

**LEGISLATIVE COUNCIL  
HANSARD - Excerpt  
Wednesday 6 September 2023**

**GUARDIANSHIP AND ADMINISTRATION AMENDMENT BILL 2023 (No. 5)**

**Second Reading**

**Continued from 24 August 2023 (page 33).**

*[excerpt]*

[11.51 a.m.]

**Ms WEBB** (Nelson) - Mr President, I rise to speak on the Guardianship and Administration Amendment Bill, which is an incredibly important step forward in providing crucial rights-based protections to some of the most vulnerable people in our community. The people who sit at the heart of this bill, Tasmanians who require support for decision-making, are highly vulnerable. We know that there has been a history where there have been instances of harm, disempowerment and suffering as a result of failures of our current guardianship and administration system.

I note the context, which others have pointed to, that has led us to today. It is an old act, a 30-year-old act and we have had instances of harm brought to light through the work of groups such as Advocacy Tasmania and other people who have lived experience in this area. There has been the independent review of the Public Trustee by Mr Bugg, which others have mentioned, which included some valuable recommendations having found the act was being misapplied over an extended period of time.

Of note, in terms of context, the work of the TLRI and also the Australian Law Reform Commission provided recommendations for effective and contemporary reforms to be made - all of that leads us here to today. When I make my contribution, I want to keep at the centre of consideration what this act is about and the people to whom it applies.

As described in Advocacy Tasmania's submission that was made on the draft bill:

Too many vulnerable Tasmanians have been imprisoned against their will, lost their treasured possessions and often had to fight for months and years to regain some semblance of control over their lives.

Benjamin Jones, who has worked at Advocacy Tasmania previously, provided me with some comments to better explain this:

It is really the direct experience of people being failed by this system that best demonstrates why it is so important to get this right. This is the community that has been fighting for decades for their basic rights, for choice, dignity and support and to not have the views and decisions of others forced upon them for the convenience or comfort of others.

This bill is a real opportunity to make it unequivocally clear what the minimum standards really are for guardians and administrators and that current practices that too often completely override the rights and choices of people with impaired decisions need to end.

I found that quite on point for getting to the heart of what these reforms are all about. Benjamin also provided some quotes from clients that Advocacy Tasmania has compiled in the course of its work. They illustrate the key issues of this situation. Those quotes include this:

No one spoke to me, just about me. All these huge decisions were being made about my life and I was not involved at all. It was so shocking how quickly I lost my independence.

Another comment:

I think everyone should get support through the process of an order if they want it. It is confusing and sometimes scary. When I told them that Legal Aid needs to be involved I was told they could not be there. I was really glad they were there, there was someone on my side.

It should be everyone's right to have a support person or lawyer at the hearing. There should also be support for people to make important decisions in their life instead of sticking them on an order straightaway. Give people a chance.

Those sorts of direct voices from people affected are really important to put into this debate. I will have a few other instances of doing so in my contribution because it makes it very clear we have had something of a cycle of distress and harm and it does need to end, as they have clearly made the point.

This bill represents an excellent opportunity for a new beginning. In reforming the current act, we have an opportunity to put in place a new approach that cements the strongest rights-based and contemporary practice for ensuring people with impaired decision-making ability are respected, treated with dignity and empowered to be in control of their own lives to the greatest extent possible.

This reform simply is about justice. Our guardianship and administration systems are areas in which, undeniably, injustice has occurred and harm has been done. We should not now fall short in responding to that injustice.

While the bill we are considering takes us forward in leaps and bounds with many carefully considered rights-based protections, there are areas in which it will still fall short. Listening to the criticisms of those with lived experience and community advocates who are central to this area of policy, there are a number of ways in which the bill has either not tackled key issues or has established an approach not preferred by those stakeholders. This is disappointing. The very basis of the approach stated in this bill is that, to the greatest extent possible, the will and preference of the person at the centre should be given effect to.

