# Hansard

# LEGISLATIVE COUNCIL

## 60th Parliament

## Thursday 1 August 2024

**By authority of the Victorian Government Printer**

# Members of the Legislative Council

## 60th Parliament

**President**

Shaun Leane

**Deputy President**

Wendy Lovell

**Leader of the Government in the Legislative Council**

Jaclyn Symes

**Deputy Leader of the Government in the Legislative Council**

Lizzie Blandthorn

**Leader of the Opposition in the Legislative Council**

Georgie Crozier

**Deputy Leader of the Opposition in the Legislative Council**

Evan Mulholland (from 31 August 2023)
Matthew Bach (to 31 August 2023)

| Member | Region | Party | Member | Region | Party |
|---|---|---|---|---|---|
| Bach, Matthew[1] | North-Eastern Metropolitan | Lib | Luu, Trung | Western Metropolitan | Lib |
| Batchelor, Ryan | Southern Metropolitan | ALP | Mansfield, Sarah | Western Victoria | Greens |
| Bath, Melina | Eastern Victoria | Nat | McArthur, Bev | Western Victoria | Lib |
| Berger, John | Southern Metropolitan | ALP | McCracken, Joe | Western Victoria | Lib |
| Blandthorn, Lizzie | Western Metropolitan | ALP | McGowan, Nick | North-Eastern Metropolitan | Lib |
| Bourman, Jeff | Eastern Victoria | SFFP | McIntosh, Tom | Eastern Victoria | ALP |
| Broad, Gaelle | Northern Victoria | Nat | Mulholland, Evan | Northern Metropolitan | Lib |
| Copsey, Katherine | Southern Metropolitan | Greens | Payne, Rachel | South-Eastern Metropolitan | LCV |
| Crozier, Georgie | Southern Metropolitan | Lib | Puglielli, Aiv | North-Eastern Metropolitan | Greens |
| Davis, David | Southern Metropolitan | Lib | Purcell, Georgie | Northern Victoria | AJP |
| Deeming, Moira[2] | Western Metropolitan | IndLib | Ratnam, Samantha[5] | Northern Metropolitan | Greens |
| Erdogan, Enver | Northern Metropolitan | ALP | Shing, Harriet | Eastern Victoria | ALP |
| Ermacora, Jacinta | Western Victoria | ALP | Somyurek, Adem | Northern Metropolitan | DLP |
| Ettershank, David | Western Metropolitan | LCV | Stitt, Ingrid | Western Metropolitan | ALP |
| Galea, Michael | South-Eastern Metropolitan | ALP | Symes, Jaclyn | Northern Victoria | ALP |
| Gray-Barberio, Anasina[3] | Northern Metropolitan | Greens | Tarlamis, Lee | South-Eastern Metropolitan | ALP |
| Heath, Renee | Eastern Victoria | Lib | Terpstra, Sonja | North-Eastern Metropolitan | ALP |
| Hermans, Ann-Marie | South-Eastern Metropolitan | Lib | Tierney, Gayle | Western Victoria | ALP |
| Leane, Shaun | North-Eastern Metropolitan | ALP | Tyrrell, Rikkie-Lee | Northern Victoria | PHON |
| Limbrick, David[4] | South-Eastern Metropolitan | LP | Watt, Sheena | Northern Metropolitan | ALP |
| Lovell, Wendy | Northern Victoria | Lib | Welch, Richard[6] | North-Eastern Metropolitan | Lib |

[1] Resigned 7 December 2023
[2] Lib until 27 March 2023
[3] Appointed 14 November 2024
[4] LDP until 26 July 2023
[5] Resigned 8 November 2024
[6] Appointed 7 February 2024

**Party abbreviations**

AJP – Animal Justice Party; ALP – Australian Labor Party; DLP – Democratic Labour Party;
Greens – Australian Greens; IndLib – Independent Liberal; LCV – Legalise Cannabis Victoria;
LDP – Liberal Democratic Party; Lib – Liberal Party of Australia; LP – Libertarian Party;
Nat – National Party of Australia; PHON – Pauline Hanson's One Nation; SFFP – Shooters, Fishers and Farmers Party

