PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Wednesday 11 November 2020

REVISED EDITION

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The President, **Mr Farrell**, took the Chair at 12.00 noon, acknowledged the Traditional People and read Prayers.

QUESTIONS ON NOTICE

Mrs Hiscutt (by leave) tabled and incorporated the answers to questions nos 44 and 47 on the Notice Paper.

44. Premier's Economic and Social Recovery Advisory Council - Progress

Ms WEBB asked the Leader of the Government in the Legislative Council, Mrs Hiscutt -

With regard to the Premier's Economic and Social Recovery Advisory Council - PESRAC - and its progress, can the Government -

(1) Confirm that on 20 July 2020, when the PESRAC Chair delivered the council's first report to the Premier, the Chair also undertook that PESRAC will -

> shortly commence a broad-based community consultation program working with the Tasmanian community to shape the details of the recommendations for its Final Report;

(2) Confirm that the publicly available PESRAC work plan and consultation program states that the phase 2 consultation stage, where consultation is to extend to the broader community, is indicated to occur between 'August - October 2020';

(3) Clarify whether that phase 2 consultation process has formally begun, and, if so, detail whether, and how, any further public notification of that public consultation process has been issued;

(4) Advise, if the phase 2 consultation process has yet to formally begin, when it is scheduled to commence, how the public will be notified that it has commenced and options available to participate; and

(5) Undertake that when the PESRAC phase 2 consultation process formally commences, the public will still have the full three months available in which to participate and submit submissions as indicated in the council's initial workplan?

The incorporated answer read as follows -

(1) As announced on Thursday, 24 September 2020, PESRAC has developed a comprehensive, multifaceted consultation work plan that will allow all Tasmanians to provide their ideas and strategies for social and economic recovery.

The first component has commenced in October and will run through November, and involves a public call for submissions and recovery ideas from any Tasmanian or Tasmanian organisation.

PESRAC is particularly interested in ideas that could help to empower Tasmanians and Tasmanian organisations to build their own future on the pathway to recovery. PESRAC has provided an online tool that has made it easier for people to lodge their ideas with the council, as well as providing the opportunity for traditional long-form submissions.

The second component is a wellbeing survey, which is being undertaken by the University of Tasmania on behalf of PESRAC. This commenced in mid-October and will run for around one month. The survey invites all Tasmanians to provide information on at elements of wellbeing they prioritise on the path to recovery.

The third component is a series of cross-sector workshops, between October and November, to explore constraints and opportunities for Tasmania based on various COVID-related 'What if' scenarios.

Finally there will be a series of regional roundtables to consider which issues and opportunities identified through the cross-sector workshops are important for specific regions.

(2) The PESRAC website has been updated to reflect the comprehensive consultation work plan for phase 2. The multifaceted work plan will be undertaken over the months of October, November and December 2020.

(3) The phase 2 consultation commenced on 1 October 2020.

(4) Tasmanians will be advised about the consultation program in multiple ways, including public notices, social media, and through networks of peak bodies.

(5) The PESRAC website has been updated to reflect the comprehensive consultation work plan for phase 2. The multifaceted work plan will be undertaken over the months of October, November and December 2020.

47. National Driver Licence Facial Recognition Solution

Ms WEBB asked the Leader of the Government in the Legislative Council, Mrs Hiscutt -

With regard to the National Driver Licence Facial Recognition Solution - NDLFRS -

(1) Can the Government provide details on -

(a) the total number of Tasmanian driver licence images and associated data provided to the NDLFRS; and

(b) the time frame during which that Tasmanian information was and/or continues to be provided to the NDLFRS system?

(2) (a) Given the absence of the necessary national legislation, are Tasmanian driver licence images and associated data currently still being provided to the NDLFRS system;

(b) if not, please advise the date it ceased; and

(c) if so, why is that the case?

(3) With regard to the following classes of Tasmanian driver licence images and associated data to the NDLFRS, can the Government provide (a) the details on data provided, and (b) the number for each class:

(i) renewal of full driver licences;

(ii) new driver licences;

(iii) new provisional driver licences; and

(iv) current driver licences granted prior to 2017?

(4) Can the Government detail the privacy, legislative and other provisions applied to the collation and supply to the national database of Tasmanian driver licence images and associated data?

(5) (a) Given the absence of the necessary national legislation for the operation of the NDLFRS, will the Government recall Tasmanians' data already provided; and

(b) if not, why not?

(6) In response to Legislative Council petition No. 33 of 2020, the Government has stated that 'Tasmanian legislation fully supports the use for the purpose reflected in this bill.'. Will any eventual national legislation be tabled in the Tasmanian Parliament?

(7) (a) Can the Government guarantee there will be a moratorium on any use of Tasmanian driver licence images and any associated data currently transferred to the NDLFRS, until such transfer is authorised under an act of the Tasmanian Parliament; and

(b) if not, why not?

(8) (a) Can the Government guarantee there will be a moratorium on any future transfer and use of new Tasmanian driver licence images and any associated data, until such transfer is authorised under an act of the Tasmanian Parliament; and

(b) if not, why not?

The incorporated answer read as follows -

(l) (a) All Tasmanian driver licences are replicated in the secure Tasmanian segment of the NDLFRS. As at 20 October 2020, there are 442 744 Tasmanian driver licences accessible only by the Tasmanian Department of State Growth.

(b) Tasmania's segment of the NDLFRS was initially loaded with data in December 2018 and continues to be maintained.

(2) (a) The data continues to be replicated to a segment of the NDLFRS managed by and only accessible to the Tasmanian Department of State Growth. No further access has been granted to this data.

(b) Not applicable.

(c) Once fully implemented, with all appropriate legislative protections and provisions, Tasmanians will be at the forefront in protection from identity fraud, a crime costing the nation in excess of $3.1 billion annually. Tasmanians will directly benefit from this initiative when operational.

(3) The data that is stored and only available to the Department of State Growth for all licence holders is: surname, other names, date of birth, licence number, expiry status and image, noting the class of licence is not replicated.

(a) There have been 377 140 driver licence renewals from 1 January 2017 to 20 October 2020.

(b) A total of 29 276 full driver licences were issued in the period from 1 January 2017 to 20 October 2020, including clients who have moved from provisional to full licence holders.

(c) There were 25 829 provisional driver licences issued from 1 January 2017 to 20 October 2020, noting a number of these holders are now full licence holders.

(d) As at 20 October 2020, 348 857 Tasmanians with an active driver licence obtained their licence in Tasmania prior to 1 January 2017.

(4) Each aspect of the Face Matching Services program has been subject to an independent privacy impact assessment. The power to store the data exists under the Vehicle and Traffic Act 1999 for the initial purpose of maintaining the integrity of driver licences.

(5) (a) The absence of the national legislation is a matter for the federal parliament to determine, and only after that has occurred would Tasmania participate in the national system.

(b) The work completed will ensure Tasmanians will be at the forefront of digital identity management and will receive the personal protection benefits this will provide - specifically, protection from identity fraud. Facial recognition is used widely to protect key photo identity documents utilised in the Australian

community, including passports and visas, and currently by three other driver licensing jurisdictions which have run their own facial recognition programs for a number of years.

(6) It is not intended to table the Commonwealth legislation as application legislation in Tasmania.

(7) (a) On passing of the Commonwealth legislation, Tasmanian legislation will be reviewed to confirm that it complements and supports this legislation. Until such time, the Tasmanian data is not accessible by any other government or authority and remains secure in a separate segment.

(b) Use of the data will not occur until the Commonwealth legislation has passed and Tasmanian legislation is reviewed.

(8) (a) The Tasmanian legislation will be reviewed in context of the Commonwealth legislation. There will be no access provided to the data to any party other than the Department of State Growth until this occurs.

(b) The Department of State Growth will continue to maintain records stored within the secure Tasmanian segment of the NDLFRS. This will ensure Tasmanians obtain the benefits of improved identity protection as soon as the Face Matching Service is extended to enable validation of driver licences.

ENERGY CO-ORDINATION AND PLANNING AMENDMENT (TASMANIAN RENEWABLE ENERGY TARGET) BILL 2020 (No. 43)

GAS INDUSTRY AMENDMENT BILL 2020 (No. 32)

First Reading

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

MOTIONS

Estimates Committees - Establishment

[12.05 p.m.]

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

> That the Legislative Council establish two Estimates committees and that Committee A shall consist of 6 members and Committee B shall consist of 6 members:
>
> And that

Ms Forrest, Mr Gaffney, Ms Lovell, Dr Seidel, Mr Valentine and Ms Webb

be of Committee A

and

Ms Armitage, Mr Dean, Ms Palmer, Ms Rattray, Ms Seijka, and Mr Willie

be of Committee B.

That the Estimates Committees report upon the proposed expenditures contained in the Appropriation Bills (No. 1 and No. 2) and budget papers by no later than Friday, 4 December 2020.

And that the schedule emailed to Members on Tuesday, 10 November 2020 be adopted as the Estimates Committees timetable.

The schedule is as follows:

Monday 23 November 2020			
Commencing at 9.00 am (maximum of 9 hours)	Committee A (Chamber)	Hon Michael Ferguson MP	Minister for Finance Minister for Infrastructure and Transport Minister for Science and Technology Minister for State Growth
Commencing at 9.00 am (maximum of 9 hours)	Committee B (Committee Room No. 2)	Hon Mark Shelton MP	Minister for Police, Fire and Emergency Management Minister for Local Government
Commencing at 2.00 pm	Committee B (Committee Room No. 2)	Hon Jane Howlett MLC	Minister for Sport and Recreation Minister for Racing
Tuesday 24 November 2020			
Commencing at 9.00 am (maximum of 9 hours)	Committee A (Chamber)	Hon Peter Gutwein MP	Premier Treasurer Minister for Tourism Minister for Climate Change Minister for the Prevention of Family Violence

Commencing at 9.00 am (maximum of 9 hours)	Committee B (Committee Room No. 2)	Hon Elise Archer MP	Attorney-General and Minister for Justice Minister for Corrections Minister for Building and Construction Minister for Heritage Minister for the Arts
Wednesday 25 November 2020			
Commencing at 9.00 am (maximum of 9 hours)	Committee A (Chamber)	Hon Sarah Courtney MP	Minister for Health Minister for Small Business, Hospitality and Events Minister for Strategic Growth Minister for Women
Commencing at 9.00 am (maximum of 9 hours)	Committee B (Committee Room No. 2	Hon Guy Barnett MP	Minister for Primary Industries and Water Minister for Resources Minister for Energy Minister for Veterans Affairs
Thursday 26 November 2020			
Commencing at 9.00 am (maximum of 9 hours)	Committee A (Chamber)	Hon Roger Jaensch MP	Minister for Human Services Minister for Housing Minister for Environment and Parks Minister for Planning Minister for Aboriginal Affairs
Commencing at 9.00 am (maximum of 9 hours)	Committee B (Committee Room No. 2)	Hon Jeremy Rockliff MP	Minister for Education and Training Minister for Mental Health and Wellbeing Minister for Disability Services and Community Development Minister for Trade Minister for Advanced Manufacturing and Defence Industries

Motion agreed to.

Estimates Committees - Request for Ministers to Attend

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

> That the Legislative Council having appointed two Estimates Committees reflecting the distribution of Government Ministers' portfolio responsibilities, requests that the House of Assembly give leave to all Ministers to appear before and give evidence to the relevant Council Estimates Committee in relation to the Budget Estimates and related documents.

Motion agreed to and message transmitted to House of Assembly.

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

Consideration of Amendments made in the Committee of the Whole Council

Amendments read the first time.

Amendments read the second time and agreed to.

Bill, as amended, read the third time.

MOTION

Phasing Out Suspended Sentences - Sentencing Advisory Council Review - Terms of Review

[12.09 p.m.]

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

> That the Council approve, in accordance with subsection 2(4) of the *Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017*, the tabled draft of terms of reference of the review laid before the Council, as prepared by the Attorney-General and Minister for Justice in consultation with the Sentencing Advisory Council pursuant to subsection 2(3).

The Tasmanian Liberal Government strongly believes suspended sentencing is fundamentally flawed and remains committed to phasing out suspended sentences. In doing so, the Government is acting on the deep concern of the sentencing experts and the community about the flawed options of suspended sentences.

The Sentencing Advisory Council is an advisory body formed to provide the Tasmanian Attorney-General with high-level independent advice on sentencing in Tasmania. In 2014, the

then Attorney-General asked the Tasmanian Sentencing Advisory Council to examine options for phasing out suspended sentences of imprisonment in Tasmania, and introducing alternative sentencing options.

In March 2016, the council publicly released its final report, *Phasing of Suspended Sentences*. The report was released in March 2016 and confirmed that Tasmania's use of suspended sentences is higher than in all other Australian jurisdictions.

This heavy reliance on a sentencing option, which at times is incomprehensible, continues to diminish community confidence in the sentencing process, particularly when SAC's research revealed that 34 per cent of suspended sentences are breached by reoffending and only half of those are ever followed up. Of those that were actioned, the suspended sentence was only activated in about half the cases.

As the Sentencing Advisory Council itself observed, these figures show that 'the punitive nature of this sentencing measure remains somewhat illusory.'. The SAC report confirmed that Tasmania's use of suspended sentences is higher than in all other Australian jurisdictions, partly due to the limited range of sentencing options available. The report also revealed that around 45 per cent of Supreme Court offenders who breached their suspended sentence were not subject to any breach action.

The Government considered that the high usage of suspended sentences, coupled with the failure to act on any breaches of suspended sentences, has contributed to the lack of community confidence in the suspended sentencing option.

The sentencing option has been abolished in Victoria and New Zealand. The SAC report proposed a new sentencing model recommending that the Government's reforms to abolish suspended sentences and introduce new sentencing options be phased in over a five-year period.

The Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017 was an important step in delivering the Government's election commitment to progressively phase out suspended sentences of imprisonment and replace them with a range of alternative sentencing options.

The act provided for a number of amendments to the Sentencing Act 1997 and related legislation. All except three provisions of that act have already commenced, including in broad terms, providing for the new sentencing options of home detention orders and community correction orders, and removing probation orders and community service orders as sentencing options.

The 2017 act provided for these two new sentencing orders for courts whilst removing probation orders and community service orders as sentencing options. The 2017 act also provided for limiting the circumstances in which sentencings of imprisonment can be suspended.

Following consideration by parliament, the act, as amended, included the framework for section 2, for a review to be conducted before those sections were considered for commencement.

I will talk about the review now, Mr President.

The amendment inserted into the Sentencing Amendment (Phasing Out of Suspended Sentences) Bill deferred the phasing out of suspended sentences until after a review conducted by the SAC of the sentencing options now available to the court.

The amendment requires that the review commence no sooner than 18 months after the commencement of home detention orders and community correction orders.

Section 2 provides for the review process, following which the commencement of the remaining three sections - 8, 10, and 19 - can be considered. These sections will remove suspended sentences of imprisonment as a sentencing option for certain offences, except in exceptional circumstances, and remove the power except in exceptional circumstances, to order an offender to remain on a suspended sentence of imprisonment or have a suspended sentence imposed as a substituted sentence where the offender has breached a condition of their suspended sentence.

As required by the act, the draft terms of reference have been developed in consultation between the Government and the Sentencing Advisory Council.

The terms of reference of the review require the approval of both Houses of parliament, before the review commences, and this is by way of this motion currently before us today.

The motion before the Houses is pursuant to section 2 of the Sentencing Amendment (Phasing Out of Suspended Sentences) Act 2017.

The purpose of the motion is to approve the terms of reference of the review so that the Sentencing Advisory Council may conduct a review in accordance with those terms.

The SAC has indicated that it will complete the review within 12 months, following which its report in relation to the review is laid before the Houses of parliament.

The Government may then give notice of an intention to commence the final three sections of the act, being 8, 10 and 19. The notice can be considered by parliament and disallowed by either House if that intention is not supported.

While the focus of this review is not mentioned in the act, it is considered that the review is intended to focus on how the current phase of measures have operated since their introduction.

I will now turn to the terms of reference for the reviews. The terms consulted on between the Government and the SAC focus on the three new sentencing options introduced under the act: home detention, community correction orders and court-mandated drug diversion drug treatment orders.

The terms of review are broad in nature, requesting that the SAC obtains a breadth of information relevant to these three sentencing options and provides relevant findings and observations. They enable the SAC to consult widely in this regard.

As I have mentioned, the SAC has indicated that it will be able to produce the report within 12 months commencing from the date that the Government provides notice under section 2(5) of the act.

For the benefit of members, I would like to provide some brief information about the three sentencing options introduced by the Government that have been operating for some time and will be the subject of the review.

Firstly there was home detention. As an alternative to prison some detention orders are a suitable sentencing option -

Ms Forrest - Home detention orders?

Mrs HISCUTT - Home detention orders are a suitable sentencing option in a broad range of circumstances. These orders allow for the punishment of an offender through restrictions on their liberty while incorporating conditions to protect the public and aid an offender's rehabilitation. Offenders are not eligible for these orders if they pose a significant risk of committing a violent or sexual offence during the intended operational period of the order.

Core conditions attach to every home detention order. These include conditions designed to effectively supervise and rehabilitate the offender. Electronic monitoring is a core condition of a home detention order unless dispensed with by the court for special reasons, such as immobility or illness of the offender.

Working with Community Corrections officers, an offender's activities are planned, timetabled and approved in advance, allowing their movements to be monitored through an electronic monitoring device.

As of 30 June 2020, 61 orders were subject to electronic monitoring under a home detention order, an increase of 30 orders from the first year of operation. Before sentencing to home detention, a court is first required to have considered a pre-sentence suitability assessment which is prepared by Community Corrections. The timetable for the completion of this assessment is six weeks. Seven additional probation officers have been employed to undertake these assessments and case management of offenders who are subsequently sentenced to home detention.

From 14 December 2018 until 30 June 2020, Community Corrections received a cumulative total of 420 assessment requests for suitability to sentence to a home detention order.

Persons who are sentenced to these orders are required to wear an electronic monitoring device at all times which is monitored by staff in a dedicated unit of Community Corrections, the Monitoring and Compliance Unit.

Community Corrections has employed 28 staff in the Monitoring and Compliance Unit, which operates a 24-hour shift roster. This comprises 24 monitoring staff, including six supervisors, which allows for three monitoring officers and one supervisor per shift and four support management staff.

The monitoring team is responsible for monitoring all offenders subject to electronic monitoring in real time and responding to alerts or anomalies in information and tracking in accordance with violation protocols.

Monitoring operations commenced on 19 March 2019. As at 30 June 2020, 61 offenders were on home detention. These have ranged from one month to 18 months, which is the statutory maximum in length. The highest number of orders range between four to six months duration. The total number of home detention orders completed in 2019-20 was 79; the completion rate was 78.5 per cent. Sixty-two orders were completed successfully and 17 were revoked, noting that supervision orders include legacy probation and community service orders. Community correction orders have not been reported separately.

I will now speak about community correction orders. Community correction orders were included in the sentencing framework to take the place of both probation and community service orders. These orders allow for a higher level of flexibility for the courts to make the orders that are specifically tailored to meet the needs of individual offenders and achieve community safety outcomes. A community correction order is a single order that can incorporate conditions for either community-based supervision, community service or both.

Community correction orders are an appropriate sentencing order either alone or in combination with other orders for a wide range of offending. Depending on the length of the order and the specific conditions imposed, community correction orders can be both a punitive sentencing option and help offenders address the factors that led to their criminal behaviour in the first place. Many of the conditions that were imposed with the previous community service orders and probation orders have become available under community correction orders. Those conditions include a requirement to submit to the supervisor of a probation officer and/or perform community service for a specified number of hours.

Additional conditions that were not expressly available with community service orders and probation orders can be imposed with a community correction order, such as an offender not associate with specified people, be present at particular places or not be absent from their premises during specified times. Approximately 1000 such orders commenced in 2018-19 and 2019-20.

As an alternative to prison, the court-mandated diversion, the CMD program, is tailored specifically to offenders who commit crimes as a result of their abuse of illicit substances. Court diversion orders work with offenders whose risk of reoffending can be addressed by treating their substance abuse issues while remaining in the community. The program was expanded in February 2017 to provide the Supreme Court with this sentencing option under the Sentencing Amendment Act 2016.

Entry to the program is subject to an assessment process and subsequent court order. CMD participants are required to attend frequent urinalysis testing, individual counselling sessions, group counselling, as well as weekly appointments with their allocated court diversion officer. It is by no means an easy option, but one which produces successful results when an offender is willing to submit to the program and be given this last opportunity by the court. In the last financial year there were 70 drug treatment orders and 17 bail diversion orders.

In conclusion and as outlined earlier, the terms of reference before the parliament have been prepared in consultation between the Government and the independent Sentencing

Advisory Council. The act provides that a House of parliament may pass a motion of approving or refusing to approve the terms of reference. It does not provide for the amendments of the terms, which is consistent with the act's expectations that the SAC be consulted. If approved, the SAC will complete the review over the next 12 months. Within five sitting days of receiving the report, the minister must lay a copy before each House of parliament. The minister may at that time or afterwards lay before each House a notice of intention to commence sections 8, 10 and 19 of the act to commence those phases of the suspended sentencing reforms. A House of parliament may within 10 sitting days of the notice disallow the commencement of those sections. Therefore the motion before us is to allow the SAC to do this important work so parliament can be fully informed of the effectiveness of these recently introduced sentencing options and consider any proposed commencement of the future reforms.

Parliament retains the discretion to disallow the future reforms after considering the report. I have emailed all honourable members the requested correspondence between SAC and the Attorney-General.

I commend the motion to the House.

[12.25 p.m.]

Ms FORREST (Murchison) - Mr President, the Government has continued to be keen to remove suspended sentencing as a sentencing option for the court. Those members who were here in 2017 will recall lengthy debate around that matter. It is a policy position but we are here to talk about the process inserted in this place to ensure this process is a considered approach and hopefully an evidence-based approach.

This is a two-step process. The amendment inserted in this place and referred to in the 2017 act required that if the Government wished to continue pursuing phasing out suspended sentences, it would instruct the Sentencing Advisory Council to do a review. The terms of reference of that review were negotiated extensively at the time, as I am sure the Leader can recall, to ensure that not only did that review come back before parliament but also that the terms of reference to guide that review would come back to the parliament for consideration.

I made the point in 2017 that that was a really important component of this whole process. The Government has a view about mandatory sentencing which I do not share. It instructed the Sentencing Advisory Council to undertake a body of work that required it to present a report that showed how you can introduce mandatory sentencing. The Sentencing Advisory Council noted at the beginning of that report and in the report it does not support mandatory sentencing but the request by the Government was to find a way to introduce it.

We need to be sure we are not hamstringing the Sentencing Advisory Council to come back with the answer the Government might like to see. That takes me to the two-step process. Today we are approving, or not, a motion that outlines the terms of reference.

I appreciate the Leader getting the information as promptly as she did from the Attorney-General regarding the communication between the Sentencing Advisory Council and the Attorney-General in relation to this. It is required in the act that the Sentencing Advisory Council is consulted, so clearly it was consulted.

Its response came back and I reference a section of this. It is only a brief letter but I will read here -

> In your letter you propose 30 terms of reference for the review. The Council considered the proposed terms at its meeting on 30 June 2020 and as result is requesting an amendment to two terms as follows:
>
> … Referral 7 be removed, as it does not relate to a sentencing matter as required in the Council's Terms of Reference for operation.

That was removed. I do not know what that was but it was removed.

> Referral 8 be amended [which is now referral 7] so that the term 'agency' is replaced with 'relevant'. This is to enable Council to consult with all relevant stakeholders and not just agency stakeholders.

I know that the Sentencing Advisory Council wrote it in that manner, but then I went back to our motion, and I note that was duly changed to 'relevant stakeholders' in reference 7, but the same problem exists in references 15 and 24 where it appears that the same limitation may now exist.