It is unfortunate to note in finalising the bill and bringing it to this place, it would appear the will and preference of key stakeholders and advocates on the level of protection needed in the bill was not necessarily supported to the full extent it could and should have been.

However, there is a further tranche of reforms in this area and the intention from government there will be further tranches to come, potentially. The first tranche of reforms from 2021 progressed some initial areas on making an implementation of advance care directives. This second tranche applies similar principles across the rest of the act. I hope, as a matter of priority, the outstanding unaddressed issues clearly identified during consultation and in reports such as that from the TLRI will be fully considered and given effect to in the next stage of reforms.

The Government congratulates itself on consultations conducted on this bill and, in the end, a very good consultation. However, the original consultation period for the bill was only set at three weeks and did not include accessible and supportive documentation and submission processes. Given the community members most affected by the legislation that is at the heart of this bill, it was a significant oversight to initially go with that approach. After strong requests and objections from groups such as Advocacy Tasmania and others, the consultation period was extended and expanded to provide better opportunity for people with lived experience to participate. It is good that response occurred and opportunity was provided. It is a shame there had to be efforts made to push for that rather than an applying the same basic principles and respectful approach on which this legislation is supposed to be based, applying that from the outset to the processes around developing it and consulting on it with the community.

Significant issues were raised in consultation, some of which were responded to with changes in the subsequent final bill. Equality Tasmania, who made a submission, were pleased with the inclusion of suggested changes made in their submission in relation to the meaning of promoting a person's personal and social wellbeing. As suggested by Equality Tasmania, that definition now explicitly includes having regard to a person's gender identity, gender expression and sexual orientation. It is a very positive change made in response to consultation.

Also, in the new sections titled Decision-making ability and Impaired decision-making ability, adjustments were made to the wording as suggested by Equality Tasmania to ensure all members of the LGBTIQ+ community are covered by the protections that it provides. It is excellent to see that change incorporated. I acknowledge that Equality Tasmania wanted further changes, in particular to the definition of 'spouse'. As it currently stands, the definition of 'spouse' includes registered and unregistered relationships pursuant to the Relationships Act without any further explanation or disclaimer.

I know that Equality Tasmania's concern is that this could lead to TASCAT failing to correctly recognise a same-sex partner as a spouse even if that person was in a significant relationship according to the Relationships Act. We have encountered this issue and discussed it in this place before and we would all understand where this concern stems from, the instance in which a coroner failed to correctly identify Ben Jago as a spouse, even though the Coroners Act similarly refers to the Relationships Act.

To provide an important safeguard for the rights of vulnerable persons impacted by the Guardianship and Administration Order, Equality Tasmania called for additional clarity to the definition of 'spouse' in this bill, wording such as 'irrespective of gender'. They point to Victorian legislation. I mention this here now because I want to acknowledge the concern raised and the suggestion put forward by Equality Tasmania. My sense of that issue is that it should not be legally necessary to include such belt and braces definitions in individual acts

when a reference to the Relationships Act should be sufficient to ensure a correct interpretation. It is something that we all need to keep a close watch on -

**Mr Valentine** - Time will tell.

**Ms WEBB** - Yes, especially in relation to legislation that perhaps substantially impacts on spousal rights to ensure that appropriate protections against discrimination are included. It also points to the need for a more purposeful and proactive training and education for anyone acting under legislation that requires the correct identification of 'spouse'. There needs to be a focus on culture change to overcome conscious or unconscious bias within any government-delivered services or agencies in this area.

I acknowledge the concerns of Equality Tasmania, although I am not presenting amendments to address the concerns that they raised today. However, it is worth having it on the record because it is something we need to be mindful of, particularly if 'spouse' is provided with certain rights or roles in a piece of legislation.

