argument for why it should be there. That basis and that rationale have not been dispelled in anything the Government has presented in the way of argument.

The final line that says that this has the potential to fundamentally undermine the foundations of the longstanding tried and tested planning system is exceptional, really, in how topsy-turvy it is. In fact, the absence of access to a merits review in this process is fundamentally against the universally accepted tried and tested and essential element to any administrative decision - and that is having the merits review there. That is the risk. That is the thing that fundamentally changes the way we usually accept things should be done.

I leave it with members to consider some of those matters further, in light of the fact that yes, concern has been raised, but that is not the reason to do it. The reason to do it is it is the appropriate and accepted way we deal with these things.

Mrs HISCUTT - Madam Deputy Chair, I seek leave -

To table a document and have it incorporated into *Hansard.*

Leave granted; see Appendix 1 for incorporated document (page 97).

Mrs HISCUTT - Madam Deputy Chair, there are just a few inaccuracies in the member for Nelson's contribution; we tried to keep up with them, but we will address what we can as far as we could get.

In talking about Mr Alomes' email, the member for Nelson pointed to the fact these are all legislative instruments the commission's role includes. I point out the fact two of them are not legislative. The third dot point is considering draft planning scheme amendments and combined permits. The fifth dot point is assessing projects of regional and state significance so it is not legislative.

The commission's main responsibility is to set out the five acts. The member for Nelson mentioned that LUPAA had a part in the PORS assessment - an incorrect process of disallowance of projects of state significance. These orders are not subject to disallowance of parliament unless the government of the day does not accept the decision of the TPC and seeks to amend it.

If the order made by the Governor is the same as the decision of the TPC, it is not tabled in parliament for possible disallowance. This is in section 26(7), (8) and (9) of the State Policies and Projects Act -

> Where the Minister does not recommend to the Governor the making of an order in accordance with a report of the Commission, the Minister may recommend to the Governor the making of an order enabling the project of State significance to proceed on conditions, and specifying-
>
> (a) those conditions; and
>
> (b) the Act pursuant to which, and the permit, licence or other approval in which, each condition, would normally be imposed: and
>
> (c) the agency responsible for the enforcement of each condition.
>
> (8) The Governor may make an order in accordance with the recommendation made under subsection (7)
>
> (9) An order under subsection (8) is of no effect until it has been approved by resolution of each House of Parliament.

The other option is the section 43A process which has no appeals. One other thing we picked up on in Resource Management and Planning Appeal Tribunal Act 1993, section 16 - the member for Nelson talked about how the appeal works and that RMPAT can review the entire process. Section 16(1)(e) clearly says the appeal tribunal is entitled to hear matters afresh so, it can start the process right from the beginning again if it wishes, so that is there in LUPAA.

Ms Webb - To clarify, I did not say they could not, I said it would not be the case every time. It is not essential or inevitable they have to revisit the whole thing.

Mrs HISCUTT - The member for Nelson is surmising they will not, but they certainly have the legislative backing to say they will.

Ms Webb - I was not surmising they would not.

Mrs HISCUTT - Madam Deputy Chair, the member for Hobart was talking about members of the community and all that sort of stuff, and we do have a response to that.

Seeing as the question is being asked would this be appropriate to put that in?

Madam DEPUTY CHAIR - The Leader has the opportunity to put whatever she wishes.

Mrs HISCUTT - To answer the member for Hobart, we have heard the views of some members of the community, especially members of the Planning Matters Alliance Tasmania and Tasmanian Conservation Trust.

However, on the other hand we all attended a briefing by Matt Pollock from the Master Builders Association, Tasmania, which represents 600 organisations employing around 8 000 members. That briefing clearly outlined the association's support for the bill and opposition to the potential inclusion of the merit appeal.

The bill is also supported by many other groups including the Property Council, Housing Industry Association, Tourism Industry Council, Tasmanian Farmers and Graziers Association, LGAT, Hydro, TasNetworks, TasWater, Brand Tasmania, Office of the Coordinator-General, Australia ICOMOS - the International Council of Monuments and Sites - Planning Institute Australia, Australian Institute of Architects, Tasmanian Minerals, Manufacturing and Energy Council, National Wind Farm Commission, and Cement Concrete and Aggregates of Australia.

Also, and possibly the most important, the Department of State Growth - the biggest and most frequent proponent of major developments in the state - has indicated its support for the major project assessment process, as we see here today. That is support for the process that is articulated in the bill, as I have just said. Are we to discount the views of these organisations, each of which, in its own way, represents and is accountable to the community?

I am not - let me make it clear - trying to diminish the rights of the PMAT and the TCT to have their opinion. I am just reminding members that theirs is not the only opinion out there. The view of the Government is that the inclusion of merit appeals is not appropriate for the major projects bill and that the amendment should not be supported.

Ms FORREST - I have been listening intently to the debate around this proposed new section. I will make a few overarching comments first about why we seem to be here and discussing this. It was first brought to my attention only fairly recently. I mean, I know this has been a project of five years or thereabouts, and, of course, when things change during the consultation process, that is normal, that is okay.

Once it was brought to my attention, the issue itself almost seemed to take on a life of its own. I think the minister has done a really poor job of getting out there and explaining it; I really do. That is a direct criticism of Mr Jaensch, make no mistake about that, because everyone I have spoken to, and particularly people around Hobart, because I have been here a little bit lately, are really frustrated. They seem to be overwhelmingly concerned about this issue.

In my view, a lot of that is based on misinformation so their fears and their concerns about this lack of an appeal process in the bill is based on a lot of misinformation. So, again, the minister should have been on the front foot and should have been out there much more visibly than I saw him when you see bits and pieces like that. The thing is that it had taken off to such an extent by this stage -

Mrs Hiscutt - Just for Hansard, so that we know what you are talking about, I have in my hand *The Advocate,* for Saturday, 23 May; on page 6, it says, 'Tasmania's controversial Major Projects legislation explained'.

Ms FORREST - That was this Saturday?

Mrs Hiscutt - May.

Ms FORREST - May. Right. Sorry.

Mrs Hiscutt - It was 23 May 2020, page 6, where the minister has tried to help the public understand.

Ms FORREST - Yes. There was a big spread - I think an even bigger spread than that which was a Q&A but once this started taking on a life of its own beyond May - I do not think it was really - my inbox was not being filled up with emails in May, not about this.

Mrs Hiscutt - That is right.

Ms FORREST - Yes. It was much more recently. There needed to be a bit more clarity around the issues we are now talking about here. I think it is probably the least well understood aspect of this legislation and this process.

The other thing that drives all this is that there is a fundamental lack of trust in the Government and the influence of developers.

That is not just here, that is around the country, and we have seen - not in Tasmania that I am overly aware of but certainly, you only have to look at New South Wales to see some of the absolutely appalling deals that have gone on. From my perspective, this lack of trust has meant the minister had to be out there really on the front foot, talking about what this legislation was about, how it was intended to work, and why, if you are having an appeals process, where do you have it? And, if you do not have it in the part that is being proposed now, why not?

It is only just in the last little while we have actually got any commentary about that. The real concern is about the influence of big players, and we have seen many people concerned about things like the cable car, Cambria Green, the northern correctional facility - I knew it was not the prison - but even hotels and high-rise buildings around Hobart. I know there has been some concern in Launceston as well about that. Those sorts of projects have been thrown up there as this will get through, this will get through under this, this will get through under that, and people get really suspicious.

Rob and I have a place in town here where we stay when parliament is sitting. We are surrounded by what I call 'urban terrorists'. They would probably like me to mention that because they are very aware of development that goes on in the region. As the member for

Hobart well knows, Battery Point is a special place. We are actually not in Battery Point, we are in Sullivans Cove. Anyway, we are very close. You walk around Battery Point and it is a beautiful place, all the old buildings that have been maintained; we are really lucky.

Sorry, I will not get off the point any further, Madam Deputy Chair. The point is that there has been a lack of trust because people have seen attempts to build high-rise buildings in these areas, and this has been of great concern.

I would like the Leader to address a question the Deputy Chair herself asked about at the start of 60ZZD about the representations, the community engagement and input into that process. It would be helpful to have even a cheat sheet list of the processes there that could be incorporated into *Hansard* to give some clarity. Your first response to the second reading of this new clause was very comprehensive, and it would be helpful for people to understand that if this is not supported. If it is supported, the game changes.

I thought at the outset when I started hearing these concerns about the lack of an appeal process, when is the appropriate time to appeal? I look at the letter from Mr Alomes, and I have great respect for Mr Alomes - he has always been very helpful in terms of understanding planning and the processes around planning for someone who has never been around a council table or engaged in it. Those members who have sat around council tables have an advantage over me in that understanding of that process.

I thought some little while ago: Why does not this assessment process or, more importantly perhaps, the referral of the minister as a major project, why is that not a disallowable process? When the minister has made a decision to put it into this independent process, to take the politics out of it, why was that not something that had to come through the parliament?

I spoke to a couple of former GMs from up my way about this, saying what could possibly go wrong with that? They did not think there was anything that could particularly go wrong with that because you maintain the absolute independence of the Tasmanian Planning Commission, the concerns that Mr Alomes raised about the integrity of that process, the independence of that process, the absolute desire of not having experts re-prosecute the assessment of experts in the same field. I understand that, but I thought that if the real problem is the worry about political influence, people lining people's pockets to an advantage here and to have a non-independent assessment because it has been politicised, do it at the front end.

When the minister is making that decision about whether it should be progressed as a major project, you bring that to the parliament. The parliament then decides whether it should this be a major project or not. Then everyone in the community has their chance to say, 'We think this does not meet the criteria', 'We think it does', or 'We think it should be a project of state significance'. For a hotel in Launceston, for example, clearly a local government assessment process.

I did not progress that as an amendment because I started getting all these other emails about the merit appeal process and I began to think that I did not know which way to go here. I listened to what the Leader said. I listened to what the member for Nelson said around this. She is right: there is a lack of trust about the whole process here. But when I talk to people in

the street, it is more about the involvement of the minister and the government of the day having too much influence here. That is where I see the problem.

I do not know whether other members want to speak to the consideration of having a disallowable instrument. I have asked the Leader to consider - as she can respond as often as she likes to me - about why you would not do that. Why would you not require a referral to the Tasmanian Planning Commission for the work it will do from the minister to come via the parliament for approval there - cut it off at the chase, a lot of that public dissent of that trust - then allow the commission, the independent experts, to go about their work free of any political interference? If there is any mood for that, we would probably have to recommit a clause, Madam Deputy Chair. I am not sure whether it is a new clause.

After listening to this debate, I do not believe I can support the inclusion of a merit-based appeal because of the concerns Mr Alomes and others have raised, and the Leader in her contribution.

I do think there is real lack of public trust around these matters of planning. That is where my thought processes are.

Mrs HISCUTT - Basically, I think that was discussed during the briefing stage. It comes to parliament for disallowance because there is a land acquisition process part of that, and there is not in this, so it is not needed. It is not required because there is no land acquisition process in here. That was the reason for having it in the clause process.

Ms Forrest - But it does not mean you cannot have it in, to refer a project as a major project, though. You can still have a separate -

Mrs HISCUTT - My advisers tell me it is not required for this bill, because there is nothing - you are not going to take anything off anybody. There is no land acquisition process.

Ms Forrest - No, but it is whether it should be assessed by the TPC as a major project, that is the question - not whether you are going to take land off people.

Mrs HISCUTT - One of the other questions, too, was about the cheat sheet. I have three pages here. The first page talks about the eligibility stage; the second page talks about the preliminary assessment stage; and the third page talks about the final assessment stage. I seek leave to have these cheat sheets tabled and incorporated into *Hansard*.

Leave granted; see Appendix 2 for incorporated document (page 100).

Madam DEPUTY CHAIR - Leader, the cheat sheets you referred to which have just been incorporated into *Hansard*, normally we would just table them. The dialogue around them would be sufficient for *Hansard*. That is just for the honourable Leader's information.

Mrs HISCUTT - With regard to POSS and MIDAA, which have a disallowable declaration, to put it in here would be out of sync because, with the other two, it gets to the point where the only hold-up is to acquire land.

With the major projects bill, you do not have that - therefore it would be out of sync with the other ones, because the only reason that is holding up projects under POSS and MIDA is land acquisition. That is why it comes as a disallowable instrument, if it is so decided.

Ms LOVELL - Madam Chair, I want to make a brief contribution. I already indicated in my second reading contribution that I would not be moving an amendment along these lines that Labor did move in the lower Chamber, and there are reasons for that.

I want to support the comments by the member for Murchison about how disappointing this process has been, and the difficult position it has left us all in.

We have the member for Nelson who is trying to address valid concerns by members of the community, which we have all heard - and they are all valid. It comes down to a lack of trust and a perception that there is not an opportunity for community to have its voice through this process. We know how important that is to Tasmanians. We know Tasmanians take their environment and planning processes very seriously. On the other hand, we have arguments from the Leader, from the Government and from Mr Alomes about why an amendment such as this may jeopardise the operation of this bill.

At the end of the day, we do not want to jeopardise this bill, because we support this bill - but we have some concerns around aspects of it.

It is disappointing that it has left us in this very difficult position. I think all of us are grappling with this, and it is not an easy decision to make. It does not mean that this could not have been addressed in another way - and the member for Murchison has made some suggestions about how that could have happened. There are a number of ways that could have happened and this community concern could have been addressed.

We are in a position now where we are not able to support this amendment, because we do not want to jeopardise the bill. We do not want to undermine the TPC. We do have faith in their independence, and we want this bill to succeed, but it is disappointing, and I want to put on record how disappointing it is that this was not addressed.

We have had this bill out for consultation for some time, but that has happened at a time where, as other members have indicated, there was a lot going on. People were not in the right space to be thinking about major projects legislation when they are dealing with a pandemic. The process has left a lot to be desired.

The fact that this has not been resolved by the Government is extremely disappointing. I hope the Government takes that on notice. It does not mean that it cannot go back and fix it, but at this stage we are not able to support this amendment because we do not want to undermine the TPC, and we do not want to jeopardise the bill.

Mr VALENTINE - I want to pick up on something the Leader mentioned about projects of state significance having a disallowable instrument because of the land. When I read that particular act, under Part 3 - Integrated assessment of projects of State significance - section 16 says -

> (1) For the purposes of this Part, a project is eligible to be a project of State significance if it possesses at least 2 of the following attributes:

It then goes through a whole heap of attributes, none of which have anything to do with whether public land is involved, or the acquisition of public land.

Then you go down to section 18 and it says -

> (1) If the Minister considers that a project is a project of State significance, the Minister may recommend to the Governor the making of an order -

Then to (6) -

> For the purposes of subsection (5) , a House of Parliament is to be taken to have approved an order under subsection (2) -

It seems to me that it does not stipulate that it has to be only to do with the acquisition of land. I am a little confused by that. The Leader might find out where I am going wrong here, if that is something she wants to do.

Mrs HISCUTT - If you do get your permit, you get all the approvals under the act, and section 27, Effect of order approving project of State significance, at 27(1)(b), you get all the permits, licences or other approvals deemed to have been issued under the act specified in the order in relation to each condition. That act applies as if such a permit, licence or other approval has been issued on the conditions set out in the order in relation to the act. So that is where the land acquisition part is included.

Mr Valentine I think what I am just reading out is indeed about the declaration of a project of state significance in the first instance. It is not about the end of the process. It goes through a disallowable instrument in the first instance for it to be declared a project of state significance, I believe, but correct me if I am wrong. Why doesn't this?

Mrs HISCUTT - Yes, you are right but the order could include the land acquisition section. That is what we are trying to keep out of this because it is there.

Mr Valentine - For it to be declared, it has to go through -

Mrs HISCUTT - Section 27(1)(b) says it can be.

Ms RATTRAY - Madam Chair, I did - as you rightly indicated in your contribution - I did ask exactly the question about having a declaration of a major project come before the parliament as a disallowable instrument at an earlier time. Again, I wrote on my piece of paper at the time 'land acquisition could not be done'.

The more I think about what the member for Hobart and the member for Murchison said in their contributions, and given that a major project declaration by the minister has the effect that the approval process bypasses local councils, bypasses various other legislated approval processes, overrides the local planning rules and removes the right of appeal, it was suggested to me - and I do not disagree - that it must be scrutinised by both Chambers and receive their approval.

I am of a mind to try to progress that and see whether there is any support for that given that we do not want to see the bill fall over. We do not, but as representatives of our community, we also understand that not being able to have that community involvement, and also somewhere where they can come and have their say, will not be satisfactory to the community.

Madam CHAIR - In order to deal with it, we need to deal with this question before the Chair at the moment.

Ms RATTRAY - Yes. I am mindful that if this amendment is not supported, we could - and I would be guided by the Clerk - report progress and we can possibly recommit, but I do not want to ask the Office of Parliamentary Counsel to draw up an amendment that is not going to receive support. Again, that is time wasting.

Madam CHAIR - We do not really know that until you bring it forward.

Ms RATTRAY - We do not really know that, but other members in this place can always contribute and there is still time to do so now. I will take my seat because that is my last call on the amendment, but I believe it is worth considering.