Reference 15 says -

> What has been the perceived effectiveness of community correction orders as a sentencing option among agency stakeholders.

Reference 24 says -

> What has been the perceived effectiveness of the extension to the Supreme Court of drug treatment orders and the sentencing option among agency stakeholders.

Now, we know there are more stakeholders than agency stakeholders. That is why the Sentencing Advisory Council made note of it in its communication. It only said reference 8, but surely we should not be limiting the Sentencing Advisory Council to just agency stakeholders with relation to community correction orders and the court-mandated drug diversion or drug treatment orders? The problem for us is we have to accept or reject this term of reference. Now, if we reject it in its current wording, we can do that. The act says in clause 2(6) -

> The Minister may only make a request under subsection (5) … not less than 18 months after and … no more than 2 years after.

The two years is up on 19 December or somewhere around then, so if we reject this today in order to get that amendment made, to put 'relevant stakeholders' in those other two, it is incumbent on the Government to bring back a motion next sitting week and fix it up.

To me this is the only option, which is really sad and rather annoying, because when I go back to the debate we had in 2017 - and we did have lengthy debate on this amendment and another amendment was proposed by the member for Rumney which was defeated - we all spoke about this, but it would not have changed what we are dealing with now. I made a

number of comments around the process of dealing with the consideration of the terms of reference.

Yes, it was to be consulted with SAC; yes, that has occurred. I referenced the *Hansard* and made the point - and I still make that point - that personally I do not believe suspended sentences should be phased out.

The court should have as many options as possible and I would be interested to know how many suspended sentences have been issued in that period. While the Sentencing Advisory Council may well report that, it is not required of it - it is just looking at the phasing out of it. It is relevant. I expect it may be picked up in some of those references, because it sort of says how this is impacting on suspended sentencing.

If the Leader has information about the number of suspended sentences issued over that time since the commencement of these other sections with regard to community correctios and drug diversion or drug treatment orders and the other measures there, that would be helpful as a point of reference, but I hope it would also be reported in the SAC report.

We also need to able to compare and contrast what is happening now in terms of sentencing with what happens two or three years after these new sentencing options are in place. We need that comparison. We know that Tasmania has, as the Leader said, perhaps you could argue, over-utilised suspended sentences in the past.

That is because we have not had these other options. What is the rate of suspended sentencing - we have the numbers of what occurred before this, but what is happening now? We have all the information about the number of community correction orders, the number of drug diversion orders and the number of home detention orders, but we did not hear anything about how many suspended sentences there were because that is still an option for the court. The Leader said that - I am quoting directly from the *Hansard* of 22 November 2017 - 'Every member has input into the terms of reference.'.

Our only input here is to say yes or no because we have been told we cannot amend it. When you look at the act dealing with this, it says, when you look at the cold, hard, black and white - which is why our job is so important here, to get the cold, hard, black and white right or as right as we possibly can - section 2 -

> (3) The Minister may lay before each House of Parliament a draft of the terms of the review that has been prepared in consultation with the Sentencing Advisory Council.

Yes, we have that, but then it says -

> (4) A House of Parliament may pass a motion approving, or refusing to approve, a draft of the terms of the review that has been laid before the House of Parliament under subsection (3).

We limited ourselves; maybe we should have made that 'given the capacity to amend'. It is not a major amendment I am asking for here, but it is a significant and important amendment because of the comments made by SAC in its request for changes. I do not know whether it will limit SAC but if it thought it was going to limit in relation to the home detention orders,

that change was made. I tried to contact SAC in the brief time between when we received this letter and now, and I left a message. That is okay. I do not expect SAC to be at my beck and call by any stretch, but it makes it difficult when we cannot hear back to say, 'Is that an issue?'. For me it is an issue that when looking at the community correction and the court-mandated drug diversion orders, they could be limited to agency stakeholders only, not relevant stakeholders.

I know I am the first speaker. I deliberately rose first to try to raise these issues. I do not know if we should adjourn the debate to try to understand what SAC's view is on this or whether we push on and potentially vote against it and get the Government to bring back a revised version. I appreciate other members have not had an opportunity to speak on that, whether we can get a commitment from the Government that it will change that. That is going against the letter of the law if you want to be technically correct.

The Government could come back with another motion tomorrow for both Houses to deal with. I know it is Budget day tomorrow and I appreciate that. That is not until the afternoon. I know others are very busy in the morning. Notionally, it could be done next week if it is important to the Government to get it done while we are doing the Budget reply. It is not a major thing in terms of time taken. I know I am taking some time here because to me this is where the problem exists.

It puts us in a bit of a difficult position. It is part of our doing, those who were here at the time - those who were not can take no responsibility for that.

Mr Valentine - We would have to state pretty clearly on *Hansard* what we are expecting the Government to change it, would we not?

Ms FORREST - Yes, and I am making it pretty clear that I think it should be 'relevant stakeholders', not 'agency stakeholders' in references 15 and 24, both of them.

Ms Webb - For internal consistency.

Ms FORREST - Yes, for consistency, and not to limit the Sentencing Advisory Council. We do not want the Sentencing Advisory Council to be limited in its undertakings here. I know we do get another crack at this, so to speak, because when the SAC report is completed, the way I envisage it, it will come back with a report. Depending on what the report says, the Government may continue to progress down the path of wanting to phase out suspended sentences and enact those sections of the legislation that do that or they may, as they did with the Education Act, decide that was not such a good idea after all and not recommend it - that was the early age of children, not the suspended sentences for children; it was about the commencement age for school.

Mr Willie - You would think they would do their homework first.

Ms FORREST - They should do their homework first but we are limited here. There is still time for the Government to do that. It may be a seemingly small matter but if it limits SAC, I think it is a significant matter. It is really a drafting thing. There are four subheadings within the references. The first one was 'Home detention', the second one was 'Community correction order', the third one 'Court-mandated drug diversion' and then the last three

references notionally refer to the phasing out of suspended sentences and 29, which is the last one, sits almost in line with that.

To me, any other matter considered relevant should be across the whole gamut, not just for the purposes of phasing out suspended sentences. It is a formatting thing, I know, but we need some clarity around the fact that SAC is not limited, as we have seen in the past, to consider a matter fully and look at all the sentencing options.

It is enlightening when you go back and read through the *Hansard* of our debate on the bringing in of that amendment to give effect to this. We do get the opportunity to reject the report. We will not reject the report, but we will reject the notice to commence, or the order to commence those sections of the act that would then phase out suspended sentences. It may just come down to a policy position on that too, at the time.

This is not the be-all and end-all. I think the only way to have a fully-informed debate of that time is to have a fully informed reference and report resulting from a reference that does not limit the SAC in any way.

I do thank the Leader again for providing that. I had not picked up an issue that there were those differences, because it is very wordy, there are a lot of references there. One links to the one before. It is the way it is written. Some of the references are just really a collection of data and numbers. They will not take too long to do. Some of the other work will take a bit longer. The SAC has said it can get the work done within 12 months.

I am not sure where to go with this, Mr President. I will not seek to adjourn the debate. Another member may wish to do that, if they would like to. I would certainly support that. But I do not want to limit other members having their say, unless the Leader wants to say something by interjection.

Mrs Hiscutt - We are trying to make contact with SAC as we speak, so if other members wish to keep proceeding, we might have an answer for you from SAC before we finish the debate, with relevance to your question about relevant agencies.

Ms FORREST - Relevant stakeholders.

Mrs Hiscutt - Yes, stakeholders as well.

Ms FORREST - Agency stakeholders versus relevant stakeholders.

Mrs Hiscutt - Yes. We are getting their opinion. We are trying.

Ms FORREST - I tried too, but the phones were -

Mrs Hiscutt - We might have the answer through the lunchbreak.

Ms FORREST - Okay. Mr President, the intention I had, is if it is not changed, I will be in a position where I will be required to vote against the motion. Then it will be incumbent on the Government to bring back another one.

To me, the rest of it seems to be reasonably broad enough to pick up the key issues. I would like some detail regarding the number of suspended sentences that have been utilised

during this period since the introduction of these various components, the three that we have referred to. That can be provided by the Leader in her reply.

I also hope that the other related matters would also consider that, and the Sentencing Advisory Council would look at those issues, because they are relevant. How many fewer suspended sentences have we used, or have been ordered by the courts because other measures have been used?

I know that there are a couple of jurisdictions where it has been phased out entirely, only Victoria and New Zealand, from what the Leader said, as far as I understand. Personally, I still hold the view that you should give the courts as many opportunities as you can to give effect to restorative justice practices, which means not keeping people in prison, finding other ways to re-engage those people with community. Not having people in prison - it is not the best place for anybody. We know that some people will end up there, and some people do, and some people will need to be there, because of things they have done. I absolutely support that. But, I think the more options there are - if someone has a drug problem, surely helping them deal with that drug problem is much better than banging them up in a jail where they have limited access to that sort of stuff?

Potentially, where they do not pose a threat to the community, home detention may be the best option. It is cheaper. It actually continues to allow engagement with the family so you might actually see some change in their behaviours and that sort of thing. We need to see the full picture. Unless you have some sort of commentary around the use of suspended sentences during this period, you are not really getting the full picture.

They are the comments I wanted to make. I find myself in a difficult position. It is a shame we cannot make some amendments. It would seem to be sensible, but again those of us who were here at the time should perhaps have fought harder for something like that. I asked the question and when I received the comfort from the Leader to say all members would have input, I thought, 'That is what we were going to be doing', but clearly not. The intention may have been there, but the reality is not, and you are going by the black-and-white letter of the law. We have what we have.

[12.45 p.m.]

Mr VALENTINE (Hobart) - Mr President, I am not really 100 per cent ready for this but I certainly do not want it go on without comment. When I dealt with suspended sentences back on 27 November 2017, I quoted from a lawyer. This particular person had written to me; I did not identify them because I did not think it was appropriate. This is what they had to say in 2017, and it is in the *Hansard* -

> I believe that the Government's main argument is around the public perception that suspended sentences are a soft option and do not provide the punitive sanction desired by the community. I am concerned that this argument gives undue weight to the argument to the influence of Tasmania's news media and not enough weight to empirical research which has shown quite the opposite once an individual is aware of the full facts of the case.

I then went on to say -

> She references the jury study done by our now Governor. She says Tasmanians should not aspire to have laws that would potentially see an increase in jail sentences when Victoria's own recent changes - and recent would have been in 2014 - have resulted in grossly overcrowded prisons. The Napthine Government's law and order campaign has also failed to decrease crime.

I quote from her again -

> She makes an interesting point though - you spoke about investigating alternative sentencing options but I do not believe you have accounted for the offences and circumstances which currently are most suited to a suspended sentencing option. Your examples focused on drug related crimes or serious crimes when, as Justice Slicer said, 'the sentencing options are simple'. Some of the alternative options for example, home detention and periodic detention are classist and will impact more harshly on lower socioeconomic groups.

I will finish that quote there. I went on to read a number of other observations from that particular individual. I am concerned that we are putting forward these terms of reference and once again treating the Sentencing Advisory Council as a research service, not as an advisory council. Asking it to find out various things the Government believes will add value to whether suspended sentences should progress is not really asking its advice. It is asking SAC to research it. That council is there to provide good advice to the Government as to whether suspended sentences, for instance, in this regard are a good option or whether the impacts are too high for it to be considered. We do not see comments from SAC in regard to the impacts of suspended sentencing.

I looked at a number of past reports produced by SAC; its main report was the *Phasing out of Suspended Sentences*, March 2016. It was quite interesting to see under 'Tasmania's current use of suspended sentences' what the numbers were like. I quote from page viii, so page 8 in the preliminary component of the report -

> The Council's analysis found that Tasmania's use of suspended sentences is higher than in all other Australian jurisdictions. In the Supreme Court of Tasmania in 2013-14 -

It is going back a while -

> … 37.9% of offenders received a FSS as their principal sentence compared with the national average of 16.7%. In the period 2011 to 30 June 2014, 428 of all offenders (36.1%) received a FSS and 195 offenders (16.4%) received a PSS. Similarly, Tasmania’s Magistrates Court also had the highest use of FSSs in Australia. In the period 2011 to 30 June 2014, 4352 offenders (8%) received a FSS and 749 (1.4%) received a PSS.
>
> Suspended sentences (fully and partly) were used for a range of offences with property offences accounting for nearly half of suspended sentences imposed in the Supreme Court, (48.4%) followed by drug offences (22.5%),

> non-sexual offences against the person (16.7%) and sexual offences (6.6%). In the Magistrates Court, suspended sentences were most commonly imposed for traffic offences (32.1%) and property offences (31.2%) followed by other offences3 (23.3%), drug offences (7.2%) and offences against the person (6.2%).

So, you can see how much they are used here in this state.

I then delved a little deeper and went to a report prepared for the Sentencing Advisory Council by Mr John Walker of Crime Trends Analysis, and Lorana Bartels from the University of Canberra. It is titled *Exploring the Costs of Alternatives to Suspended Sentences in Tasmania*.

The executive summary of that particular report looks at three scenarios in both the Supreme Court and the Magistrates Court. I will not go through all that, but I will read the costs. This is really important because it comes down to the terms of reference before us today. The sentencing data is old data because it is an old report, but it is important to point this out -

> Sentencing data from 2011 to 2014 were provided by the Council and assembled into a standardised format forming the statistical basis of the four scenarios. The results of the modelling are as follows:
>
> No change … costs around $15.7 million.
>
> Scenario 1 - replacing fully suspended sentences by equivalent terms of imprisonment costs around $50.9 million per annum.
>
> Scenario 2 - replacing fully suspended sentences with CCOs [Community Correction Orders] of 12 or 24 months costs around $32 million per annum.
>
> Scenario 3 - replacing fully suspended sentences with alternatives, including fines, imprisonment, CCOs, home detention and treatment orders, according to the offence type, costs around $27 million per annum.

Not insignificant costs. If you are going to do a proper analysis, those sorts of statistics are needed to be able to fully understand the impacts of taking away suspended sentencing. I do not see that in here. You have to look at the expected increase in prisoner numbers and the costs of that if there is an increase.

It comes back to how we are dealing with the Sentencing Advisory Council. We are dealing with it as a research service. That is not appropriate. That is not what it was set up for. It was set up to be an advisory council.

Ms Webb - Expert advisory council.

Mr VALENTINE - Yes. I see this tendency to try to shoehorn in what the Government's policy position might be. I am not saying -

Ms Forrest - But we have passed the legislation to do that.

Mr VALENTINE - Sorry?

Ms Forrest - You were here at the time.

Mr VALENTINE - Yes, I know but whether I passed it or not is another thing. I will have to go back and check.

It is important we use the Sentencing Advisory Council for the purpose for which it was originally intended, which is to provide advice, not just simply as a research service.

I agree with the member for Murchison - it does need some tweaks with regard to stakeholders, that it be relevant stakeholders as opposed to just agency stakeholders. Many stakeholders could have an interest here. It is important we look at the whole picture, not just a section as in what the agencies think. That is important.

This falls short. I will listen to other debate, but I am concerned about how this is all tracking.

[12.56 p.m.]

Mr WILLIE (Elwick) - Mr President, I support the members for Murchison and member Hobart and their comments around the scope of this reference to the Sentencing Advisory Council.

I note, member for Hobart, that we are not talking about a disallowance motion yet.

Mr Valentine - I know that. I was referring to the previous debate because of the content of the terms of reference.

Mr WILLIE - Yes. The Government is on a fact-finding mission, as you have said. If the Government brings the disallowance debate forward, members will be free to use their own research and information and come to a decision.

Maybe the Government is being a bit tricky in narrowing the scope of this investigation but I am sure members will conduct their own thorough research and make their own determination at that time if that is the Government's agenda.

I remember the 2017 debate. I think it was a government amendment that came forward because -

Ms Forrest - It was. We had negotiated with the Government, though. I did a lot of work with it to get something done.

Mr WILLIE - The House did not want to approve suspended sentences then and there, and the Government came forward with an amendment to put this process in place as a concession that the Legislative Council was not going to pass that provision.

Ms Forrest - The problem was if we did not do that and just voted against the bill, we would not have had the other measures. So you end up shooting yourself in the foot.

Mr WILLIE - Yes, that is right. I remember that debate. A lot of members spoke in favour, as I do, that other sentencing options are a good thing. We have supported the Government in implementing other sentencing options. My view is that we should leave these decisions with the courts, which are best placed to weigh up the circumstances around each case and have a range of options to determine the best course of action to be taken.

We do not want to be overly punitive and cause unintended consequences in some circumstances where somebody who may get a home detention order may lose their job. That would be an unintended consequence and a further penalty to the crime.

Regarding suspended sentencing, the Leader mentioned in her speech that 34 per cent of suspended sentences had been breached. That means that 66 per cent were served, so an overwhelmingly majority of suspended sentences were served without breaches. It is a decision of the Government not to follow up those breaches.

You talked about that in your speech. The Government could follow through on those breaches if it chose to and it has not decided to do that. I picked up on those comments from the Leader.

The other thing I thought was interesting in the Leader's comments was the reference to Victoria and New Zealand as jurisdictions that had abolished suspended sentencing. It means a majority of Australian states are still using the suspended sentencing as a valid option for the courts to use if required.

Mr Dean - At this time. Other places are looking at what is happening here and Victoria.

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

QUESTIONS

North Eastern Soldiers Memorial Hospital - James Scott Wing

[2.31 p.m.]
Ms RATTRAY to LEADER of the GOVERNMENT in the LEGISLATIVE COUNCIL, Mrs HISCUTT

Leader, in regard to the James Scott Wing attached to the North Eastern Soldiers Memorial Hospital, which you will know well, Mr President, the Leader advised in September last year that discussions had commenced with staff, service providers and community members in regard to the future use of this building. It will become vacant when all the nursing home people head over to the new May Shaw facility.

Can the Leader provide an update on any discussions, including community consultation - that I have not seen or heard of - and input that has taken place around the future use of these significant buildings in Scottsdale?

ANSWER

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

At the current time the efforts of the Tasmanian Health Service are focused on supporting the completion of the May Shaw redevelopment and the transition to the new premises when the building works are completed. Following the relocation of residents to the new building premises, internal consultation will commence on the future use of the James Scott Wing building to identify organisational and site needs prior to external consultation.

Lake Malbena Development

[2.33 p.m.]

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

My questions come from a constituent and relate to future plans for the Lake Malbena development and Daniel Hackett. Numerous constituents are requesting factual data on the development and agreement reached or being negotiated with the state. Rumours are rife. Will the Leader please advise -

(1) What has been planned for the site?

(2) At what stage is the development at?

(3) What is the expected spend on the project?

(4) What is the expected financial return monthly, annually, to the state for the right of this development to proceed?

(5) What precautions are being taken to ensure that the Wilderness World Heritage Area will not be damaged by the proposed project?

ANSWER

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

I have quite a lengthy reply here but as we have time, I will read it in.

(1) The Lake Malbena Halls Island proposal involves the development of a standing camp in association with the existing historic hut on the island. The standing camp proposes three accommodation pods, approximately 6 metres by 3.5 metres and a communal eating pod, which is approximately 8.8 metres by 4.5 metres.

The site will accommodate a maximum of six guests at any one time. The recent reserve activity assessment proposes that guests will fly by helicopter to the site, totalling 120 return flights per year, primarily between November and May. Total flight time is approximately 44 hours per year with a landing site on natural rock - so there is no landing platform - located on the south-east of Lake Malbena. The small group of guests will walk from the landing site to a rowing boat where they will be escorted to Halls Island for the duration of their stay, before returning to the helicopter landing site for pickup. Activities proposed include canoeing on the

lake, fishing and nature appreciation, with some community conservation. Citizen science works have been proposed. In an earlier proposal the proponent intended to conduct walks around the lake to various features, but at this stage it was withdrawn.

(2) The proposal is still in the assessment phase and, as such, no works have commenced. The proponent has completed the Parks and Wildlife RAA to step (7). At this step, it was determined that the proposal should be referred to the Australian Government under the Environment Protection and Biodiversity Conservation Act 1999 and the proponents made that referral. The final consideration of the RAA by the PWS and, if appropriate, the issuing of any authorities required, will consider the outcomes of the EPBC act assessment decision.

The federal minister determined on 17 September 2020 that the Halls Island proposal is a controlled action under sections 75 and 87 of the EPBC act. This decision requires that a formal federal government assessment will be undertaken. For the proponent, this will require the submission of additional information against specific areas identified.

The proposal is also awaiting the outcome of an appeal to the Supreme Court by the Environmental Defenders Office, the appellant. The Supreme Court found in favour of Wild Drake Proprietary Limited, the proponent, and the Director of National Parks and Wildlife on 6 July 2020. The appellants referred the matter to the Full Bench of the Supreme Court, with a decision pending.

(3) The most recent estimates indicate expected investment will be up to $1 million.

In the House of Assembly recently, Ms O'Connor produced what she described as a leaked document and claimed that the investment for the project had increased to approximately $6.9 million. The figures in the document are incorrect. The $6.9 million figure was first reported in March 2019 when a new tracking system was established by the Office of the Coordinator-General. The OCG has advised that figure is an isolated data entry error.

(4) Two leases have been issued. The commercial lease of Halls Island was granted in January 2018 and is presently in force. A separate private domestic lease has been issued for use of the historic hut on the island. The rental for the lease is presently $1050.63, excluding GST, per annum but will increase to $4000, excluding GST, per annum on practical completion of the development and it will be varied at a rate of 2.5 per cent and subject to review every five years as determined by a valuer to reflect current market value.

The licence fee for activities on the lake component is $1, excluding GST, per annum, if demanded. The rental for the hut is $2000, ex-GST, per annum for a term of 10 years for domestic and non-commercial purposes with a curtilage of five metres around the building.

Rental payments have been made since the lease has commenced.

The rental reflects there is currently no income as the development has not commenced; that there is no service of any kind - electricity, water, sewerage, and waste - and that the proponent has significant environmental obligations to meet, including the removal of all waste.

(5) For the past three years, the proponent has been progressing all levels of assessment required to deliver the highest standards of environmental accreditation under local, state and Australian Government legislation and planning requirements. These processes address areas like fragile habitats and effects on the wilderness to ensure that the development is sustainable and any environmental impacts are minimised or removed.

In addition, both lease agreements have been issued using contemporary terms and conditions. These ensure the lessee is aware of their obligations and again that the development is sustainable and any environmental impacts are minimised or removed.

MOTION
Phasing Out Suspended Sentences - Sentencing Advisory Council Review - Terms of Review

Resumed from above.

[2.40 p.m.]

Mr WILLIE (Elwick) - Mr President, earlier I was talking about the number of other states still using suspended sentencing as a valid option and that it is important to let courts make that decision because we do not want unintended consequences.

Over the break I was recalling that debate in 2017. A gentleman from my electorate, from West Moonah, from memory, came in and was used as an example for the drug treatment order.

He had a problem with drink driving, members may recall. He had been caught a number of times and he ended up being sentenced to jail. He had to serve time in the jail; as a result of that, he lost his job and he lost his house. Potentially the system had put him on a pathway to reoffending and making the community less safe over time. We have to be really careful in removing options for the court. They know the circumstances around each case and often make the best decision to make sure the community is safe and that restorative justice can happen. In some instances where punishment is needed, that is part of the system.

Ms Forrest - With all the facts of the matter.

Mr WILLIE - With all the facts of the matter in front of them. I now go back to the other point I was talking about before the break, and that was the terms of reference and the limitations the members for Murchison and Hobart have described.

I have been reflecting on that over the break. I think that is on the Government. We are not having a disallowance debate now. If the Government wants to restrict that reference to the Sentencing Advisory Council, that is its decision. The Government has brought forward

the terms of reference to the House; it could withdraw it if it wanted to. If the concerns of the member for Murchison worry the Government enough, it could withdraw it or it could proceed with the House's permission, if that is what eventuates.