In consultation with various stakeholders, I have prepared some very minor amendments for consideration on the bill if we get to the Committee stage. Those amendments do not address any large policy matters or new inclusions to the bill. The aim is to strengthen or clarify certain areas of the bill and to more clearly put at the forefront the rights-based foundation of the bill. They are in line with the work of the TLRI and the Australian Law Reform Commission. When we get to those, I will speak about them in more detail.

I note that supported decision-making is referenced in the bill in a number of clauses but there is a concern raised by advocates about the lack of a legislated supported decision-making scheme or operational means to realise the appropriate supports for people with a disability in terms of decision-making.

I note that from the Advocacy Tasmania submission on the draft bill, on page 3 they said:

For comparison, in Victoria half of the legislated reforms and resulting act are based on operationalising and realising supported decision-making and giving them legal status and effect.

And then further on page 4 they go on to say:

So much of the operations of the act depend upon the operation of informal and formal decision supports and the state ensuring access to them. Without it, the bill is really missing its heart or the mechanism by which change and rights are actually realisable for people.

That does leave a question over whether, with no legislated supported decision-making scheme, there risks being not a shift in practice, but only potentially a shift in language and optics presented through this bill. I recognise that concern and I understand that the Government may wish to reflect on why that has not been included here, and what future and intention there might be to see some operational means that sit alongside this bill to ensure that supported decision-making does actually come into effect and practice in a way that is indicated by the bill.

Clearly, of central importance here is the interpretation or assessment of a person's decision-making ability. The definitions, the requirements for what must be considered in the application of principles, must all be clear and effective in this legislation - remembering also that decision-making ability is a complex area. It is an ability that can come and go. A person potentially can have decision-making ability in some aspects but not others at any given time.

Practicable and appropriate supports as referenced in various places in the bill can make all the difference in a person having decision-making ability and the degree to which such supports are provided, and reasonable steps to provide them, to be exhausted. It is a crucial aspect to ensure that it is not just a nice idea if it is convenient to apply, but central to what is required when ensuring that people are correctly assessed in terms of their decision-making ability.

As I seek to do at every opportunity, I will make some comments in relation to human rights. As you may well expect, I will state my strong support for, and call on the Government to progress, the establishment of a human rights act for our state. As is appropriate, contemporary rights-based approaches are being introduced into many pieces of legislation and legislative reforms in Tasmania that we then come to consider in this place. This bill is another example of that, and I am pleased to see it.

In the absence of an overarching human rights act for Tasmania, our best way forward is to develop policy to govern and to legislate as if we did have one in place. Explicit inclusion of rights-based approaches in legislation is one key way for us to do that and to be moving our way towards what I think is inevitable, and that is that we do have a human rights act for our state.

This bill introduces objects of the act in section 7, which reference the need to apply the principles of the Convention on the Rights of Persons with Disabilities, including recognising the need to support persons with impaired decision-making ability to make, participate in and implement decisions that affect their lives. This is an excellent inclusion to establish an important foundation of rights-based principles. That foundation of principles then has to be actively reflected throughout the legislation and accountably implemented when the legislation is being applied. That is where we know things have fallen down under the current legislation with the Bugg Review finding that those implementing the legislation relating to the Public Trustee have been misinterpreting that in significant ways over an extended period of time.

What is in legislation, particularly in the high-level end of that legislation in the objects or the principles, must be accountably then implemented through the legislation and when it is given effect in practice. Without effective mechanisms to hold those exercising powers under this legislation to account for acting in accordance with the rights-based principles that underpin it, the vulnerable people at the centre of this are still at risk of having their rights violated.

I also note the very important inclusion in the bill of principles to be observed in section 8. The principles outline fundamental rights-based principles that a person performing a function under this act is to observe. The principles include a person's decision-making ability to be respected and promoted; a person who requires support in decision-making is to be provided with access to support necessary to enable the person, as far as practicable in the circumstances, to make and participate in decisions affecting them, and to express that person's will and preferences and to develop the person's decision-making ability.