Mrs HISCUTT - We are looking for some information because we think this was discussed in the other place, and we are looking for that. Bear in mind that I tabled a document of three pages where the community has -

Ms Rattray - The cheat sheet?

Mrs HISCUTT - Yes, where the community has the opportunity to engage with this process and be consulted on and consult with.

Ms Rattray - Can they be distributed?

Madam CHAIR - I am going to ask the Clerk to distribute those to members, the three sheets that were just tabled, which is how the community can interact with the process, those for and those against. We are just looking through *Hansard* to make sure we are on the right track here.

For the reasons I stated earlier, there is no need for this amendment. This was debated in the other place when an amendment was put forward by Ms O'Connor. I will not reflect on the *Hansard* of the other place because it is quite extensive, but this was discussed.

It did go to a vote and it was defeated - everybody else against three people. The three ayes who were trying to progress it were Ms O'Connor, Ms Ogilvie and Dr Woodruff. Everybody else had discussed it, had input to it and had decided it was not a good amendment to have in the bill.

Ms Rattray - While the Leader is on her feet, so that was in line with what I have suggested there?

Mrs HISCUTT - Yes. Yes, the minister -

Ms Rattray - That it comes to parliament?

Mrs HISCUTT - Yes. The minister must pause for declaration. It must come before both Houses of parliament. It was discussed ad nauseum in the other place. The motion was put and it was defeated - everybody but three.

Ms WEBB - I will be quite brief in my third and final call. I would just point to a distinction I would like to make.

I agree with what the member for Murchison said earlier - the high level of consternation in the community is expressed in relation to political influence in this process. However I reiterate quite strongly that the inclusion of a merit review into this legislation as a new planning process is not about stopping political influence. Many of the other amendments attempted to be made to this bill would have effectively addressed that. However, this amendment is not about that; it is about appropriate administrative process and appropriate accountability for primary decision-makers in the planning process.

To remind ourselves what it does we look at that very neat breakdown from the Australian Administrative Review Council, the independent advisory body to the Commonwealth Administrative Appeals Tribunal, which outlined three reasons why we want a merit review available in processes where there are primary decision-makers making administrative decisions.

First, because any decision-maker can make an error, an error of law or process, and the decision made may not be correct and preferable. Those are the terms. That can happen, in which case you need a merits review to assist to correct that.

Second, it improves consistency and quality in primary decision-makers. There is accountability, a check and balance, and a second set of eyes that will potentially go over decisions and encourage and ensure consistency and quality at the primary decision-making point.

Third, having a merit review as a necessary and inevitable part of the process to enhance openness and accountability ensures all primary decisions can be reviewed in a broad sense, in a rule of law sense, in a good governance sense, natural justice sense. To enhance openness and accountability, you have a merit review as an essential part.

Those are the three reasons. It is not just to remove appearances around political influence, and it is not just to provide community confidence or any of those more vague or principal objections. There are tangible and material reasons around good decision-making, good governance and good administration that should always be there in instances such as this process.

Nothing that has been presented overcomes the demand for those three reasons we insert and have as part of this process, given the magnitude of what this process presents to us as a community, as a new planning process. There is no reason put forward - not time, which is questionable; not cost, which is questionable; not assertions it is unnecessary, because it is demonstrably necessary to achieve those universally accepted good governance measures - that this is not required.

The member for Rumney talked about disappointment. There will be an incredible amount of disappointment if this amendment fails to get up, that we, as a parliament, will have given effect to legislation that fails so absolutely fundamentally and essentially in delivering an accountable, open and robust, appropriate process that would include a merits review. Concerns about political influence aside, which could really have been dealt with in other amendments, this one is about robust governance. If we are not able to support robust governance in legislation that comes through this place, I am sad to say I regard that as a real failure to deliver good legislative outcomes for the Tasmanian community. I encourage members to vote for this amendment to be included, to vote for robust legislation that includes fundamental principles of good governance and administrative justice, and ensures that merit review is available within the process.

Mrs HISCUTT - The member for Nelson raised several issues in support of her amendment. One relates to the advice of the Administrative Review Council and when it considers merit reviews are required or preferred. It omitted to cover the advice as to when a merit review may be excluded, particularly those processes which include extensive inquiry. The bill sets out the extensive inquiry process, not only for the project's assessment, but also for determining what the assessment criteria should be. These include public exhibitions and hearings similar to those that RMPAT conducts, but not as adversarial.

The member for Hobart raised the issue of public support for an appeal. Unfortunately, in determining legislation, the loudest voices are not necessarily the right ones. While many people may have wanted an appeal, as the member for Windermere indicated in his second reading contribution, many seem to be fearful of the bill without good cause.

The inclusion of an appeal has not been tested in the broader community, and we simply do not know the views of most of the Tasmanian population. We know the views of LGAT, TPC, Master Builders Tasmania, and the Department of Justice and all those other people I read out earlier. That is because we asked them. Greg Alomes is also opposed to it. This is an untested proposition with significant consequences. The issue of precedence cannot be understated. While there is no legal impediment in putting in an appeal to RMPAT, the policy precedent is significant.

As Greg Alomes has stated, the section 43A combined development application and planning scheme amendment process would at least be anticipated to require a similar appeal being added, because it delivers essentially the same outcomes - a planning permit and a planning scheme amendment, and it follows an identical process conducted by a TPC panel. If the major projects bill includes an appeal, proponents will simply continue to use the section 43A process because there is no appeal attached to it.

The member for Nelson refers to the DAP, but the bill follows the normal process that the TPC has for delegating its functions. Yes, the panel is constituted for a special assessment; so are all the panels of the TPC - that is how they are set up. No decisions of this nature are made by the TPC itself. In fact, the TPC act prohibits two of its members from being on panels. Additionally, the panel has to follow the normal TPC processes with the same checks on integrity. It is, to all intents and purposes, the TPC.

The amendments that have been passed on its memberships and functions reinforce this. The TPC has always been at the top of the planning system tree. The position of the TPC in the planning system has actually been strengthened over the years, because the original separate

bodies to look after state policies and projects and planning matters were merged into the RPDC and then expanded later into the TPC. The role of RMPAT has always been predominantly to review decisions of local councils which are not themselves expert planning bodies. It has never been given the role of reviewing decisions by the TPC or its predecessors.

Finally, the operation of the appeal itself. The member for Nelson implied the appeal could be dealt with quickly, but the advice of Greg Alomes and the department suggests it would be complicated, lengthy, expensive and highly likely to provide exactly the same result. You would expect that two expert panels assessing the same proposal against the same rule would probably agree.

At the end of the day, members, we must ask ourselves which bit of the independent TPC process do they not trust. Is it the independence of the panel members? Are the shortcomings with the public opportunity to be engaged through setting the assessment criteria, making written submissions to the proposal, appearing in open public hearings and testing evidence? Or is it the requirement for the panel to act with integrity, to declare conflicts of interest and to act impartially while examining every aspect of the proposal in accordance with the legislation?

Because an appeal on the TPC decision draws all of these into doubt -

Mr DEAN - Madam Chair, I am just about information-overloaded. A lot of information has been coming forward. I want to refer to a couple of issues. One is local government - LGAT is behind this bill. It has given support to this bill and the way in which it is written without the merit appeal there. That means that either the 29 councils are of that view, or the greater number of those councils are of that view, one or the other.

Some local councils are dealing with DAs several times a week. They are dealing with these matters the whole time. They are very conscious of the need to support the public, the people, and to give the people a reasonable opportunity to take matters forward, to appeal, to challenge and do all those other things. Local government is right there with the community, it is at that level. It is satisfied with the bill as it is.

To me, that sends a very strong message. We can talk about the other groups; of course we can. But local government sends me probably the strongest message in this situation. Mr Alomes is well known to all of us, I think, or to most of us. He has given us a very strong position as to why there ought not be a merit appeal introduced or included in this bill. He has made that perfectly clear. He has held a senior position within the Tasmanian Planning Commission; he was there for some time, and he has dealt with many of these matters.

Once again that also sends me a fairly strong message. It is clear - and I said this in my second reading contribution - that there is no doubt. I agree with what Labor has said, I agree with the member for Nelson and every other member here - the public has been quite suspicious about this whole process. In fact, I think you could say 'strongly suspicious' of it and what it is really intended for - that is, the major projects currently around this state that have been talked about, for instance, the cable car.

Ms Rattray - Is that your view as well - Cambria Green, the northern correctional facility, Mount Wellington, those three projects being mooted at the time?

Mr DEAN - I think - and this is my opinion - that their judgment has been somewhat clouded probably by that. I say that because we had a group come into us - the members for Rosevears, McIntyre, and, I think, for Launceston were present - where some issues and some fairly important points were raised. It was clear those people were not aware of some of those points. To me, it also seems that many of these people probably had been influenced in the positions they took when they made contact with us.

I have had many, many communications on this, and they are still coming through. I think one came through last night. Peter McGlone sent one as well; that came in only very recently. They are still coming through to us. Many of these letters indicate a fairly common position. I would say that there has been much discussion - there is nothing wrong with that - among many of these groups of people.

I have some concerns with the reason the merit appeal is being pushed so strongly. I can understand; I guess I can understand why.

The member for Hobart made a comment along the line of - I do not want to verbal you, you will obviously jump on top of me if I do, I have no doubt -

Mr Valentine - I do not have any speaks left.

Mr DEAN - Is it that the department would do what the Government wanted? My question from that would be to the department and to the Leader: what instructions would the Government or the minister have given to the department in putting this bill together? I would be very surprised - I could be wrong - if the Government would say to the department, 'We want a bill written up which has no further appeals in it.' I inferred from the comment made by the member for Hobart -

Mrs Hiscutt - There is an appeal process in the bill, which I have been through, yes.

Mr DEAN - Yes, there is. That is what I mean, but the type of appeal we have now been talking about for the last -

Ms Rattray - The merit-based -

Mr DEAN - Merit-based appeal we have been talking about for the last umpteen hours is the one I am talking about, so I would be very surprised, but it could well have happened. They could have been asked to look at not including a merit appeal or whatever.

Mr Valentine - What I was saying was the Government has obviously said to the department, 'We want a major projects bill. Go out and develop that law.'. That is all I was saying. I was not suggesting any more than that.

Mr DEAN - If that is all you were saying, then, yes, I have no issues with that.

Mr Valentine - I was not suggesting that -

Mr DEAN - I have no issues with that, but maybe there might have been some terms of reference included, or what have you, but it would be good just to know if that was the case.

Mr Valentine - They are not going to operate off their own bat in that regard.

Mr DEAN - There has been a lot of consultation on the bill and the department has said this bill has been around for five years with consultation taking place. The member for Murchison commented that maybe there should have been more consultation or the minister should have been involved in more consultation and perhaps let the side down. I am not sure I could subscribe to or support that.

I am not sure how much consultation you can do, and I suffer with a private member's bill I currently have. Do you get out there and make a position of trying to talk to every member of the public? I am not quite sure how you do it. You give publicity to it through the written and other media, hold other contact meetings and so on right throughout these processes so, really, I see this as really a very difficult area to satisfy everybody there has been a proper consultation process.

It is not easy. There comes a time when you have to say that enough is enough and we have to move on. Having said that, I am not convinced I can support this amendment to the bill. I have listened, because there were times I could have probably been perhaps moved that way, but those very strong points were made by local government and Mr Greg Alomes.

Mrs HISCUTT - With regard to your question about an appeals process, going back to the second reading speech and what the Government asked the department to do it says -

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

It started with the PORS process which does not have an appeals process, so that may be where some of the suspicion started up. We have addressed trying to make the PORS process more community-engaged. This is what we have come up with - the major projects bill which includes consultation. There is no loss of appeal rights, because those rights do not exist now.

This is to demonstrate we did put out information on this. One of the department consultation 'frequently asked questions' was, 'Is there a loss of appeal rights to the community?' There is no loss of appeal rights to the community because they did not exist, they did not -

Ms Rattray - Compared to what?

Mrs HISCUTT - Well, the PORS process did not have it. The major projects process is consistent with the projects of regional significance process - where the independent expert panel established by the Tasmanian Planning Commission holds hearings into the project and its impact statement before determining the final decision to grant a permit or not. So this is what was put out there. It has all been consulted on.

The Committee divided -

AYES 4	**NOES 8**
Ms Armitage	Mr Dean

Ms Rattray	Ms Forrest
Mr Valentine (Teller)	Mrs Hiscutt
Ms Webb	Ms Lovell
	Ms Palmer (Teller)
	Dr Seidel
	Ms Siejka
	Mr Willie

PAIRS

Mr Gaffney	Ms Howlett

New clause A negatived.

Proposed New Part A, clauses C and D -

Ms WEBB - Madam Chair, I move -

That new Part A be read a second time.

This amendment is a straightforward one. It is closing a door that is open at the moment. The amendment ensures that the commission is not subject to influence in exercising its major projects powers. The amendment secures the Tasmanian Planning Commission's independence in relation to decisions it is required to make under Part 4, Division 2A of the Land Use Planning and Approvals Act 1993.

The Government says that proposed new sections 60X(6) and 60X(7) provide that the minister cannot direct or influence the commission or the panel in any way, but that is not what they provide in the bill. It is absolutely true that the minister cannot direct the commission in its functions under Part 4 of LUPAA, which would include this major projects process. That is found in section 7 of the Tasmanian Planning Commission Act 1997. That is true.

However, section 7B of the Tasmanian Planning Commission Act requires the minister to provide the commission with an annual ministerial statement of expectation. That statement of expectation is -

> to specify the objectives of the Minister in respect of any matter relating to the functions of the Commission.

That is section 7B(2) of the TPC act.

Section 7A of the TPC act requires the commission to -

> conduct its business and affairs in a manner that is consistent with the ministerial statement of expectation -

It is clear that even though the minister cannot direct the commission in its functions relating to major projects, the minister can issue a statement of expectation with objectives in respect of those functions, and the commission must act in a way consistent to that statement.

One of the functions is to approve the hearing procedures for this major project panel process. These sections are found in Part 2 of the TPC act.

There is no such prohibition on the minister directing the panel. Subsection 60X(6) says that Part 3 of the TPC act applies to the panel as if it were the commission. There is no reference at all to Part 2.

That was a lot of references to acts and numbers - but the reason for this amendment being needed is to prevent the minister from influencing the parameters of the hearing process that applies in this major projects process through a statement of ministerial expectation to the commission.

This is important because proposed new section 60X(3) of the bill allows the commission to approve the hearing procedure for the conduct of the proceedings by the panel in terms of hearings.

The minister can constrain the commission through the ministerial statement of expectations, who can then constrain the panel in how they conduct the hearings.

It is true that the commission is not to approve procedures not inconsistent with the procedural requirements of the bill but that does not prevent the commission from placing additional restrictions on the hearing process.

Ensuring that the hearing process - which, remember, is the part of the process that the public are involved in - is important, to ensure that the hearing process is free from ministerial influence. That is critical to ensuring the integrity of this process, and while it might seem like this is 'finickity' - I apologise to *Hansard* for that spelling of that; perhaps another word would be 'pedantic' - let me assure you it is possible and has occurred in other circumstances.

I will give you an example of where this very thing I am trying to prevent with this amendment happened, and it happened in New South Wales. I am going to give you a clear example where this power of ministerial expectation was used to constrain a hearing process in a planning process.

In New South Wales, the Independent Planning Commission, the equivalent of the TPC, is also subject to ministerial statements of expectations. The minister there has used that statement of expectations to constrain hearing time frames for state significant development. The minister there has required a decision from the commission within five weeks without a public hearing and within eight to 12 weeks with a public hearing.

Those expectations have substantially constrained its public participation on those large and incredibly complex developments that were going through the process. While on first instance you might think this is technical or pedantic or a remote possibility, I am pointing you to the fact that it has happened similarly in another jurisdiction.

I point you to the fact that the inclusion of this amendment does nothing to interfere with the process. It does nothing to take away from it. It simply protects against that small avenue, that open door, that would be there otherwise for ministerial influence potentially on the public hearing process under this major projects bill. We can close that door quite readily and easily with this amendment.

The Government here has said that the commission will be independent and we have confidence in that. Then let it be without any avenue of that political influence. The Government has said if the panel are experts then let them be experts. Let us ensure that nothing can be put in their way to direct and influence them through that ministerial statement of expectations on their ability to act as independent experts in undertaking their role.

This amendment is to remove any opportunity for undue influence over the hearing procedures which we know - now in the absence of a merit review opportunity - is the one and only part in this process that the public get a substantial opportunity to participate in.

This is to stop the intervention by the minister that may, and could, occur with the way the bill is configured now, to constrain the ability of the community to have a fair hearing in that particular part of the process. I would just finish by saying, this amendment is warranted not because we expect poor behaviour, not because we expect overt examples of political influence but that we should be robust enough to ensure that it is not possible. We should be robust enough to have a governance process that does not leave a back door open for it to occur and for confidence and good process to be undermined by that.

I invite members to consider this amendment as a small adjustment but an important one that does not constrain us. It does not interrupt the process of the bill. It merely ensures that there is a robust accountability there around political influence.