If they are going to bring back something limited in its scope, the members of this House will look at that in a very analytical way and make their own minds up around a disallowance debate. They will do their own research and -

Ms Forrest - The future one - the future debate you mean?

Mr WILLIE - Yes. If the Government wants to exclude suspended sentences from the terms of reference, that is its decision. Members in this House are wise enough to look at the research, maybe broaden the research, and come to a decision in that disallowance debate, if that is what happens.

Following the member for Murchison's request, I will be interested in what the Government has to say; ultimately it is your agenda and if you want to be tricky about it, that is on you.

[2.43 p.m.]

Mr DEAN (Windermere) - Mr President, I am interested in the example the member for Elwick put forward. Was it a drink driving charge?

Mr Willie - Yes.

Mr DEAN - To make statements like that you need to be aware of the background of the person. To be sentenced to imprisonment for drink driving means he would have had a number of other drink driving charges, similar charges. Possibly many others as well.

Mr Willie - Which I described.

Mr DEAN - All of them? What were they?

Mr Willie - Well, I said, from memory, that he had been caught a number of times.

Mr DEAN - The fact that a person is jailed and loses their job, in my view that is what should happen. These people are obviously given chance after chance after chance and are an absolute danger on the roads to other people. Go through the statistics of fatalities in this state and see the number of people who had been drinking prior to the fatalities occurring. It is high.

I support the position of the Government, which is that the suspended sentencing structure is flawed. You might expect me, being a former police officer, to probably say that. Many questions have been asked about suspended sentences for a long, long time.

If you talk to the public - the public who are in the know; not all members of the public keep up with what is happening with courts and sentences, but those that do have an understanding of this - they also see it in a similar way. They cannot understand why we have had the suspended sentence situation in place for as long as it has been.

What they say is, if you commit the crime, you do the time. If a magistrate, or a court or a judge, on all of the evidence they have, determines that imprisonment is the right punishment, that is where they should be, in prison, not having that sentence suspended.

If you read the media releases in the paper over the years, and even now, you will see that people already on suspended sentences have come before the courts for serious crimes, and suspended sentences have been given them again, on top of another suspended sentence.

They are not always activated. My view has aways been - I think this would be the case with most police and most people - that if you are on a suspended sentence, and you breach the conditions of that suspended sentence, you go to jail. You would do your time, not get another suspended sentence, or get other conditions imposed. But that has not happened. There are many cases and examples to identify the position I am putting forward.

A suspended sentence works. I do not disagree with it. In my view, it works in the case probably of a first offender, or for a blue collar criminal who, through some foolish activity, has put themselves in trouble and committed a crime.

Those types of people, going to jail in those situations, would comply with almost any condition imposed. You see that with these people because they do not want to be subjected to jail. They want to do everything possible to ensure they do not go back to jail. They will comply, absolutely, with all the conditions that are occurring.

The member for Murchison raised the issue of a lack of sentencing opportunities for the courts, and that is so. I do not know who was involved here; it might have been the member for McIntyre. I referred to this here previously, where Michael Hill, the magistrate at the time, and it was some 12 years ago from memory -

Ms Rattray - He came and spoke to us.

Mr DEAN - He came and spoke to us about sentencing options, saying they were restricted in what they could do in sentencing people coming before them. As he said to us, for many prisoners who probably ought to go to prison, there ought to be some other way to deal with those people.

From memory, there was discussion about home detention, electronic monitoring and all the things that go with that.

It is true, in my view, to say there was a lack of sentencing options, and now we are moving forward with providing more options to the courts. That is what we should do.

I agree jail should be an absolute last resort. We should do everything possible to keep people out of jails. They are learning schools for criminals and crooks. It is just not a good environment.

If you look at the recidivism rates in this state, they are very high. I think it is up around the 60 per cent mark -

Mr Willie - It is 47 per cent.

Mr DEAN - I thought it was higher than that. Nearly 50. That is right. It was close to 50.

That is just too high. What is that doing? That is setting a clear position that we are not doing enough to get these people back on the straight and narrow. That is what it does.

About three weeks ago I watched on television - I do not know whether any other people did - a documentary of the latest prison position in Austria. The latest prison built there only a few years ago is all about rehabilitation.

It is all about trades. It is about providing places in these facilities for families to come and stay a night with the imprisoned person. It might be a father, it might be a brother or a sister.

Austria has turned its recidivism rates around from some 60 per cent - I do not know exactly what it was - to 25 per cent over a fairly short time. That is what we should be doing here as well.

The member also mentioned mandatory penalties, and the member for Murchison is not in favour of mandatory penalties -

Ms Forrest - Mandatory jail terms.

Mr DEAN - Mandatory jail terms.

Ms Forrest - We have mandatory penalties in other areas, but not mandatory jail terms.

Mr DEAN - In certain places, I support them; I do not support them in every case.

Ms Forrest - We will have to agree to disagree on that.

Mr DEAN - Yes, we will agree to disagree on that. I think there are times, but the courts generally, the judges and magistrates, as I understand it, are not generally opposed to some of these sentences and mandatory penalties that apply. Mandatory penalties have been in place now for years and years. For decades, in fact, we have had mandatory penalties and the courts, I understand, are quite happy with it. They do not have any real issues with it.

In relation to the terms of reference, we have already had a report completed in relation to the monitoring of, and compliance with, home detention and electronic monitoring. That was in regard to people subjected to this activity in relation to family violence. The report that came back to us on that - and I referred to it in this place - was very, very good. It indicated there was a high support for it. It was doing its job well; it was keeping a lot of people out of the jail system and providing support and assistance to victims as well. It was working as it was supposed to work. That was the report we got a while back. In among these terms of reference, that is also a part of the process moving forward.

The Monitoring and Compliance Unit - I note that if you look at the Leader's contribution on this, quite a number of staff are in that unit - I think 28 staff. Some people would say there is a high cost to having 28 staff in that unit. But if you look at the number of people they are dealing with, I think it is 61 or thereabouts - I am not sure if that covers everyone subject to

electronic monitoring, or whether it also covers those under domestic violence, whether it includes those members as well - the cost of keeping them in jail is significant. I think it is worked out at $300 plus per person per day, around about.

Mr Valentine - It certainly would not have the same overtime implications.

Mr DEAN - You are right. In fact, the overtime in the jail would cover this group of people.

Ms Forrest - Exactly. Get them out of the prison and you would not have the overtime.

Mr DEAN - You are right, exactly right. It has benefits, and I think all these costs would be picked up if we looked at the whole cost structure around this. There are 61 home detention orders at this present time and they would be monitored.

There is a reference here to seven additional probation officers. I am not sure on reading this, whether these seven additional probation officers are working only with people on home detention orders or if they are working with all those on correctional orders as well. I am just taking that from the second reading where it talks about the seven additional officers being employed.

The success of the mandated drug diversion treatment orders - many people are sceptical about whether we are getting a good return from that. I recently read in the paper about person being refused re-entry to that program because they had reoffended while on it. At this time, they were being refused that opportunity and were going to be sent back to jail. You read that in the papers fairly frequently, so I am not sure the program is as successful as we would like it to be.

Ms Forrest - Reference 24 does go some way to that. It says -

> What has been the perceived effectiveness of the extension to the Supreme Court of drug treatment orders and the sentencing options ...

So you would hope the Sentencing Advisory Council would look at that if it can talk to all stakeholders, not just the agency.

Mr DEAN - Yes, you are right. Supreme Court drug treatment orders - there is a term of reference there to cover that.

Speaking of the terms of reference, it is all very well to have all these options in place - the home detention orders, electronic monitoring, correction orders and all those other things in place - but at the end of this you have to have the right number of staff to police these matters and orders. I notice there is nothing at all in the terms of reference to allow the Sentencing Advisory Council to look at that area, or to look at whether there are sufficient staff and resources available in any of these areas to ensure proper checking, monitoring, compliance and so on. I am not sure whether that has been deliberately missed or whether there is something else somewhere that might be able to capture this. I do not see anything in there at all. Maybe the Leader might want to comment on that.

It is a very important part of this whole thing if you are reviewing the suspended sentence situation with all these things we are putting in place.

Mrs Hiscutt - Number 29, any other matters considered relevant.

Mr DEAN - Number 29 relates to a specific area. We referred to that before. It relates to phasing out of suspended sentences. I do not know whether you could use that there. I would not have thought you could, but if you are keen, that is good. I put an asterisk against 16 and thought you might be able to pick it up there, but I do not think you could -

> Legislative amendments recommended that could be made to improve the operation of community correction orders

Particularly if suspended sentences are phased out, but that is only in relation to community correction orders.

Ms Forrest - The same division in 25 and 8.

Mr DEAN - I do not think they are and would pick up the appropriate resourcing levels in that area. Having said that, if the Leader was able to provide an answer to those couple of questions, I would appreciate it. I do not see any reason I would not support the motion.

[2.58 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I have quite a few answers here that may pacify some, so I will try working my way through them. There will be some more answers to follow up for the member for Windermere when I am finished.

I will start with the member for Murchison about stakeholder engagement, agency versus relevant stakeholder. In discussions over the break, the chair of the Sentencing Advisory Council confirmed the council will engage with relevant stakeholders, not just agency stakeholders, in terms of review items nos 15 and 24. The Attorney-General has confirmed this will be clarified as the intention of the relevant matters to be considered when the terms of the review are provided formally to the Sentencing Advisory Council.

Another question was about term of reference 29, 'Any other relevant matter constrained by the subheading.'. The term of the review item 29 is under the general heading 'Phasing out of suspended sentences'. This is used in the context of the amended act which has that term in its title. Item 29 means the SAC can consider any other matters considered relevant to the amending act's provisions including home detention, community corrections and drug treatment orders and suspended sentences themselves.

The member for Hobart - terms of reference treat SAC as a research service, not an advisory council. The SAC final report on phasing out suspended sentences provided 55 recommendations in 2016. The SAC's terms of reference as an advisory council include to assist the Attorney-General to make decisions relating to sentencing matters, improve the quality and availability of information on sentencing in Tasmania, and educate the public about sentencing matters.

Research and analysis are important to information, policy and decision-making. The draft terms of the review specifically include considerations of matters relating to outcomes and effectiveness of sentencing orders. For example, item 7 requires SAC to determine the perceived effectiveness of home detention as a sentencing option among relevant stakeholders.

Item 8 then asks SAC whether there are any legislative amendments recommended that could be made to improve the operation of home detention, particularly if suspended sentences are phased out. The terms are broad in scope and ensure relevant data and information is available to inform the view and SAC's recommendations. It must be remembered that SAC has already completed extensive advice to the Government in its previous report.

The 2017 act then progressed part of the Government's response to that advice. This review seeks further advice on relevant matters relating to the act. These terms of the review do not need SAC to repeat its comprehensive work. However, they do seek consultation and the advice of stakeholders' views and any legislative amendments to improve the new sentencing orders, and advice on whether any serious offences are incompatible with the new sentencing options.

Mr Valentine - It is simply that report. They were not asked what the impacts were likely to be. They were asked to specifically comment on other aspects. That is the problem.

Mrs HISCUTT - They have provided recommendations.

Mr Valentine - Anyway.

Mrs HISCUTT - Okay.

Mr Valentine - I have said my piece.

Mrs HISCUTT - The members for Murchison and Hobart also spoke about suspended sentence statistics availability. The capabilities of the database for the Supreme Court and the Magistrates Court currently vary considerably. The Magistrates Court database is able to identify suspended sentences as raw data - that is, numbers of sentences. However, the ability to obtain data on the use of suspended sentences in the Supreme Court is difficult.

For the Sentencing Advisory Council's 2016 report on phasing out suspended sentences, the council received funding to employ a research assistant to read all the comments on passing sentences for the period of the report in order to determine the use of suspended sentences. This is the data noted in the report. The Supreme Court database has been undergoing improvement.

However, the council will again likely need to seek a research assistant to review comments on passing sentence as part of this review to ensure all relevant information is captured. This is expected to be part of the process of conducting the review. In terms of higher level data, consolidated statistics on suspended sentences are reported by the department to the Australian Bureau of Statistics. They are generally reported at a high level such as 'acts intended to cause injury'.

Ms Forrest - What was that last bit you just said?

Mrs HISCUTT - In terms of higher level data, consolidated statistics on suspended sentences are reported by the department to the Australian Bureau of Statistics. These are generally reported at a high level such as 'acts intended to cause injury', such as -

Ms Forrest - It means suspended sentences issued for those sort of offences.

Mrs HISCUTT - Pardon?

Ms Forrest - I am getting a nod from behind you. It is all right.

Mrs HISCUTT - ABS Tasmanian data shows there were 1080 defendants finalised in 2018-19 with a principal sentence of fully suspended sentence, down from 1165 in 2017-18. However, the SAC review will involve the necessary research and analysis to consider sentence statistics for each offence in Schedule 3 of the 2017 legislation. If Schedule 3 and proposed new section 8 commence, these offences would be subject to suspended sentences only if the sentencing officer considered there were exceptional circumstances.

The Schedule 3 offences represent a much smaller number than the total number of suspended sentences currently made.

An answer for the member for Hobart - suggestions it will lead to an increase of prison population. The Tasmanian Government has been very clear on its policy intent, and that is not to send more people to jail. It is to ensure dangerous, violent and repeat offenders get a sentence that matches the seriousness of their crime and those at the other end of the scale do not end up in jail unnecessarily purely because Tasmania has fewer sentencing options than other jurisdictions.

It is important to make the point that -

Mr Willie - You want to take that away.

Mrs HISCUTT - It is important to make the point that before any suspended sentences are abolished, the full range of alternatives will have been implemented. Sentencing decisions in individual cases will continue to be in the hands of the judges and the magistrates. The difference is they will have a much wider range of alternatives from which to choose.

Mr Valentine - But not suspended sentences.

Mrs HISCUTT - As a general principle prison should be for serious, dangerous, violent and repeat offenders.

Ms Forrest - I could not agree more.

Mrs HISCUTT - That is great. A wider range of alternatives means there are better options than prison for lesser offenders who do not present a high risk to the community and can be rehabilitated in the community, but with other restrictions to their liberty - for example, home detention, where employment and housing can be maintained, supporting themselves and their families.

Ms Forrest - I could not agree more with you in those sentiments, Leader.

Mrs HISCUTT - I am so pleased. I think I will have some more advice to seek for the member for Windermere.

The SAC's file and report include a consideration of cost and resourcing. Implementation of the measures is dealt with through the normal budget process. We considered that the items seeking advice on stakeholder views on the effectiveness of orders include the ability for SAC to consider any issues raised and this may include resourcing.

Motion agreed to.

DANGEROUS CRIMINALS AND HIGH RISK OFFENDERS BILL 2020 (No. 28)

Second Reading

[3.08 p.m.]

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

That the bill be now read the second time.

This bill will repeal the current dangerous criminal declaration provisions in the Sentencing Act 1997 and establish the Dangerous Criminals and High Risk Offenders Act. The bill reforms and updates Tasmania's legislative framework in response to the Government's commitment to two separate but related aims.

First, the bill reforms Tasmania's indefinite detention laws for dangerous criminals.

Second, the bill introduces a second tier scheme for high risk offenders that would provide for serious sex or violent offenders to be monitored post-release. This second tier scheme applies to serious offenders who do not meet the threshold for indefinite detention and may also operate as a 'step-down' mechanism for a court to consider when reviewing a dangerous criminal declaration.

The bill also establishes a high risk offenders assessment committee that will support the new legislative provisions and enable cooperation and information sharing between relevant government agencies.

The background to the need for reform in this area includes considerable criticism and judicial comments on Tasmania's current dangerous criminal provisions in the Sentencing Act.

Justices of the Supreme Court of Tasmania have expressed particular concern about the absence of a mechanism for periodic reviews of dangerous criminal declarations and the inability of the court to impose any form of prerelease or post-release conditions on an offender whose declaration may be discharged. These deficiencies set Tasmania's current legislation apart from other Australian jurisdictions with indefinite detention regimes.

In July 2017, the Tasmania Law Reform Institute released a research paper titled *A Comparative Review of National Legislation for the Indefinite Detention of 'Dangerous*

Criminals.' That paper made 10 recommendations for the reform of Tasmania's dangerous criminal declaration legislation.

The TLRI paper concluded that Tasmanian courts are reluctant to approve dangerous criminal declarations under the current provisions due to concerns about the barriers to offenders discharging those declarations and the lack of capacity for courts to impose conditions upon discharge. It further suggested the reservations of the judiciary may, in turn, result in fewer applications for declarations, based on a perception they may be unlikely to succeed.

In the lead-up to the state election on 3 March 2018, the Government released its law and order policy, which committed to reforming Tasmania's dangerous criminal declaration laws and introducing a second tier scheme that would subject offenders to intensive monitoring post-release, including electronic monitoring and other forms of supervision, to help protect the community and ensure offenders do not reoffend.

I am pleased to confirm this bill delivers on our election commitment and responds to each of the recommendations in the TLRI paper.

I will now outline key provisions and reforms relating to the three major components of this bill, being the new dangerous criminal framework, the second tier scheme for high risk offenders, and the high risk offenders assessment committee.

Dangerous criminal framework

First, Part 2 of the bill provides for the new dangerous criminal framework.

The current provisions in the Sentencing Act state an application for a dangerous criminal declaration may be made if an offender is convicted or brought up for sentence after being convicted for a crime involving violence or an element of violence. They do not explicitly provide for an application to be made after sentencing, although Tasmanian case law has confirmed that an application may be made at any time during the offender's period of incarceration.

Division 1 of Part 2 of the bill provides for the declaration of dangerous criminals. It confirms that an application for a declaration may be made -

- at the time the offender is convicted of a crime involving violence, or an element of violence;
- at the time they are sentenced for that crime;
- at the time they are serving a custodial sentence for that crime; or
- at the time they are serving a custodial sentence for another crime that is being served, concurrently or cumulatively, with the sentence for the crime involving violence, or an element of violence.

This reform implements recommendation 4 in the TLRI paper.

A significant problem with the current legislation is the requirement for a dangerous criminal declaration to be made by the judge who convicts or sentences the offender for the crime involving violence, or an element of violence. This means that a declaration is unable to be made post-sentencing, where that judge has ceased to hold office. In such circumstances, an application for a declaration may only be made in relation to that offender if they commit another violent crime and are convicted or sentenced by a different judge.

The Government's law and order policy identified this as an area that was in particular need of reform, and the bill delivers on the Government's commitment to fix this problem by dispensing with the requirement for a declaration to be made by the convicting or sentencing judge. This change also responds to recommendation 5 in the TLRI paper.

The bill provides a list of mandatory factors that the court must consider in determining whether to make a dangerous criminal declaration. They require the court to consider: the nature and circumstances of the offender's criminal conduct involving violence; their antecedents, age and character; the need to protect the community; any relevant psychiatric, psychological, medical or correctional reports; and the risk of the offender being a serious danger to the community if they are not imprisoned, as well as any other matters the court considers relevant.

These matters closely align to those in the comparable legislative provisions in Victoria, Queensland and the Northern Territory, representing the majority of Australian jurisdictions that provide for indefinite detention. The inclusion of a mandatory list of factors responds to recommendation 3 in the TLRI paper.

When determining an application for a dangerous criminal declaration, the court may declare an offender to be a dangerous criminal if it is satisfied to a high degree of probability that the offender is, at the time the declaration is made, a serious danger to the community. Similarly, when a dangerous criminal declaration is being reviewed, the test for the court under clause 14(1) of the bill is whether the court is satisfied to a high degree of probability the offender is still, at that time, a serious danger to the community.

The test and standard of proof provided for in this bill will align the new Tasmanian provisions with those in Victoria, Queensland and the Northern Territory.

Like all other Australian jurisdictions with equivalent legislation, the Director of Public Prosecutions - DPP - bears the onus of proof for the original application to impose indefinite detention and any subsequent review or application to discharge the order.

The reforms I have outlined in relation to the test, standard and onus of proof in Tasmania's dangerous criminal provisions respond to recommendations 1, 2 and 7 in the TLRI paper.

The key effect of a dangerous criminal declaration is the offender is not to be released from custody until that declaration is discharged, regardless of whether their custodial sentences have expired. For example, a declared dangerous criminal cannot be released on parole or leave.

I made earlier reference to one of the major criticisms of Tasmania's dangerous criminal laws being the absence of periodic reviews of declarations, with concerns frequently raised by

legal stakeholders and the judiciary. I am pleased to advise the bill addresses this by providing for mandatory reviews of dangerous criminal declarations.

Periodic review of dangerous criminal declarations is provided for in Division 2 of Part 2 of the bill. Periodic review applies to both declarations made under the bill once commenced and also to offenders already subject to a declaration under the current or previous legislative provisions.

Where an offender's relevant custodial sentences - that is, their fixed-term sentences - have already expired at the time the Dangerous Criminals and High Risk Offenders Act commences, the bill requires the DPP to apply for an initial review of the offender's dangerous criminal declaration within three years after the commencement day. For declarations made after commencement of the act, the first review application is to be made within 12 months before the day on which all the offender's relevant sentences expire.

If an offender's dangerous criminal declaration is not discharged as a result of the initial review, the bill requires the DPP to subsequently apply for further reviews, making each application within three years of the most recent decision refusing to discharge the declaration. This means every offender's declaration will be regularly reviewed by the court.

In addition to these mandatory periodic reviews and at any time after the initial review has taken place, the bill provides for an offender to apply for a review of their dangerous criminal declaration, provided that the court grants leave on the grounds that exceptional circumstances apply to the offender.

To inform the court's review of a declaration, the bill requires the DPP to provide the court with certain reports facilitated by the high risk offender's assessment committee. It also provides a discretionary power for the court to order a report in relation to the offender that is prepared by a psychiatrist, psychologist or medical practitioner, by the Director of Corrective Services or by any other person.

When conducting a review, the court will be required to consider the mandatory list of factors set out in clause 14(2) of the bill in determining whether the offender is still a serious danger to the community. These factors include whether the risk posed by the offender may be appropriately mitigated by imposing a high risk offender order on the offender - part of the new second tier scheme - instead of refusing to discharge the dangerous criminal declaration.

Implementation of the review provisions I have outlined responds to recommendations 8 and 10 in the TLRI paper.

The discharge of a declaration does not take effect until any appeals in relation to the court's decision have been determined, and the discharge of a declaration has no effect on any sentence of imprisonment being served by the offender. An offender whose declaration is discharged may not be released from custody until the DPP has had the opportunity to apply for a high risk offender order.

The bill also includes new provisions for the court to make prerelease orders during the review of a dangerous criminal declaration, either of its own motion or upon application by the DPP or the offender.

The purpose of a prerelease order is to provide the court with additional information in relation to the offender's suitability for release from indefinite detention. As set out in Division 3 of Part 2, a prerelease order may require the offender to participate in rehabilitation, treatment or reintegration programs or other activities specified by the court, or achieve certain results. It may also require the preparation of additional reports relating to the offender, or the provision of information as to the accommodation, employment or any other support that may be available to the offender if they are released from prison.

The court may make orders that assist it in determining whether to make a prerelease order and what conditions should be included in such an order. For example, the court may obtain information about the availability and suitability of programs and activities that may assist with the offender's rehabilitation or reintegration into society.

Where the court makes a prerelease order it must specify a period of up to 12 months for an offender to complete the requirements of the order and adjourn the review hearing.

The provisions in the bill for prerelease orders respond, in part, to recommendation 9 in the TLRI paper by enabling the court to impose prerelease conditions prior to discharging a dangerous criminal declaration. The other part of recommendation 9 - enabling the imposition of post-release conditions when a declaration is discharged - is addressed through the making of high risk offender orders, which I will outline shortly.

Appeals relating to initial applications, reviews and prerelease orders will be heard by the Court of Criminal Appeal.

High risk offender orders

I now turn to Part 3 of the bill, which provides for high risk offenders.