The principles also recognise that the views, wishes and preferences of the person are to be respected and used to inform decisions. They recognise the role of close family members, carers and other significant people in the life of the person with impaired decision-making. They recognise the importance of preserving the person's cultural and linguistic environment to promote the personal and social wellbeing of the person and to adopt the means which is the least restrictive of the person's freedom of decisions and actions as possible.

Further, the principles in relation to decision-making are further elucidated in relation to children in the act. That is a very strong section of the act and pleasing to see. Again, we understand these principles are then to underpin the other aspects and the details in the act, but it is important that we are very clear and strong in understanding how that will be accountably implemented and how we can ensure that those mechanisms in the act adhere to the principles unpinning it.

While it is positive to have the fundamental principles laid out, we do need to ensure that all other aspects of the bill reinforce them explicitly throughout. Some of my amendments relate to that.

Further, it is important that there are effective mechanisms to hold accountable people who exercise powers and functions under the bill and that there is some way to challenge instances in which the principles are not believed to have been applied correctly or to the extent that they should have been. I will speak more on that later.

I want to note the part of the bill that deals with emergency orders. Under the current system, emergency orders have been an aspect that has caused considerable harm and suffering with life-altering, permanent decisions being made through the imposition of emergency orders. So many of the issues that have been raised in recent years and the media have been caused by way of emergency orders that have been used and managed in ways that have caused harm. These are orders that allow someone else to make crucial decisions about a person's life without their consent for up to two months.

I know Advocacy Tasmania has described witnessing emergency orders being used under the current legislation to do things such as permanently put people into residential aged care, to sell people's treasured possessions, to decide that the person will give up their public housing tenancy, and to make other irrevocable choices in that person's life. Under the current system, these orders have been made far too readily without appropriate accountability and have been far too broad in their impact and effect.

As others have noted - and the member for Launceston spoke about this very well - there have been many efforts in recent times made within the Public Trustee, under the leadership of the now CEO, Todd Kennedy, to change approaches and change practices in that context. However, these concerns about emergency orders are particularly pointed because of the rapidity with which they are brought in to address urgent situations and then the potential permanent impact that they can have.

I note some advocates argue that there is no need for emergency orders under this act. They point to provisions under the Mental Health Act or under common law to deal with urgent emergency situations, especially situations of serious risk to life and health.

I would be interested to have on the record some reflections from the Government on why it does not regard aspects provided for under the Mental Health Act and under common law to be sufficient to deal with most situations that we would think would be related here under an emergency orders provision.

Under this bill, we do have emergency orders still available to be made by the tribunal if it is considered a represented or an unrepresented person is in immediate risk of harm. There is an improvement on current requirement in this bill. It is my understanding the tribunal may make emergency orders only on application and after a hearing, and that process has been made more rigorous compared to what has been the practice. My understanding is that the bar should now be higher and the accountability for the decisions to impose an order should be greater.

However, under this bill, the emergency orders can still be put in place for 28 days and then renewed for a further 28 days, adding up to a period of close to two months. For many, that is regarded as an unacceptably long time for orders of this type. That has been expressed by many lived-experience advocates and there is a concern there. Having discussed it during briefings, I also hear the point being made that to shorten that time frame significantly is potentially problematic because it does not necessarily allow time to schedule and then undertake a hearing of the tribunal to fully consider the circumstances of that person's life and to consider a regular order that may need to be made.

Accepting that, if that time frame is to remain - 28 days plus 28 days - in which emergency orders can be imposed, it is even more important we have very good clarity on what may be decided on. To what extent under those orders and the scope it can have on a person's life and the permanency of that impact are even more important to get right. The concern from Advocacy Tasmania is the standard for what qualifies as an emergency is set too low in their assessment. 'Immediate risk of harm' is defined in the bill as being an immediate risk of harm to the health, welfare, property or financial situation of the person, including because of the risk of abuse, exploitation or neglect of the person, or self-neglect.