Mrs HISCUTT - My advisers assure me that there is no 'back door' and they are putting a lot of information here that I can use to clear that up.

The amendment is not supported because the matter is already covered in current legislation. It is covered by the Tasmanian Planning Commission Act 1997, where section 7(2) refers to the processes set out in schedule 3A(2). These sections prevent the minister from directing the commission on any matters concerning how they assess a major project because Part 4 of the Land Use Planning and Assessment Act 1993 is listed in Schedule 3A. Basically, what that means is section 7 of the commission's act -

> Commission subject to directions of Minister
>
> (1) Subject to subsection 2, the Minister may give directions in writing to the Commission and the Commission must perform its functions and exercise its powers in accordance with those directions.

Mr Valentine - That is clause 7 on the sheet.

Mrs HISCUTT - I want to get to 7(2), which says -

> The Minister may not give a direction to the Commission in relation to the outcome of the exercise of a power, or the performance of a function, specified in schedule 3A.

Let's go to Schedule 3A, Provisions in respect of which delegation and directions are restricted.

Item 2 of that says, 'Parts 2, 3A, 3B and 4 of the Land Use Planning and Approvals Act 1993'.

If you go to Part 4, Division 2A, it says, 'Special permits for projects of regional significance'.

Section 60C is 'Projects eligible to be declared projects of regional significance'. That is replaced by the major projects bill.

This is from the commission's act. I need to read it back to front. I have just read a bit of section 7. Section 7B, the ministerial statement of expectations, which the member for Nelson referred to. I will go to the part where it is appropriate. Section 7B (4) of the act says -

> The Minister must consult with the Commission before preparing the ministerial statement of expectations.

Subsection (8) says -

> The Commission is to make the ministerial statement of expectation, as in force from time to time, available to the public on its website.

The time frames in Tasmania - the member for Nelson alluded to in another region - but the time frames in Tasmania are set out in legislation. The minister cannot modify these through a statement of expectation. It is set out in legislation, regardless of what the ministerial expectations say and that would have to come to parliament for amendment if that was to change.

Mr GAFFNEY - Further to that, section 7(2) where you said words along the line of 'may not pass or make comment on', earlier on when you spoke. What does it say?

Mrs HISCUTT - Yes, 7(2) - 'The minister may not give a direction to the Commission'.

Mr GAFFNEY - On that, does that mean the minister must not, or the minister may not but can give a direction? Do you see what I mean? 'May not', does that mean 'must not' or can they?

Mrs HISCUTT - I am assured that they cannot. They may not do it.

Mr VALENTINE - I am looking at that act and talking about the Tasmanian Planning Commission Act, looking at section 7B, which is the ministerial statement of expectation, and which says -

> (2) The ministerial statement of expectation is to specify the objectives of the Minister in respect of any matter relating to the functions of the Commission.

The ministerial statement of expectation, as we go to (3) -

> (a) may not prevent the Commission from performing the function it is required to perform or otherwise -

which is good -

(b) may not extend the functions and powers of the Commission.

(4) The Minister must consult with the Commission before preparing the ministerial statement of expectation.

(5) The ministerial statement of expectation and any amendment to the ministerial statement of expectation is to be in writing and signed by the Minister.

(6) The Minister may at any time, at his or her discretion or after receiving an application from the Commission -

So it can be either at the minister's discretion or the Commission's request -

(a) amend the ministerial statement of expectation; or

(b) revoke the ministerial statement of expectation and substitute another ministerial statement of expectation.

This particular amendment is trying to make sure the minister is not able to specify - well, the ministerial statement of expectations may not specify the objectives of the minister in relation to the commission's functions under Division 2A of Part 4 of the Land Use Planning Approvals Act.

I do not see how it conflicts. It is an extra component. It stops the minister from specifically altering the commission's functions to the benefit of the government or whatever. It adds and I do not know that it takes away or duplicates.

Mrs HISCUTT - Whatever is stipulated there in section 7B has to be in accordance with what is at 7 and those points at 7 so, you have to read it back to front, so I am told. The point is it is duplication because it is there.

The Committee divided -

AYES 3	**NOES 8**
Ms Rattray (Teller)	Ms Armitage
Mr Valentine	Mr Dean
Ms Webb	Mrs Hiscutt
	Ms Lovell
	Ms Palmer
	Dr Seidel
	Ms Siejka
	Mr Willie (Teller)

PAIRS

Mr Gaffney	Ms Howlett

New Part A, clauses C and D negatived.

Bill taken through the remainder of the Committee stages.

POLICE OFFENCES AMENDMENT (REPEAL OF BEGGING) BILL 2019 (No. 49)

Second Reading

Resumed from 26 August 2020 (page 47).

[4.51 p.m.]

Ms LOVELL (Rumney) - Mr President, the Police Offences Amendment (Repeal of Begging) Bill 2019 repeals the offence of begging in the Police Offences Act 1935, and I want to express my strong support for this part of the bill.

Begging is a social issue, and a criminal response to a social issue is not appropriate. I was disappointed to hear some of the language the Leader used in her second reading speech, particularly the use of the word 'beggars'.

Let us not forget we are talking about people here - members of our community. The problem the Government is attempting to address is a behaviour, not a group of people, and it should be described as such.

People only beg out of extreme desperation and extreme poverty. Language matters, and I encourage all members to remember that and show some compassion in the way we talk about this social - not criminal - issue.

Many people will have noticed a visible increase in the number of people begging in Tasmania in recent years. This indicates an increase in hardship being experienced in Tasmania - an increase in the number of people living in extreme poverty, without adequate shelter, and without adequate mental health treatment and support, among many other very difficult circumstances.

That is what we should be talking about. It is all well and good to decriminalise the act of begging and think that makes you a progressive and compassionate government. But without action to address the underlying causes of this behaviour, what is this really achieving?

If the Government is serious about wanting to do something about the fact that more Tasmanians are being driven into extreme poverty, and as a result are being forced to beg for help on the street, it should be looking at how community services can be better resourced, how mental health services can be better resourced, how drug and alcohol services can be better resourced. It should be focused on delivering more social housing.

Legislative change to decriminalise begging is all well and good - welcomed in fact - but it is only the tip of the iceberg. Without genuine action backed by real investment across a number of portfolio areas, an opportunity to effect real positive change is sadly being missed.

While I strongly support the repeal of begging, I have significant concerns about the move on powers that clause 5 introduces, with an amendment to section 15(B) of the Police Offences Act 1935. The act currently allows police to move people on under the 'dispersal of persons' powers, if the police officer believes on reasonable grounds that the person -

(a) has committed or is likely to commit an offence; or

(b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or

(c) is endangering or likely to endanger the safety of any other person; or

(d) has committed or is likely to commit a breach of the peace.

This amendment to section 15(B) would allow police to move a person on if the police officer believes, on reasonable grounds, that the person -

(ca) by, or in the course of, or in connection with, begging in that place has -

(i) intimidated, or harassed, a person; or

(ii) prevented or deterred persons from entering, or the conduct of, a business that is in, or in the vicinity of, the place; or

(iii) prevented or deterred persons from using a public facility that is in, or in the vicinity of, the place …

Further, it defines a public facility as including - so not an exhaustive list- a toilet or shower facility, a barbecue facility, playground equipment, a structure for the provision of shelter, a parenting room and a water fountain. It is a broad and, as we heard in the briefings, deliberately not an exhaustive list. The Government argues this is about being able to respond to community expectations. When somebody has an issue with people who are begging, they want to call the police and have confidence the police will respond.

In the 2018-19 financial year, there were 61 complaints to police about people who were begging; of those complaints, only seven charges were laid. What those statistics indicate is police are already managing the expectations of the community, without needing to make use of the powers they have to charge people. This power would be less than what they have now, so why would we not expect they would have the same capacity to manage effectively?

This is not about having concerns about police misusing their powers, rather about having confidence in the police to be able to respond with compassion and to be able to resolve situations without needing to escalate by making use of powers under the act. The current powers allow police to move people on for problematic behaviours. The question is whether as a society we should be including begging in that scope. For me the answer is no. If we allow this provision to pass into law, someone proselytising, someone trying to sign people up to a charity, collecting donations or selling raffle tickets or protesting outside a shop or business, maybe deterring people from entering but not obstructing, would not be able to be

moved on, but someone who is begging would. Someone with offensive body odour or someone coughing and sneezing on everyone near them, deterring people from entering a business, would not be able to be moved on, but someone who is begging would.

There are many, sometimes very complex, reasons why people resort to begging. If the Government is serious about wanting to be able to respond to community expectations, it needs to understand what that expectation is and show some leadership, address the underlying issue, not just move the person along to the next spot they can find.

There are other more compassionate and effective actions the Government could be taking. Other models, such as having mental health workers with police or community services - that is what the Government should be funding: solutions that will actually have a real impact on the reasons people have to beg for support, because they cannot find it otherwise. For example, in New South Wales, the government is investing in mental health workers to accompany police on responses to mental health call-outs. This started as a pilot program and was so successful the government has recently committed an additional $6 million to continue this program, imbedding specialist mental health workers in the first response to mental health-related call-outs. I can only imagine the police in Tasmania would welcome a government response along these lines, and I encourage the Government to explore some of these options.

I am not going to disagree that members of the community, business owners and retailers want to and should be able to have confidence police can assist them when they call for help, but I am deeply concerned the Government's attempt to respond to this expectation will simply further stigmatise people who are begging, rather than trying to address the cause of the problem.

Responding to a community expectation is not about finding a way to be able to continue to respond as you always have, because, let us remember, while begging is currently a crime, only seven charges were laid from 61 complaints. We know police are already responding in the same way this new power would allow them to continue to do so. Responding to a community expectation can also be about showing leadership, taking the community with you that few steps further and moving towards a compassionate, genuine response to the circumstances that have left the person in question, a member of our community, in a set of circumstances where they have been driven to beg for help from strangers.

That is the opportunity the Government has missed here. I have faith in our police officers to show compassion and to use their skills to work with people to resolve any situations that lead to a complaint without requiring this new power to do so. I will support the bill into Committee. I am sure other members will have contributions to make and I look forward to further debate, particularly on this clause.

[5.00 p.m.]

Ms WEBB (Nelson) - Mr President, this bill is primarily about acknowledging and giving effect to our shared agreement that begging should not be criminalised. It is a straightforward matter that it should not be criminal for one person to ask another person for money in a time of need.

The criminalisation of poverty and homelessness, which is the context in which begging remains an offence, is now widely recognised as representative of an outdated understanding

of social issues and an outdated understanding of what constitutes an appropriate government and community response to these issues.

Begging is a symbol of social exclusion that merits attention. The causes of people begging are complex and include systemic societal issues that are beyond the control of an individual. Many who find themselves in situations where they need to beg never planned nor expected to be there and would prefer not to be in that situation. While people who beg are often reviled and seen as deviating from what is deemed acceptable in public spaces, they are frequently victims themselves of past trauma, of crime, of economic deprivation and of social exclusion more broadly.

Research in Victoria by Justice Connect in 2016 showed that among people who begged, 77 per cent were experiencing homelessness, 87 per cent had a mental illness, 77 per cent were experiencing drug or alcohol dependence, 80 per cent had been unemployed for 12 months or more, 33 per cent had experienced family violence and 37 per cent reported childhood trauma or abuse.

The law as it stands today - begging as an offence - targets and criminalises some of the most deprived and most disadvantaged members of our society for the crime of being visibly poor and homeless. Our current approach does not address the root causes of homelessness or destitution, nor its consequences. Tasmanians who are in a position of desperation should receive support. That support should include housing, welfare, medical and mental health services, alcohol and drug services and social support. On these measures of support in this state we are falling well short. Fining people in such circumstances, criminalising them, is perverse and saddling them with a potential criminal record does nothing to address the underlying causes that may have led them to begging.

At present, people who beg find themselves in a situation due to factors largely beyond their control. If the act of begging criminalises them, we can broadly understand that they have ultimately been criminalised due to our community's policy failures - Tasmania's increased cost of living, for example, low incomes, an inadequate supply of affordable housing, high unemployment rates and inadequate provision of mental health support services and drug and alcohol services.

The criminal justice system is not the place to help people who are destitute.

Organisations that work with people experiencing poverty and homelessness around Australia - researchers, legal practitioners and academics - all agree that criminalising the actions of begging in these circumstances does nothing to address the underlying causes. It perpetuates the stigmatisation of poverty, homelessness and disadvantage. It sends a message, Mr President. That message is that people who experience destitution, people who are homeless, and people who beg are at fault personally - they are bad; they are to be feared, is the message.

This message reinforces negative community attitudes towards people who are homeless and those who beg. However, all evidence demonstrates in the vast majority of cases, this message and these attitudes do not reflect the reality. Evidence tells us that, substantially, the activity of begging is one carried out in a way that is relatively passive and not accompanied by problematic or aggressive behaviours.

That being said, my observation would be that it is common for people to feel uncomfortable about the presence of begging even when it is a simple passive, non-invasive action. I have similarly observed that it is common for people to feel uncomfortable about even the presence in public spaces of people experiencing primary homelessness - that is, people who are rough sleepers.

I note this discomfort among some members of the community. I think many people would prefer not to have to see or encounter people experiencing homelessness and destitution in public streets and spaces. My observation is that there are people who feel a sense of apprehension or even fear in sharing public spaces and streets with people who are visibly experiencing homelessness or destitution. I suggest that apprehension or fear is connected in some cases to the anticipation those people who are homeless or destitute may behave in an aggressive, intrusive or unpleasant way. At other times that apprehension or fear arises from seeing a person who is homeless or destitute behaving in a public area in a way that is aggressive, intrusive or unpleasant, even if this is the minority of cases. I acknowledge those feelings are there in the community and believe it is our job to encourage those feelings to be resolved and better informed, rather than encouraged.

Research and evidence tell us that largely people who are homeless or destitute and in the public domain do not behave in ways that are aggressive, intrusive or unpleasant. Many would note in those fewer common instances - the small proportion of times - we actually see problematic behaviour in a public area by a person who is homeless or destitute, there is a high likelihood that person in question may be being affected by mental ill health and/or may be experiencing an issue with drugs or alcohol. We recognise the response required is to ensure the person is not going to hurt themselves or others, and to provide that person with support services. I will come back to these observations shortly in relation to the second part of this bill.

On the face of it, therefore, it is pleasing to see reform progressed in this area for our state. It has been called for over many years, primarily by those in the social services area, including myself in various previous roles in that sector. I fully support the repeal of subsections (1) and (1AA) of section 8 of the Police Offences Act 1935, which set out the offence of begging and the associated penalty.

However, I also do not support aspects of this bill, and I will spend some time discussing those aspects.

It is a complex issue and I hope we can discuss these issues in the debate today with careful thought and analysis. We are off to a good start with the contribution from the member for Rumney. Like the member, I had noted here we need to be thoughtful about the use of language in regard to this activity. We have to ask ourselves about how we speak about our fellow citizens as whole people, not in terms of labelling them on the basis of one action that they may undertake.

The impact that the second part of this bill, the expansion or additional police dispersal powers in section 15B, will have on the members of the Tasmanian community who beg is significant. It is entirely counter to the stated intent, the first part of the bill. Further, it is poorly conceived and as a result of that unfair and discriminatory. The proposed amendment to section 15B of the Police Offences Act 1935 would add to police powers in relation to dispersal of persons. Under these new powers, the police would be able to direct a person to

leave a public place if they believe that by, in the course of, or in connection with begging that person has intimidated or harassed a person, prevented or deterred persons from entering a business, or prevented or deterred conduct of a business, or deterred persons from using a public facility that is in or in the vicinity of the place.

Then it provides a descriptive list of what could be included as a public facility but not an exhaustive list. Under section 15B, a person failing to comply with such a direction to move on could receive a fine not exceeding 2 penalty units. This amendment creates new powers of dispersal that are specific to or connected with the activity of begging in a public place. It specifically places those who are begging at risk of attracting a fine, which we have already established is a perverse response to somebody who is destitute.

I do not support the proposed amendments in section 15B, and there are three key reasons for that. One reason is that those powers are not needed; the second reason is that they are not warranted; and the third reason is they are discriminatory and stigmatising in exactly the same way that the offence of begging is in the first place, which renders the repeal in the first part of this bill meaningless and somewhat hypocritical.

We first need to ask ourselves: What is the intent of the inclusion of these new dispersal powers? What are these additional powers actually for? Who do police want to be able to move on under these new powers? What specific behaviours do police want to be able to move people on for under these new powers?

It has been expressed to us in briefings that the intent of this additional dispersal power is to provide police with the ability to respond to complaints made in relation to people begging.

It has been expressed to us that there is a community expectation that police, when called with a complaint about a person begging, will have the ability to do something to remove that person in question.

We have been told by the department that, with the repeal of the offence of begging, there will no longer be a basis on which police can move on people who are begging, hence the Government's claim that the inclusion of these additional move-on powers is required to maintain the same response that is currently available to police when called to deal with these complaints.

Here I believe we need to test that claim and look more closely at what specific behaviours we are talking about that warrant a move-on response.