There are some serious offenders who do not meet the threshold for being declared a dangerous criminal, warranting indefinite detention, but who nevertheless may pose an unacceptable risk of committing another serious offence if no supervising conditions are in place when they are released post-sentence.

Among Australian states and territories, Tasmania and the Australian Capital Territory are currently the only jurisdictions that do not have legislation in place that enables these serious offenders to be appropriately supervised in the community after their sentences are complete. This bill delivers on the Government's election commitment to introduce such a second tier scheme by providing for the making of high risk offender orders.

The bill provides the DPP may apply for an HRO order in relation to a 'relevant offender' as defined by the bill. This includes an offender who is serving a custodial sentence for a serious offence listed in Schedule 1 of the bill, or for the breach of an HRO order, including where that offender has been released on parole.

An application may also be made where a dangerous criminal's declaration is reviewed by the court, as a potential 'step-down' should that declaration be discharged.

In making the application, the DPP must provide the court with relevant reports in relation to the offender that have been facilitated by the high risk offender's assessment committee and provided to the DPP.

To make an HRO order, the court must be satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious offence unless the order is made. This test and standard of proof is consistent with most Australian jurisdictions that have post-sentence supervision schemes.

Amongst other specified factors, the paramount consideration for the court must be the safety of the community.

Where the court makes an HRO order, it is required to impose the mandatory conditions set out in the bill, including reporting and residential conditions, permitting police to enter premises and conduct searches, not leaving the state without approval and complying with directions by a probation officer to engage in treatment, counselling or other activities. The bill also provides a non-exhaustive list of other conditions that may be ordered at the court's discretion.

An HRO order may have an operational period of up to five years. This period may effectively be extended by applying for a new HRO order before expiry of the current order.

The bill provides for the making of interim HRO orders if it appears to the court that an offender may cease to be in custody, or cease to be subject to an existing HRO order, before the court can determine an HRO order application in relation to that offender.

The bill also provides for the variation or cancelation of HRO orders or interim orders, breach and enforcement provisions and appeals.

High risk offenders assessment committee

In response to consultation on the proposed legislation, changes were made to the bill to establish a high risk offenders assessment committee to support these reforms.

The committee will facilitate the provision of reports and risk assessments in relation to offenders, and ensure effective cooperation and information sharing between the Government agencies that deliver services in relation to the supervision, management and support of offenders in the community. Similar bodies operate in other Australian jurisdictions to support their post-sentence supervision schemes.

Division 2 of Part 3 of the bill provides for the establishment of the high risk offenders assessment committee and its functions. The committee will include representatives from the Department of Justice, the Department of Health, the Department of Communities Tasmania, and the Department of Police, Fire and Emergency Management.

A significant function of the risk assessment committee will be to facilitate behavioural and management reports in relation to relevant offenders. This includes any declared dangerous criminal whose declaration is to be reviewed by the court and any other offender who may be eligible for an HRO order application.

Where the committee determines these reports warrant a risk assessment in relation to a particular offender, the committee can appoint a psychiatrist, psychologist or medical practitioner to conduct that assessment and prepare a report. A person conducting a risk assessment will provide their opinion as to the likelihood of the offender committing another serious offence unless they are subject to an HRO order.

The DPP may refer to those reports in determining whether to apply for an HRO order in relation to a particular offender, and must provide these reports to the court for any HRO order application and for dangerous criminal declaration reviews. The decision as to whether to apply for an HRO order will sit with the DPP, and the risk assessment committee will not make a formal recommendation.

The bill also provides for information sharing and cooperation between relevant agencies to support the management of relevant offenders and the functions of the risk assessment committee.

In conclusion, the Government recognises there are diverse and strongly held views about how we, as Tasmanians, should deal with dangerous criminals and ensure the community is protected from offenders who pose a serious danger to our safety.

In noting indefinite detention should be confined to very exceptional cases, where the exercise of the power is demonstrably necessary to protect society from physical harm, the High Court of Australia has affirmed the legality of indefinite detention regimes.

The Government believes this bill strikes the right balance in enabling indefinite detention to be used as a last resort, to safely protect Tasmanians from an offender who has proven to be a serious danger to the community.

With the introduction of the second tier scheme for high risk offenders, the bill provides an alternative mechanism for the courts to ensure an offender is appropriately supervised and subject to strong conditions in order to minimise the risk they will commit another serious offence following their release.

In developing this bill over the past 20 months, the Department of Justice has undertaken extensive analysis of Tasmanian judicial decisions, the recommendations in the paper prepared by the Tasmania Law Reform Institute and the comparable legislative frameworks in other Australian jurisdictions.

A consultation draft of the bill was released for public consultation for a period of nearly eight weeks and was also provided to targeted stakeholders. Following consultation, the Government has made a number of changes to the bill to take into account the significant stakeholder feedback received.

I would like to foreshadow a small number of additional amendments I intend to move on behalf of the Government.

Following the bill's passage through the other place on 15 September this year, the Chief Justice wrote to the Attorney-General in relation to some matters that had not been previously raised during consultation. In response to the Chief Justice's request, the Government has agreed to progress amendments to the bill to -

(1) Insert a new clause 4(A) providing for the Supreme Court to obtain papers of its own motion as part of an application for a dangerous criminal declaration in the first instance;

(2) Amend cause 40 to provide that offences for a breach of an HRO order or interim HRO order be dealt with in the Magistrates Court rather than the Supreme Court; and

(3) Delete of clause 42(2) to provide greater consistency between appeals relating to the HRO order provisions of the bill and those relating to the dangerous criminal provisions.

At the request of the Chief Parliamentary Counsel, I will also be moving minor technical amendments to clauses 5 and 6 of the bill to make clear that the applications referred to in those clauses are applications made under clause 4(1).

I take this opportunity to thank every stakeholder who provided submissions and comments on the draft bill. In particular, I acknowledge the invaluable work of the Tasmania Law Reform Institute in formulating the recommendations reflected in these important reforms and the substantial work undertaken by the minister's department.

I also acknowledge the work of the Office of Parliamentary Counsel in drafting and finalising this substantial piece of legislation, particularly in light of the additional challenges created by the COVID-19 pandemic.

I commend the bill to the Council.

[3.32 p.m.]

Ms WEBB (Nelson) - Madam Deputy President, it is NAIDOC Week. As this is the first time I have risen to speak this week I am going to take a brief opportunity to acknowledge the palawa pakana of lutruwita, Tasmania, the traditional owners and ongoing custodians of this land, the land that was never ceded. I acknowledge the muwinina people, originally of this place, nipaluna/Hobart. I acknowledge the Elders past, present and emerging, of the Tasmanian Aboriginal community.

NAIDOC Week is an important time to celebrate the rich and vibrant culture of the palawa pakana whose connection to this land extends back beyond 40 000 years and has survived invasion and dispossession.

To the bill - I welcome this bill and its progress in improving Tasmania's indefinite detention laws. This is well overdue as our current laws have been recognised for some time as having deficiencies that have rendered them less effective in delivering safety to the community and less able to provide appropriate justice to offenders. I acknowledge the work done by the Government and those in the department to bring this bill to fruition. Consultation has been undertaken quite extensively across a range of stakeholders on the development of the bill. I note that, even today, we are likely to make amendments to the bill brought by the Government, based on further feedback from the Chief Justice of the Supreme Court provided after the passage of the bill through the other place.

In discussing this bill, it is helpful to remind ourselves of some foundational tenets of criminal justice. It is important to remind ourselves because there are instances in which this bill supports those foundational tenets and there are instances in which this bill is intentionally setting some of them aside. It is no small matter to set aside a basic concept of justice so it is important we do so, not lightly, but with careful consideration, especially in regard to balance and proportionality. It is important to remind ourselves of some key foundational tenets of criminal justice and I would highlight just a couple here, one being that a person is innocent until proven guilty, otherwise known as the presumption of innocence; another is that the onus of proof rests with the prosecution and the prosecution has to establish the guilt of a person.

A third one, which is really important, is that a person should not be punished more than once for the same offence. That is sometimes referred to as the double jeopardy rule. Additionally, I note a couple of further foundational principles, such as that a person should not be punished for something they might do but only for something they have done.

I acknowledge a principle around incarceration, which in its essence infringes upon fundamental human rights to liberty, and the deprivation of liberty is only justified by a finding of criminal guilt. The ultimate purpose of punishment through imprisonment is to rehabilitate the offender and the civil liberties we enjoy as citizens of Australia and as residents of Tasmania should only be curtailed in circumstances where it is absolutely necessary to do so. I would like us to bear those foundations in mind when we look at this bill.

The bill itself deals with the matter, as we are aware, of indefinite detention. That is, situations in which a person is deemed to be a serious danger to the community and can be further detained or otherwise supervised and monitored beyond the conclusion of their original custodial sentence.

We can immediately see that this is squarely in opposition, if you like, to some of those fundamental principles, including the principle that a person should not be punished for something they might do, but only for something they have done, that incarceration infringes upon fundamental human rights and the deprivation of that liberty is justified only by a finding of criminal guilt. Further, I think the important one there is also that the ultimate purpose of punishment through imprisonment is to rehabilitate.

We are prompted to be careful and intentional in our consideration of justice in relation to the matters in this bill. We know that the High Court of Australia has acknowledged the legality of indefinite detention in exceptional circumstances. However, even with this fact established at the level of the High Court, as we know, the devil is in the detail - and it is our job to consider and scrutinise the detail here.

We must do that with an awareness that it relates to exercising a power that fundamentally transgresses some of our core concepts and principles of justice. It is my view that this makes it incumbent on us to construct a framework for that power that has two things: a framework that has the least infringement on the personal and civil liberties of our citizens alongside the greatest degree of accountability on the state for exercising that extraordinary power.

The arrangements we have in our current laws do not get that balance right. They neither achieve the least infringement on liberties, nor the greatest degree of accountability on the state, hence we are all in agreement that they need to be improved and updated. In fact, the 2017

Tasmania Law Reform Institute research paper provides a very clear road map to reform and improve Tasmania's current indefinite detention laws in this respect.

That review found that courts currently are reluctant to make dangerous criminal declarations because of the substantial barriers to discharging those declarations. The review made a series of recommendations to improve current laws, including recommending periodic reviews be provided in the interests of justice and to safeguard against institutionalisation.

It also identified that, unlike other jurisdictions, we had no capacity for the courts to impose conditions prerelease or post-release. Options were limited then for managing the risk of serious danger to the community in a more nuanced way. In responding to each of the recommendations in the TLRI paper, this bill improves the process of declaring and managing a person in custody whose potential for violence poses a high risk to the community.

The existing judicial reluctance to exercise the power of indefinite detention unless under exceptional circumstances is quite understandable due to the severity of that punishment it imposes on the individual and the need to weigh that against the degree of risk to community safety. However, given that the power exists, it is incumbent on the state to ensure the processes involved are as functional and effective as possible.

A clear problem with the current law was that only the sentencing judge could make a declaration, and that has presented difficulties in circumstances where the judge has ceased to hold office. Part 2 of this bill solves that problem and confirms when a declaration may be made. That now includes a range of circumstances described in the Leader's speech that now capture a range of opportunities for declarations to be made. That is appropriate. It is functional and it is more effective.

It brings Tasmania into alignment with some other jurisdictions by providing also a list of mandatory factors for the court to consider in determining whether to make a dangerous criminal declaration. It requires the court to consider a whole range of matters, including the nature and circumstances of the offender's criminal conduct involving violence, their antecedents, their age and character, the need to protect the community, any relevant psychiatric, psychological, medical or correctional reports and the risk of the offender being a serious danger to the community if they are not imprisoned, as well as other matters the court considers relevant.

That is quite considerable and expansive that is now a requirement of the court to give consideration to. I think that is appropriate and a substantial step forward with this bill. I note too alongside that that the test for the court to apply in making a declaration and the standard of proof required have also been aligned with those of other jurisdictions and aligned with what we would regard to be an acceptable standard within our criminal justice system.

Under this bill that onus of proof has been put back onto the state rather than on the individual in question, as has been inappropriately the case under our current laws. This change and the improvements it brings aligns very well with the core principle I mentioned earlier, which is around the prosecution. The onus is on the prosecution to establish a person's guilt rather than the person have to prove their innocence.

The bill also addresses the problem with the current laws identified in the TLRI review that there is no periodic review of dangerous criminal declarations that have been made. The

bill provides for that now with regular opportunities for a declaration to be reviewed occurring at three-year intervals.

Further, it provides for an offender to apply for a review, in exceptional circumstances, of their own dangerous criminal declaration. That is a positive inclusion. There may be cases in which the offender has reason to request such a review. That may be in the interests of justice that they are now able to do so.

Again, we have some clarity provided in the mandatory list of factors for the court to consider when conducting such reviews. That provides clarity and strengthens the framework and accountability that is there on the part of the state in exercising these powers.

The factors listed in that review process include whether the risk posed by the offender may be appropriately mitigated by imposing a high risk offender order on the offender, which is part of that new second tier scheme. The availability of this option removes some of the sense of all-or-nothing that existed under the current arrangements where the court may have erred on the side of refusing to discharge a dangerous criminal declaration, keeping a person incarcerated beyond the time they might otherwise have been, at least to some degree, at liberty.

Whereas under the current laws it is difficult to remove the dangerous criminal declaration, we now have an opportunity to more readily and in a more nuanced way bring that to bear. The bill addresses this gap well and gives the court that power. Looking at the opportunity for prerelease orders during the review process or prior to discharging a dangerous criminal declaration brings that nuance further forward. That can be done either with the courts own motion or an application by the DPP or the offender. That is an important inclusion into this bill. It tilts towards a sense of justice for all those involved, including the offender in question.

Courts under this process can obtain information deemed necessary to assess that need or the benefit of the prerelease orders that they may consider. That can include looking for information on availability and suitability of programs and activities that may assist with the offender's rehabilitation and reintegration into society.

That is a very positive inclusion. I almost hope that potentially provides an opportunity for another level of advocacy to help us ensure that offenders are given access to appropriate and effective services, programs or treatments while they are incarcerated when it is known that courts will be reviewing and looking for information about the access for those things to people who fit into the categories covered by this bill.

Under the current laws, an offender under a dangerous criminal declaration is either in prison or is released into the community unsupervised, at the discharge of that declaration. As already discussed, this can be problematic. It could result in people being kept incarcerated for longer than necessary, or released but without what may be considered an appropriate level of supervision and monitoring. Neither of these are preferable.

The new bill allows the Supreme Court to impose an HRO order as an alternative to renewing a dangerous criminal declaration. This is a positive step forward. It has been referred to as a step-down usage because it is a lighter punishment than being imprisoned entirely until the next review.

If the conditions attached to the order are breached, the offender can face two years imprisonment, so there is an appropriate penalty available for breaches.

The conditions described in the bill regarding these have been - correctly, I think - described as intensive monitoring. They are substantial, both the mandated ones and the ones available as optional.

The bill creates the HRO assessment committee that comprises government agency representatives. They have a clear role to play preparing reports, coordinating agency responses and facilitating information sharing to advise on the management of the HRO orders.

This committee is designed to reduce the case management workload of the DPP so that it can better determine whether to apply for the extension of an HRO order. That is positive in terms of functionality and effectiveness. Again, a good inclusion in the bill.

I have an amendment for a further explicit inclusion into the membership of the HRO assessment committee, which I will speak to in the Committee stage. I also have an amendment in regard to matters that must be considered in determining whether to make an HRO order, which I will speak to later.

Mr President, I will speak briefly about an HRO order in relation to the similarity and dissimilarity to parole, just to make explicit that distinction.

The post-release conditions available under an HRO order allow for that provisional release into the community, in some ways with conditions that are similar to parole.

But for clarity, unlike parole, those measures, conditions and constraints extend beyond the custodial sentence the person served. The people we are looking at in this bill, in relation to these HRO orders, have done the time for their crime and this is additional to that time. It is quite distinct from parole in that sense, which has a definite end date aligned to the sentence the person was serving in prison.

The basis for the post-release conditions under the HRO order is that there is a risk they will commit a serious offence again. It is designed to reduce recidivism and protect the community. These are people known to be prone to violence; they have demonstrated a propensity towards that. The risk is deemed to be high to the community, and so conditions are considered such that protection can be provided and the liberty of that person can be allowed to an extent that balances against the safety of the community.

While it is accepted that is an important measure to have available in exceptional circumstances, we must remember that the reason for that exceptionality is because it contravenes some of those basic principles of justice.

Just as a reminder, it contravenes the fact that a person should not be punished for something they might do, only for something they have done. It contravenes the fact that the ultimate purpose of punishment through imprisonment is to rehabilitate.

It goes against the fact that the civil liberties we enjoy as citizens should only be curtailed in circumstances where it is absolutely necessary to do so. With that in mind, I would like to

reflect on three specific areas of concern I have in relation to the HRO orders components of this bill. It is to put them as a matter of record here.

The first of those concerns relates to the application of these orders beyond simply those who have been subject to a dangerous criminal declaration. The second reading speech tells us some serious offenders do not meet the threshold for being declared a dangerous criminal, warranting indefinite detention, but who nevertheless may pose an unacceptable risk of committing another serious offence if no supervising conditions are in place when they are released post-sentence.

As well as that step-down usage for those whose dangerous criminal declarations are being discharged, HRO orders presented in the bill are also to function as a step-up mechanism in some sense. That is, there is the ability to apply them to offenders who are not declared dangerous criminals, but who are deemed to pose a risk of committing another serious offence if the HRO order is not imposed at the conclusion of their custodial sentence.

I do not believe this circumstance was covered entirely in the TLRI review. I do not recall in that review reading an examination of that circumstance in detail, but I am happy to be corrected if that was covered. I think we are prompted to consider carefully where that threshold is going to land in terms of who that could or may be applied to, those HRO orders. It gives me pause to consider that threshold, knowing that thresholds can move and shift.

In the bill it does say in proposed new section 34(2) that -

> … the Supreme Court may only make an HRO order in relation to an offender if the Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing another serious offence unless an HRO order is made in relation to the offender.

Proposed new section 34(3) also says -

> … the Supreme Court is not required to determine that it is more likely than not that an offender will commit a serious offence, in order to be satisfied to a high degree of probability that the offender poses an unacceptable risk ...

This tells me we are anticipating that a person may come to the conclusion of their custodial sentence - the sentence the courts determined was appropriate for the crime they committed - and while not being regarded as warranting a dangerous criminal declaration to necessitate further imprisonment, they are deemed sufficiently dangerous to pose a high level of risk to the community. In such a case, the first question I would be prompted to ask is: why have we failed so catastrophically in our responsibilities as a state during their period of incarceration? Remembering that the ultimate purpose of punishment through imprisonment is to rehabilitate the offender and that a person should not be punished more than once for the same offence.

If someone concludes their custodial sentence such that they pose either the same high level of risk to the community as when they went into prison or possibly presents an even higher level of risk than when they went in, then first and foremost I believe it is an indictment on us as a state and on our criminal justice system. Instead of our response to this being, in the first instance and first instinct, the curtailing of the rights and liberties of that person through

the imposition of onerous conditions and restrictions, I believe our first instincts should be to step up and ensure categorically that our prison system and broader criminal justice system is fit for purpose. We should ensure it is appropriately equipped to deliver on contemporary understandings of justice and is able to produce positive outcomes for our whole community, including community safety.

This is a failure of our system if people arrive at the end of their custodial sentence and are actually in a position to require this form of HRO order. Given this concern, I am not proposing an amendment that relates to it as it is a matter of policy and I would have needed further time and resources to consult appropriately and propose a possible solution to the concern - and perhaps there is not one. However, the concern remains and I believe it is given even more urgency by the recent Custodial Inspector's report in this state which highlighted such devastating failure within our prison system to best serve the interests of rehabilitation. Not only does that failure not deliver positive outcomes for prisoners and the community, it is likely we are seeing negative outcomes actively driven by the situations currently in our prisons. We are seeing a worsening of circumstances for some of those who spend time in our prisons, and a higher likelihood that people will arrive at the end of their sentences in such a place and will be subject potentially to these HRO orders.

That is not their individual failing or fault. I regard that as a systemic failing and fault of our system. That to me does not look like justice and it has to be part of that consideration of accountability for the state balanced against the least imposition on personal liberties.

My second concern I would like to highlight is around the HRO orders. It relates to the fact that they are potentially indefinite and permanent. The current bill we have puts the maximum at five years per high risk offender order. That is in proposed new section 38(2)(a), but there is no cap on that order being renewed indefinitely.

It may be that those circumstances do not arise. It may be that in practice, high risk offender orders are imposed and they may not even be imposed for the maximum of five years. But they may in some circumstances - and certainly the bill provides for this - be put at the five-year maximum; they may be reviewed and reapplied, reviewed and reapplied. It could create a situation where, for example, an offender who has served their custodial sentence is no longer declared a dangerous criminal in the context of being kept incarcerated, but they could then have significant constraints on their civil liberties for an indefinite period of time, perhaps the rest of their life.

The punishment if they breach one of the conditions is fairly substantial. We know it can be up to two years so there is quite a hefty penalty hanging over their heads.

I have concerns about the potential indefinite nature of those orders. I do not believe that represents consistency with some of the principles and purposes of criminal justice, particularly those principles around a person not being punished for something they might do but only for something they have done. The ultimate purpose of punishment and the constriction of civil liberties to this degree is punishment. The ultimate purpose of punishment should be to rehabilitate an offender, and I do not believe necessarily that the outright imposition of these constraints, in and of itself, delivers rehabilitation to the offender.

Again, I have not proposed an amendment in relation to this concern that I am expressing here. I looked at a possible amendment that would have put an absolute time limit on any HRO

order or sequence of HRO orders, perhaps a time limit that corresponded to the period of that person's original custodial sentence. Due to the complexity of that drafting and the need to give a more comprehensive consideration to framing it up, I have not pursued that amendment. However, I am registering the concern here potentially for future discussion.

My third and final concern is that HRO orders in this bill are really a matter of balance. With these orders, all the constraints and conditions are put on the person, the individual, under the order, and none are effectively put on the state in my reading of this.

Proposed new section 37(1), things that must be included in those orders, and proposed new section 37(2), things that may be included in terms of conditions and constraints, are extensive.

The person can have almost every aspect of their life constrained in some way: their activities, their associations, their employment, the place they live, the things they consume even, as discussed in briefings.

As a state, we are placing such onerous constraints on the civil liberties of a person who has already served their time for the offence they committed and were doing so against a fundamental justice principle, the one that says a person should not be punished for something they might do. Given that, I am concerned that when I think about the balance here, I do not see any legislative expectation or requirement that the support and the treatment and the rehabilitative needs of that person are to be met by the state.

If we give ourselves the right to do this - that is, impose such onerous restrictions in these exceptional circumstances - where is the recognition, the explicit recognition and acceptance of the responsibilities that we as a state should bear to accompany that right to impose and exercise that power? I have some comments from some lawyers regarding this and I will read one of them. It said -

> The only comment I add is that some of my Barrister colleagues in NSW, during a conversation I had regarding these laws, opined that similar laws operate in NSW and serve as a source of injustice.
>
> We would be better served with intensive post release rehabilitation programs that focus on drug and alcohol abuse, life skills, education and employment. All of the evidence demonstrates rehabilitation deters and reduces offending, draconian laws do not.

In a separate piece of communication from another legal colleague -

> … in terms of taxpayer funds a much better use of resources would be intensive support not monitoring

I was interested to receive those comments because they align with what I am trying to get at here - we have all the legislative emphasis on constraint of the individual and no explicit accountability put on the state to deliver on the rehabilitative side of things that would be required and should be expected alongside the constraint. How can we moderate, in the service of justice, the deprivation of civil liberties that occurs under high risk offender orders in the pursuit of community safety?