The contention and difficulty do or can arise when the need to allow the dignity of risk comes into play. Where there may be impacts on the convenience of others or when it can be too easy to have personal views and judgments of decisions being made by a person whom others deem to be inappropriate. There is a real tension here in anybody deciding on behalf of another person they are making bad decisions or decisions that put them in immediate risk of harm. That is a very tricky test.

The fundamental shift in model from what we have had, which was a best interests approach, to the general shift of a will and preference approach, is crucial here if it then is also rigorously applied to this emergency order. Under the current approach, where decision-makers can stick in and make judgments on what is in the best interests of a person with impaired decision-making ability, those grey areas on what constitutes immediate harm and warrants the need for emergency order has contributed to being very problematic and harmful. It then allows for factors such as judgments, convenience and disagreements on degree of risk to come into play.

Under the will and preference model in this bill there should be a cultural shift, including in this area in the level of regard and respect afforded to the person at the centre. Including respect for their right to engage in the dignity of risk in decisions relating to their life and their circumstances.

I do want to bring forward into the debate some voices of lived experience to understand the importance of how we improve this area of emergency orders. To illustrate the issues that have been there, that need to be addressed as we look at bringing forward these reforms. The Advocacy Tasmania submission made in December to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, on guardianship and administration, states on page 10:

So many of our clients have had horrific experiences with emergency orders under the GA act. These orders can be made when someone feels there is an immediate risk of harm to health, welfare or property and last for up to two months of a person's life.

Emergency orders can apply in a plenary fashion in that they can cover decisions on all matters and can lead to permanent disempowerment for people subject to them.

We see incredibly disturbing trends in the use of emergency orders, including how they are requested, what evidence is required for an order to be made, what powers are granted under orders and the accountability of guardians and administrators, including the Public Guardian and Public Trustee in ensuring the will and preferences a person under orders are fully considered and respected. In our experience, the requirements in the GA act that a guardian/administrator must consult with the person under orders and take into account their wishes are routinely ignored in practice.

The obligation for administrators to support the person under orders to develop the decision-making capacity is functionally not being implemented by the Public Trustee in Tasmania. Instead, our clients are lucky if they receive a single contact from the Public Trustee annually.

We have worked with clients who have had life-altering decisions made on an emergency basis under the GA act, such as being placed in permanent residential aged care, having access to community and housing supports terminated, and having all their treasured possessions taken to the tip. These decisions can be impossible to undo and should never be made on an emergency and permanent basis, but regularly are.

Before 2022, we observed that many emergency orders were made on the papers without an actual hearing, notice or opportunity to speak. Thankfully, this practice has now ceased following our considerable systemic advocacy.

However, it demonstrated a fundamental problem with the guardianship and administration system that decisions can be made in a plenary fashion for people based on very low thresholds and evidence, without the person being present or aware that decisions are even being made about them or what their impact might be.

The system allows and supports these huge denials of shared humanity and due process as almost a matter of course. It is appalling there are so few protections, checks and balances built in to prevent this from occurring.

That was a quote from the Advocacy Tasmania submission to the royal commission. It highlights the ways that the current system has been failing. It is important for us to have in mind when we are considering how well this bill moves us forward and addresses those issues; and whether it does so with enough rigour and strength that we do not have a situation where we might see such problems arise again. I appreciated that Advocacy Tasmania's submission had some direct quotes from clients about emergency orders. I want to put that on the record.

If we move through to the Committee stage and we have questions or amendments to consider about emergency orders, it is important to be clear about those issues or problems that we are trying to address with this legislation.

One of Advocacy Tasmania's clients, quoted in their submission to the royal commission, said:

I went to hospital after a fall and eventually I was put on an emergency order. No one discussed this with me or invited me to attend a hearing. In fact, the order was done while I was unwell and on loads of medication. At the hearing it was decided that the Public Trustee would also be appointed. The Public Trustee went on to sell or throw away all my belongings, having never discussed any of it with me. Most of my photos and personal items were just gone for good. I even had a few hundred dollars in a large jar and that money was gone too. They changed the locks on my home. People should be involved in any decisions about their own life, where I was not. The Guardian and the Public Trustee just came in and took over.