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# Thursday 1 August 2024

**The PRESIDENT (Shaun Leane) took the chair at 9:33 am, read the prayer and made an acknowledgement of country.**

## *Petitions*

### Housing

**Samantha RATNAM** (Northern Metropolitan) presented a petition bearing 2001 signatures:

> The Petition of certain citizens of the State of Victoria draws to the attention of the Legislative Council that the Victorian Labor Government's proposed destruction and privatisation of Victoria's remaining 44 public housing towers will displace over 10,000 people during a housing crisis. Across Melbourne. 6,660 public homes are planned to be destroyed. The majority of the land will be used to build private, market rate apartments. There is no public housing guaranteed on this land into the future. The average increase in social housing proposed over the next 28 years is just 15 homes per year. There are currently 125,000 people on the public housing waiting list. This plan will make it harder for everyone to find a secure, affordable home and will worsen the housing crisis.
>
> **The petitioners therefore request that the Legislative Council call on the Government to immediately stop the wholesale destruction and privatisation of public housing and instead maintain existing public housing and build new public housing on public land.**

**Samantha RATNAM**: As this is a petition qualifying for debate under standing order 11.03(10), I give notice that I intend to move 'That the petition be taken into consideration' on Wednesday of next sitting week.

## *Papers*

### Papers

**Tabled by Clerk:**

Statutory Rules under the following Acts of Parliament –

Conservation, Forests and Lands Act 1987 – No. 71.

National Energy Retail Law (Victoria) Act 2024 – No. 70.

Subordinate Legislation Act 1994 – Documents under section 15 in relation to Statutory Rule Nos. 70 and 71.

## *Petitions*

### Lord's Prayer

*Response*

**The Clerk**: I have received the following paper for presentation to the house pursuant to standing orders: Attorney-General's response to petition titled 'Retain the Lord's Prayer in Legislative Council proceedings', presented by Mr Mulholland.

## *Business of the house*

### Notices

**Notices of motion given.**

### Adjournment

**Jaclyn SYMES** (Northern Victoria – Attorney-General, Minister for Emergency Services) (09:41): I move:

That the Council, at its rising, adjourn until Tuesday 13 August 2024.

**Motion agreed to.**

## *Petitions*

### Ballarat East substation

**Joe McCRACKEN** (Western Victoria) (09:41): I move, by leave:

That this house authorises the petition tabled by me on 30 July 2024 to be given precedence over all other items listed under petitions qualifying for debate on the next sitting Wednesday.

**Motion agreed to.**

## *Motions*

### Middle East conflict

**Sarah MANSFIELD** (Western Victoria) (09:41): I move, by leave:

That this house:

(1) notes that since the Legislative Council's resolution on 17 October 2023 concerning Israel and Gaza, which states that this house 'stands with Israel', the following has occurred:

(a) Gaza's hospital infrastructure has been destroyed by Israel, leaving only one partially functioning tertiary hospital that can provide maternity and paediatric care, the Al-Nasr;

(b) the Al-Nasr is currently unable to meet demand for paediatric and obstetric care, seeing over 300 paediatric patients a day who are forced to share hospital beds and receive treatment on the floor;

(c) the hospital provides 25 to 30 deliveries a day, and women are being discharged within hours of giving birth, without basic hygiene products, into unsafe and unsanitary conditions;

(d) at least 183 women are giving birth in Gaza each day, most without any access to medical or midwifery support before, during or after delivery, and aid agencies have reported growing rates of life-threatening complications, including eclampsia, haemorrhage and sepsis as well as increased frequency of premature delivery, miscarriage and stillbirth;

(e) Israel's attacks on civilian populations and infrastructure have led to high and growing rates of paediatric diarrhoea and respiratory illnesses, starvation and trauma, contributing to rising child deaths in Gaza;

(2) does not support the state of Israel's continued invasion of Gaza; and

(3) supports calls for an immediate and permanent ceasefire and calls on the Victorian government to advocate to the federal government that it ends its support for the state of Israel's invasion of Gaza.

**Leave refused.**

## *Members statements*

### King's Birthday honours

**Gayle TIERNEY** (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (09:43): I rise today to extend my congratulations to Mary-Ann Brown of Dunkeld, who has been awarded the Medal of the Order of Australia in the King's Birthday honours. Mary-Ann's tireless efforts and commitment to community, gender equality and the promotion of tourism and the arts have made a significant and lasting impact on Dunkeld, Maryborough and the Barwon South-West region. The Medal of the Order of Australia is one of the highest honours our country can bestow. It is a well-deserved acknowledgement of hard work, passion and countless hours of devoted community service.

Many other western Victorians also received OAMs for community service, so I also congratulate Bernard James Sinnott of Camperdown, Donald Papst of Horsham, Robert Gartland of Highton, William Dobell of Sebastopol, Michelle Challis from Manifold Heights and James Mullins of Geelong. Congratulations to you all.

## Western Victoria fires

**Gayle TIERNEY** (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (09:44): I was also pleased to hear from Tim and Ange Chandler, whose business was significantly impacted by the Pyrenees bushfires. Tim and Ange have fully reopened their wedding and events business at Cave Hill Creek near Raglan. They have one of the most beautiful venues in Victoria. They have just held their first wedding since the fires, and they will soon reopen to school camps. There is still some repair and road access work that needs to be done, but they are thrilled to be able to welcome guests back to their beautiful venue.