One way to ensure we are not putting these onerous constraints on people in a manner that is simply set-and-forget, is that we ensure we do not do that because we look at them more frequently. I am suggesting in an amendment that we set a maximum of only three years for the maximum operational period of an HRO order. I will speak more about that in the Committee stage. But doing that means we are not setting and forgetting; we are accepting this is something we should be on the front foot about - ensuring it is appropriate and set at the right level.

In light of the fact the order could well be on this person for the rest of their lives and people's circumstances can change, it is reasonable to review the extent of an order at intervals of, at most, three years. This helps balance this ledger where we, as a state, accept a level of responsibility to ensure this power is being exercised appropriately. The review of the order could result in conditions being removed or adjusted. It allows us as a state to be confident we are exercising this extraordinary power as lightly as possible.

In light of those three areas of concern I have outlined on the HRO orders, which were the application beyond the dangerous criminal declaration, the potential indefinite nature of them and an imbalance between constraints put on the person and responsibilities accepted by the state, I ask the Government to make a commitment for a formal review of the application of this new act within a timely interval to assess its functioning and impact.

That review should be undertaken by an independent body, such as the TLRI, and should, amongst other things, give consideration to some of those specific concerns I have raised and perhaps there will be some others raised by other members. I would be interested also, separately to have an understanding from the Government today about what it expects in relation to the numbers of Tasmanians who may come under the powers laid out in this bill.

The deficiencies and problems of the current laws have deterred, to some extent, their use by our courts. With the changes brought in by this bill, where we see some of those problems and deficiencies addressed, may we then expect to see greater usage of the dangerous criminal declarations, for example? Also, with the inclusion of the high risk offender orders in this new bill and the benefits that could bring in some measure in terms of nuance and appropriateness, what level of use are we anticipating with those newly created HRO orders?

What is the expectation? It would be useful to be reviewed and certainly reported on in coming times to see what impact may come from the new approach.

I acknowledge that whatever the numbers are in terms of this new bill and its application, whether it be the dangerous criminal declaration or the HRO orders, I am in support of the improvement this bill will deliver. It certainly will deliver us confidence far beyond what we have currently that these powers are being exercised in a more robust framework in the service of justice. The bill is a positive step forward regarding the indefinite detention arrangements in this state.

It is my intention to highlight that, as good as this improvement is on what we have currently, it is important, because of the extraordinary power in this bill, that we do not take our eyes off the impact it has and the future ways we might assure ourselves of the appropriate

balance between constraints on individuals and responsibilities and acceptance of responsibilities by government.

I thank the Government for the work done on this bill, for the improvement that it offers, and I support it in a broad sense.

[4.06 p.m.]

Ms ARMITAGE (Launceston) - Mr President, I am pleased to see that the Government has introduced a bill that delivers on a mandated election commitment and that, in doing so, guidance has been taken from experts in the areas of crime and criminal justice.

The Tasmanian Law Reform Institute in its 2017 report, *A Comparative Review of National Legislation for the Indefinite Detention of 'Dangerous Criminals*, takes a thorough look at the current state of relevant Tasmanian law, examines the approach taken by other Australian jurisdictions and provides a number of recommendations to improve Tasmania's approach.

The bill responds to each of these recommendations and I am pleased that the advice of the TLRI has been taken seriously, and taken into account, by the Government in formulating this bill.

The current state of the law and the bill we are debating essentially allows a person to be incarcerated on the potential for future offending, with the purpose of protecting the community, not detaining someone for a crime already committed. It is a truly significant power which we vest in our judiciary.

The most important civil liberty against which the law protects is that against arbitrary detention. When we examine powers such as these, the judiciary rightly emphasises the need for restraint and caution when applying them. As a consequence, judges are already wary of imposing indefinite sentences given the inroads into civil liberties such sentences require, according to legal academic, Bernadette McSherry.

In the case of *Chester v R*, the court remarked that any sentence of indefinite detention should be confined to very exceptional cases, where the exercise of the power is demonstrably necessary to protect society from physical harm. The sentencing judge must be clearly satisfied by cogent evidence that the convicted person is a constant danger to the community.

It has been remarked that current legislative arrangements are not working. On the one hand, they do not work for offenders because they are so hard to appeal and have removed, that they in effect lead to indefinite detention.

On the other hand, it was said that they do not work for victims, because these provisions are infrequently used by the judiciary because they realise the limitations and deficiencies of the current scheme and are therefore reluctant to issue such orders, as I mentioned a little earlier.

I support any measure taken by this bill to clarify the purpose and function of indefinite detention laws, to provide greater guidance to the judiciary to apply them, and to ensure that common law tests are used infrequently to avoid inconsistency and provide greater certainty

for when such declarations are applied to an offender. To this end, I support the provision of a new dangerous criminal framework by the bill.

Recommendation 4 of the TLRI report states -

> … it is intended to create both an indefinite (at the time of sentencing) detention regime, as well as a post-sentence preventative detention regime.

Current law requires that a dangerous criminal declaration can only be made by the judge who convicts or sentences the offender, which prohibits the making of such a declaration after sentencing if the sentencing judge has left the bench, which as I understand it has also been informed by recommendation 4 of the TLRI report.

Clause 6 of the bill sets out the prerequisites for an offender to be declared a dangerous criminal, including that the court must be satisfied to a high degree of probability the offender is a serious danger to the community, including only some members of the community.

It also provides a list of mandatory factors the court must consider in making a determination of a high risk offender declaration. Providing a list of mandatory considerations, whilst including a provision allowing the court to consider other matters it deems relevant, provides the court adequate direction, but also gives it a fair degree of discretion when making these determinations.

The establishment of a high risk offenders committee is also a positive step towards ensuring proper implementation of the legislation and to monitor compliance and ongoing cooperation and information sharing between relevant government agencies.

Clause 25 sets up the composition of this committee and will certainly contain a high degree of expertise and experience to carry out its mandate.

Building in a periodic review mechanism to the bill in Division 2 is a welcome addition so that the offenders declaration will be regularly reviewed by the court. The court is empowered to order reports in relation to the offender from medical professionals. In addition to the reports provided by the DPP, facilitated by the aforementioned offenders assessment committee, it refers the court back to the mandatory factors set out in clause 14(2) of the bill to determine whether the offender remains a serious danger to the community and obliges the court to discharge the declaration unless it is satisfied to that high degree of probability that is the case. This is entirely reasonable and strikes a good balance between the rights and risks of the offender and that of the community.

An extremely important aspect of this bill is the establishment of the second tier system. I support the introduction of a scheme to monitor serious sex or violent offenders after their release who do not meet the threshold for indefinite detention. This is also a balanced approach to what has historically been a grey area. Not being suitable for indefinite detention, but being serious enough to warrant a monitoring plan to be applied. The high risk order - HRO - can only be applied when the court is satisfied to a high degree of probability the offender poses an unacceptable risk of committing another serious offence unless the order is made, the paramount consideration expressly being the safety of the community.

With a HRO being granted, a number of ongoing conditions are placed on the offender obliging them to report their residential conditions, permitting police to enter premises and conduct searches, not leaving the state without approval and complying with directions to engage in treatment, counselling or other like activities, including a non-exhaustive list of other conditions the court may deem appropriate.

In light of this bill being brought into this place, I understand a number of amendments will be proposed after consultation with the Chief Justice of the Supreme Court. I do not believe these amendments will alter the overall policy direction and substance of this bill, but will make its operation smoother.

I am pleased to see the proactive approach His Honour has taken to protect the interests of the court, the community and any person who may be subject to an order of the kind contained in this bill. Likewise, I am pleased the Government has acted not only on His Honour's advice, but also on that of the Tasmania Law Reform Institute, whose review into national legislation of indefinite detention of dangerous criminals has significantly informed this bill.

On the face of it, the imposition of indefinite detention and placing conditions such as those associated with HROs are in contravention of the solid common law principles of proportionality and finality - proportionality being that the sentence is proportionate to the crime that has been committed, and finality being that once a sentence is completed, no further sentence ought to be imposed.

As the TLRI report points out, measures that contravene proportionality and finality are exceptions and as such should still be used only in the most exceptional circumstances. Protecting our community is also extremely important and no innocent person or people should have to be harmed when we can reasonably foresee a dangerous or high risk offender might cause such harm.

As such this bill is a welcome development. It strikes a reasonable balance to this end. It contains provisions which provide adequate guidance to the courts in making these determinations, invests expertise and knowledge in the high risk offenders assessment committee that will aid in good decision-making and, as far as possible, it protects the offender from unfair, arbitrary or unusual measures.

I support the bill.

[4.14 p.m.]

Mr DEAN (Windermere) - Mr President, I will not make a long contribution on this matter because I support the bill. I thank the Leader for the briefing this morning. It answered a number of questions asked by myself and other members.

We were told that this morning that very few people have ever been branded with the dangerous offender category we currently have. I ask the Leader: how many people in this state at this time are branded dangerous criminals under the current sentencing act? As a police officer for a long period, I only ever knew of two or three people who fell into this category and that was because they were the worst of the worst. If you live in the real world, there are people, sadly and unfortunately, who do not give a damn about anybody else, who do not want

to be rehabilitated - have no interest in that at all - and who only ever want to push their harm on other people. That is sadly the position we have.

I listened to what the member for Nelson said about people who should not be tried or punished for what they might do. Police arrest people for what they might do on a fairly frequent basis. When you have a person out there who has demonstrated and shown by their actions, and by the way they are living, that they are a real risk of causing harm to a child if they are free or real risk to a female if they are free, or real risk to any other person who might cross their path, what do you do about it? Do you just let them go after they have done their sentence and hope to god they do not harm anybody? Is that what we do? The public demands they be able to live in a safe society, a safe community and be protected from these people.

I do not know who here would remember the Allie case where a young man and his girlfriend were kidnapped from a home at Glenorchy by two people. One of those men has been in the media in the last year or two because of a possible release from jail. Mr Allie and his girlfriend were kidnapped by these two absolutely evil men, and were taken just north of New Norfolk -

Mr PRESIDENT - It was the Curtis case.

Mr DEAN - That was one of the offenders; thank you, Mr President.

They were subjected to the most violent, most horrendous crimes you could ever imagine. The girl was raped a number of times throughout the night. He was bundled into the boot of the car and she was in the front. I do not want to go into too gruesome detail, because it will upset some people listening, but suffice to say the man was deliberately blinded and taken into the bush and murdered. The girl was continually molested; things happened and it was not until the two offenders fell asleep that she was able to escape. I do not think she had any clothes on, but she was able to escape the car and was assisted and supported by people in a home close by she was able to get to.

Those two men have been incarcerated now for a long time. At the time, I am not sure if one or both were branded dangerous criminals. To me, they would probably fit that category, but at the time there was a scream from the public for the death sentence, of them never being released, ever - all those things - because those people were just plain damn evil. To say we should not take actions against a person for what they might do to me is not to appreciate or to fully understand just what does happen.

Ms Webb - Just to clarify, to make sure there was no suggestion that is what I was saying in my contribution, I was pointing out the need to be very mindful in circumstances where we are going to ignore that fundamental principle, that we get the balance right in doing them. That is what I was focused on in my contribution, not a suggestion that we do not ever contemplate it.

Mr DEAN - I thank the member for that. We have a responsibility to keep other people safe, and that is what it is. This bill - and I think I have it right - provides another category for the high risk offender category, which is a slight fallback from the dangerous criminal offender where they must remain in custody. Under this bill, they can now apply for relief or release from that through the processes of the court or the DPP can do that and/or the person themselves can make those applications for release.

As I understand it, if that happens, an application could also be made to have that person released under a high risk offender's application under this bill as well, if it gets up. In that case, they would be - could be - able to be released back into the community, with many conditions applying to their release. That is a great fallback. The good thing about this bill is that we are told that the Chief Justice, I understand, is reasonably content with the bill.

The Chief Justice has suggested some further amendments that we will hear about during the Committee stage of the bill. I am confident it will get through there - in fact I am confident it will get right through - so we will hear those amendments. It is clear that the Chief Justice has looked at this bill very closely and, I suggest, his colleagues have as well.

From that, and the fact that the Tasmanian Bar Association and the Law Society of Tasmania have not come forward with any real grievances with this bill, identifies to me that this is a good bill, one that will assist and support us in the future. It is a bill these organisations can work with and a bill they will have to understand fully, which they have done.

I suspect the police have looked at this bill as well - and the Leader might be able to suggest any comment that they might have made because the bill will impact police. It will impact the police in a big way in relation to their search capacity and their ability to enter homes where breaches of HROs have occurred.

In passing this type of bill, I often say - and other members too; from time to time, I think the member for Murchison says it - we never really look at the workload we put onto other organisations. This bill will also place a workload onto police because I would be very surprised if the DPP has not a few people he may well consider making an application for if the bill is passed, if it gets through all those hurdles. Maybe the Leader will be able to tell me about that. The DPP might not be interested in bringing HRO orders into the system; I would be surprised because there would be those members and those people there who -

Mrs Hiscutt - I do not think that is an answer that we can give in parliament.

Mr DEAN - No, probably not.

Mrs Hiscutt - He may have or he may not have, but I do not know we can confirm that he does have.

Mr DEAN - No.

Mrs Hiscutt - Sorry.

Mr DEAN - I would visualise that we may well see a few more people now. As I understand it, the courts have been reluctant to brand a person a dangerous criminal because they cannot change that order and all of the things around that. This process will ease the restrictions and controls on judges, therefore we may see a few more fit into that category here.

Mrs Hiscutt - I take on board your comments, but I do not think we can pre-empt what the courts or the DPP may have in mind.

Mr DEAN - I understand that. I also note that if the bill should be supported, retrospectivity does apply. In other words, any persons who might be out there now with the tag 'dangerous criminal' will still be, and remain, dangerous criminals under this bill. That is a good position as well. It would be a risky thing to see those people set free from that position as a result of this new bill.

Mr Valentine - Is it not the case that, being included, they are reviewed? They are not outside the review, are they?

Mr DEAN - They can be reviewed and they will fit within this bill, if it is supported. As I understand it, they will be able to go to a court to ask for a review of that order, as the DPP would as well. That puts them into that category.

Mr Valentine - I think that is the case.

Mr DEAN - I am pretty confident of that. I read through what I see as the retrospectivity clause a while ago.

Mrs Hiscutt - Yes. That is the case.

Mr DEAN - To ensure I properly understood it, so that is right. I will certainly support the bill, which is not to say that I will not have some questions on it during the Committee stage.

[4.27 p.m.]

Mr WILLIE (Elwick) - Mr President, I was not planning to speak, but I thought I would pick up on some of the comments made by the member for Windermere. I certainly agree with him in terms of this bill and its provisions dealing with the worst of the worst.

The member mentioned the evil nature of some people, but I want to address that point because I do not think people and children are born evil. In an ideal world we would not need a bill like this because we would have an education system that would identify, for example, language issues in children at a younger age and intervene. We would have a child safety system that would be able to protect children and nurture families to stay together. We would have a family violence system that would identify issues earlier and intervene.

People who become dangerous criminals have had trauma. They have often had generational poverty. Many government systems let people down and they end up in the jail. You can walk in the jail and talk to some of the inmates and find that some of them cannot read or write. I cannot imagine trying to function in this world without functional literacy.

In an ideal world we would not need this bill, but there are exceptional circumstances. I understand the human rights argument, I really do -

Mr Dean - We live in the real world.

Mr WILLIE - Yes, and the reality is that some people in our society, for all those reasons I mentioned, have been let down and have become dangerous. For that reason, we need bills such as this to protect the community. The current system is not working. As other members have said, it does not work for the victims because it has deficiencies - there are not enough

applications to protect victims, so it does not work for them. It does not work for the offenders because it is very hard to appeal or get a dangerous criminal order removed. We end up with people in indefinite detention and becoming institutionalised, which makes the whole problem worse, as the member for Nelson talked about.

This is an improvement. We all know the circumstance surrounding the development of this. It might have been the ALA or the Prisoners Legal Service that made a reference to the TLRI that prompted that report and these recommendations have formed the basis of this bill. It puts significant protections around the judge, reviews and the onus of proof on the DPP. It is a significant improvement and it may keep the community safer, but it may also allow some people to reintegrate into the community in a safe way. We know recidivism rates are high. We were talking about that earlier today. Almost one in two offenders, 47 per cent, in this state are likely to end up back in the justice system. That is not good enough.

The high risk offenders provision within this bill is a good thing because within that order there could be requirements to participate in rehabilitation programs and a range of other conditions that could be set on that offender, appropriate for their circumstances. It may help with the recidivism of really high risk offenders to have those restrictions and conditions put on their release.

I support the bill. I think it is a good bill. It is not ideal in an ideal world, but we know the reality is that there are dangerous people in our community and the community needs to be protected from them. Unfortunately, there is a human rights versus safety issue here that we all, no doubt, are struggling with. I think this bill gets that balance right.

[4.31 p.m.]

Mr VALENTINE (Hobart) - Mr President, I have appreciated the offerings each member has provided. The member for Nelson's offering was very interesting. Principles of justice are always important in our society. I heard the member for Windermere talking about that awful case. I cannot remember whether that person had previously been convicted of other crimes -

Mr Dean - In my memory they had been, but I stand to be corrected.

Mr VALENTINE - The point we are dealing with is whether people can be provided with the opportunity to improve their lot in life. The member for Elwick says he does not think people are born intrinsically evil, but there are people whose nature has a greater propensity towards harm to others or towards improving their own circumstance.

Mr Willie - I was talking about the circumstances of their life that had led them to this.

Mr VALENTINE - Yes, that is what I was going to get to. There is that, and there is the environmental aspect, which is what you are talking about.

Those two things balance out the way somebody turns out in life. It is important that whatever we do as a society, we try to provide the opportunity for people to improve themselves. The research paper from the Tasmania Law Reform Institute has 10 recommendations. That is where the value of these sorts of organisations comes in. I point back to the previous one we were dealing with and the Sentencing Advisory Council. We need to listen to their expertise and their advice. This law reform institute is one such organisation.

As I work my way through the bill, I can see where each recommendation has been considered and taken into account. I thank the Government for producing this legislation which will improve things. We do not want to see members of the public put at risk. We do not want to see victims of perpetrators of significant violent acts put at risk, but we have to do it with balance.

We have to think about human rights and hear what the member for Windermere is saying. Again, if people are serious criminals, we cannot just simply put them to one side and say, 'Well, you will never be any better'. It is important we make sure when they are coming out of prison and incarceration, that we give them an opportunity to break the networks they have that will make it more likely for them to reoffend, that we provide proper services to help them get their life back on track.

Thankfully, this particular intended act will not deal with that many people, and we will get the answer to that. It is important to know we are not talking about heaps of people; I think it is only a few in number compared to the number of people we have in our institutions who have offended. I will support this bill. I will listen carefully to the amendments to be put forward by the Leader and the member for Nelson as to the veracity of their arguments and how the bill may, indeed, be improved by amendment. I thank members for their considered input, and I certainly got a lot from that.

[4.37 p.m.]

Ms FORREST (Murchison) - Mr President, I will not go over many of the areas other members have covered, but it is important to note this legislation has been some time coming and that the need for reform in this area was identified some time ago, as others have mentioned. It does follows from a pre-election commitment to have this sort of legislation updated and more contemporary.

With justice and restorative justice - however we look at those engaged in that justice system - we need to focus more on prevention in the first instance, like health. If you do not spend and invest enough in preventative health, you end up with much more demand in your acute health setting.

If we can find ways of supporting people who may be inclined to commit offences or to reoffend, if we can spend more time supporting those people and helping them to reintegrate into society if they have been in prison or perhaps prevent it in the first place - we all have families in our electorate or cohorts of individuals who tend to fall into that category. Unfortunately, we know that around Australia, it is almost a rite of passage for some Aboriginal men, for example, which is really sad.

You cannot just say 'That is really sad' and then do nothing about it - you actually have to do something about that. You have to support those communities and help them see a better way. It is important to do this sort of legislative reform - absolutely it is - but we cannot overlook the fact there is much more we could be doing. If you can lift people out of poverty - and we do have many people living in poverty in this state - you will naturally have much less demand on your justice system. It takes a whole-of-community approach to this that is actually going to make inroads.

Yes, there are some people who, no matter what we do as a society, will commit horrendous offences and rightly deserve to be in prison. We know it is a small number, but some of those pose an ongoing threat to society and we need a particular mechanism for dealing with them that is fair, but that also considers both sides of the coin. I instance the example provided by Fabiano, whose surname I cannot remember.

Mr Valentine - Cangelosi.

Ms FORREST - Yes, thank you. The case he described may not necessarily have been appropriate to that particular argument, but the fact remains that a young woman was raped. She came from what he described was a stable, happy family, and she had good relationships with her parents. I suggest she may not have received the appropriate support, counselling and advice, but the result is that it has basically wrecked her whole life, and that of her family, too. She started on a life of petty crime, which became more serious crime and then she cycled through the Justice system, in and out of prison. That is not okay. I do not know if the man who raped her ended up in prison, but her sentence goes on and on as a result of our society failing her.

We do not know whether other things happened in her life that could have led to those outcomes, but either way that was definitely a changing point in her life. We must never underestimate the impact of crime on an individual. That is why we have the victims of crime process. We have victim impact statements. They are all important.

Do this work, do this as legislation, but do not lose sight of the fact that we have to do much more in that preventative role. That includes preventing people going to prison in the first place or even entering the Justice system. For those who do, we must support them much more than we currently do to help them reintegrate into society and not become part of that almost one in two people who end up reoffending and re-engaging with the Justice system.

This bill is a vast improvement on the current sentencing act. That is to be welcomed. Hopefully it will provide a more structured and fairer process. It will provide for regular reviews of these orders, and that sort of mechanism is important. It will create a level of consistency with other jurisdictions. Even though they are not entirely consistent, there is a more consistent framework.

I am pleased to see that some of the crimes included in Schedule 1 of the bill include the persistent family violence offenders. These are people who do not tend to change their ways. We see examples of the impact of coercive control as well as physical violence. It often ends in physical violence to the point of strangulation, which to them is a red flag for homicide or murder. We need to do a lot more in that space. These people are dangerous and rarely do they change unless they have really intensive programs. It does not mean you should not try, but these are real patterns of behaviour and they have been going on for a long time. They have probably been a role model for some of these men when they have been very small. They have seen, usually, their father control their mother physically, sexually, emotionally, socially or financially. That is what they seem to think is the normal behaviour.

Rape, kidnapping, aggravated armed robbery, arson, sexual abuse of a child, murder, manslaughter - those sorts of offences we would expect to be part of this scheme. I was pleased to see the persistent family violence one because it does not necessarily have to mean physical violence. It can be other forms of violence. Thankfully in Tasmania we are a leader in

progressing some of those legislative reforms. Under this Government that has occurred. That is a positive thing.

I will listen to the debate on the amendments. I understand the Leader's was in response to further communication after the bill passed the other place. I will listen to the member for Nelson prosecuting the case for hers.

It really is a step forward. With these bills we often see minor amendments coming through later on with a lot of areas of justice as they are implemented by the courts. It becomes apparent that things are not working quite as intended. Every year we have a justice and related bill to tidy up some of these things. We all do our best to get it right in the first instance. This is pretty comprehensive and significant legislation. One would expect there may be further changes or tweaks that may need to occur.

I support the bill and will consider the amendments as they are put.

[4.45 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I thank honourable members for their contributions. I have some lengthy answers here, which hopefully will clarify a few of the matters discussed.

Member for Nelson - the question was the HRO orders that form the basis of the second tier scheme were not discussed in the TLRI report.

The Tasmania Law Reform Institute 2017 paper focused on Tasmania's dangerous criminal provisions and provided an analysis of issues relating to indefinite detention and preventative detention. While the TLRI paper identified the need to be able to impose conditions on an offender once a dangerous criminal declaration had been discharged, it did not exclude extensive analysis of the full range of schemes operating in other jurisdictions that provide for post-detention supervision of high risk offenders in the community.