Advocacy Tasmania in that submission goes on to say:

Imagine having your whole life overturned based on an alleged urgency you disagree with; being removed from your home, having all your possessions disposed of, and being forced into residential aged care against your will.

You're telling everyone what you actually want, and they're ignoring you and aren't interested. You have no ability to actually challenge what is being inflicted on you, and the choice is being made for you. It's horrific and it happens again and again. It's an insidious violence being perpetrated against the most vulnerable, and it happens at a time when they should be receiving the most support, options and choice instead.

It is very important that we have this in front of mind when we are thinking about how well we are addressing and solving these past issues. We need to provide support and confidence to the community, to the vulnerable people who will be impacted by this legislation, that these situations will not occur again; or at least that the most is being done through the legislation, and in giving it effect, to ensure those situations do not happen again.

There are some other stories presented by Advocacy Tasmania. I will share one more on the record because I believe these people deserve to have their words on the record here, in

front of mind, when we are considering these reforms. It is a de-identified client story presented on page 12 of Advocacy Tasmania's submission to the royal commission, and it is titled 'Jennifer':

Jennifer has moderate mobility impairments associated with her condition, but no identified impairments in her mental or decision-making ability. She sought advocacy support when, after a stay in hospital to recover from an injury resulting from a fall, she had been denied the right to discharge herself from the hospital to return home. The advocates sought urgent legal support for Jennifer, which determined that Jennifer was under no legal orders at that time and that she had the right to be discharged. When Jennifer attempted to leave the hospital, accompanied by her advocate and under legal advice, hospital security was called and Jennifer was threatened with a Code Black physical and chemical restraint. Jennifer was unwilling to risk being physically and chemically restrained and elected to wait, at which point the hospital applied for an emergency guardianship order. Despite no previously identified impairments in Jennifer's decision-making capacity, the 28-day order was granted and Jennifer was restricted from leaving hospital.

Jennifer wanted to appeal the emergency order, but there was no appeal or review pathways available to her within the 28-day period of the order, such as to TASCAT or the Supreme Court.

I believe it is important to share these so that we have a clearer understanding of the need for reform and a better understanding of how to assess the reforms presented to us in this bill.

Given the egregious disregard of people's rights and dignity experienced under the exercise of these emergency powers over decades, we must be highly vigilant in ensuring that any new model presented in this bill provides the highest of protections. I invite the Government to reflect on, and perhaps emphasise, the points at which the new reforms around emergency orders provide that protection - protection that is described as lacking in the past, as people such as 'Jennifer' have experienced.

We have heard from many advocates that emergency powers under the bill can, and have, been exercised harmfully; certainly not every time, but far too many times. Knowing this, we must guard against such abuses of power as vigorously as we possibly can. I remain concerned that the bill falls short in this area. I have sympathy for the call from lived-experience advocates for the powers in relation to emergency orders under this bill to be more appropriately constrained than is currently drafted. That is something we will discuss in amendments if we reach the Committee stage.

Mr President, it is pleasing to see the bill address the matter of gag provisions under the current act. Currently, we have the unacceptable, damaging situation where people are prevented from talking about their own story. This has had harmful consequences for those in some cases who have not only had their autonomy, their dignity and their rights taken from them, but have then been legally silenced to speak about it. The negative impact of those gag provisions has not only been individual - it has also been systemic. The confidentiality provisions in the current act have likely played a role in delaying much-needed reform in this area because people were not allowed to speak about it. Effectively silencing individuals also effectively silences systemic advocacy, in many circumstances. How much suffering might

we have avoided through more timely reforms if people had not been silenced in that way? The bill rightly amends these confidentiality provisions to allow people under guardianship orders to consent to the publication of that information if they wish, and it is a really positive development.