We were told in the second reading speech that 61 complaints were received by police about people who are begging. Over three-quarters of those complaints - more than 47 - were made by business owners. We hear in the Government's second reading speech that -

> The nature of the complaints varied. They generally reflected circumstances where beggars intimidated or harassed people, or adversely impacted business.

Further -

> In a minority of cases, yelling, spitting or other abuse was described by the caller.

Let us look a little more closely at those statements about the complaints. I hear the following behaviours described - intimidation and harassment, yelling, spitting and other abuse.

I also hear that some complainants report their business being adversely impacted by someone begging nearby.

Something I would like to know from the Government is how many of those 61 complaints were made in relation to the by far most common instance of begging, in which a person sits with a container in front of them to collect money, and either with a written sign indicating their circumstances or perhaps by a straightforward verbal request, asks people passing by for money. How many of those 61 complaints related to that form of begging?

Then, how many of those 61 complaints were made in relation to begging accompanied by other problematic behaviour, such as intimidation or harassment, yelling, spitting, or other abuse?

I am interested to know this, because I suggest that when it is the first instance - the most common form of simple, relatively passive begging - there should be no power for police to move people on for that behaviour.

I suggest that in cases where there is other problematic behaviour occurring in addition to begging, that behaviour may warrant being moved on, and I suggest no additional powers are required for that to occur.

I further suggest that in instances where a person who is begging is also behaving in a way that, say, actively blocks the entrance to a business, or actively deters people from patronising a business, that behaviour may warrant being moved on. No additional powers are required for that to occur.

Let us consider those problematic behaviours sometimes associated with begging that were described in the second reading speech as being part of some complaints. Are the new powers being proposed needed to provide police with the power to move on people who are behaving in intimidating and harassing ways as part of their begging?

Under the existing powers in section 15B, police already have the power to direct a person to leave a public place if that person -

> (a) has committed or is likely to commit an offence; or
>
> (b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or
>
> (c) is endangering or likely to endanger the safety of any other person; or
>
> (d) has committed or is likely to commit a breach of the peace.

Thinking first then about intimidating, harassing, aggressive or jostling behaviour that may be associated with begging - thinking about yelling, spitting or other abuse - I suggest these can be dealt with under (a) in that list, which is 'has committed or is likely to commit an offence'.

Police can point to section 13 of the current act, which contains the offence of creating a public annoyance. A public annoyance includes behaving in a violent, offensive or indecent manner; disturbing the public peace; engaging in disorderly conduct; insulting or annoying another person; and committing any nuisance.

Or it may be, when relevant, they could point to section 12 of the current act, which contains the offence of prohibited language and behaviour, which includes cursing; swearing; singing profane or obscene songs; language which is profane, indecent, obscene, offensive or blasphemous; and threatening, abusive or insulting words or behaviour to provoke a breach of the peace, or may occasion a breach of the peace.

In using section 15B(1)(a) as the basis for moving someone on - that is the one where a person 'has committed or is likely to commit an offence' - the police do not have to bring an actual charge on that relevant offence. They just need to believe that the person has committed, or is likely to commit, the offence. There is the opportunity for discretion and there is the opportunity to act in anticipation of an escalation of behaviour. It is not relevant to say, for example, that the offence of public annoyance is rarely, if ever, used; that people are rarely, if ever, actually charged with it.

Here they do not need to be charged with it. It just needs to be there on the statute book in order for the police to use it as the basis for moving people on under section 15B(1)(a). Much the same, actually, as the situation we have now with begging as an offence where it has been explained to us by the police that it is rarely brought as a charge, but the police use it as the basis to move people on under section 15B(1)(a).

Further, beyond what can be captured under (a), we also must remember that existing move-on powers can be used for behaviours captured by (b), (c) and (d) -

(b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles;

(c) is endangering or likely to endanger the safety of any other person;

(d) has committed or is likely to commit a breach of the peace.

This provides very broad scope to move people on under the existing dispersal powers in section 15B. I have heard from members of the legal profession that across the suite of offences in sections 12 and section 13 to provide a basis for using (a) and the breadth of behaviours captured by (b), (c) and (d), there is plenty of scope for police to use as a basis for moving on those people who are behaving in a problematic way while begging. By that, I mean those who are intimidating, harassing, being aggressive, jostling, blocking the footpath, creating a disturbance or causing a risk to others.

We have heard from members of the legal profession experienced in these matters that no additional police powers are required to respond to such behaviour. However, as a thought experiment, let us for a moment take the Government's claim to be true. If it is true that section

15B does not provide police with the power to move people on for behaviour in a public place that is, say, harassing or intimidating, I suggest this indicates a gap which is relevant not just to the activity of begging but potentially much more broadly. Behaviour in a public place that is intimidating and harassing or aggressive and abusive or which may present an active deterrence to people accessing a business, does not only happen in connection with the activity of begging.

What is not clear then is why we would seek to remedy this general deficiency in police move-on powers by adding additional dispersal powers only connected to the activity of begging. The proposed amendment would mean that people who are begging would be subject to legal constraints on their behaviour that are stricter than those faced by anyone else in the community.

Under the proposed additional dispersal powers, a person could be undertaking an activity in a public place that was not begging but involved harassing or intimidating behaviour and that situation apparently would not be captured by existing powers and nor would the police be able to move them on under this new power proposed because there is no begging present.

Let us think of some possible examples that could be considered here. If a person standing on the street soliciting donations for a charity was so assertive and persistent in their approaches to passers-by that it amounted to intimidation and harassment, and was behaving in such a way as to create a deterrent to people patronising a nearby business, as we are told, apparently they would not be captured by these existing move-on powers and could not be moved on under this new power because they are not begging.

Again, if a person were standing on the street proselytising and was so assertive and persistent in their approaches that it amounted to intimidation and harassment or behaving in such a way to create a deterrent to people patronising a nearby business, we are given to believe they could not be captured by the existing powers or moved on under the new power because they are not begging.

While the behaviours exhibited and the impact on passers-by in these two examples may be near-identical to those problematic behaviours sometimes associated with begging, under the proposed expansion of dispersal powers here, only people engaged in begging would be subject to move-on powers and consequently subject to a penalty if they fail to comply.

This new power is categorically discriminatory and unfair. If police genuinely cannot move someone who is behaving in a way that is harassing, intimidating or actively deterring people from patronising a business, there is a broader gap in the suite of offences currently on the books and in existing move-on powers in section 15B. If that gap is to be filled, it should be filled to capture all instances in which those behaviours may be exhibited and not tied only and specifically to an associated action of begging.

If what was proposed here were a broader effort to add move-on powers to deal with these problematic behaviours in whatever circumstances they occur, it would not be discriminatory and we could consider the evidence for it and possibly support it, but that is not what is presented to us. We are asked here to support additional powers that are either

unnecessary or, if necessary, they are drafted with specific reference to begging and through that are discriminatory.

It was put to us in the briefings we received that many of the people engaging in begging are observed to have issues relating to mental ill health, drug and alcohol use. As a result of these circumstances, they sometimes behave in ways that are problematic or alarming to members of the public. I take that to refer to those kinds of behaviours mentioned already, intimidation or harassment, yelling at people, spitting or directing abuse to people and such like.

People with mental ill health or drug and alcohol issues are experiencing health problems. We would all agree we most appropriately primarily respond to these issues with a health response. The police are constantly called on as first responders to incidences where a person with mental ill health, drug or alcohol issue is causing problems for themselves or perhaps for others in a public place and requires a response. These calls may relate to people who are homeless or not. The police are often the ones who are required to resolve these problems or disturbances, and connect the person in question with a health response to their issues. This happens all the time and police are compassionate in using their discretion and acting to assist people in these circumstances.

It would not be unusual for police to have to manage a situation that involved a person experiencing mental ill health, drug or alcohol issues who is directing problematic behaviour at others or affecting others with their problematic behaviour. I suggest this happens quite commonly and happens commonly in instances that have nothing to do with begging and in which no correlated begging activity is occurring at the time. Not always, but many times it would not be related to begging.

In those common instances, is the Government saying there is no response available to police to manage the situation if a complaint is made to them? If a complaint is made about problematic behaviour such as intimidation, harassment or abuse being undertaken by a person with mental ill health, drug or alcohol issue that is affecting or being directed at those around them in a public place, what response is currently available to police? In instances such as this, which are relatively common, a range of responses is available to and used effectively by police. They do not ignore these situations; they manage them.

My next question is: can the Government explain why, in a situation that involves a person who has mental ill health, drug or alcohol issues that are causing problematic behaviour such as intimidation, harassment, abuse, and who is also engaging in begging, do police not have available to them those same responses as in a situation that did not have begging? If police regularly manage the former, they can equally well manage the latter under the same powers and actions available to them now. They do not need additional begging-specific powers to manage situations involving behaviour connected to mental ill health or drug and alcohol issues. In relation to problematic behaviours sometimes associated with begging, we have established there is already the power to move people on. If a new power is needed, it should be able to capture the problematic behaviour with or without begging being associated with it. Police already manage difficult behaviour associated with mental ill health and alcohol and drug issues in circumstances not related to begging so they are certainly able to do so when begging is also present.

I would like now to return to the most common situation in which someone is begging. It became clear in the briefings we received that when we ask ourselves: What are these additional powers actually for? Who do police want to be able to move on under this additional power that they cannot under existing powers once the offence of begging is repealed? - the answer is that these additional powers are being sought to allow police to move on people who are simply begging with no accompanying problematic behaviours.

With the repeal of the offence of begging, this simple act of begging with no accompanying problematic behaviours is the only action that can no longer be captured by the existing move-on powers. As I stated earlier, I do not believe there should be a power for police to move on a person who is undertaking a simple action. Moving someone on in these circumstances is counter to the intent of this bill. Some of our fellow citizens experience homelessness and destitution, and while we may find it uncomfortable or unpleasant to see or encounter these fellow citizens, they have as much right to be in the public streets and public spaces as we do.

All citizens have the right to be subject to the same legal constraints on their activity and behaviour. Citizens experiencing homelessness or destitution and engaging in a behaviour deemed to be legal should not be targeted with discriminatory constraints that apply only in association with that legal behaviour. I think the Government has twisted itself in some contradictory knots. It appears that it still wants to be able to make people who beg go away - out of sight, perhaps, out of mind.

The things that will genuinely make begging go away are big, complex and structural. They are typically the responsibility of government policy - an adequate safety net; enough affordable housing; enough health and mental health services, and drug and alcohol treatment and support; adequate family support services; an excellent education system; and available jobs and participation opportunities. These are the imperatives to make real change in poverty, in homelessness, in destitution and, ultimately, in reducing begging.

When we stigmatise and penalise begging, when we move begging people on because it offends our sensibilities, when we force begging people to be out of sight and out of mind, we actually remove the imperative to demand and act for real change in delivering those real solutions. We absolve government and ourselves from taking responsibility for those big, complex and often wicked problems.

The repeal of section 8 and the removal of begging as an offence is a step in the right direction towards acknowledging that we must not scapegoat individuals who beg but, rather, take that collective responsibility onto our shoulders.

The inclusion of the begging-specific addition to dispersal powers in section 15 is an immediate step backwards - right back to where we were. That is hypocritical. It is inconsistent and discriminatory lawmaking, and it is just plain wrong. When we consider this bill, I ask that members do not participate in legislating this hypocritical and unnecessary addition to police move-on powers and to consider voting against the second part of this bill, and supporting the first part with absolute sincerity.

[5.29 p.m.]

Ms ARMITAGE (Launceston) - Mr President, first, I thank the Leader for the many briefings we have had. It certainly clarifies many things in our minds. It is important to note,

and should go without saying, that people do not beg because they want to - it is because they have to. It is an action of last resort. By retaining the offence of begging in the Police Offences Act, it criminalises what is essentially a social problem. Nobody wants to see someone kicked when they are already down.

These circumstances, which are typically fuelled by poverty, substance abuse and a myriad of further saddening circumstances, are ones a good community like ours wants to see ameliorated, not worsened. By repealing the offence of begging, we can cease to perpetuate a cycle of ongoing disadvantage for people who already live in difficult circumstances. I thank TasCOSS for its advice on the bill, which I believe has been sent to all members here. TasCOSS states, quite rightly in my opinion, that the offence of begging is antiquated and disproportionately punishes people who are poor.

Furthermore, TasCOSS argues that criminalising begging does not address the root causes of this poverty, including lack of employment opportunities, mental health, homelessness and other factors. While I absolutely agree with this, I think it is also important to be clear that this bill does not propose to address these root causes but, at the very least, sees the continued entrenchment of disadvantage that the criminalisation of begging causes. I will return to TasCOSS in a moment. Understandably, community concern relates to some of the less common instances of worrying conduct of people who are begging.

However, it seems to me that in cases where people have been charged with the offence of begging, it has coincided with other antisocial behaviours such as yelling, spitting or other abuse, which might otherwise typically be classed as assault or harassment. In other words, it has not always necessarily been the begging itself that has caused concern, but the antisocial behaviour that has accompanied it.

Commensurate with this, the expansion of the dispersal of persons power proposed to be inserted into the Police Offences Act by this bill enables police to direct a person to leave a public place if there are reasonable grounds for the belief that the person is intimidating and harassing people, or deterring or preventing the conduct of business or using a public facility.

This bill does not empower police to move a person on simply because they are begging - only if they are begging and engaging in intimidation and harassment, prevention of business patronage or use of a public facility. This clearly defines prohibited conduct, and thus prescribes police very certain circumstances in which a move-on direction can be issued. This, to my mind, is entirely reasonable, and I support it because it does not continue to criminalise begging, but ensures that there are measures that can be enacted if directions are not complied with.

It also ensures that the move-on power is constrained enough to apply only in those circumstances, and not to broader situations, activities or classes of people. The bill also provides a list of public facilities, to clarify the nature of the facilities to which it refers. I understand that this is not an exhaustive list, but it does provide further guidance for police where they might consider issuing a move-on order, or to the judiciary if they are required to interpret and apply this if it becomes law.

I believe this is a well-drafted, well-reasoned and compelling bill. It makes sense to cease criminalising begging, but to also listen to the concerns of our community in instances where

begging coincides with other antisocial behaviour, and where it has an adverse effect on the patronage of business or use of public facilities.

To return briefly to TasCOSS's advice on this bill, I understand that it feels that the expansion of police move-on powers is unnecessary. However, I reiterate that I believe this a well-drafted bill. I note that in the other place, some support was expressed for the minister's consideration of conducting a review of the results of the act at the end of its first year to ensure no unintended consequences have occurred.

I, too, would support this measure, and would further encourage the minister and the department to continue seeking the expertise and assistance of our social service organisations such as TasCOSS and Shelter Tasmania, amongst many others, as the act is implemented.

I support the bill.

[5.34 p.m.]

Mr GAFFNEY (Mersey) - Mr President, the Police Offences Amendment (Repeal of Begging) Bill is a bill I am sure all of us welcome as it repeals of the offence of begging. It is interesting to note from members' input their similarities in where this is going, so I suppose each of us will put a little bit of something different into it.

While we can celebrate the Government's noble and compassionate intent in seeking to abolish begging as an offence under law, we do have to address the root causes that sees far too many people in such straitened circumstances. Recently media reports and this Government's own well-intentioned actions in our pre-COVID-19 world have seen recognition of the highly complex problem that is homelessness, together with the mental health issues, trauma and poverty that leave people having to resort to begging as a means of sustaining themselves.

With this comes the bill's other actions in seeking to amend section 15B. The net result is we have a bill that on the one hand decriminalises begging, and on the other hand re-criminalises it. In a fair-go Tasmania this is simply not on.

Greg Barns from the Australian Lawyers Alliance wrote to us with its concerns about the bill. Foremost among those concerns were observations about the bill's proposed amendment to section 15B -

> The Bill seeks to amend section 15B of the Act to allow police to direct a person to leave a public place if the police officer believes on reasonable grounds that the person …

Then the proposed amendment brings back begging as a divine codicil to a veritable shopping list of places and circumstances that might lead anyone going about their normal businesses subject to its strictures.

At the end of the day, it is a very low threshold based on the subjective judgment of the police officer, a result that I don't believe is fair on the police officer and not fair on someone subject to such judgment, complete with its ritualised and implicit humiliation.

TasCOSS is another highly respected advocate that has highlighted the existing divisions that allow an equitable approach to resolving any issues that can be effectively used by police officers without an unnecessary amendment to section 15B.

We can do better.

I take this opportunity to speak to another element within this because it was a growing issue surrounding unaccompanied homeless youth, young people, many of whom are under 18 and do not have a safe and secure place to call home. Dr Catherine Robinson of Anglicare in Hobart is one of the nation's leading researchers and advocates in this field. Her work as a state coordinator for the Australian Research Alliance for Children and Youth puts her at the forefront of this essential work.

To complement facilities in a number of Tasmanian communities, we can celebrate Eveline House, a specialist house that opened in Devonport a couple of years ago for 16- to 24-year-olds, with 25 units, five of which were specifically designed for people with a disability. The facility is managed by Anglicare as a community partnership that has a truly holistic approach to getting young people into a safe and stable housing environment with a range of support services that allow them to establish themselves and complete whatever study or training they may need.