Extended supervision schemes of this kind currently operate in all Australian states and territories except for Tasmania and the ACT. Some of those schemes, such as Victoria's Serious Offenders Act 2018 and the updated provisions currently before the Western Australian Parliament, are the result of new legislation that did not exist at the time the TLRI released its paper, which has been considered by the Government in progressing these reforms.

In developing this bill, the Government has met its commitments to introduce a second tier scheme that applies to serious offenders. It is important to understand that the new high risk offender provisions operate both as a step-down mechanism from a dangerous criminal declaration, and as a step-up mechanism for other serious offenders who do not meet the higher threshold required for indefinite detention, but who, nevertheless, pose an unacceptable risk of committing another serious offence if not kept under supervision.

The bill establishes the clear connection between both tiers. This is reflected in clause 14(2)(i), which states that factors the court must consider when reviewing a dangerous criminal declaration include consideration of whether the risk posed by the offender may be appropriately mitigated by imposing an HRO order rather than keeping the offender detained pursuant to the declaration.

The capacity to make the HRO order when a dangerous criminal declaration is discharged enables the imposition of strict conditions on the offender so they can be effectively managed once released into the community. It responds to the intent of the TLRI recommendation that a court should be able to impose post-release conditions following discharge for declaration.

The HRO framework is therefore flexible and provides for consistent treatment of offenders needing post-release supervision by serving two purposes. It enables for post-release conditions to be applied to discharged dangerous criminals, as contemplated by the TLRI, and it enables post-release conditions to be imposed on other high risk offenders after they have been released from custody.

The member for Nelson also asked how many offenders are likely to be declared as dangerous criminals, under the new provisions. Other members also asked that question.

Since the introduction of the Tasmanian indefinite detention provisions, originally in the Criminal Code, and replaced in 1997 with those currently in the Sentencing Act, nine offenders have been declared dangerous criminals. The most declarations took place in 2007. There are currently five declared dangerous criminals in custody. I think the member for Windermere asked that question as well.

The number involved is very small and highly dependent upon individual offending behaviour that is considered to meet the test required for the imposition of indefinite detention. Individuals who exhibit such extremely dangerous behaviour are rare and it is not possible to predict how likely it is that an offender may be considered for a declaration in the future. The proposed reforms to the dangerous criminal declaration provisions in Tasmania in themselves are unlikely to lead to any significant change in the frequency of applications for a declaration.

However, the introduction of the new second tier scheme for high risk offenders will offer an alternative to the Supreme Court for dealing with serious offenders who do not meet the threshold for being declared a dangerous criminal but who, nevertheless, may pose an unacceptable risk of committing another serious offence if no supervising conditions are in place when they are released post-sentence.

Another one for the member for Nelson: how many offenders are likely to be placed on HRO orders under the new provision? As at 27 June 2020, there was a total of 672 prisoners in Tasmania, excluding those in the Wilfred Lopes Centre health facility. Based on this number, the Department of Justice estimates that of those prisoners who are in custody for murder and the more serious assaults and sexual assault offences, an average of 27 prisoners will become eligible for their earliest release date each year and could therefore be subject to an HRO order application.

On this basis, it is anticipated that the high risk offenders assessment committee would consider around seven offenders each quarter for the purpose of obtaining behavioural and management reports and would then determine whether a risk assessment was required. It is important to note that not all those prisoners would necessarily meet the threshold required for imposing an HRO order - for example, that they pose an unacceptable risk of committing another serious offence if not kept under supervision. The DPP will need to make a decision as to whether to apply to the Supreme Court for an HRO order in each case.

In comparison with New South Wales, it is expected that only a very small number of offenders would be subject to these orders. It should also be noted that the conditions required to ensure the safety of the public would be expected to vary amongst those offenders declared as high risk offenders under the new scheme. For example, not all offenders would necessarily require electronic monitoring in order to minimise the risk of committing another serious offence.

Another one for the member for Nelson. The bill does not create obligations on the state. First, the Corrections Act provides for guiding principles on the exercise of powers in relation to prisoners in section 4 of that act. These include that people retain their rights as citizens, except as lawfully limited; services have regard to personal dignity; people are capable of change; and people should be assisted to become socially responsible and their demonstrated responsibility should lead to less intrusive interventions.

These principles apply to the director of Corrective Services and the director is responsible to the secretary for the care of all prisoners and that is in section 6.

The member for Windermere spoke about police input into the bill - consultation. The Department of Police, Fire and Emergency Management has been consulted formally and several times at officer level on the bill and its impact has informed the final bill. As an agency involved in the high risk offenders assessment committee, DPFEM will have direct involvement in the operational process to support the new act.

The member for Windermere and the member for Hobart - I will just read this out for clarity: how would the new provisions affect offenders who are currently subject to dangerous criminal declarations? I have touched on that, but I will just read this again for clarity -

> Indefinite detention was previously provided for under section 392(1) of the Criminal Code before the current dangerous criminal provisions under the Sentencing Act came into force in 1997.

There are currently five offenders detained indefinitely as dangerous criminals. One was declared in 1997 under the old Criminal Code provisions, while the other four offenders were made subject to dangerous criminal declarations in 1999, 2003, 2004 and 2007 respectively under the current legislation.

Section 7 of the proposed Dangerous Criminals and High Risk Offenders Act will ensure that those previous declarations are taken to be declarations under the new section 6(1) so that their indefinite detention will continue when the new provisions commence.

The fixed term sentences for each of those five offenders have expired and they are currently in custody only due to their dangerous criminal declaration. Under proposed new section 9(2)(b) of the new legislation, the DPP will be required to apply for a review of each of those declarations within three years of the commencement day of the new provisions.

Hopefully, I have addressed most things that members have asked and I commend the bill to the House.

Bill read the second time.

DANGEROUS CRIMINALS AND HIGH RISK OFFENDERS BILL 2020 (No. 28)

In Committee

Clauses 1 to 4 agreed to.

Clause 5 -
Procedure in relation to application

Mrs HISCUTT - Madam Chair, I move that clause 5 be amended by -

Before subclause (1)

Insert the following subsection:

(1A) This section applies in relation to an application under section 4(1).

This is the minor technical amendment requested by the Chief Parliamentary Counsel, Office of Parliamentary Counsel, that simply clarifies that the application referred to throughout clause 5 is the application made by the Director of Public Prosecutions under clause 4(1) of the bill for an offender to be declared a dangerous criminal.

Amendment agreed to.

Clause 5, as amended agreed to.

Clause 6 -
Declaration of dangerous criminal

Mrs HISCUTT - Madam Chair, I move that clause 6 be amended by -

Subclause (1)(a), after 'application'

Insert 'under section 4(1)'.

This is a minor technical amendment requested by OPC. It simply clarifies that the application referred to in subclause 1(a) is the application made by the DPP under clause 4(1) of the bill for an offender to be declared a dangerous criminal.

Amendment agreed to.

Mr DEAN - I think this has been answered before but I want to ask again to make sure I am right. In relation to clause 6(e), where a dangerous criminal branding can be given to a child, why do we have 17 years and not 18 years there? What is the reason or the circumstances for making that difference in this bill?

The other question under the same area, as I only have three calls, and I am not sure if I will use them, obviously arson is seen as having an element of violence in it. It is the first time I have referred to arson. If you look at the schedule, it is included . How can we really say arson in relation to property has an element of violence? In a long interpretation you could determine a matter. Obviously, it must be the case because if you look at clause 6, in particular, it keeps saying crime involving violence or an element of violence so, obviously, it must fit into that position. I would appreciate some explanation.

Mrs HISCUTT - I can supply the answer to the member's second question first - the age 17. It is currently the case under the existing indefinite detention provisions. The Government made a policy decision not to change that. It is already there, but ultimately it is up to the courts to make the decision.

If an offence of arson could threaten the safety of the community, if it is done repeatedly by a repeat offender - you could end up with a house burning down with someone inside, or the burning down of the Harris Scarfe building in Ulverstone.

Mr Dean - Not all arsonists.

Mrs HISCUTT - No, not all but it is up to the judge to make that final call.

Mr DEAN - So 17 is currently in the existing act?

Mrs HISCUTT - Yes.

Mr DEAN - Why is it there? It is all very well to say it is under the current existing act; it is now in this bill we are currently dealing with. Was it right to be in the existing act if you have moved it across into this bill? Why have we included '17' in this bill? I would think this bill would be the right time to amend that if there is not some strong reason. Having said that, I know of kids of 15 and 16 who are violent offenders. I have dealt with some of them and, I might add, have spent some time in hospital as a result of one of them. Why is it we have retained the position here?

Mrs HISCUTT - It was just a policy decision that it should remain carried over from the other act. An offender of age 17 can be dealt with as an adult in the Justice system. It was just a policy decision to bring it from one to another and maybe if the member is really concerned about it, he might like to take it up personally with the Attorney-General because it does not sort of sit, yes.

Mr Dean - No, no. I was just trying to get the explanation.

Mrs HISCUTT - Yes.

Clause 6, as amended, agreed to.

Clauses 7 to 13 agreed to.

Clause 14 -
Determination of review application

Mr DEAN - I refer to clause 14(1)(b), which says -

> (b) must refuse to make an order discharging the declaration, if it is satisfied to a high degree of probability that the offender is still, at the time of refusing to make the order, a serious danger to the community.

What is meant by 'at the time of refusing to make the order.' I take it where the offender is opposing the making of the order? Is that the right interpretation? An explanation would be good, thanks.

Mrs HISCUTT - It reflects that the court must assess the danger of the offender at the time the review is being conducted, not at some point in the past or predicting the future. This was OPC's choice of language to get that across.

Mr Dean - All right.

Clause 14 agreed to.

Clauses 15 to 23 agreed to.

Clause 24 -
Meaning of relevant agency

Ms WEBB (Nelson) - Madam Chair, I move that clause 24 be amended by -

After paragraph (b)

Insert the following paragraph:

> (x) the department primarily responsible in relation to the administration of the *Mental Health Act 2013*.

This discussion will also capture the next amendment there and will probably bundle those up together, in a sense, and we may or may not have to do the next one.

In relation to clause 24, my amendment is fairly straightforward. Clause 24 defines the meaning of 'relevant agency' in the next part, and you will notice it is presented in terms of particular pieces of legislation - the Tasmanian Health Service Act, Disability Services Act, Police Service Act et cetera.

In my amendment, I have suggested including explicitly the Mental Health Act as a relevant piece of consideration, I suppose, or a relevant matter to be covered in the same way those other acts are covered. I believe this makes it explicit that there is relevance in terms of that act to the matters being dealt with in this part of the bill. We do not lose anything by adding the Mental Health Act in terms of 'relevant agency', and in the same way when we get to the next clause 25, where I have also proposed similarly to include it.

We do not jeopardise or lose anything by doing that. We explicitly acknowledge that as a state, the Mental Health Act has importance in this consideration being done by the high risk offenders assessment committee. While it may be that that act is also covered by departments that may administer some of the other acts mentioned, it may be it is appropriate for a representative from the same department but from different parts of that department in relation to the different acts that are covered by that department to be represented, for example, on the committee in that next section.

We are not naming departments. We are naming acts here that are relevant. This explicitly includes that for relevance and as an acknowledgement that will be a part of our responsibility as a state when we are undertaking the work described in these clauses by the HRO assessment committee.

I will just leave it at that. People can consider it or ask questions if they have any.

Mrs HISCUTT - The Government believes this amendment is unnecessary and we do not support it.

The Mental Health Act 2013 is administered by the Department of Health, except for parts 2 and 3 of Chapter 3 and schedules 3, 4 and 5, which are administered by the Department of Justice.

Both these departments are already included in the membership of the high risk offenders assessment committee under clause 25(2). The committee also includes the Chief Forensic Psychiatrist or their nominee.

The Government is confident that any matters relating to the mental health of an offender can therefore be comprehensively addressed through the committee membership currently proposed in the bill.

Once the committee is operational if the need for any additional representation is identified additional members can be included as prescribed by regulation pursuant to clause 25(2)(h) of the bill.

We name departments by reference to one of the acts they administer for the purpose of identification in case they change their name in the future, not to highlight acts as relevant as such. Basically speaking, this is duplication and is unnecessary because it is already there.

Ms RATTRAY - Madam Chair, as the member who has posed the amendment has said you have named the Tasmanian Health Service Act and the Disability Services Act and the Police Service Act - well, they might all change as well. Nothing stays constant forever so does it cause any problem by including the amendment to reflect the Mental Health Act?

No, it may not necessarily be necessary, but does it cause an issue or is there a problem if it is included? That is really the question. That might change too.

Mrs HISCUTT - I go back to my original comment that it is creating duplication and it is unnecessary. As I said, the Chief Forensic Psychiatrist is already there so there is plenty of

mental health coverage for any person who is being assessed under this clause. It is unnecessary.

Ms Webb - Was that answer a 'No' to that question? Just to clarify, because I thought it was a good question?

Mrs HISCUTT - The answer is it is duplication and it is unnecessary, and the Government does not support it.

Ms RATTRAY - My question was: does including the member for Nelson's amendment present any issue other than a duplication?

Mrs HISCUTT - No, it just creates duplication and is unnecessary.

Mr VALENTINE - When I was in the public service, mental health used to be incorporated with Community Services, and it was not in the Health department. Departments and their various units do change. There is an interesting argument here that the act is not mentioned as opposed to the department that might deal with the Tasmanian Health Service, and that is the thing for me. I suppose if anything, it would point out that we care about mental health. I know we are talking about legislation and the power of the law or what we are enabling under law, but when it comes to individuals who are in our institutions, a lot of them have mental health issues. We have a mental health service with the Wilfred Lopes Centre, for instance, in Risdon. I do not see any detriment to adding it at all and it points out that we care more, or at least as much, for mental health as we do for general health of an individual. I would support it.

Mrs HISCUTT - I will seek some more advice but before that comes, can I remind members that the committee already has the Chief Forensic Psychiatrist or their nominee on that so we do care about mental health.

Mr Valentine - I am not saying you do not.

Mrs HISCUTT - It is because of that the Chief Forensic Psychiatrist is way up there, he or she. Any additional members can be included by regulation if it is deemed necessary at any stage of the game.

Mr Valentine - It is just naming up the act.

Mrs HISCUTT - Yes, it is just duplication and unnecessary, but I do think more information is coming.

The Department of Health has been consulted on this policy and it has advised that it is comfortable with the representation currently posed in this bill. It is not necessary.

Mr WILLIE - Clause 25(2)(g) talks about the high risk offenders assessment committee -

> the Chief Forensic Psychiatrist or a person nominated by the Chief Forensic Psychiatrist.

Do they not govern the Mental Health Act? Is that not part of their responsibility? Why would we not name the Mental Health Act? It is just a question because we have that committee and you are naming that position but the act does not line up.

Mrs HISCUTT - Madam Chair, I do not think I have much more to add, other than the Department of Health has been consulted and it was comfortable with this. The amendment will provide duplication and it is unnecessary. Clause 24 is to provide cooperation between the agencies, which is different from acts.

I do not think there is more I can say, Madam Chair. It is just unnecessary to put that in there.

Ms WEBB - I thank members for the questions to help clarify. I restate very briefly the inclusion of the Mental Health Act explicitly gives responsibility to the state for the matters covered by that act, in relation to the things covered in these proposed sections.

I do not think my amendment jeopardises or takes anything away. It also accommodates if things shift and change in the future and that is why I proposed it.

Mr DEAN - I have said many times in this Chamber that I will not support any amendment that is not necessary. This amendment does not improve the bill.

I heard what the member for McIntyre said, but it is not a matter of it not causing an issue. The question is: is it necessary? And it is not necessary. We could have duplication of different things right throughout this bill and any other bill we pass.

I cannot understand why it is needed in the circumstances. It is covered; it is supported. It is there - we care about mental health. It is a part of this bill and will be included.

I cannot support it just for the sake of having an amendment,.

Mr VALENTINE - I just point to what it is saying here. For the purposes of this part, each of the following is a relevant agency. It then talks about the department primarily responsible in relation to the administration of the Tasmanian Health Service Act.

As I said earlier, mental health and health services have been separate before. It is a belt and braces thing. It would avoid something slipping through the cracks, which is why it deserves consideration.

Mrs HISCUTT - I am not going to add anything more, Madam Chair, other than what I have already said - it is totally unnecessary and duplication.

Madam CHAIR - The question is that the amendment be agreed to.

The Committee divided -

AYES 8	**NOES 6**
Ms Forrest	Ms Armitage
Ms Lovell	Mr Dean

Ms Rattray	Mr Gaffney
Dr Seidel	Mrs Hiscutt
Ms Siejka	Ms Howlett (Teller)
Mr Valentine	Ms Palmer
Ms Webb	
Mr Willie (Teller)	

Amendment agreed to.

Clause 24, as amended, agreed to.

Clause 25 -
High risk offenders assessment committee

Ms WEBB - Madam Chair, I move that clause 25(2) be amended by -

Insert after paragraph (d), the following paragraph:

(x) A representative of the department primarily responsible in relation to the administration of the *Mental Health Act 2013*, who is nominated by the Secretary of that department.

This to some extent follows on from the previous discussion we had about the amendment to clause 24.

I will not speak in any great detail on it at this time, but if people have further questions on it or other matters, I will hold my other two speaks and speak more if I need to in response to those.

Mrs HISCUTT - This is practically the same as the last one except that it adds another person to the committee. There we are - duplication again.

Mr DEAN - If this amendment were to get up, could the person identified under 25(2)(g) the Chief Forensic Psychiatrist or a person nominated by the Chief Forensic Psychiatrist be the same person? It cannot obviously because it is going to identify two from that similar area. To me it just makes a nonsense. Anyway, it has happened before.

Ms RATTRAY - I have counted up and I want to check that there will be eight members on that high risk offenders assessment committee without the person representing mental health under the previous amendment. Can I confirm that adding in the mental health one would make it nine? I am thinking nine is probably not a bad number if you want to get an outcome.

Ms Webb - While you are on your feet there, noting that (h) provides for extras.

Mr Dean - Let us have 13 or 14; let us have 15 or 16. Let us get going. For goodness' sake.

Ms RATTRAY - With all due respect, member, you can have a majority out of nine whereas you may get a four and four, if you like. That is what I was asking, Madam Chair, just a question on whether it is eight and then you add one more and that makes a committee of nine. That is my question; the Leader, I am sure, will be able to answer that question.

Mrs HISCUTT - We have had a count and there are currently seven. This bill would add eight and on page 45, under (h), you could add anybody else by regulation if it was deemed necessary. So currently there are seven and this one -

Ms Rattray - This will -

Mrs HISCUTT - will be eight so makes it an even number, which is -

Ms Rattray - Okay. Well, I cannot count then.

Mrs HISCUTT - Paragraph (h) is only if you want them.

Ms Webb - Because paragraph (h) is the regulation one.

Ms Rattray - Apologies. That is what I have counted.

Mrs HISCUTT - I can only say it one more time - it is duplication and totally unnecessary.

Mr WILLIE - Can the person - the representative of the Mental Health Act and the Chief Forensic Psychiatrist - be the same person?

Mr Dean - That was a question I asked, but I could not get an answer.

Mr WILLIE - Yes, well, you did not get an answer so I am asking it again.

Mr Dean - Good on you.

Mrs HISCUTT - We are a bit unsure at this point. We will have to have a closer look at it, so I do not know. The advice is they need to scratch their heads a bit and think about it, so I cannot answer.

Ms Webb - There is nothing in there that says they could not be.

Mrs HISCUTT - Yes, we would have to study the regulations and what have you because there could be something else that might govern this so I cannot give an answer here and now. We need to think about it. Some advisers are thinking it might not make a difference and some it might. At the minute we are a little bit undecided, expect for the fact it is not necessary and it is going to create duplication.

Ms FORREST - Let people note I voted from the Chair regarding the inclusion of the Mental Health Act in clause 24. I want to explain what the question I want to ask relates to, because I think when you look at clause 24 related to the meaning of a relevant agency, okay, so we are talking about the agencies.

I believe the inclusion of a relevant agency is the one responsible for the Mental Health Act. We have Wilfred Lopes and I would expect a number of these people are actually incarcerated there. It was eminently sensible to include that and it was not necessarily

duplication; it was making sure they were considered a relevant agency. That leads then into my comment about the amendment now before us, which is talking about the committee.

I am struggling with the numbers and know I struggle doing numbers in my head sometimes but, anyway, to talk this through -

> (1) The high risk offenders assessment committee is established …

and the committee consists of -

> (2) … the Secretary of the Department or a person who is nominated by the Secretary of the Department.

That is one -

> a representative, of the unit of administration, within the department primarily responsible … the Corrections Act 1997 ...
>
> (c) a representative, of the department primarily responsible in relation to the administration of the Corrections Act -

Sorry, that was 'nominated' - the first one was responsible for the management of prisons nominated by the secretary, and this is - I assume - a different person because otherwise why would they be listed separately? I am getting nods from the table.

Then we have the third person who is nominated by the secretary regarding the Corrections Act, the administration of. Then the next one is a representative of the department for the Tasmanian Health Service Act, and Madam Deputy Chair is keeping count - good -

> (e) a representative, of the department primarily responsible in relation to … the Disability Services Act …
>
> …
>
> (f) a representative, of the department primarily responsible in relation to … the Police Service Act …
>
> (g) the Chief Forensic Psychiatrist or a person nominated …
>
> (h) a representative of any other unit of administration of the State …

So, there is already another person -

> … representative of any other unit of administration of the State, another State, a Territory, or the Commonwealth, that is prescribed.

So someone else is going to be prescribed.

Mr Dean - Do they have to be prescribed?

Ms FORREST - That is what it says.

Mrs Hiscutt - The word is 'if'.

Ms FORREST - Yes, there is another who will be prescribed. That is eight. The eighth person will be prescribed. That will be in the regulations. That is fine. There are eight.

Mr Dean - I do not interpret that there necessarily has to be. It is prescribed - it might not be.

Mr Valentine - There might not be a prescription; that is what I am saying.

Ms FORREST - We will let the Leader answer that question. We are struggling with the numbers. There is possibly eight, there may be seven. In terms of prescription, it says 'a representative of any other unit', so it is sounds as if you can prescribe one other person. If somebody has a particular expertise in another, maybe if they have been accused of terrorism or something which comes under federal law. I am thinking about how this could apply. The amendment would insert a representative of the department primarily responsible in relation to the administration of the Mental Health Act. Logically one would assume you would nominate the Chief Forensic Psychiatrist, because the Chief Forensic Psychiatrist is the person who is responsible for much of the administration and operations under the Mental Health Act, particularly where it comes to the Wilfred Lopes Centre, for example. For anyone on any sort of order under the Mental Health Act, clearly the Chief Forensic Psychiatrist is the person who deals with that.

The Leader may or may not be able to clarify this, but I understand the Chief Forensic Psychiatrist is also the Chief Psychiatrist - your advisors may not be able to confirm that - in which case that person is the person who administers the Mental Health Act in all senses. I think that Dr Aaron Groves is that person. I believe he fills the position of both the Chief Psychiatrist and the Chief Forensic Psychiatrist.

Dr Seidel - That is correct.

Ms FORREST - It is correct. My trusty advisor on the left says it is correct. I wonder whether you need this amendment? I agree with including that the person who administers the Mental Health Act as a relevant agency or the agency that administers that, but I am not sure you need an additional representative for that purpose when you have already named the Chief Forensic Psychiatrist. Can the Leader shed light on that? She said why you would not. I imagine that if you are going to appoint a representative who is primarily responsible for the administration of the Mental Health Act 2013 and nominated by the secretary, the secretary is going to nominate the Chief Forensic Psychiatrist. This allows the Chief Forensic Psychiatrist to nominate a person if they were unable to do it or perhaps had a conflict - maybe one of their relatives is the person being dealt with. This one is more likely to be duplication, that is what I am getting to. I am not sure if the Leader can help with that, but the numbers are little unclear.