I am also concerned about the lack of effective provisions to ensure compliance with the act once it is in practice. The Advocacy Tasmania submission has many stories from clients who have experienced great harm and were put through processes that did not necessarily even comply with the current act - as limited as it has been.

There has also been a lack of avenues for redress. I know there is a key concern from advocates about the process that has been put in place in this bill. It is a positive step to put complaints and mediation processes in place to resolve disputes. However, this bill locates that within the sphere of the Public Guardian, and people have pointed to the fact that the Public Guardian is often directly involved in decisions made by the Public Trustee or as the Guardian itself. There is a potential difficulty that this is not seen as an unconflicted avenue of resolving disputes.

Subsequent to the TLRI report, we have established a Disability Commissioner in this state. That is since the TLRI report, so it was not contemplated in the report. Some people put forward submissions that it would be more appropriate to facilitate a dispute resolution process or mechanism as a function of the Disability Commissioner as an entirely independent and appropriately credible entity to resolve those disputes. I am not putting forward a suggestion as to what is the right way forward; I am raising the concerns that have been put up. It is positive that we have a more explicit way for disputes to be brought forward and addressed, but perhaps that is something that will need to be improved or developed further over time.

Timely resolution of complaints is another issue. I do not see minimum time frames or expectations or specified time lines for the resolution of complaints or issues that are brought forward. I wonder what the escalation pathways might be and the time frames on that, too. It is something that would be necessary for vulnerable people and their families, friends, carers and supporters who might need to utilise dispute resolution or complaints mechanisms.

It is important to have security and confidence in the mechanisms available and to understand clearly what the time lines will be, and what the process will be. I am not sure if there is a reason, for example, that time lines and timely resolution of that complaints process was not included in the bill. If the Government is able to provide a comment on that, I would be interested to hear it.

As we have had pointed out and referenced in the Government's second reading speech, the bill does not contemplate penalties, compensation or offences in relation to people not abiding by the legislation. Community advocates point to the fact that the bill appears to be missing teeth when it comes to penalties and compensation for noncompliance. They point to the fact that currently there are no penalties, compensation or consequences for people and organisations that fail their responsibilities under the bill. I understand from the second reading speech that the department has been tasked to consider this issue further in future tranches for reform and that is pleasing. If that is the intention, that is positive and we will look forward to it.

However, having no meaningful recourse for penalising those who fail their responsibilities under this bill - should it pass - or for providing compensation to those who may be harmed by such failures is a major obstacle to achieving the justice that we would want to see in this area delivered by this bill. There will be a lag time between this bill potentially coming into effect and then a future tranche that may contemplate issues relating to penalties and offences and compensation. During that lag time, people who come into the sphere of this bill will not have those things available to them as part of the protections and the recourse that is there.

I note the part of the bill that deals with health and medical research being inserted into the principal act to establish a framework for authorisation of medical research on people with impaired decision-making ability. The intention to provide a framework and safeguards to regulate the involvement of people with impaired decision-making in health and medical research is understandable. I hear the arguments put forward for situations in which what is provided for in the bill may assist in good outcomes. However, concerns have been raised that the bill takes an approach that is incompatible with the hard-fought rights of people with disability and older people.

I know, looking to the Advocacy Tasmania submission on the draft bill, that organisation regards this section as 'fundamentally misguided and likely to substantially detract from improvements in the legislation'.

I also note article 15 of the Convention on the Rights of Persons with Disability provides protection for people with disability from being subjected to medical and scientific experimentation without their free consent. The provisions in the bill appear to be contrary potentially to that international human rights law, which views medical research without consent on people with a disability as tantamount to torture or cruel, inhumane and degrading conduct.