For young people on Youth Allowance, there are almost no affordable rental options anywhere in Tasmania, and thanks to the activities of local advocates and government support these initiatives have grown in their scope and action. One of these community-based initiatives is the Devonport-based Action against Homelessness, an organisation founded by Royce Fairbrother and Dr John O'Sullivan a few years ago with the support of a strong team from the local community. Whilst it actively supports and houses residents, it is focused on addressing homelessness, together with health and wellbeing issues with practical support for young people in and around Devonport.

I wonder if these sorts of sustainable community partnerships and practical support need to be an area of renewed activity and focused on by the minister, Mr Jaensch, and his Government colleagues, especially as we seek to recover and rebuild in the midst of the COVID-19 pandemic.

We can commend the Government for seeking to remove the offence of begging and yet to be confounded to see it reinserted as the offence of begging in the form of an additional amendment. We are not here to see the legislative vilification of people with very few options. I look forward to the bill going to Committee and to ensuring the legislation reflects the affirmation that all members of our community are to be respected and to be assisted.

[5.39 p.m.]

Mr VALENTINE (Hobart) - Mr President, for quite a number of years I have participated in the Sleep Out for the Salvos. At events like this you have an opportunity to move around town to engage with the homeless in a respectful way and learn a bit about them and their circumstances. Quite a few people on the street have mental issues. Some have issues with drugs and quite significant issues in general terms surviving in the world as we know it today.

I congratulate the Government for attempting to address the issue of begging because I do think it is very stigmatising. I know that the second part of that bill causes some concern. We have heard it from Community Legal Centres, from TasCOSS and from others with respect to how it continues to discriminate. I agree with that and other members have spoken about that.

I am sure the police do not like to have to be involved in this area either. I am sure the last thing they want to do is to feel they are in no position other than to move somebody on when they are causing a concern, when they know that person - and they probably know better than most - really is down on their luck. That is not what the police want to be involved with in that sense.

This is the sort of circumstance that ought to be followed up in a different way. You look at the number of the complaints that have been received, talking about it in 2018, the number of instances where, as the second reading speech says, persons who were charged with begging was extremely small: seven in the 2018-19 financial year, whereas the number of complaints received by police was more significant, 61 over the same period. You think about that number and you think about how often that that means the police are getting a complaint and that is only just over one week - 61.

This is the sort of thing that where other organisations like councils, like the welfare organisations, ought to be involved or have the opportunity to have somebody in plain clothes going down and talking to those people to see if there is something that they can do to help them out or, indeed, to gently explain to them the problem that they might be causing.

We need to take a humane approach to this. If you are walking through Cat and Fiddle Arcade and you see somebody sitting outside one of the shops and they are begging, and you see police officers talking to them, the first thing that comes to mind for most people would be, 'Oh, they've done something wrong'. It stigmatises that individual straightaway. It is not the police's intention to do that, but that is what happens. The person is stigmatised as soon a police officer is talking to them.

I do not think this ought to be in law - I really do not. I think that there needs to be an effort between police, councils and the welfare organisations to work out a system where somebody simply says, 'Look, we have a problem here' - you are talking about one a week, roughly. 'Do you reckon you could send someone who works in 'your street to home' service and have a bit of a chat to them? Try to get them to understand that where they are is not really the best place for them to be.'

We need to take a bit of a different tack on this. You do not get solutions by passing laws all the time. Sometimes those solutions sit within the organisations that are already out there trying to help people.

I support the bill in its intent in terms of decriminalising begging, but I cannot support the part that provides extra powers to move people on, unless begging was taken out of that clause and all of those things were added so that it applied to everybody, not just people who happen to be down on their luck.

[5.44 p.m.]

Mr DEAN (Windermere) - Mr President, I certainly will not be making a long contribution because I do not think it is needed. Sitting back, having been involved in policing for 35 years myself, and listening to people telling us how policing should occur and what should happen gets to me a bit.

I make the statement now very clearly: who is in the best position to tell us what is required to manage and handle the situations currently being presented? Who is in the best situation? Mr Barns in his office? I suspect he has never dealt with a person in this situation. Or some other organisation that really has not been out there and had to attend a complaint from a complainant, from a business, who is expecting something to happen? I think it would be those on the ground, those who are expected to manage these situations and who are managing the situations on a fairly frequent basis - those people are the police. Surely they would have a good idea of what is required.

Nobody wants to stigmatise anybody. People who are begging are doing so, in the main, through the most unfortunate situations. I will refer in a moment to a transcript of Mr Barns when he was talking to the ABC a week or so ago. I do not know who else may have listened to it. It seems to me they are virtually saying that all these people out there asking for money have mental problems. That is not the case. They do not all have mental problems.

I do not know if people walk through North Hobart, but when I walked through North Hobart going to my home a while back, there was a man - I suppose he would have been in his twenties or thereabouts - sitting on the footpath near the news agency right in the middle of North Hobart. He was, and probably still is, there quite frequently. He was quite well dressed, and had quite a large dog with him, and he had a sign saying 'homeless'. I am not quite sure what else the sign said, but he was homeless and was asking for money and support.

I talked to him. I stopped a number of times and talked to him and he was quite an intelligent person. He certainly did not give me any suggestion he had any mental problems - he may have done, I do not know - but he was quite a decent guy to talk to, taking and accepting that he was homeless and wanting some extra money.

I am not sure what the member for Hobart is saying. I am not sure whether he is saying that police should not stop - I take it he is only talking about uniformed police - but police in uniform probably should not stop and talk to anybody because it will stigmatise them. Or does he mean only somebody who is sitting on a footpath or on a seat that police should not stop to talk to? In their training, police are told to talk to people. Stop and talk to people, work with people, be open and be pleasant.

Mr Valentine - Basically I was saying there are softer ways to being able to achieve the same outcome. That is all.

Ms Webb - What I heard the member say is not that the police should not be stopping to talk to those people, but that we should be providing a better response so that police do not have to be the primary responders.

Mr DEAN - I understood the member said very clearly that it stigmatises people when police in uniform stop to talk to somebody on - I think he mentioned the Cat and Fiddle Arcade.

Mr Valentine - Well, it can do.

Ms Webb - Therefore we should provide a better response.

Mr DEAN - I am of the view it does not.

Mr Valentine - I am not having a go at police.

Mr DEAN - I, for one, was a sort of friendly character in my uniform, and I used to stop even as a commander of police and an inspector in uniform and talk to anybody and everybody, whether they were begging or what. I would do it fairly frequently. I would hate to think that people thought I was causing some stigma to those people by doing so.

Mr Valentine - I was just merely pointing out that sometimes when people are out there begging, it may well look like they are doing something wrong if a police officer is talking to them as opposed to someone in plainclothes; that is all.

Mr DEAN - The position I just take is that I wonder how many people have spoken to the businesses that are making these complaints to police? It is happening, and from the facts and data we were given, it is not happening many times a day. I think we were told 60 to 70 complaints were made.

It is not a tremendous issue out there at all. I wonder who has spoken to the businesses and asked for their position? How they see it, and how they would see this legislation if it were passed with the amendments I understand will be coming forward, which remove the provision that police have the right to ask these people to move on, in certain circumstances. That is, where their begging involves other actions that do not fit within the current legislation and the police have to move people on.

Have you spoken to those businesses? I have not, and I guess everybody received that letter from Robert Mallett. Let us be honest here -

Ms Rattray - He is reading your mind. The member just mentioned that two seconds before you mentioned that.

Mr DEAN - Robert Mallett and I do not always see eye to eye.

Ms Forrest - That would be an understatement at the moment.

Mr DEAN - That would be an understatement, but he raised some very important points in the email he sent to us. He made it fairly clear that police do need some legislation under which to ask these people to move on in certain circumstances. He is saying it is needed. I just ask the question, what would happen in those situations if begging is removed - and police want it removed, police have brought the bill forward. It is something that should not be an offence, and police see it that way. They want to remove it.

The other situation is that these people should be assisted by other organisations - welfare organisations. Nobody is disputing that, and I do not dispute that either. Should it be something that the police should have to manage in any way at all? I do not think so, but the fact is we do not have that happening. Currently, it is a requirement of police to attend these matters and do

these things and take action and so on. I am very confident in saying that the police would love us to pass legislation that would take them right out of this. I would be surprised if they did not. They would not want any involvement in it, but that is clearly not the case.

Ms Webb - Leave the gap then. Leave the vacuum to be filled by something else.

Mr DEAN - They have to act. The fact is that we make legislation and police have to action that legislation. It is a requirement of them as police officers. They have no right to ignore it.

Ms Webb - I was not suggesting ignoring it. I was suggesting leaving the second part out, and if there is a gap in the response available, that gap can be filled more appropriately.

Mr DEAN - I will just quote Robert Mallett and a couple of points he makes -

> The small business sector has probably never considered the act of begging as a criminal act. However, we do feel that the times when it becomes intimidation, nuisance or detrimental to the efficient operation of business by harassing or acting in a way or in a place which will deter customers from entering the premises should be dealt with.

As the police told us in the briefings - I thank the Leader for organising all the briefings - those actions do not always amount to an action where police have the right to order those people out of the area. It does not always amount to that - all those actions, at all times.

I quote further -

> Although people begging and causing problems to the public and businesses is rare, it does occur and police do need a power to deal with it when it happens. It should not be the job of business owners to act as police in these instances, and just because someone is begging cannot be an excuse to engage in intimidating or harassing behaviour. People deterring potential customers from patronising businesses is obviously a concern to business owners.

Ms Rattray - I heard some business owners comment on the radio - I am not sure if it was the ABC or LAFM - and they were hesitant to say anything to people outside their doors for fear of repercussions, perhaps something to their business or the like. That was just a comment that was made. I do not have any evidence to back that up, only that I heard it on the radio.

Mr DEAN - It upsets me when I hear people making statements that really put an organisation down in some respects, or have an adverse impact on the people. A lot of these people, and the police in many instances, cannot defend themselves much with some of the public statements that have been made, and they do not seek to do that. They accept it and take it on the chin, but I do not have to take it on the chin.

I am going to take one or two quotes from Mr Barns, talking to Edith Bevan about the begging bill on the ABC morning program on 18 September, at about 8.36 a.m.

To quote Mr Barns -

> The problem is that it is a sleight of hand on the part of the Government, and particularly Tasmania Police.

Why would police engage in this behaviour in these circumstances? They would not want this sort of work. What does it do for them? It causes difficulty for them, but it does help and will help the complainants, the businesses - many of which are already struggling to survive. To suggest it is sleight of hand by the police really concerns me.

Mr Barns goes on to say -

> They will come back into that area, and of course they can be charged then with a breach of the move-on notice that was given to them.

We heard from police that this very rarely happens. They mentioned they have seen it happen in places around licensed premises; I think the Salamanca area was referred to. Police said that very seldom happens. It is a rarity if that ever happens. Mr Barns is making it sound as if it is going to happen every time.

Mr Gaffney - I had the impression when he was saying 'sleight of hand' that he is saying what they get in one hand, they take away in the other because of the legislation. I was not thinking that it was untoward.

Mr DEAN - I thought sleight of hand had that one meaning. It is a very clear meaning.

Mr Gaffney - Okay, sorry.

Ms Webb - There is a risk of verballing Mr Barns, who cannot -

Mr DEAN - I am not verballing anybody.

Mr PRESIDENT - We cannot have a conversation going three ways. Just keep your interjections through the Chair.

Mr DEAN - I am not verballing anybody, because I am referring to the transcript of evidence, and as I understand, it has not been amended or corrected by Mr Barns or anybody else. That is all I am doing.

He goes on to say -

> It is a continuing stigmatising of people who are begging.

I do not see that. I have mentioned that already. Mr Barns goes on to say even more about the point made by the member for Mersey -

> As I say with a dishonest sleight of hand, simply replaced it with another form of stigmatisation.

I get disappointed when the word 'dishonest' is being used. That, to me, is not what Mr Barns would like to be referred to as behaving in a dishonest manner. Dishonest to me is not a word that really does anybody any good, unless they are clearly dishonest. That is really an attack on the character of people to use that word in that form.

He goes on to say -

> And no criticism, but we saw in Melbourne this week the horrific example of abuse of police power with a person with a mental illness.

Mr Barns is talking about a begging bill being considered here in this state and he makes some reference to an alleged abuse by police. People here would have seen that on television. As I understand it is only an alleged position in Victoria. It is was what people saw, but is not a proven situation, but I am not quite sure why you would want to raise that here.

Is he suggesting the police are going to abuse these people in this way? That they are going to handle them viciously and violently? We have thousands of police in this country and how often do we get complaints of abuse by police? Not that many, particularly in this state, where police have got an exceptional record when it comes to managing people, working and operating fairly and properly. They have an exceptional record, perhaps the best record of any police service in the world. That is how they appear when it comes to these sorts of things.

I get annoyed. I was listening to this on the way into work here and I had another person in the car with me and they said to me have the police got to accept this or can you do something about it? I said I can raise it.

He then goes on to make another statement -

> It is no criticism of the police, but they are not trained and not well equipped to deal with these issues.

Well, police do have training in how to handle people with mental illnesses. They certainly had it when I was there at the academy and still have training to handle and manage these matters, so it is not right to say that. I am not sure what he means by equipped. Whether they need equipment or what, I am not sure but they have training in this area, how to deal with mental health and if a person has got mental health issues, that is fact.

He then goes on to say -

> And the Government in this case has gone along with it because it is always, with most governments, they fail to stand up to the police.

The police are controlling the Government? I am not sure that is happening. The statement was made by Mr Barns and I suppose he is entitled to make the statement.

The Leader will be able to answer this question for me. Mr Barns then goes on to say -

> I understand the police were again there yesterday, lobbying, but look, I will say to the Legislative Council that this is a really simple. Don't allow yourselves to be hoodwinked and don't allow this sleight of hand to take the

> form of law. The police will tell you what they will tell you because they are self-serving as all lobby groups are, self-serving.

I was crabby and upset when I heard it. Is not Mr Barns a lobby group? Can I not put him in that position also?

Mr Valentine - I think he is an advocate.

Mr DEAN - Because police are self-serving.

Ms Forrest - I do not know whether this is adding to the debate. I know what you are saying.

Mr DEAN - Mr Barns was listened to in the briefing. My view is that Mr Barns was able to influence a number of people in the direction they are taking and probably influenced members, perhaps, in wanting to move the amendment. It is important.

Ms Forrest - I do not think it is necessary to have all the comments about the police on the record, quite frankly.

Mr DEAN - It was on the ABC public record. It was on the ABC, and it was made public.

Ms Forrest - It is very insulting to police.

Mr PRESIDENT - If you get back to the bill before us.

Mr DEAN - It went on again towards the end to refer to the terrible situation in Victoria. I have some concerns with some of those issues. I hark back again. This is police wanting to remove begging because as they see it should not be there. It has been there for yonks and as I keep saying, there are other things in the Police Offences Act that should be removed as well.

Policing is an extremely hard job. Policing is not an easy job at all. It is probably one of the hardest jobs that you could probably ever get. Police are called on now to attend many situations and they normally support just about every government department after normal working hours. We ought not be making it harder for police to do their job - to do the job that the public expects of them and to do the job that the business people expect of them.

If we move forward and support a part of this bill and not another part of it, we are going to make it difficult for them. There is no doubt about that. I should imagine that the complainants, the public, the business people who make these complaints will be the ones who will be asking questions, wondering why the police come and simply talk to the person. They even have to be careful talking to them now and then having to move on without being able to take any actions. I think the police will find that fairly tough.

You are right. Whoever said that police are good at satisfying a situation and not over-exercising the powers and authority they have - they are very good and astute at working out a situation and being able to satisfy a complaint that might be made. They do it well and they do it on many occasions.

I do not think we should be making that harder for them and that is what this bill will be about.

Having said that, I can understand why the police need this authority to ask people who are asking for money and creating some other problems and issues, to ask those people to move on and to leave that area where they are disturbing people entering shops and businesses. The police need that authority. They do not have that now, as the police told us on many occasions. They do not have it.

I will certainly be supporting the bill moving forward.

[6.08 p.m.]

Ms FORREST (Murchison) - Mr President, I am not going to re-prosecute a number of points that have been in my contribution but there are a few things I need to say in support for the intent to this bill.

It is the absolute right thing to do to remove begging as an offence. Unfortunately, there are members of our community who have a very low tolerance for seeing someone in the position of being is much worse off than themselves.

I have had members of my community tell me it is disgusting to see a person in the street begging or sleeping rough. Thankfully, here in Tasmania that is not a common occurrence. I fear that it will become more common as the impacts of COVID-19 flow through our society, particularly depending on the decisions made at the Commonwealth level with things like JobKeeper and JobSeeker. That is off the point of this bill but it does point to the fact that we need to be particularly compassionate at the moment. There are people who are really struggling and who will struggle further depending on decisions that are made in relation to that support, unlike those of us who are on a good salary and will continue to be pretty much regardless, until our next election at least.