Mrs HISCUTT - It is the Government's view that the persons listed in clause 25 would need to be separate individuals, otherwise the Department of Justice would have the same person representing (a), (b) and (c). That is why they are clarified there. Clause 25(2)(h) is only for prescribed; its intention is to provide flexibility for the future and no representative is currently envisaged. It is here to provide the flexibility in the future. I think we have our

numbers correct. There is nothing prescribed in regulations yet. It is only there for the future if need be. There are seven representatives and there is no need for this duplication.

Mr GAFFNEY - I do not think this is needed because if you go to clause 25(4)(b), now that we have identified that the Mental Health Act is a relevant agency -

> (4) The risk assessment committee has the following functions:
>
> …
>
> (b) to facilitate cooperation … and the co-ordination of, relevant agencies, in the preparation of risk assessments ...

Therefore, if we identify that it is an agency in clause 24, it means if there is somebody who would fall under the banner of the Mental Health Act, it is actually required in 25(4)(b) for the cooperation of that. I actually think it is already contained in that because you have identified the relevant agency.

With that reasoning, I do not think it needs to be in here because if it is meant to be, they have to do that because of what is required in the risk assessment committee. I will not support this amendment because I do not think it is needed. It will be used if it is required.

Mr WILLIE - Thank you, Leader, for the clarification. As you say, (b) and (c), it is named under the same act, but they specify who that would be so we are adding another person.

Ms Webb - What about (a) and (c)?

Mr WILLIE - Definitely (b) and (c), it is specified so I do not think we can support it.

Mrs HISCUTT - Just for clarification, we have just had another look at this and the member for Elwick is right, it is (b) and (c). Sorry about that.

Mr VALENTINE - My question is - and I heard the member for Murchison state it but I want to hear it from the Government too - with respect to the act that the Chief Forensic Psychiatrist is under, is that the Mental Health Act or is it the Tasmanian Health Service Act? I want to be 100 per cent sure. As far as numbers are concerned, does (h) not necessarily introduce another member? It could be more than one because it says, 'representative of any other unit of administration of the State'. So, I assume - and could the Leader clarify - that it may well be more than one individual if there are other units involved? It is not just one extra person, is it?

Mrs HISCUTT - I will just seek some advice on the first part of your question, but as regards to the second, 'any other unit', yes, it could be.

Mr VALENTINE - So it could be 10 or 11 or whatever?

Mrs HISCUTT - It is deemed to be whatever expertise is necessary and that would be done by regulation. The Chief Forensic Psychiatrist is appointed under the Mental Health Act.

Mr VALENTINE - Thank you.

Mr DEAN - My question does not specifically relate to this amendment so thank you I will not take the call right at this moment. I will wait until the amendment is done.

Ms RATTRAY - I think this debate we have had around this amendment has been really useful in clarifying who will be part of that committee. My question will be outside the amendment as well so I will ask it in the next one. I think it was really important to have that clarified, and now I can count to 8, I can sit down.

Amendment negatived.

Mr DEAN - In relation to clause 25(2)(h), is that there to cover the situation where we may have a prisoner being transferred from another state or territory to Tasmania to serve their time here who would meet the category of being a high risk offender? Is that the reasoning behind that? Or that they may well have been assessed by some other person outside this state?

Mrs HISCUTT - The specific example that you have given may not be. The idea of paragraph (h) is if the committee decides it needs the expertise of another specialist of some sort. Your example is not particularly - it may be, it may not be. Paragraph (h) is there to give the committee the regulated power to access other expertise if it deems it necessary for the committee.

Ms RATTRAY - Really a clarification around the eight people - possibly seven or possibly eight, or 15, if the member for Windermere is right.

If they have any other representative of any other unit, would all those members of the committee meet for an assessment? Would they all meet or would there be particular times when only five might meet for whatever? Obviously, there will be a quorum if it is committee, but I am interested in whether is it envisaged that each time the committee meets it will have a full complement of members?

Mrs HISCUTT - It is important to remember that the committee is only providing advice and helping to facilitate information for somebody to make that decision.

The committee may all meet, or just the expertise necessary to judge that particular case. That would be up to the committee chair to decide who is coming. I should imagine they are all there for a reason.

Mr VALENTINE - Correct me if I am wrong, but as I pointed out earlier, as far as I recall, during my time in the public service we had Community Services and Health. We had all sorts of different combinations of departments. As far as I recall, there was certainly a time when Mental Health Services was not with Health.

Does not this capture all of that? If you actually get the creation of new departments, I know in relation to the acts, it is covered under 24. But does not paragraph (h) cover the possibility that other departments may well be created in the picture and therefore may end up being prescribed and therefore be a representative for that department?

Mrs HISCUTT - Yes, the member is correct, paragraph (h) is there to provide flexibility for the future.

Ms WEBB - Could the Leader explain if there is a relationship between, or what the similarity or difference might be between, (a) the secretary of the department or person who is nominated by the secretary of the department, and (c) the representative of the department primarily responsible in relation to the administration of the Corrections Act, who is nominated by the secretary of that department?

Mrs HISCUTT - It is expected, or it is the case; (a) is the chair, who is the secretary of the department, (b) is the Director of Prisons, and (c) is the Director of Community Corrections.

Mr DEAN - My question was not quite answered by those other matters that came up. Is it a set committee with the same people on this committee or can the committee have different people from these organisations to determine a particular case? In other words, can the members change around, depending on who the person might be? The member for McIntyre was getting to that point, but I am not sure that was put.

Mrs HISCUTT - I think I understand the question: would the same physical person turn up to the meetings all the time? The legislation says 'who is nominated by the Secretary of that department'. Once that person is nominated, they are that person. That may change if the person moves on or has a different job; then the secretary or whoever is responsible will nominate another person.

Clause 25 agreed to.

Clauses 26 to 33 agreed to.

Clause 34 -
HRO orders

Mr DEAN - We discussed clause 34(3) in the briefing and were given an answer as to why it is relevant and why it needs to stay in the bill. There has been a bit of discussion on it, so to get the answer in *Hansard*, I ask: why do we need subclause (3) in this bill?

Mrs HISCUTT - Subclause (3) was inserted into the bill at the request of the DPP in May this year following the department's consultation process on the draft bill. It has been included to better define the operation of the test for the court in subclause (2) by clarifying that the court does not need to undertake an exercise in assigning a particular value to the probability that the offender poses an unacceptable risk of committing another serious offence. The subclause aligns with section 5D of the New South Wales Crimes (High Risk Offenders) Act 2006 in which the new HRO provisions are substantially based. Subclause (3) was included in the version of the bill most recently provided to the Chief Justice for comment in July this year. The Chief Justice did not raise any issues that suggested the Supreme Court would have any difficulty in applying the provisions within clause 34.

Clause 34 agreed to.

Clause 35 -
Matters to be considered in determining whether to make HRO order

Ms WEBB - I move that clause 35 be amended by -

Subclause (2) after paragraph (d).

Insert the following paragraph:-

(x) the treatment of the offender while in prison at any time, including the extent to which -

(i) the offender has been provided with, or denied access to programs for rehabilitation, for treatment of mental illness or for other purposes; and

(ii) the offender has been subject to solitary confinement or a behaviour management regime.

Essentially, what is covered here in clause 35 are the matters to be considered in determining the high risk offender order. They basically entirely relate to the individual upon which the order might be made and the constraints imposed. What I am seeking to do with this amendment - and if you think back to my second reading contribution where I talked about balancing the least imposition on civil liberties with the accountability and responsibilities of the state in exercising that power - is put one element into these considerations. There are many of them - this just introduces one which focuses on accountability of the state in terms of how the person was treated while they were incarcerated.

The amendment says, 'How was this person treated while they were in prison?' Specifically, to what extent were they provided with, but potentially denied access to, programs for rehabilitation or for treatment for mental illness or for other purposes? We know circumstances within prisons often do constrict and prevent access for prisoners to those sorts of programs beyond their control. It is not about -

Ms Rattray - Through lockdowns? Is that what you mean?

Ms WEBB - Yes, things like that. That is right. Beyond their control, for example, it may be their participation in rehabilitation-type programs or mental health support programs or whatever it might be, might have been shut down and constrained not through any fault of their own, not through any behaviour of their own, but because of circumstances within the prison.

That has an impact on them and any behaviour management regime - which in fact I am also asking to be considered here in the second part - has an impact on prisoners. We heard in the briefings and would know through other discussions institutionalisation happens with people, particularly if they are treated in very constrained and controlled ways within this sort of context. It has an impact on people and their ability to function, particularly when they are released.

This amendment adds into this list of matters to be considered. One part that must be considered relates to the treatment of the person, rather than the person's own characteristics or own behaviour and things they can be responsible for as an individual.

Looking at the other things captured there in (2), you have (2)(a), which is reports to the court, which relates back to clause 33(2). That is actually a report from the Chief Forensic

Psychiatrist that relates to the likelihood of that person reoffending, so it is about them, their behaviour.

Paragraph (b) is also about reports to the court and is again an assessment by a psychiatrist, psychologist, or medical practitioner about the likelihood of the offender committing further serious offences, their willingness to participate in that assessment that was done and the level of participation - again, factors relating to the person. Paragraph (c), report to the court about the extent to which the offender can reasonably and practically be managed in the community. It is about them and how they will be managed. Paragraph (d) is any treatment or rehabilitation programs which the offender has had an opportunity to participate in and the willingness of the offender to participate. Again, it focuses on the offender and their willingness to participate in programs that might have been there but it does not capture consideration of circumstances in which the person was denied access to them or that the prison environment itself created a barrier to the person's participation in those sorts of programs.

The rest of those all the way through are essentially about the offender themselves. I hope it is clear what the intent of this amendment is. It is incumbent upon us to insert here as a matter that must be considered in making these orders how the person has been treated by the state while they have been incarcerated.

Mrs HISCUTT - The Government does not support this amendment. It is unnecessary to include the specific provisions proposed in the amendment as these matters can already be considered by the court pursuant to existing provisions in the bill.

Clause 32(3)(a) requires an application for an HRO order to be accompanied by reports facilitated by the high risk offenders assessment committee. These would include behavioural and management reports prepared by the Tasmania Prison Service in relation to the offender under clause 26.

Any such report would be expected to address occasions where the offender may have been subject to solitary confinement or other behavioural management regimes while in prison. An offender would be provided with a copy of these reports pursuant to clause 32(5) and could cross-examine the author of the report pursuant to clause 33(7)(a).

Among the matters the court must have regard to in determining an application, clause 35(2)(d) specifically refers to any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate in any programs and the level of the offender's participation in any such programs.

Accordingly, an offender could make submissions in relation to any removal of rehabilitation opportunities or lack of access to mental health treatment.

Clause 33(6) of the bill further provides a general power for an offender to adduce evidence at a hearing for an HRO order application. This evidence must be considered by the court pursuant to clause 35(2)(j) and could include any relevant evidence relating to the offender's treatment in prison.

It is therefore the Government's view that all matters identified in the proposed amendment can already be comprehensively assessed through existing provisions. The amendment does not enhance the operation of the bill.

There again, members, we have duplication that is unnecessary.

Mr VALENTINE - I read this as putting the onus on the Government to show the offender has been provided with opportunities or denied access to programs for rehabilitation.

Is that not putting the onus on the Government to be able to show whether or not they have taken positive action? Is that what the member is getting at?

Mr WILLIE - I was listening carefully and trying to flick back to the clauses you were referring to, Leader. You were talking about these sorts of conditions being able to be compiled in reports and provided. Is there a level of comfort in that process? The key word in the amendment proposed by the member for Nelson is 'denied'.

If you look at 35(2)(d) -

> any treatment or rehabilitation programs in which the offender has had an opportunity to participate ...

That is only considering the programs that they have had an opportunity to participate in, not whether they were denied access to opportunities. The key word is denied. Whether that can be considered in determining whether to make an HRO order. It is whether we are comfortable with the process of this being captured in the report and then being provided as a matter to consider, or whether we want to name it up - the key word being denial, not to have had an opportunity, not provided access, so it is a different concept.

Mrs Hiscutt - Just for clarity if there are classes A, B, and C, and the offender wanted to go to C, but was not allowed to go to A - is that what you are saying?

Mr WILLIE - For example, there might be a range of rehabilitation programs offered in the prison. An offender is subject to potentially an HRO decision. They were never given an opportunity to participate in those programs.

Mrs Hiscutt - Given or denied?

Mr WILLIE - They are not being given; they are effectively being denied, because other prisoners are participating in these rehabilitation programs. They have not had that opportunity and as it is written, paragraph (d) says 'any treatment or rehabilitation programs in which the offender has had an opportunity to participate', so the key word is 'denied'.

Mrs HISCUTT - The offender can make a submission they did not have the opportunity to attend a particular class. An offender may not be offered a particular course for some reason of their offending. I do not know what sort of courses are handed out in prison for rehabilitation. Maybe there is a chainsaw licence course and a particular offender may be deemed not a suitable person to go to that course. I do not know. The offender does have the opportunity to talk about what they did not have the opportunity to do.

Mr Willie - Which will be captured in reports and provided to consider. It is whether we are comfortable with that or whether we should name it up.

Mrs HISCUTT - They can also make direct submissions themselves. They can make complaints at any time or direct submissions - 'I wanted to do course A and it was denied.'. There is that opportunity anyway. We have read through all the things that are there. The issue with these amendments is they might favour release of an uncooperative prisoner whose behaviour is so bad they have either been confined or were denied access to a program due to their behaviour. The prisoner does have the opportunity to make a submission personally or through their legal aid representative to the court, so there is plenty of opportunity.

Ms RATTRAY - Madam Chair, as I have addressed the amendments of the member for Nelson, I understand completely your intention for subparagraph (i). I am not so comfortable with subparagraph (ii) because I am working through this and thinking the offender has been subject to solitary confinement or a behaviour management regime. They would only be subject to that if they have done the wrong thing. So, I am not as comfortable with the subparagraph (ii) in the amendments, and I apologise for not sharing this with you earlier. The first part of it, I understand there could be a lockdown, issues in an area, and everyone is denied access and so nobody gets to go to a rehabilitation program. I certainly understand that part. But I am not as comfortable with subparagraph (ii) in your amendments.

At this stage, I am not inclined to support the amendment, but again I apologise for not alerting you to that earlier, because you might consider taking out subparagraph (ii).

Ms WEBB - I thank members for their contributions and questions. Couple of things then to pick up on.

One probably picks up on what the member for Hobart was asking about when things were offered. The intent is more, as the member for Elwick was talking about, it is more about the way the person is being treated while incarcerated and whether they have been prevented from accessing things that would have been deemed assistive to them either for their own personal wellbeing, mental health treatment or their rehabilitation, for example.

While I accept these matters could be captured in some of the reports mentioned, the exact same argument could be said for paragraph (d), which says -

> any treatment or rehabilitation programs in which the offender has had an opportunity to participate, the willingness of the offender to participate … and the level of the offender's participation …

Equally, under that rationale, that does not need to be here at all because that could equally be captured in the reports being provided. Yet we have decided explicitly to put that focus on the person's, the individual's, willingness to participate and level of participation.

I am suggesting, with these amendments, that we, in an equal way accept that, yes, these matters about how they were treated by the state while they were in prison could be in those other reports and may come through that channel. By putting it into this list under things that are matters to be considered in determining to make an HRO order, we are making a statement about the essential importance of that being one of these matters absolutely.

We know that in putting it into this section, through this amendment, it will be in those reports. It will be captured via the information gathered in order to make this consideration.

Mr Valentine - Building a total picture.

Ms WEBB - Yes, and it is a statement about the expectation explicitly detailed and then considered as part of this process.

I am not disputing it may well be in some of those other reports. This, though, is about a statement about what must be considered at this point in time when these HRO orders are being contemplated.

If we can decide to put paragraph (d) in there, which could also come through those reports, we can equally decide to put this amendment in there, and as a state, take responsibility as the institution doing the incarcerating - explicitly take responsibility for the treatment and the context to and within which this individual was subjected during the time they were incarcerated.

To pick up on the member for McIntyre's question about the second part there. That is an important part. It does not say if the offender is being subject to solitary confinement or behaviour management, they automatically get or do not get an HRO order. It just says one of the things amongst that big long list of other things that should be considered and presumably, what that means is, if we put it here in this list, it will be in some of those other reports and what-nots that come through for the consideration.

The individual circumstances then of that particular individual being looked at, around those matters, will be spoken to. It may be for that particular individual, they may as you describe have behaved terribly and that was resulting in their solitary confinement or their behaviour management regime, which then might point us towards certain outcomes around the HRO orders.

But it may be, when we see the detail come through the reports - and we absolutely do see it if we put it here - it may show us that that individual, for example, might have been subject to solitary confinement beyond matters that were within their control because of other circumstances in the prison so that they regularly spent excessive amounts of time alone. Not because of their own behavior but because of other circumstances. It may show us that they have been subject to a behavior management regime potentially alongside not accessing appropriate mental health support or substance use support, for example.

This really just says these things should be considered on the individual case-by-case basis as part of this list of things that must be considered. That would be important information for the committee to have and for consideration by the courts when making this very nuanced and tailored decision about HRO orders for each individual.

Again, that is an important part of how well they were treated while incarcerated. I hope that explains a little bit about why that is there and why I think it is important that it is there as part of that amendment.

Did I cover everything that was raised?

Mrs HISCUTT - Just for clarity, let us get back to what we were talking about. The factors in subclause (2) are to assist the court in determining the risk posed by the offender.

Whether the offender was denied an opportunity to participate in a program is not directly relevant to that test. Nor does the offender, having been in solitary confinement, go directly to the court's test so the factors in subclause (2) are to assist the court in determining the risk posed by the offender. The factors raised by the member for Nelson would be relevant to a sentencing exercise, but making an HRO is not such an exercise. We have to get a grip.

This is determining the risk posed by the offender.

Ms FORREST - I want to follow on from the Leader's comments to try to take this in context and look at the sequence of events perhaps.

The clause that we seek to be amended here, subclause (2), as the Leader just said, is determining whether or not to make an HRO order in relation to an offender, the Supreme Court must have regard to the following matters. They are listed there and subparagraph (d) makes reference to any treatment or rehabilitation programs which the offender has had the opportunity to participate in, as the member for Elwick referred to, not necessarily what was denied them, for example.

So, just to go back a little further and to clarify - if the Leader might, when she responds - that when you go back to clause 32 and this is subclause (5) of 32, the DPP must within seven days of making an application - so under subclause (1) - so the DPP makes an application before the Supreme Court gets anywhere near it and within seven days after making the application in relation to a relevant offender or with a longer period allowed by the Supreme Court serve on the offender a copy of the application and a copy of the documents referred to in subclause (3).

If we go to subclause (3), which talks about the application under subclause (1) in relation to the relevant offender, it must be accompanied by each report in relation to the relevant offender that is provided to the DPP under clauses 26(4) or 28(5).

We go to clause 26(4) which says -

> As soon as practicable after a behavioural report, or a management report, in relation to a relevant offender is provided to the risk assessment committee, the committee is to provide the DPP a copy of the report.

So, the DPP gets a copy of the behaviour report, which would include behaviour management regimes and the like and solitary confinement, I assume, because that is all part of that.

Then clause 28(5) is -

> As soon as practicable after the risk assessment committee has provided under subsection (3) with a report in relation to a relevant offender, the committee is to provide to the DPP a copy of the report.

Which is in Conduct of risk assessment. That is under that section.

Just going back to 33(5), those reports and documents are all provided to the offender. So, the offender gets all those and they say, 'Well, yes, I had to have a behaviour management

program. That is because there was a big riot at the prison and the lockdown occurred and whatever.'.

I am clarifying here, the prisoner, the relevant offender here, has the opportunity in this process before they get to the court or certainly when they are in the court to provide a response to these documents that have been provided by the DPP. They say, 'Yes, I did *x, y* and *z* program, but I was denied access to *a* and there was no explanation given, or something like that. We have known for a long time that I have quite complex bipolar disorder but I have not been given appropriate treatment for that. I have not even seen the psychiatrist for months.'. That sort of thing.

There is a process in response to those reports that the relevant offender can give to ensure they have that right of reply. I can argue that we do not need the amendment on that basis but I could also argue that putting it in makes sure it is a matter that is considered in the process under 35 which is, matters to be considered by the court when they are making a determination about the level of risk, as I understand it, and whether they would issue an HRO order.

If the Leader could clarify the actual time frame, at what point does the relevant offender have the opportunity to respond to these matters? In some respects, I think it is better for the offender to get the reports up-front and be able to respond rather than them having to say, this happened, this happened, I was denied access to this. I was treated poorly here, I was in solitary more than prisoner *x* who was worse than me. So long as there is a timely process around that it is better for the prisoner, for the relevant offender, to have an opportunity to respond rather than have to be proactive, potentially.

Ms Webb - That is not what my amendment is asking for.

Ms FORREST - No, but the prison service has to provide reports and they are providing reports. They are then provided to the relevant offender for the relevant offender to respond to. For me, if that is the process as it unfolds I do not know that you necessarily need the amendment.

Ms Webb - While you are on your feet, do you think the same would then apply as I was saying to subparagraph (d) on this list? It seems to be exactly the same because that material would be in all those reports that you have mentioned already to. So subparagraph (d), we have put in here explicitly even though it would be captured in the same way you have just described, do you think?

Ms FORREST - I am not sure what you are asking me?

Ms Webb - I am asking you the same argument you have just made for potentially why the amendment is not required, could be made for subparagraph (d) not being required in the list.

Ms FORREST - But subparagraph (d) is in the list and that is the point I am making, subparagraph (d) is there and the relevant offender has an opportunity to respond to the reports in relation to access to or denial of access to programs, treatment, medical health care or whatever and claims of excessive use of solitary confinement, for example.

I am cautious about making a broad statement here about the nature of some of the people who would fall into this category but a lot of them, I would expect - and I have been in the prison and met some of the prisoners in a program I was involved in there in assisting the prisoners -

Mrs Hiscutt - Were you a participant?

Ms FORREST - Yes, with the Just Sentences program Rosalie Martin did. It was very worthwhile for me and hopefully for the men involved. Mainly as an observer and supporter of these prisoners. The men I met do not have particularly high levels of ability to articulate an argument or to put forward a case proactively. That is a generalisation and I am reluctant to do that. We have to make it possible for someone to be able to respond to claims and that sort of thing.

Ms Webb - I am not sure what relevance that has to the amendment. This does not require them to respond at a particular time. They still have the opportunity, as you said earlier. This is just about what explicitly we are saying the court -

Ms FORREST - I am making my comment about the process that exists in the bill as it is drafted. I could argue that you could add another section as being proposed but I am not convinced it is needed. I want the Leader to address the questions and comments and process questions I have asked about this and acknowledge that it is not always easy for people in this situation to be able to clearly articulate an argument up-front.

The prison service can say it did not deny them any programs, but the person may have a completely different view on that. They will have the opportunity to say they had access to those programs or they did not have access to those programs and they wanted to do a particular one. That is what I am asking you to respond to.

Mrs HISCUTT - The reason we do not need this proposed amendment is because (d) is in there. The member for Murchison talks about some prisoners not being clearly articulate in being able to express themselves.

Ms Forrest - Or highly literate.

Mrs HISCUTT - That is why they have Legal Aid or a legal representative, unless they choose not to. That is provided. If they cannot afford representation they get allocated Legal Aid. All offenders at a hearing can make submissions, they can dispute reports, and they can cross-examine the authors of reports. They can do all that and they can say what they like, as long as it is legal, to defend themselves. The mechanism is there. The amendment proposed by the member for Nelson is duplication.

Ms ARMITAGE - I am inclined to support the amendment. I do not see any detriment to it being there. I cannot see a problem. Okay, you have 35(2)(d), but I cannot see a detriment, I cannot see a problem with it being there. You might say it is duplication but it is not going to cause a problem.