I note that in the TLRI submission to consultations on the bill they said not to progress these sections without further research and consultation as they had not touched on it in detail. I quote from the TLRI submission:

It is recommended that the implementation of these reforms be delayed and dealt with separately after greater consultation. The TLRI report did not deal in depth with issues around medical research, though medical research was flagged in recommendations 13.10 and 13.11. It goes without saying that strong safeguards must apply to medical research. It is recommended that the bill progress without the medical research provisions until further research and community consultation has been conducted.

I note that groups such as Advocacy Tasmania strongly agree with that sentiment from the TLRI and the recommendation that this be an area for further consultation and research.

I do not understand why some things have been delayed for further consideration and consultation in the next tranche, but something that has been as clearly identified as needing further consultation and research, such as this aspect of consent to health and medical research by people with impaired decision-making, has not been and has been put forward in this tranche. I hear the argument made from lived-experience advocates that rather than removing rights protections in the way that this does for people with impaired decision-making ability,

the approach fundamentally should be, and needs to be, one of removing barriers for people with impaired decision-making ability to be involved in medical research. Alongside that is the need to provide real support for people to decide for themselves.

Rather than be quick to allow others to override what might be the situation for a person with impaired decision-making ability and potentially consent on their behalf for them to be involved in health and medical research, there should be more focus on how to better support people with impaired decision-making to be in a position to make that decision themselves. The case is made that if there are broader changes needed to give effect to this, those changes should apply to the community as a whole in separate consent to medical treatment and research legislation, not in this bill where they will be applied in a discriminatory fashion, it could be argued, to a particular group of people whose rights are being traded away.

While the Government asserts that this aspect of the bill strikes the right balance, I am not convinced that it is nuanced enough in balancing rights protections here. The second reading speech from the Government aims to make the argument with a very specific example here, which is all well and good, but if the provisions proposed are too broad, allowing lesser incursions on a person's autonomy and liberty, we are right to still be concerned about it. One good example does not constitute a convincing rationale when we are talking about trading away people's rights.

I do wonder why the Government has not sought to give full expression to the protections demanded by Article 15 of the Convention on the Rights of Persons with Disabilities. The way this has been inserted into the act feels like it harks back to what we are stepping away from, which is that best interest approach where someone decides whether it is in a person's best interest to be involved in health and medical research and can consent on their behalf to it.

I note that the Government -

**Mrs Hiscutt** - Would the member give an example of what you are thinking of, as opposed to -

**Ms WEBB** - I am delivering my second reading speech. I would rather not engage in an interactive debate. If there is something that the Leader wishes to follow up with me about afterwards to include in a summary, I am happy to have that conversation during the next break.

I note the Government does emphasise that not all areas are addressed in this bill and that there will be those further tranches of reform. I wonder why this matter was not dealt with in a further tranche after greater consultation and consideration, as recommended by the TLRI.

I note again, and I will quote from the Advocacy Tasmania submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability on guardianship and administration, which they made in December last year. On page 19, they said this:

We must urgently move beyond treating people as less because of their status or function and focus instead on their human rights agency, support needs and giving effect to their will and preferences. The reality is people make decisions in a wide variety of ways. These ways are often personal, emotional and strongly driven by values and experiences.

But for those with disabilities or who are older, we routinely see them denied the dignity to make decisions in this diversity of ways, especially where there is an element of risk.

We need to move past trading the rights of people with disabilities away. The right to safety and to live free from abuse, neglect and violence is not more important than the right to agency, liberty and legal capacity. We need to support all these rights concurrently and in ways the current substitute a decision-making approach fails to do. I profoundly hope with this bill, we are taking giant steps down that path to upholding and supporting that totality of rights for all Tasmanians. Even with the progress that is in this bill undoubtedly, there will be more work to be done.

The Government is intending to continue these reforms and I urge the Government to continue that work in a timely way with input and direction from those Tasmanians with lived experience and their advocates at the very centre of progressing that work.

*[end of excerpt]*