One of the reasons I say it is the right thing to do is because the stigma that is attached to people who are finding themselves in a situation where begging becomes their only option is very real. We should be doing what we can to assist those people, not just to find themselves not needing to beg for money, but by not further adding to the stigma that they must no doubt feel.

I know there are the occasional examples - and we saw a bit of a racket going on in Victoria and probably other states as well - I was aware of it in Victoria some time ago with quite well-off people pretending to be beggars and getting money that way. I think that is certainly not the norm and it is certainly not the case in Tasmania as far as I am aware.

As a society, we need to focus much more on addressing the underlying reasons why someone might find themselves in that position and it could be that they are living in poverty as a result of becoming homeless or being homeless, particularly if it is as a result of loss of income from COVID-19. We hope that can be addressed by other means.

Sometimes people escaping family violence find themselves - particularly when women leave, they finally find the courage and the wherewithal to leave, and they leave with nothing. They can try to get support in our communities but we know there is not enough support in our

community for women escaping family violence. What can they do if they have a child to feed or themselves to feed?

Mrs Hiscutt - Through you, Mr President, I imagine in a situation like this, they would appreciate a policeman coming up and saying, 'Are you okay?'.

Ms FORREST - I was just about to get to that.

Mrs Hiscutt - I do beg your pardon.

Ms FORREST - Yes, you should sit back and listen.

Mr PRESIDENT - Remember the Standing Orders.

Ms FORREST - That is where I was going to next. Despite the sometimes lack of community tolerance or members of our community having a lack of tolerance to seeing beggars, the police have and continue to display a very compassionate response to people in these circumstances.

I mentioned the briefing we had - I am not sure when it was - talking about the incident in Wynyard where we had a woman in the street who was homeless. She actually came from Launceston and she had come to Wynyard. She was living in the street and my community was really concerned about that. The number of phone calls I received was amazing. The police received calls, the police responded; she initially rejected help, which made it difficult, and then people gave her a tent. People were buying her food and taking her a cup of coffee, something to eat and that sort of thing.

It was maybe a week before we managed to get her some support and to accept some support. Every morning when I went to the newsagent, I was asked the question, 'What are you doing? Have you sorted this yet?'.

She was hanging around in the street, particularly near the open doorways to keep warm. It was cold. She was not actively begging that I saw, but I did not see her all the time. She did move around a bit. Those who know Wynyard would know Civic Park, the Cow Park, which is in the main street and she would go down to the Gutteridge Gardens and out to the foreshore.

Ultimately, she was spending most of the time in the street and people were very concerned. I was really heartened by that community response. It was not that people were being intolerant of her, they were terribly concerned about her. I know the response of the police was equally compassionate and equally concerned.

As we all know, you cannot make someone do something; they have to be ready to accept that help. Once we finally could work out who she was and get in touch with some of her family to find out what might be the underlying problem, we were able to directly assess that and sort it out.

That is what a strong community will do. There are other avenues for support for people who sometimes must find themselves in this situation but not for everyone.

The police do provide a very compassionate response. As we heard, there were 61 complaints of begging last year and seven offences, and only three people were involved in that because it was multiple offences by one person. We are not talking about a massive problem here.

For me, Mr President, that is why, even though I will be in the Chair at the time, I will not be supporting clause 5 because I do not believe a case has been made for the need for this measure. I believe that the power is there and it was not Mr Barns who convinced me of this, it was more the service agencies, like TasCOSS and the Community Legal Centres and other organisations that do deal directly with people in this situation, trying to assist them.

Mr Barns is entitled to his views. I do not always agree with him either. I find the comments the member for Windermere repeated abhorrent. It was unnecessary to repeat such awful comments on the record.

Mr Dean interjected.

Ms FORREST - I know. I am not saying that, but I do not think we need to repeat them to give them any credibility. That is my view. My lack of support for clause 5 of this bill relates to the discussions I have had with other service providers, people who work in this space. It does further stigmatise people who are begging as opposed to people who may be equally difficult to move around.

I am quite fearful of dogs now, particularly big dogs and particularly German shepherds, because when I was out doorknocking a while back I was bitten by one. I ended up in Accident and Emergency for the rest of the day while they syringed the wounds - and I had deep puncture wounds in my arm. Thankfully, it was only my arm. He bit and released. He did not hang on, this dog, and it hurt like a mongrel. I thought maybe it was broken. It was X-rayed and everything.

As a result of that, if I see a German shepherd anywhere in the vicinity I take a wide berth. I am sure they know I am frightened of them. So, if I saw someone shabbily dressed, looking a bit rough around the edges, looking like they had not had a shower for some many days with a German shepherd, I would not go into that shop. I think I will go somewhere else.

That person would not need to be begging and they would not be creating a nuisance but there are times when people do behave in a way that probably is not threatening to some people but it is to others. When you think about the impact on store owners, it is difficult because if that person was outside that shop I will not go in, not if I have to go past a big dog like that. The dog was standing right beside me, apparently, quite happily until I reached to give the person the flyer I was giving him. That is when it happened.

There are lots of different circumstances where people may behave in a way that makes it unpleasant for another person. Should we ask that person to move along because they have a dog? No. Anyone else might be quite happy and might even pat the dog on the way past. Rest assured, I will not.

Saying it is beggars who can be moved along, purely because they are standing close to a doorway begging, is not appropriate. It is stigmatising a particular behaviour and thus a particular person. If we find the behaviour of being a beggar offensive or not appropriate for

us to walk past, most beggars are not aggressive and if they are aggressive then there are definitely measures there that can enable the police to move them along.

Most of them, except for the recalcitrant ones that end up like the person who had multiple charges, they are going to be a problem anyway. Most of them would find that if a police officer went and spoke to them and explained that maybe they are creating the problem here, according to some, that would be all that it would take. The powers are there already in the Police Offences Act to move people along if they are behaving in a threatening or intimidating way or a whole range of other measures.

Unless the Leader can provide some very convincing argument as to why I am wrong, then at that stage if it does go to a vote I will not be supporting clause 5 but I support the intent of the bill and commend the Government for bringing it forward.

[6.19 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - I have some general responses here. Members have covered a couple of things, so some of the answers are applicable to two or three members.

We talked about the resourcing of issues resulting in begging. The Government is focused on practically improving the lives of Tasmanians by reducing the cost of living pressures, helping people out of family violence situations and supporting vulnerable Tasmanians into safe and affordable accommodation. The amendment is only one aspect of dealing with the problematic behaviours which are associated with begging.

Members talked about what should be done. I will go through what is being done so members can see we are not just focusing on this particular bill.

The Tasmanian Government is continuing to take action to reduce homelessness and housing stress across Tasmania. With the outbreak of coronavirus, the Government has taken several measures in the short, medium and long term to support those who are homeless or at risk of homelessness and will continue to review these measures to ensure they are appropriate.

We were the first state to announce a moratorium on evictions during the emergency period and announced a freeze to any rent increases. We have now extended this to 1 December to help with that.

In April, we announced $4.3 million to expand homelessness services to Tasmanians in need, whilst also increasing the capacity of our homeless services with seven family units and 10 two-bedroom units at Hobart Women's Shelter and 18 pods for Bethlehem House. They are now complete and being tenanted. The package included expansion of the Safe Night Space into a 24-hour, seven-day Safe Space service to address the immediate needs of rough sleepers in Hobart, Launceston and the Burnie areas. Nevertheless, we know one solution does not fit every need and that is why we have extended brokerage services, expanded the capacity of our shelters and are working to deliver other projects like the 24-bed refurbishment to the former Waratah Hotel and the 25-unit Goulburn Street complex.

The Safe Night Space service is currently being reviewed. It is great to see this project has been helping those in our community who we set out to provide support for. So, the right people are getting that help. The service is currently funded until the end of the year and future

options will be considered as part of the budget process. We know there is a lot more to do in this area to help people in need in the coming months and we will do everything we can to help our most vulnerable get through this.

In addition, the Government is delivering across the spectrum of housing. We have now completed the delivery of an additional 35 dwellings for use by two of Hobart's homeless shelters and we are progressing on the development and expansion of other projects such as the Youth Foyers in Hobart and Burnie or the expansion of Thyne House.

We are progressing well on key housing projects such as refurbishing the Waratah Hotel at the 24-bed supported accommodation unit and as I mentioned the Goulburn Street unit complex and, of course, the Huntingfield subdivision. We have a pipeline of over 350 social houses under construction or being contracted now. We are progressing with our announcement from March to extend our agreement with community housing providers until 2040 and transfer of a further 2000 properties to be managed by them providing long-term certainty for the sector and delivering more homes for people in need.

As part of our Rebuilding Tasmania infrastructure program, we announced that on top of our Affordable Housing Plan, we will deliver even more new social housing stock through a $100 million investment that we construct up to 1000 new social houses over the next three years.

We have also broadened the eligibility requirements for our home safe program with a $9.3 million commitment to allow even more Tasmanians to reduce the initial cost of buying a house and the monthly cost of owning it.

It is this Government who secured the agreement to waive the state's housing-related debt to the Commonwealth. We know there is still more to do and we will continue to focus on helping Tasmanians in need to secure accommodation.

Members, you can see there is an awful lot of work being done.

Ms Forrest - You just demonstrated perfectly you do not need a move-on power. There will not be any beggars.

Mrs HISCUTT - If that time comes in Tasmania that will be the case, but member for Murchison that time is not here yet.

There was much discussion about whether the move-on power is needed in the bill during the second reading debate, or whether the existing powers under the Police Offences Act 1935 are sufficient. I will touch on that here.

The Government has clear advice that the existing powers are not as broadly stated or, indeed, as tailored to the purpose at hand as those proposed in the bill. This view aligns clearly with what has been expressed by Tasmania Police at the various briefings provided to members. Members, this is an important part. This is why coinciding with the repeal of the begging offence the Government proposes this provision to give Tasmanian police the authority to move those poor afflicted people on in a limited number of circumstances. The assertion that this is an increase in police powers is simply incorrect. With begging as an offence currently, police

can move on any beggar now. This bill creates a limited and lesser power than the current authority.

As members have heard in briefings, in practice police are not routinely prosecuting people for the existing offence. However, as members have heard, there is a community expectation for the need for police action from time to time. I note that members have also had representation from the Tasmanian Small Business Council as quoted by the member for Windermere. Although people begging and causing problems to the public and businesses are rare, they do occur and police need a power to deal with them when they do happen. Begging cannot be an excuse to engage in intimidating or harassing behaviour, especially with respect to vulnerable people like the elderly or people with disability, or deterring the public from patronising businesses or public facilities such as toilets.

This move-on power does not apply to anyone just because they are begging. The offence of begging is completely removed. To be asked to move on by police the person must be begging and have intimidated or harassed a person, prevented or deterred persons from patronising a business or the conduct of the business, or prevented or deterred persons from using a public facility. When a person is begging and is preventing and deterring persons from patronising a business, this is a legitimate concern for business owners and the public.

Police officers are highly trained to be dealing with these types of situations and are the appropriate people to deal with complaints from members of the public. We do not want to create unintended consequences by repealing this path and then members of the public or business owners feel the need to get involved.

The member for Nelson asked about complaints to police about begging. In 2018-19 there were 61 complaints to police regarding beggars, with prosecutions for begging occurring on seven occasions, but related to only three individuals, one of whom was dealt with on five occasions.

In 2017-18 there were 42 calls to police complaining about instances of begging, with police that year proceeding against beggars on three occasions. All these charges related to two individuals, with one being a repeat offender. Over these two financial years, this averaged one complaint per week from the community where there was an expectation the police should act.

In the 61 complaints from 2018-19, 47 calls appeared to be from businesses. In many instances the police radio room recorded concern about additional problematic behaviour such as yelling, abuse and aggressive behaviour. There was also concern about beggars who were alcohol- or drug-affected or targeting vulnerable people.

Although not the most prevalent of issues, the statistics highlight a regular community expectation of the need for police action. About half the complaints were about beggars being located near businesses without any additional record of additional problematic behaviour. This does not mean there was or was not additional behaviour. This is simply unknown as it is not stated in the despatch system that is used to manage police attendance, as opposed to recording offence information.

Ms Webb - Through you, Mr President, was that half, did you say?

Mrs HISCUTT - Pardon?

Ms Webb - In that category? Half were in the category of not having a reported associated behaviour?

Mrs HISCUTT - Yes, about half the complaints. So not half, but about half. With regards to the proposed additional move-on powers to be added to section 15B of the Police Offences Act 1935, substantial consideration was given to how to frame this to address the problematic behaviours associated with begging, but also to constrain any powers so that it did not inadvertently extend to others, particularly those who may be involved in lawful protests.

By requiring that a person be begging and also that they be intimidating or harassing, deterring customers from patronising a business or deterring persons from utilising a public facility, the legislation very clearly constrains this additional move-on power so that it cannot be applied to any other classes of persons including skateboarders, youth or those engaged in protest activity.

In the case of other examples given, like collecting for charity, these often require other authorisations or permits, hence the reason the additional move-on power is not expressed more broadly.

I was asked how do police deal with mental health issues and problematic behaviours in non-begging circumstances?

When police respond in other circumstances, their ability to act without the cooperation of the person involved will be limited to where there is an offence or where the person is likely to cause harm to themselves or to others.

Police encounter many circumstances where they cannot take coercive action. This is appropriate in a free society. The difference with begging is that where it invites problematic behaviour, it is usually tied to the location. Moving the person on from that location can have the effect of defusing a situation. That is all the power seeks to do.

'

Bill read the second time.

POLICE OFFENCES AMENDMENT (REPEAL OF BEGGING) BILL 2019 (No. 49)

In Committee

Clauses 1 to 4 agreed to.

Clause 5 -
Section 15B amended (Dispersal of persons)

Ms WEBB - I have a few questions to put to the Leader on clause 5. I am sure others will add further questions.

I would like better clarity on some of the words and the intent of the bill. The Leader mentioned in her second reading speech that the current powers are not tailored to the purpose at hand, so I would like a better explanation about what specifically the purpose at hand is. I would like that to provide clarity to -

> (ca) by, or in the course of, or in connection with, begging in that place has -
>
> (i) intimated or harassed a person;
>
> (ii) prevented or deterred persons from entering, or the conduct of, a business that is in, or in the vicinity of, the place; or
>
> (iii) prevented or deterred persons from using a public facility that is in, or in the vicinity of, the place; or

What does 'in connection with begging' mean in that area? I would like to better understand the intent and the meaning of 'prevented or deterred persons from entering, or the conduct of, a business'. As well as clarifying that in a general sense, I would specifically like to know whether sitting and begging in a passive manner could be deemed to be preventing or deterring persons from entering a business? If so, in that same subclause, in terms of 'in the vicinity', how close would a person have to be sitting and passively begging to be captured by that given that half the complaints potentially related to that form of begging? That is a start.

Mrs HISCUTT - Honourable members, the purpose at hand is to deal with the problematic aspects of beggars, the problematic aspects of the begging. 'In connection with begging' was on the advice of OPC to capture circumstances, for example, immediately after begging has ceased.

The meaning of 'prevented or deterred' has its normal meaning. There are no absolutes; cases are assessed individually. Yes, persons can be moved on for passively begging if they deter patronage of a business. This will be assessed objectively by police, who we already know respond compassionately. It is left up to the police officer to help the beggar along.

Ms LOVELL - I have already indicated that I am not inclined to support this clause and my reasons for doing that. I want to ask for clarification around an example to make things clearer for me. I would like the Leader to clarify whether clause 5 would allow police to respond compassionately to a person as described by the member for Nelson. That is, someone sitting outside a shop, beside the doorway, for example - not blocking the entrance, but begging passively, and, by virtue of being in that location, the shopkeeper believes they are deterring patrons from entering their shop or place of business and reports them to the police That is why I feel we do not need this power at all, and police will assess the situation.

Should the police come to assess the situation and determine that, yes, objectively, this person is deterring people from entering this shop, clause 5 would give them the power to move that person. That is the first example. Is that correct?

My second example is: if you replaced the person who is begging with somebody protesting - so sitting in the same location, not obstructing the doorway, holding a sign for example - and the shopkeeper believes this protesting person, who is not involved in any kind

of aggressive behaviour, not intimidating people but is sitting quietly in exactly the same manner as the person begging, is deterring people from entering their shop, under current legislation, do police have the power to move on that person?

Mrs HISCUTT - It is yes to the first, and no to the second.

Ms WEBB - I am just going to clarify a little further around 'prevented or deterred'. I am going to come back to the question you did not answer, which is around 'in the vicinity'.

Mrs HISCUTT - I apologise to the member. There were a lot of questions.

Ms WEBB - I asked questions in relation to three parts of it. If we can get to it this time, that would be useful.

To clarify further, in terms of the normal meaning of 'prevented', are we particularly to take that to mean 'physically prevented'? In terms of 'deterred', is that likely to be an instance in which somebody claims that they have been deterred, and we can point to a person who has been deterred, or could it be circumstances in which a shopkeeper, for example, claims that people are being deterred but cannot point to an actual person who has been or is being deterred? They can make a general claim about a deterrent effect. I am interested to unpick that a bit further.