Mr Dean - But why? Just because it is not a problem.

Ms ARMITAGE - I do not consider it is. As I said, it has 35(2)(d). It was very clearly put by the member for Elwick that there might be some courses that they have not had the

opportunity to participate in. I do not see an issue with it so I am more likely to support it than not support it.

As for (ii) 'the offender has been subject to solitary confinement or a behaviour management regime', well, it can go against them just as much as it can go for them. They may have been in solitary for their own safety. There could be a number of reasons they are in there.

I also do not agree with comments that have been made that a lot of prisoners are illiterate. The work I have done with prisoners, particularly with younger prisoners, shows a lot of them are very literate and quite well educated.

If I had the opportunity to read something, I can understand a lot more than if someone is speaking to you off the cuff. It gives you the time to digest it. It has more bearing than someone standing up and making a comment. I am inclined to support the amendment.

Mrs HISCUTT - As has been clearly outlined before, the offender does have the opportunity to respond to the reports that they have received. That is done when they are at court through their legal representative if they cannot do it themselves. The relevant question for the court is whether the offender has participated or not, not the reasons why or why not. That question is already covered in subsection (d). I do not think there is more I can add.

Mr WILLIE - There is one matter I would like you to confirm, or clarify, Leader. You said that the inclusion of this amendment would unintentionally lead to the release of prisoners. We are talking about whether a high-risk offender order should be put on a prisoner for their release, and the conditions of their release. So, they are going to get released anyway are they not? It is just a matter of whether there is going to be an HRO order in place or not. Could you clarify whether it will unintentionally lead to prisoners being released?

Mrs HISCUTT - Just for clarification and thank you for drawing our attention to that - it is not a matter of an early release but it is release with clarifications around it.

Mr Willie - An HRO or not. So, there is no unintentional early release?

Mrs HISCUTT - Thank you for drawing that to my attention. Thank you.

Ms LOVELL - I am still in two minds about how it will work. I had a question for the member for Nelson. The paragraph that would be inserted into this clause is prescribing that the committee needs to consider the treatment of the offender while in prison at any time, including the extent to which they have been provided with, or denied access to, programs and treatment.

How will that information be provided, and how will it be recorded? I imagine there would not necessarily be prison service records to say that someone was denied access to a program, or had not been offered a program.

Are you anticipating that that would be information that the inmate would provide? I am just unclear as to what form you would expect that information to come in.

Mr WILLIE - To add to the member for Rumney's question on the collection of that information, and whether the inmate is providing that information, there is a question of how

reliable it is. An inmate might not necessarily understand the full operation of the prison, or what is available in certain divisions of the prison. Could the member for Nelson answer that?

Mr DEAN - I have listened to the arguments and the positions put. It is clear that it is not needed. The Chief Justice has gone through this bill very closely and supports the bill as it now is. He has put through a number of amendments that have moved through this stage. He would have spoken to the other judges as well.

We have had the Bar Association and the Law Society all involved in putting this bill together. Many of these people would be very much focused on the fairness to the subject, to the offender or prisoner. Sometimes they go over the top in doing that. They have seen this as being extremely fair and presented before us in this manner.

I urge members to consider those people and where they sit on this bill. It is not necessary because it is captured in all of this. There is plenty of opportunity for the offender and these other people have supported it.

Mrs Hiscutt - While you are on your feet, I think the member for Murchison articulated it very well in her contribution.

Mr DEAN - I have listened to all arguments and that is my position on it.

Mr VALENTINE - I guess my question is if it is in the act, that would spark the attention of the judge as they considered what was coming before them, the fact this is extra information rather than leaving it to chance. That is an observation of mine. It would be an advantage for the judge knowing this act, as they will once they get their minds around it.

Ms WEBB - I will respond briefly to the questions raised by the members for Rumney and Elwick. Just remember, we are putting this in there, it has become part of a list of things we have articulated that must be considered. Some of the information that relates to what is in this amendment is likely to be in some of the other reports which have been gone through in detail with some of the other discussion on the amendment being compiled and put together to feed through into this process. This also prompts and highlights, encourages or promotes the submission directly from the person affected and probably through their representative to assist them to feed into this process.

The member for Elwick talked about how reliable that would be. Well, of course self-reported matters like that will be assessed on their reliability by the court. We would be remiss to dismiss a person self-reporting their experience, it being important information to be considered and judged in the context of this sort of matter. Effectually, in the same way that what is covered there in (d) does not need to be in that list necessarily, it was also entirely covered in those reports and things earlier. It is more covered than the amendment I am suggesting is. It will absolutely be in those earlier reports. It does not necessarily need to be in this list and yet it is there. It focuses on the individual, as does virtually every other matter in this list here that must be considered. It focuses on behaviour, the character and the actions of the individual. This amendment is just putting one explicit thing into this list of things that must be considered relating to the treatment they have experienced, the behaviour, the actions of state, the system, in relation to that person.

In suggesting it is not necessary because it is captured in those earlier reports, there might be some of this in those earlier reports potentially, but there may not be if we have not required it to be a matter to be considered. It even might be in those earlier reports, but it might be sidelined or not given the same level of credence potentially or examination because it has not been put into this list of things that must be considered.

My argument is this holds ourselves to account as the institution, the state, in this consideration of these orders, knowing there is a balance and we should be held to account of how we have treated this individual while they are incarcerated as well as how they have behaved and their actions during that time.

Mrs HISCUTT - I do not want to labour on this but the matters focus on the individual because the court needs to consider the risk posed by that individual. There is a difference. The capacity of the prison to provide a program is not a factor that determines the risk.

Ms Webb - It is. It contributes to it.

Mrs HISCUTT - It is not. The court is looking at the risk posed by the individual.

Ms Webb - Because it contributes to the person's actual state of being.

Mrs HISCUTT - It is not. It is not.

Madam CHAIR - Order.

Mrs HISCUTT - It is not. The court is looking at the risk posed by the individual, whereas this amendment is focused on the individual. There is no need for this amendment in this bill.

Mr WILLIE - The member for Nelson's explanation -

Madam CHAIR - You have three calls.

Mr WILLIE - Yes. I know. I am just explaining -

Ms Webb - He already has.

Madam CHAIR - A point of explanation, is it?

Mr WILLIE - A point of explanation, yes.

Madam CHAIR - Right.

Mr WILLIE - Sorry.

Madam CHAIR - I will give you a little leeway, this much.

Mr WILLIE - The member for Nelson's explanation that the information would be provided in these reports shows why this is not necessary. The explanation given by the Government on the opportunities for the offender to provide a response to these -

Madam CHAIR - I think you probably have made the point and you might like to sit down. I am not giving you more leeway.

Ms Webb - Would you like me to stand?

Mr WILLIE - I was trying it on. Sorry.

Amendment negatived.

Clause 35 agreed to.

Clauses 36 and 37 agreed to.

Clause 38 -
Operational period of HRO orders

Ms WEBB - Madam Chair, I move that clause 38 be amended by -

Subclause (2)(a).

Leave out '5 years'.

Insert instead '3 years'.

This is a fairly straightforward one. I spoke about it briefly in my second reading speech. Notwithstanding we have heard some other jurisdictions have five years, some other jurisdictions have 15 years, some have no limit, some have minimums, I am suggesting we contemplate what might be appropriate here in sense of balance.

This is to do with a potential maximum amount of time the HRO orders are applied and, again, we probably do not need to hear from the Government but, of course, they could be applied for less than this. In that case, it is not relevant to contemplate this amendment. I am talking about situations in which the maximum time is applied and is allowed for it to be five years in the bill as it stands.

That is, I believe, a substantially long period of time to impose these very onerous constraints, these very significant conditions on people's civil liberties. Much as they may be warranted, it is a big imposition, especially for someone who has already served their time for their crime.

All I am suggesting is we contemplate a time frame slightly less for the review of these orders that will allow us to then continue a nuanced approach to these orders. If we do impose the maximum time and it was to be three years, then it will be reviewed in three years and the circumstances again examined as to whether the HRO order is necessary, relevant and still needs the same sort of conditions when originally applied.

Five years is a long time in someone's life to be under a set of circumstances potentially as onerous as this. Three years is a more reasonable time. That is the time of review we are applying to the dangerous criminal declarations within the prison system. We have deemed

that to be a reasonable time in which we should reconsider, have another look and be able to show again why that dangerous criminal declaration should apply within our prison system.

If we have decided it is an appropriate time frame for that, we could contemplate the same time frame for these orders which are applying to people not incarcerated, but under incredibly constrained and onerous conditions outside of the prison system. This gets the balance right to be more of a just way to approach the nuance of these orders given we are putting incredible civil liberties' constraints. As a state, as an institution exercising that power on an individual, we should be holding ourselves to account with enough regularity to be able to adjust and respond if required.

There is nothing in the bill that would not allow then a three-year maximum, it gets reviewed, it could be applied for another three years as it can be now, it could be applied for another three years. To me, it is just a statement about holding ourselves to account and allowing for more nuance and potentially a high level of justice to apply here in the context of significant constraints put on a person who has served their time.

Mrs HISCUTT - There are several reasons for not supporting this amendment. The Government strongly believes that it is preferable for the courts to have the flexibility and discretion to set an operational period of up to five years for an HRO order if required, based on the particular circumstances of the offender and the risk profile.

Once an HRO order has been made, if the offender's circumstances and behaviour subsequently indicate that the order is no longer necessary or that a shorter operational period should be substituted, the offender may apply to the court under clause 39 of the bill to have their HRO order varied or cancelled at any time.

Reducing the maximum operational period for an HRO order will require the Director of Public Prosecutions to make more frequent applications where it is deemed necessary to extend the period of supervision through a new order. This will add to the burden of the resources of the DPP, the Supreme Court and Legal Aid.

No other jurisdiction in Australia sets a maximum operational period for an extended supervision order that is less than five years. New South Wales and South Australia set a maximum period of five years, the same as in this bill, while the maximum period under Victorian legislation is 15 years. In Queensland and Western Australia, there is no legislated maximum period at all. The Northern Territory also has no limit and in fact, their extended supervision orders must be made for a minimum five-year period.

The proposed amendment would lead to Tasmania being significantly out of step with other jurisdictions, would limit the court's capacity to make orders appropriate to the circumstances of the offender, and would add to the workload of the court system. It is certainly not supported by the Government.

Members, the crux of it, and I will say it again, is the offender may apply to the court under clause 39 of the bill to have their HRO order varied or cancelled at any time. We do not support the amendment.

Mr WILLIE - With a couple of things raised in the briefing, one was that this is in line with other jurisdictions at the equal lowest. That is a point to have on the record. The other point I made in the briefing was, in some instances this will be a step-down provision from a

dangerous criminal order. So the time may be required because that person has had a long history potentially of being a dangerous criminal and five years would not be unreasonable in that situation, depending on the likelihood of them offending. I think the five years is required. It is in line with other jurisdictions, so we do not support the amendment.

Amendment negatived.

Clause 38 agreed to.

Clause 39 agreed to.

Clause 40 -
Breach of HRO order or interim HRO order

Mrs HISCUTT - Madam Chair, I move that clause 40 be amended by -

First amendment

Clause 40(2) -

Leave out 'the Supreme Court'.

Insert instead 'a court of petty sessions'.

Second amendment

Clause 40(3) -

Leave out the subclause.

In speaking to that, this amendment responds to a request made by the Chief Justice following the passage of the bill through the other place. Clause 40 of the bill provides the proceedings for the offence of breaching an HRO order, including an interim HRO order, are to be dealt with in the Supreme Court. When an offender is found guilty of a breach, the court may impose a fine not exceeding 40 penalty units or imprisonment for a term of two years or both.

Subclause (3), further provides for the court to vary the HRO order if an offender is found guilty of a contravention.

Clause 39 of the bill establishes a separate process by which the offender or the DPP may apply to the Supreme Court to vary or cancel an HRO order. This process is not linked to the offence provisions. The Chief Justice has advised that dealing with a breach in the Supreme Court would require a jury trial and has requested that instead breaches are dealt with in the Magistrates Court with the DPP able to apply for variations of HRO orders in the Supreme Court under the clause 39 provisions.

This amendment will replace the reference to the Supreme Court in subsection (2) of clause 40, to ensure that breaches are dealt with in a Court of Petty Sessions. This approach is consistent with the policy intent of the Justice Miscellaneous (Court Backlog and Related

Matters) Bill 2020, recently passed by parliament, which provides for offences attracting a term of imprisonment for up to three years, to be dealt with in the Magistrates Court.

The proposed amendment will also delete clause 40(3). Given that HRO orders will be made by the Supreme Court, it would not be appropriate for the Magistrates Court to vary such orders. The power to vary an HRO order, or interim HRO order, will remain available to the Supreme Court, pursuant to clause 39(5).

Mr DEAN - I support the amendment. I want to have a little bit of clarity around it as to the position of the CPS. I raised this in the briefing and it was mentioned there that they do not have the opportunity to vary the conditions at all. They must stick by the sentencing principles relating to penalties, either imposing the unit penalty or the two years or both and/or there could be some other courses in relation to that. They could suspend a penalty for a period of time and all of those other things that go with it.

In dealing with a breach of an order in this situation, is the CPS in a position to be able to make a determination that, yes, a condition does need changing and that has caused this breach? Can they then direct the matter to the Criminal Court for the Criminal Court to make a determination, rather than they attend to it themselves, if they believe that condition should be changed?

Mrs HISCUTT - It cannot be dealt with in the Court of Petty Sessions but the DPP or the offender can apply to the Supreme Court for that.

Mr DEAN - My question was, can the Court of Petty Sessions refer the matter to the Criminal Court if they determine a condition needs changing for whatever reason and has probably caused the breach in the first place? Can they do that or not?

Mrs HISCUTT - The Court of Petty Sessions cannot.

Mr DEAN - Cannot refer it?

Mrs HISCUTT - No.

Amendments agreed to.

Clause 40, as amended, agreed to.

Clause 41 -
Arrest for failure to appear at certain applications or for breach or suspected breach of HRO order

Mr DEAN - I raised this during the briefing session as well. My question there was - and I ask it here so it is on record: where it says that a police officer believes on reasonable grounds, et cetera, they can enter any property, any vehicle, any aircraft, vessel or whatever, where they believe on reasonable grounds that an offender is, for the purposes of carrying out an arrest where there have been breaches, am I to understand that the police officer can be accompanied by as many persons as they want? It does not specifically say that.

Does it also provide a police officer with the authority to break open, force entry, do whatever they need to get access to that person?

Mrs HISCUTT - Clause 41(4) provides a lawful power for a police officer to enter and search premises for the purposes of making an arrest under subclause (5).

Sections 26A(1)(b) of the Criminal Code provides a police officer may enter, using reasonable force if necessary, remain on and search premises for the purposes of making an arrest without warrant if lawful to do so. This would apply to the entry power provided under subclause (4) of clause 41 of the bill. The use of the term 'a police officer' in subclause (4) is a common form of referring to police powers, for example, throughout the Police Offences Act 1935. It would not preclude more than one police officer responding to a breach or suspected breach of an HRO order.

Clause 41 agreed to.

Clause 42 -
Appeal

Mrs HISCUTT - Madam Chair, I move that clause 42(2) be amended by -

Leave out the subclause

In speaking to this amendment, it responds to a request made by the Chief Justice.

The appeals provision relating to HRO orders in clause 42 of the bill includes at subclause (2) that an appeal may be on a question of law, a question of fact or a question of mixed law and fact. This inclusion arose from the new HRO provisions being substantially modelled on the New South Wales Crimes (High Risk Offenders) Act 2006 which contains an identical provision. However, the appeal provisions set out in clause 18 and 20 of the bill relating to the dangerous criminal provisions do not include this requirement.

This defence means that the HRO appeal provisions require the demonstration of error on the part of the judge making the original decision while the dangerous criminal appeal provision would have the nature of a rehearing of the material that was before the primary judge.

Removal of subclause (2) will ensure that the bills appeal provisions consistently provide for the Court of Criminal Appeal to conduct an appeal as a rehearing of the material before the original judge and do not unnecessarily narrow the grounds of appeal in relation to HRO orders.

Amendment agreed to.

Clause 42, as amended, agreed to.

Clauses 43 to 49 be agreed to.

Schedules 1 and 2 agreed to.

New clause A -
Reports and examination of offender to whom application under 4(1) relates

Mrs HISCUTT - Madam Chair, I move -

That new Clause A be read the second time.

I also move -

After clause 4, *insert* the following section:

A. Reports and examination of offender to whom application under section 4(1) relates

(1) The Supreme Court, after receiving an application under section 4(1) in relation to an offender -

(a) must order that the DPP provide to the Court, by the date specified in the order, each report, if any, in relation to the offender provided to the DPP under section 26(4) or section 28(5); and

(b) may order that the Chief Forensic Psychiatrist provide to the Court, by the date specified in the order, a report, prepared by a psychiatrist, psychologist or medical practitioner, as to the risk of the offender being a serious danger to the community.

(2) The Supreme Court -

(a) may order the DCS or any other person to prepare and provide to the Court a report in relation to the offender addressing the matters that the Court specifies in the order; and

(b) may have regard to the report for the purpose of determining the application under section 4(1).

(3) The Supreme Court is to provide to -

(a) the DPP a copy of a report that is provided to the Court in accordance with an order under subsection (1) or (2), other than a report provided to the Court by the DPP; and

(b) the offender a copy of a report in relation to the offender that is provided to the Court in accordance with an order under subsection (1) or (2).

(4) The Supreme Court may order an offender to submit to examination by a person who is to prepare in relation to the offender a report that is to be provided to the Court under subsection (1)(b) or (2).

(5) If -

(a) the DPP or the offender proposes to tender a report at the hearing of an application under section 4(1); and

(b) the DPP or the offender has caused the report to be prepared otherwise than in accordance with an order under subsection (2) -

The DPP or the offender, respectively, is to provide to the other part to the application a copy of the report at least 7 days, or within such other period ordered by the Court, before the hearing of the application.

This amendment responds to a request made by the Chief Justice. When a dangerous criminal declaration is being reviewed, clause 10 of the bill provides for the Supreme Court to obtain reports of its own motion, for example, from the Chief Forensic Psychiatrist, and to order an offender to submit to that examination by a person who is preparing such a report.

However, there is no similar mechanism for the court to order such reports as part of an original application or a declaration in the first instance.

If a dangerous criminal declaration is sought at the time of conviction or sentencing, section 82 of the Sentencing Act 1997 would empower a judge to obtain pre-sentence reports for the purpose of sentencing. Such reports could then be referred to via the court during the application for a declaration pursuant to clause 6(2)(d) of the bill. To date, all applications for declarations under the current and previous dangerous criminal provisions have been made at the time of conviction or sentencing. Nevertheless, the new provisions in the bill are explicitly intended to enable an application to be made post-sentence if required.

In this circumstance, the Sentencing Act provision could not be relied upon by the court. While clause 5 of the bill does provide for the DPP or the offender to educe evidence during an application hearing which could include the tendering of reports, it is possible there may not be a recent report available to the DPP and the offender may be uncooperative in facilitating a new report being prepared.

The proposed amendment will insert a new clause 4A in the bill that replicates the provisions currently contained within clause 10 of the bill relating to reports and examinations for the purposes of review to ensure similar powers are available to the court when an application is made for a dangerous criminal declaration in the first instance.

New Clause A agreed to and bill taken through the remainder of the Committee stages.

Bill reported with amendments.

Consideration of bill as amended to be made an Order of the Day for tomorrow.

FINANCIAL MANAGEMENT (FURTHER CONSEQUENTIAL AMENDMENTS) BILL 2020 (No. 16)

Second Reading

[7.06 p.m.]

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

That the bill be read the second time.

The Financial Management Act 2016 commenced on 1 July 2019. The Financial Management (Further Consequential Amendments) Bill 2020 has been drafted in order to make necessary amendments to a small number of other Tasmanian statutes to ensure that there is consistency between those statutes and the Financial Management Act. These amendments are in addition to amendments that were made by the Financial Management (Consequential and Transitional Provisions) Act 2017.

The bill ensures the consistent use of terminology between the Financial Management Act and other Tasmanian statutes. In order to do this, the bill amends a number of terms used in other statutes. For example, as the Financial Management Act introduces a single fund Public Account, instances of the use of the term 'Consolidated Fund' will be amended to 'Public Account'. Similarly, references to the 'Special Deposits and Trust Fund' have also been changed to refer to an 'account in the Public Account'.

The bill also removes some redundant terms and redundant legislative provisions.

Mr President, I commend the bill to the Council.

Ms RATTRAY (McIntyre) - Mr President, it has taken me some time to get my head around the 'con fund' and now you are changing the name. I cannot believe it. You have this in your mind, the reference to the con fund but I understand there needs to be changes in the terminology so I will not be making a long contribution but now I have to get my head around referring to the account in the Public Account. I support the bill

[7.07 p.m.]

Ms FORREST (Murchison) - Mr President, I want to remind members and inform those who have not been here for what feels like a very long time, the new Financial Management Act we passed in 2016 was not enacted straightaway because there was a lot of work to be done to get it into place. It had a gestation of about 10 elephants to get to that point. It took a very long time and, in fairness, there was good consultation around this. I had quite regular briefings and catch-ups with the Department of Treasury officials. We will have a big session the week after next in Estimates.

I was surprised when I saw this. I thought we had done all of this and picked up all of these changes that changed the Consolidated Fund to the Public Account but clearly not and again you get an amending bill to tidy a few others up.

This year's Budget papers are reported under this new framework, which is a positive step. The Special Deposits and Trust Fund were also removed out of the process under the new Financial Management Act. It is necessary to tidy these things up from time to time so I support the bill. It is really only technical in nature.

It is important to recognise that there has been a lot of work, a lot of consultation done over many years to go from the Public Account and now we have the Financial Management Act that is much more contemporary and in line with modern practices.

Mr DEAN (Windermere) - I support the bill. I was getting very excited there at one stage. When I opened up the bill, I thought, 'This is going to wrap up the Macquarie Point Development Corporation'.

Bill read the second time.

FINANCIAL MANAGEMENT (FURTHER CONSEQUENTIAL AMENDMENTS) BILL 2020 (No. 16)

In Committee

Clauses 1 to 4 agreed to and bill taken through the remainder of the Committee stages.

Bill reported without amendment; report adopted.

Third reading made an Order of the Day for tomorrow.

MESSAGE FROM THE HOUSE OF ASSEMBLY

Budget Speech 2020-21 -
Attendance of Legislative Council Members and
Attendance of Minister at Assembly Estimates Committees

Mr PRESIDENT - Honourable members, I have received the following message from the House of Assembly -

> Mr President, the House of Assembly, having passed the following resolution, begs now to transmit the same to the Legislative Council and to request its concurrence therein.
>
> Resolved:
>
> That the House of Assembly requests that:

(1) All Members of the Legislative Council attend in the House of Assembly Chamber following the first reading of the Appropriation Bills (No. 1 and No. 2) 2020 for the purpose of listening to the speech by the Premier and the Treasurer in relation to the Tasmanian Budget 2020-21.

(2) The Legislative Council gives leave to the Honourable the Minister for Racing and Minister for Sport and Recreation to appear before, and give evidence to, the relevant Estimates Committee of the House of Assembly in relation to the Budget Estimates and related documents.

Signed

S Hickey
Speaker
House of Assembly
11 November 2020

Motion agreed to and message transmitted to House of Assembly.

ADJOURNMENT

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

That at its rising the Council adjourns until 11 a.m. Thursday 12 November 2020.

Mr President, I remind all members of our 9 a.m. briefing tomorrow morning. We will start at 9 a.m. and work our way through, maybe not according to the time, but pretty well.

Motion agreed to.

The Council adjourned at 7.15 p.m.