The Leader, in her summing up of the second reading stage, said that this power doesn't apply to a person just because they are begging. How does that tally with the fact that we are now to understand, with the detail provided here, that a person may simply be begging sitting outside, for example, a shop in a passive way with a sign, and that this power certainly can apply to them? How is your statement from the summing up correct when we have just identified that this power can apply if it is deemed that their presence has deterred?

The other unanswered question was the 'in connection with begging'. Just to point that out, the unanswered question from the first speak.

Mrs HISCUTT - Madam Chair, I hope I have everything covered this time. 'Vicinity' is to provide for persons near the business. There is no absolute distance. That will be at discretion.

Ms WEBB - To clarify, it could be one metre, it could be three, it could be 20 metres?

Mrs HISCUTT - It will be up to the police to make that decision when they are called.

Ms WEBB - Absolute discretion on distance -

Mrs HISCUTT - I should imagine the police officer at the time would decide whether they thought it was a frivolous complaint and try to help the person. The judgment call would be made if there is a person sitting 10 metres down the road - obviously they are not blocking the doorway. I am sure the police, at that time, would make a judgment call. I do not want to put words into the mouth of the police.

Ms WEBB - Just to clarify, blocking the doorway is not the test here? Deterrence is the test?

Mrs HISCUTT - The police would work our whether it actually is a legitimate complaint. It is up to the police.

'In connection' is part of the drafting on advice from OPC. For example, the person may have set up to beg, but stopped when the police arrive. The power is not about simple begging. It can apply if there is the additional element of deterring patronage of a business. 'Prevented' is likely to be physical but each case needs to be assessed individually. It could be blocking the entrance. 'Deterred' is likely to not be physical but it is the police who will objectively assess whether the conduct is deterring people.

Ms WEBB - I seek clarification on a couple of those matters. In terms of your comments that there would have to be the element of deterring, to clarify, the mere presence of someone could be deemed to be deterring in this instance. It would not require anything other than somebody saying, 'They are deterring people because they do not look nice, or smell nice, and they are begging'. Just their mere presence could be deterring. Correct? I would also like to know -

Mrs Hiscutt interjecting.

Ms WEBB - I am asking the Leader whether that is correct. You will have an opportunity to explain whether that is not -

Mrs HISCUTT - Thank you for the correction. On you go.

Ms WEBB - I wanted to go a bit further on the 'in the vicinity of'. Given there is no way we can give people who may be engaging in begging - which, with the repeal under the first part of this bill, we know now is not an offence, and it is a legal behaviour to engage in - how would people who intended to engage in that behaviour, quite legally, know where it is that they can appropriately, safely and without being at risk of being moved on - how is it that they will know where they are able to do that, if there is no indication that a particular distance - say from an opening to a business, a doorway, or a particular distance from a particular facility - is not deemed to be a deterrent if they happen to sit there and engage in this legal activity?

Just to be clear, I am talking about instances in which the person is simply passively begging, not engaging in other behaviours that we know can be captured by this move-on power. Just the simple passive act of begging.

There are surely people who would like to, and intend to, engage in that now-legal activity, and should be able to come to know where it is they are able to do that with clarity, and without being at risk of being moved on because someone has found their presence to be a deterrence. If you could explain that - how will people know - that would be useful.

Mrs HISCUTT - There are a few answers that the member has put into my mouth, that were not what I said, but anyway.

The element of deterring - only if they were so close to the entrance of the business, and the police confirmed that was objectively the case. As I said before to the last answer, the call is by the police.

The member talked about 'in the vicinity'. A distance is arbitrary. The issue is whether they are impacting business. Common sense will guide them. If it does not, police will guide them if called. They will not immediately resort to a coercive power.

What we are saying here is that with passive begging - again I hate using the words - the judgment call will be done by the police on the day when they assess the situation. The police have discretion in all matters of law now, and this is not new. Police are trained, they will make a judgment call. If the police decide that the beggar is not causing an obstruction, that is the case. If the police decide the beggar is causing an obstruction, they might put their arm around him, 'Mate, can we help you. Would you like to sit over here?' Put them in a different position. Move them on a little bit.

The Committee divided -

AYES 5	**NOES 7**
Ms Armitage	Ms Forrest
Mr Dean	Mr Gaffney
Mrs Hiscutt	Dr Seidel
Ms Palmer	Ms Siejka (Teller)
Ms Rattray (Teller)	Mr Valentine
	Ms Webb
	Mr Willie

PAIRS

Ms Howlett	Ms Lovell

Clause 5 negatived.

Clause 6 agreed to and bill taken through the remainder of the Committee stages.

MARINE-RELATED INCIDENTS (MARPOL) IMPLEMENTATION BILL 2019 (No. 37)

Second Reading

Debate resumed from 16 September 2020 (page 89).

[7.00 p.m.]

Ms FORREST (Murchison) - Mr President, I can hardly remember the second reading speech, to be honest. The bill itself poses no concern to me as such. I appreciate - and it seems like last century, it might have been last year - that a few of us had a briefing on this. Yes, I think it was last year. I do not know if I can confirm or deny that.

At the time it landed on my desk I did not know anything about this and so it was really helpful to actually have that briefing and understand what we were talking about. It is an important piece of legislation to deal with the pollution of our waterways and we know the

significant harm oil spills and that sort of pollution into our waterways can have on particularly our bird life but also the other marine animals.

We do need to be really cautious about the way we approach this and make sure there is robust legislation in place to deal with this. I understand it has been well consulted with the relevant authorities that would be involved in actually dealing with and the administration of this so I do not have a lot to add to the contribution. I did not realise we had done your second reading. I was thinking I need to refresh my memory about this - it was probably a century ago.

Mrs Hiscutt - It was not that long ago - Thursday last week.

Mr PRESIDENT - It was on 16 September.

Ms FORREST - Yes. Right. Yes, I might have slipped out of the Chamber at that point. Mr President, personally what I went through - I had the briefing, went through the bill and previously did not have any major concerns with it, but am sure there are other members who will raise things through the Committee stage if there are.

[7.03 p.m.]

Ms RATTRAY (McIntyre) - Mr President, I take the opportunity to head over here because my papers are not together, and I know what is going to happen over there - they will go everywhere. I, like the member for Murchison, quickly had to put my mind to this because I had a bet with the member for Hobart in the seat next to me - I said, 'I reckon we are going onto the corrections bill' and I was wrong so I have just lost the bet, Mr President, and now I have to get my mind on to MARPOL.

I was not quite there, but I will be by the time I start. I also had to recall when we had that briefing and the information was provided because marine-related incidents - and so I have got a few parts of the second reading speech highlighted and I will work my way through those. I will refresh members' minds here, seeing it was a while since the Leader did her speech, that the bill protects waters up to three nautical miles from our coastline where the pollution event occurs within the distance or the pollutant has originated from outside state waters.

Then it goes on to say the main strength of the bill is it improves the Government's capacity to respond to and police any such event. And, as, again, the member for Murchison said in her contribution, any of those oil spills or issues that are happening in our state borders need action and protection. I notice that it replaces the existing bill, the Pollution of Waters by Oil and Noxious Substances Act 1987, which is outdated and only gives partial effect to the International Convention for the Prevention of Pollution from Ships (MARPOL) Convention. I expect that this is Australia-wide. Is that the case?

Mrs Hiscutt - I can confirm that that is the case.

Ms RATTRAY - So we are nationally consistent. I love that nationally consistent approach - not always, but I understand when it comes to pollution of our waters, particularly by oil and noxious substances, that we have to have something in place. I expect that since 1987 things have changed considerably. They probably carry completely different fuel from 1987. I am a non-water person, other than the daily requirements, but I am not big on going out on boats and the like. I do not know much about that part of the marine environment.

I note as well that it is says also in the second reading speech and it talks about that 'the bill removes the possibility of a party to a pollution event evading the legal, financial and environmental consequences of their actions'. I immediately thought this is the chain of command scenario that we have in the transport industry. You can actually be the owner of a company. The person third-way down the command is the person who caused the incident but the person at the top is also liable. Is that what we are looking for here? It does not matter who is part of the process that caused the issue, right to the top and right to the bottom there is a compliance obligation around those persons or organisations. As we know, it could be a large shipping company and maybe the buck stops with the president of P&O Cruises, or would it be the board of Toll, or something like that? That is what I am looking for here. How far does that chain of command responsibility apply under this legislation? That is a key point for the industry to know and particularly us to know as legislators.

It goes on to talk about a serious offence - the court may impose a prison term of up to four years and an individual penalty of nearly $1 million, and wait for it, a corporate penalty of nearly $4 million. We are talking significant dollars and significant penalties when you are talking prison terms.

Ms Forrest - When you think about the oil spill in the Gulf of Mexico, it was a long time ago. It cost a bit more than that to clean up.

Mr Valentine - The *Exxon Valdez*?

Ms FORREST - That is the one, yes.

Ms RATTRAY - I remember that name.

Ms Forrest - Bringing oil to your shores - that was their promotion.

Ms RATTRAY - It is certainly high stakes here, extremely high stakes. We need to understand what the impact is when we are talking about that sort of penalty arrangement and we are talking about corporates and individuals, and then prison terms as well.

I do not disagree with the comment that it has to be clear to any irresponsible shipowners and operators, that our seas are not dumping grounds for their waste. I absolutely support that.

It goes on to talk about that the fifth element of the bill is to allow the state to recover these costs instead of the community having to foot the bill. Well, hooray. I am sure the community will be absolutely in support of that, having those that have caused the problem pay, but my question is, if it is an incident that you cannot predict, does it still have the same level of penalty? Sometimes our cars just break down. There might be oil coming out of them and it goes all over the road. As responsible as I am as a vehicle owner, you cannot always predict what will happen when you are operating a machine.

In this case, I am interested to know if there is a way that somebody who - I will not say who is not responsible - was not able to predict that that was going to happen and they took all reasonable attempts to address that matter - do they still end up in the court process looking at a term of imprisonment or $1 million fine, or for a corporate, $4 million fine?

It is the level of issue that has been caused in our waters but I am interested in how that might play out.

Mr Gaffney - I am pleased the member has raised that because it was one of the things we talked about at the briefing. I had the impression that as long as they have done everything by the book as well as they could, there was something that was always going to be -

Ms RATTRAY - Unforeseen?

Mr Gaffney - Yes. I was pretty comfortable with the responses we received. Then I realised that no matter how we feel about this, this bill is going to pass the way it is anyway.

Ms RATTRAY - That is not always the case. The Leader might tell you that you can never predict what this House might do.

Mr Gaffney - All right, we will see.

Ms RATTRAY - We will see. It goes on to talk about exclusions may apply subject to strict conditions such as ship location, size and diluted oil concentration. That is around the discharge into the sea and therefore banned unless required for ship safety to save lives. I guess you can unload your oil or your fuel in certain circumstances in particular areas. I am sure you cannot unload it here in Salamanca. It would not be accepted but perhaps out to sea a bit further. I am interested in the Leader's response to that.

It talks about 'timely and truthful' reporting. That might go to the member for Mersey's comment around if people have taken all steps that they possibly can and they are truthful and timely in their reporting then people can get onto it. I expect that they are still liable for the cost of clean-up, and a clarification around that.

I will get down to the next part on page 2, which is that there is a state marine pollution committee. It will continue its important administrative and oversight role under the law. The committee's job is to coordinate and support a quick response, as you would expect, to any threatened actual or threatened marine pollution incident. We are told that the director of the EPA, whose company we had the pleasure of this morning, will continue to chair this committee and report to the responsible minister. It goes on to say that the committee will include representatives, relevant government agencies, LGAT, TasPorts, Australian Marine Oil Spill Centre and the Australian Maritime Safety Authority - AMSA - good old AMSA.

On top of that, an incident controller will take immediate responsibility of the management on behalf of the committee. Does the committee get together, decide there has been an incident, appoint an incident controller, and then let that particular person do the work? I am interested in how that works. If you already have somebody who is identified who could be an incident controller, why would you need to gather a committee together to decide that there has been an incident and then you need to put somebody in charge?

It looks like we might have a step that we do not need, given that, if it is a marine spill, we need to act quickly and efficiently, as it says in the bill.

It says it allows for the minister to suspend any state law or part of a law relating to a state's physical environment for a period of up to two weeks. It then says the minister must

have reasonable and urgent grounds to do so. I am interested in an example of when the minister may need to do that. It goes on to talk about more powers of the director. The director has a key role in this as the chair of the committee.

I note in the last part of the second reading speech that there has been consultation with key stakeholders during June and July of last year. Those views and any concerns were listed. I have not had any contact in regard to any key stakeholder concerns. I would be interested if the Leader could provide us with any of the concerns raised.

Comments were received from AMSA, LGAT, MAST, Huon Aquaculture, and the Department of Police, Fire and Emergency Management, the DPFEM. It says those comments were largely positive and helped to inform the finalisation of the bill. Given that AMSA is on the committee, LGAT is represented on the committee and TasPorts is represented on the committee, it is just MAST, Huon Aquaculture and the Department of Police, Fire and Emergency Management looking to have their views heard.

It seems like quite some time ago that we discussed this matter and that briefing. Once you start putting your head back into the second reading speech, it starts to flow again. I will not be opposing the bill. I will support it into the Committee stage, whenever that is. I am interested in those areas around the chain of command and the functions of the committee where it appears they gather and then decide there has been an incident and they appoint an incident controller.

If there has been an incident, everyone will know about it. Why would you need to have a committee to decide there is an incident and appoint an incident controller? There may be a very good reason. I am sure the Leader will let us know what that is at the appropriate time.

[7.18 p.m.]

Mr VALENTINE - Mr President, I support this bill. It is very important we have strictures around the sorts of things that ships may let go into the environment. Nothing is protected once it is out of the way of the ship, it can move to all sorts of places.

Ms Rattray - It might be debris, it might not even be a pollutant.

Mr VALENTINE - That is true. It is a bill that is consistent with the equivalent legislation in other jurisdictions. We heard that in the second reading speech - with the Commonwealth legislation that protects Australian waters. That is why someone was suggesting that it is not likely to change a lot because it is trying to meet national strictures, to make sure it is consistent. I have a question around what a ship is. I note the bill has 'Australian ship' and 'foreign ship', but it does not actually define ship as such. When we get into Committee, I have quite a number of questions I will follow up on.

My main question is in relation to aquaculture vessels and barges that might be towed by those or might be anchored as in stationary barges, like feed barges and the like. Also, vessels that are not powered and do not have a motor of their own. I am interested to know because it uses the ship a heck of a lot in there. I would value knowing exactly what a ship is relative to aquaculture vessels or barges being towed by tugs in harbours and things, and how they are classified under this sort of legislation.

Quite clearly, there is a fish pen for instance. Is that considered a vessel? It holds fish poo - that is sewage. It talks about sewage. I want to know where the edges are when it comes to those sorts of things.

I am certainly happy to look closer at the bill and hopefully we will have all our questions answered. Mr President, I move -

> That the debate be adjourned.

Debate adjourned.

ADJOURNMENT

[7.22 p.m.]

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

> That the Council at its rising adjourns until 11 a.m. Thursday 24 September 2020.

Mr President, I remind members that our annual Tasmanian Community Fund update happens at 9.00 a.m. tomorrow. We will then go on to the briefing by the pharmacists on COVID-19 and medicine safety. That will occur at 10.00 a.m., so see you bright and early at 9.00 a.m. in Committee Room 2.

Motion agreed to.

The Council adjourned at 7.23 p.m.

Appendix 1

Tabled & Incorporated into Hansard by Hon. L. Hiscutt MLC 23/09/20.

Mandy Jenkins

From:	Jaensch, Minister <Minister.Jaensch@dpac.tas.gov.au>
Sent:	Thursday, 17 September 2020 10:46 AM
To:	RogerJaensch-externalEmail; Palmer, David; Reid, Anthony; Risby, Brian (DoJ); Mandy Jenkins
Subject:	FW: Major Projects Bill - role of the TPC
Importance:	High

From: Greg Alomes <galomes@kingisland.tas.gov.au>
Sent: Thursday, 17 September 2020 10:37 AM
To: Jaensch, Minister <Minister.Jaensch@dpac.tas.gov.au>
Subject: Major Projects Bill - role of the TPC

Dear Minister,

As the immediate past Executive Commissioner of the Tasmanian Planning Commission, I would like to advise you of significant concerns I have about proposed amendments to the Major Projects Bill that are being considered. I do this because I appreciate that the current Commission members may feel constrained in expressing a view on the Bill because of their independent role. However, where the proposed amendments would fundamentally change the way the Commission functions and undermine its authority within the Tasmanian planning system, I feel duty bound to make my views on this known.

I am aware from media reports and debate on the Bill in the House of Assembly that some members sought to introduce an appeal from the Commission appointed Panel to the Resource Management and Planning Appeal Tribunal (RMPAT). I am particularly concerned at this prospect, and would be very surprised if the current Commissioners were not of the same view.

The role of the Commission is paramount in the Tasmanian planning system and its scope of independent statutory functions are quite separate and different to those of RMPAT. As the Commission's annual report sets out it is involved in a range of roles covering significant pieces of planning and related legislation. The Commission's roles include:

- considering amendments to the State Planning Provisions (SPPs)
- considering draft Local Provisions Schedules (LPSs)
- considering draft planning scheme amendments, and combined permits
- reviewing reports on representations to draft management plans
- assessing projects of regional and State significance
- reporting on draft State Policies and Tasmanian Planning Policies
- assessing draft planning directives
- inquiring into the future use of public land
- making changes to planning schemes to give effect to Housing Land Supply Orders

The Commission's main responsibilities are set out in the following Acts:

- *Land Use Planning and Approvals Act 1993*
- *State Policies and Projects Act 1993*
- *National Parks and Reserves Management Act 2002*
- *Water Management Act 1999*

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- *Wellington Park Act 1993*
- *Public Land (Administration and Forests) Act 1991*

While RMPAT also has responsibilities under a large number of Acts, it's planning review functions are largely limited to decisions made by local planning authorities (councils) made under s.57 or s.58 of LUPAA. It does not engage in assessments of more strategic or policy based matters, or determine the appropriateness of and make decisions or recommendations on changes to the planning rules that local planning authorities are obliged to administer. Indeed, planning rules that RMPAT itself is obliged to follow.

Interestingly, while RMPAT is limited to review of development assessments, the Commission adds that function to its more strategic and rule setting roles, under both the current Projects of Regional Significance (PORS) process and the combined planning scheme amendment and development application process under s.40T of the current Act (referred to as s.43A generally – a reference to the same process for the interim planning schemes). So the Commission is given the responsibilities of both 'rule setter' and 'assessment against those rules'.

The suggestion that decisions of the Commission, or its panels, on regionally significant or State significant projects, should be appealed to RMPAT would substantially undermine the status of the pre-eminent planning body in the State. It would create a nonsensical situation where one independent statutory authority would have its decisions reviewed by another independent body. The repercussions of such a move would be to cast doubt over all of the transparent, open and independent processes that the Commission carries out with the potential of seeking to introduce an appeal against all of its determinations, or at least any which include a specific development proposal (a s.43A, PORS, or Project of State Significance).

The fact that there are no appeals on the Commission's determinations of Projects of State Significance, is of note. The only scrutiny beyond the Commission's determination is Parliamentary disallowance where the Minister has determined to amend or act against the Commission's determination. Even that is not a merit review.

Notwithstanding the extraordinary precedence that this would create for all Commission work, the functional arrangements of such an appeal would also need to be carefully considered. The Commission generally does not participate in appeals made to the Supreme Court against its determinations on procedural grounds, whereas RMPAT traditionally on hearing an appeal against a planning authority decision requires the original decision maker to be made a party to the proceedings. This would presumably create the situation of the Commissioners and delegates who formed the Panel being subject to providing their case to a panel constituted by RMPAT for it to review alongside the appellants and other parties joined (which could be numerous). Interestingly, there is some overlap of the list of delegates that RMPAT calls on and those the Commission uses.

The implications of such an appeal would be some members of one expert panel justifying their decision to another expert panel. The time taken to carry out such a review would be substantial if all of the evidence and considerations of the first Panel are to be revisited. The standard 90 day time for RMPAT to conclude its deliberations would, I suspect, never be achieved and it is far more likely that the time taken to carry out the original assessment will be matched if not exceeded. The result would be a doubling of the timeframes that a proponent would anticipate with the obvious outcome of them pursuing the project through one of the other processes which do not provide such an appeal and yet are not as well suited to the matters being considered.

Finally, I would like to also pass comment on the apparent concerns about the process for selecting the Panel that is set out in the Major Projects Bill. The process is reflective of the normal method that the Commission follows for selecting panels to hear and determine matters. While there appears to be a general view that the Commission 'proper' carries out the bulk of the work, this is not so. The Commission acts by delegating its functions to a range of other people deemed by it to be appropriate for the task. The majority of these are drawn from the Commission itself and from the ranks of the senior staff that are assigned to work for the Commission. Generally the panels may consist of a Commissioner and one or two of the senior staff, or perhaps two Commissioners and one of the senior staff. My reading of the process for establishing the panel under the Major Projects Bill is consistent with this practice.

While I appreciate the current level of scepticism in the community and the perhaps well intentioned attempts of some to mollify those concerns by introducing such an appeal to RMPAT following the Panel's determination, I am dismayed that the fundamental structure and roles of the planning system would be the undermined in the process. The ramifications for the Commission's status in the future could be substantial. This apparent minor addition to the Major Projects Bill to assuage concerns of some in the community, has the potential to fundamentally undermine the foundations of the long standing, tried and tested planning system.

Yours faithfully

Greg Alomes

Appendix 2

Tabled & Incorporated into Hansard by Hon L. Hiscutt MLC 23/9/20

MAJOR PROJECTS ASSESSMENT PROCESS – TIME STAGES IN DETAIL

J Hiscutt.

Timing of proposed process set out in the Bill

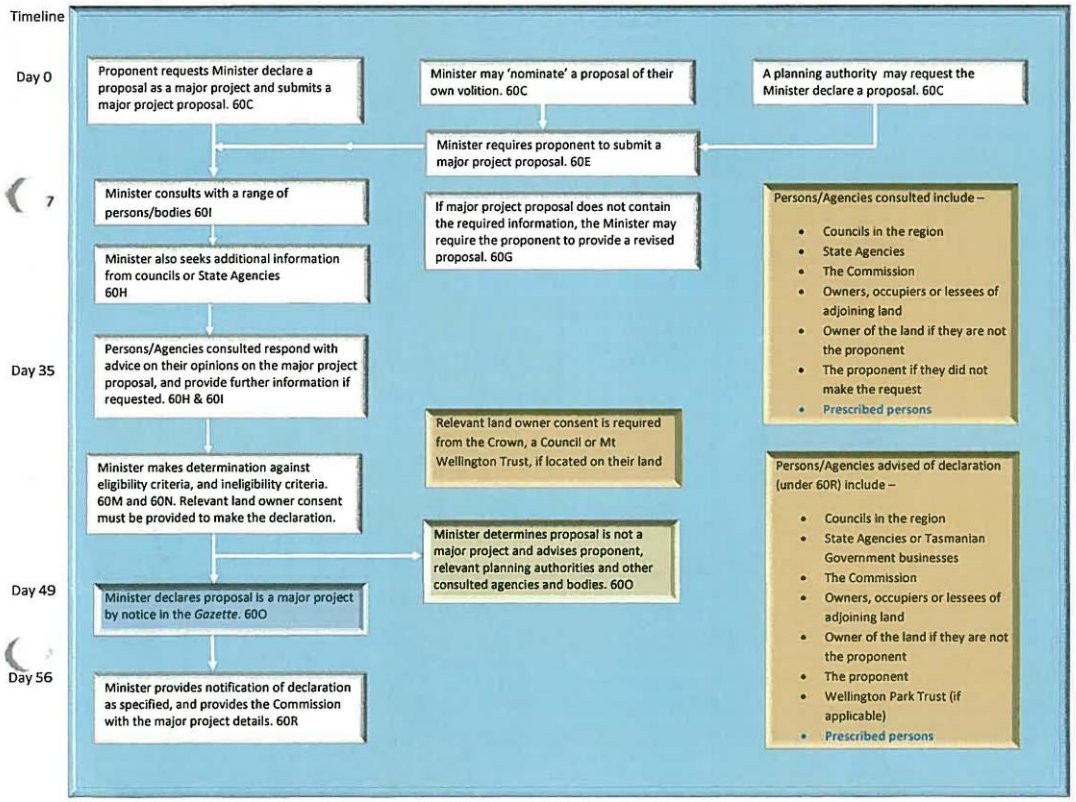
Stage 1 – 56 days – Eligibility Stage

Stage 2 – 98 days – Preliminary Stage

Stage 3 – 195 days – Final Assessment Stage

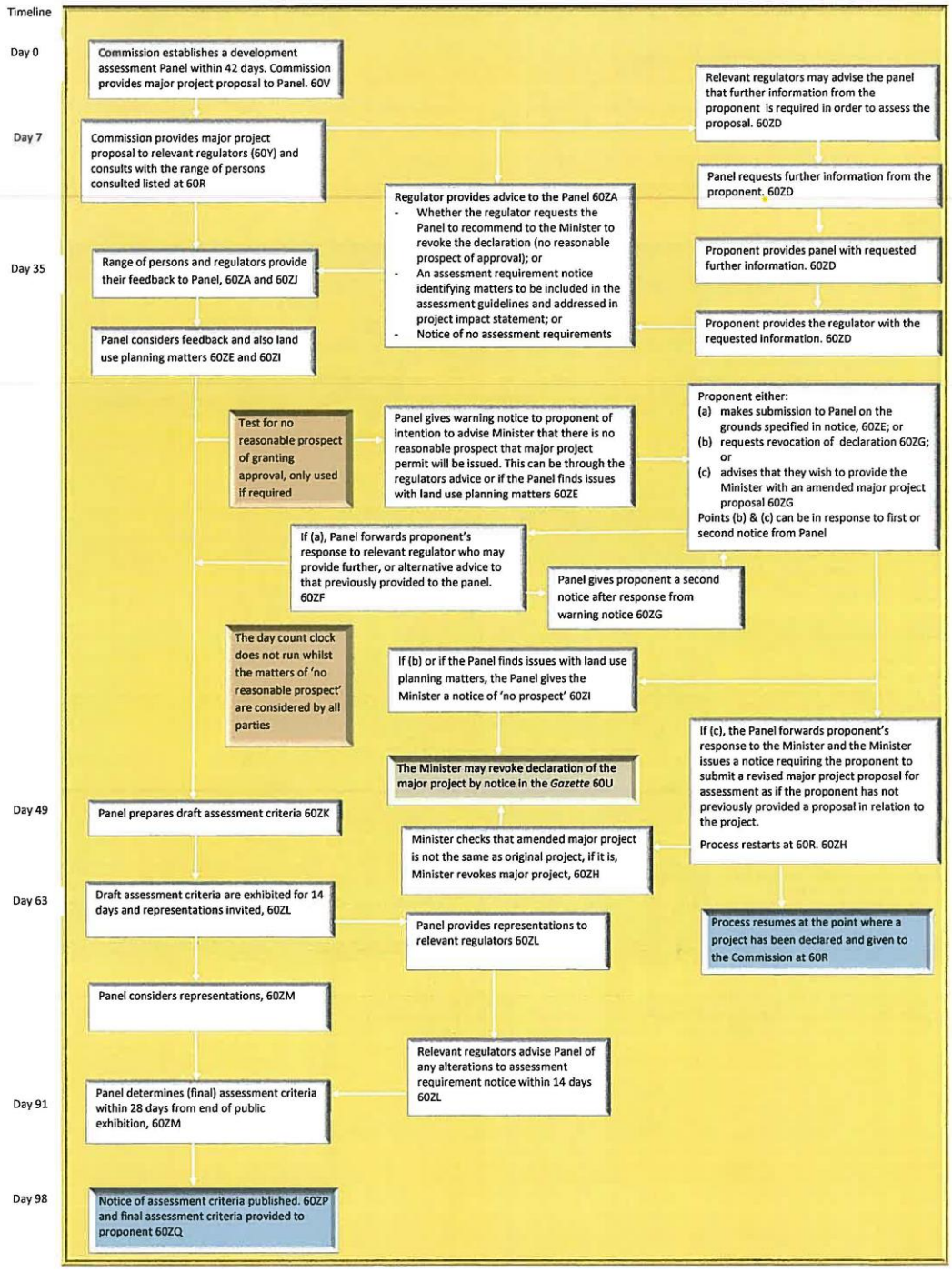
All stages - 349 days – Total Process time for a Major Project

Eligibility Stage

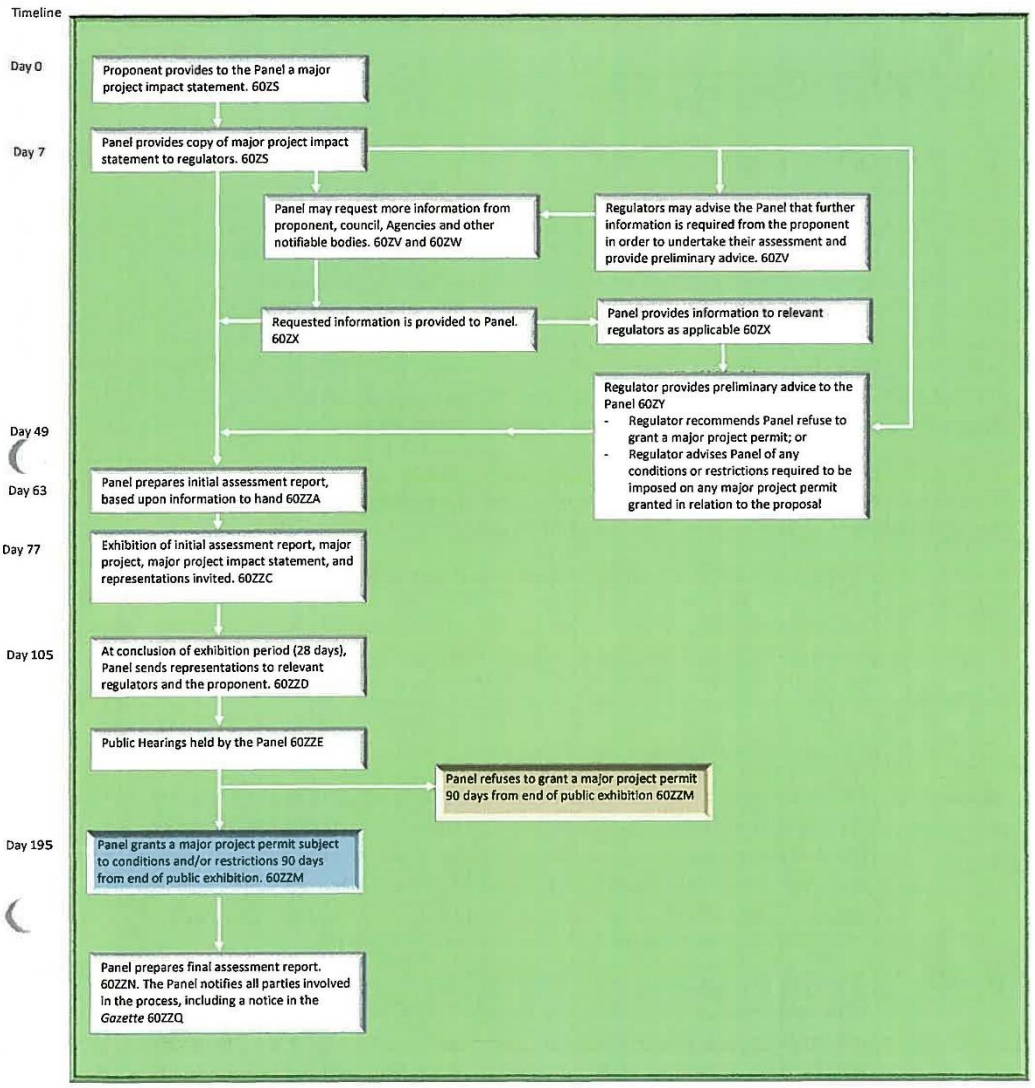


[the House of Assembly during debate modified the list of persons consulted to include 'prescribed persons']

Preliminary Assessment Stage



Final Assessment Stage



MAJOR PROJECTS BILL

1. Responses to key criticisms

Is there a loss of appeal rights for the community?

The Major Projects process continues the same assessment process that exists in the Projects of Regional Significance (PORS) process, where the expert panel established by the Tasmanian Planning Commission holds hearings into the project and its impact statement before determining the final decision to grant a permit or not. There is no appeal beyond the Panel's decision on merit in either the current PORS process or the proposed Major Projects process. Both are subject to appeals under the Judicial Review Act 2000.

The proposed legislation is consistent with all decisions made by panels established by the Commission which are not ordinary permits, in not providing an appeal to Resource Management Planning and Appeals Tribunal (RMPAT) (which is also an expert panel).

Consequently, there is no loss of appeal rights from those currently in place under existing legislation.

What is the level and type of community input into the assessment of Major Projects?

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

(s.60I) Firstly, a range of interested parties are consulted for 28 days as to whether they think the Minister should declare a project. This includes the owner of the land and owners and occupiers of adjoining land, the relevant local council and other councils in the region, prescribed persons, relevant State agencies and the Tasmanian Planning Commission. [the House of Assembly during debate modified the list of persons consulted to include 'prescribed persons']

(s.60ZL) Secondly, there is an opportunity (14 days) for the broad community to comment on the draft Assessment Criteria prepared by the Panel and the regulators before they are finalised. The Assessment Criteria are the project specific rules against which the project will be assessed by the independent panel.

(s.60ZZB) Thirdly, the opportunity (28 days) to make a representation to the exhibition of the finalised assessment criteria, the major project impact statement, and the Panel's initial assessment report based on the information provided at that point, including the preliminary advice of the separate regulators.