## Middle East conflict

**Georgie PURCELL** (Northern Victoria) (09:45): On Friday I sat inside Geelong hospital holding Pippie and Bowie, my new niece and nephew. Instantly I felt the overwhelming urge to protect them, especially little Pippie, swaddled in special care with her cleft lip, weighing just 2.2 kilograms and receiving around-the-clock care. At the same time my phone pinged. It was a message from a mother in Gaza named Maisa and she was pleading with me to help. Maisa was messaging me from a tent with her children Ziad, Amal and Taim. Those who have survived relentless bombings are still at imminent risk of death by their consequences: starvation and chronic untreated illnesses. In fact most Gazans are at risk of famine within the next two months as aid continues to be restricted. Maisa's younger son Taim has an injured eye that will not heal. Ziad was top of his class at school and had dreams of becoming a doctor. Now he cannot even access one himself. Maisa says Amal cries when she thinks of her old life in Gaza and their home before it was destroyed. As I sat in the hospital doting on my newest family members, the reality was clear: simply because of where they were born, Pippie and Bowie will never face such cruelty. This hospital will never be bombed, nor will their school or their family home turn to rubble. I donated to this family's fundraiser. It remains one of the most meaningful actions individuals can take right now, so I am sharing this story in hopes others will too.

## Construction, Forestry and Maritime Employees Union

**Nick McGOWAN** (North-Eastern Metropolitan) (09:46): The allegations that currently engulf the CFMEU – and by extension therefore the government, the Premier and every other minister and every other member of this government – are of the utmost seriousness. So it was with some interest that I read a research report from IBAC dated 27 February 2023. The report summary on their website says:

> IBAC's research has identified several corruption risks that could affect major infrastructure projects in Victoria during procurement and construction.

It is with grave disappointment then that I note my colleague Mr Davis received a letter a year later. He lodged a complaint with IBAC in respect of the CFMEU activities back on 27 April 2023. Well, they wrote back to Mr Davis on 22 June 2024. What a disgrace. These are the people charged with holding those who commit corrupt offences to account, and they are taking a year to reply to a member of Parliament, much less investigate – forget that. This is what they said:

> In relation to the allegation about the activities of the CFMEU, this allegation did not have sufficient basis to meet the IBAC threshold to engage our suspected corrupt conduct jurisdiction.

What nonsense – their own report said a year earlier that there was. Yet here we have the very body that this Parliament in good faith created to prevent and investigate corruption doing precisely nothing.

## Cyprus settlement

**Lee TARLAMIS** (South-Eastern Metropolitan) (09:48): I rise to commemorate the 50th anniversary of an event that has profoundly shaped the lives of many, both here and beyond our shores in Cyprus. In 1974 Cyprus was forever altered by the Turkish military operations which illegally seized 37 per cent of the island, a historical moment that has brought about immense suffering, displacement and loss. The Australian government's stance remains clear and firm: it does not recognise the state of Northern Cyprus and condemns the invasion and subsequent 50-year

occupation. As we reflect on this significant milestone, we do so with a sense of solemnity and a commitment to understanding.

The events of 1974 are not just historical facts; they are lived experiences for many of our friends, families and neighbours and represent a period of turmoil that has left deep scars on the collective consciousness of many. We remember the countless civilians who were displaced from their homes and those innocent lives lost, and we extend our heartfelt sympathies to the families who continue to bear the weight of their absence. We must also acknowledge the pain and injustices of the past, acknowledging that both Greek Cypriots and Turkish Cypriots have suffered, and we must look forward with hope for a peaceful resolution.

The path to peace is not an easy one, but it is the only path that promises a future where all Cypriots can live with dignity and security. Our collective responsibility is to work towards a resolution in line with those passed by the United Nations Security Council. This means addressing the grievances and rights of those who were displaced, the withdrawal of Turkish troops, fostering dialogue and understanding, and committing to a process that leads to genuine reconciliation and coexistence. As we honour the memory of those who were affected by the events of and since 1974, let us also pledge to work tirelessly for peace, guided by compassion, understanding and a shared vision of a better future for all Cypriots.

## Market duopolies

**Aiv PUGLIELLI** (North-Eastern Metropolitan) (09:49): The duopolies reign supreme in Australia, and it is everyday people who will pay the price quite literally. Coles and Woolworths have shelved any chance of reasonably priced food by dominating the grocery game. Telstra and Optus control around 80 per cent of our phone and internet services, and now we have seen the Qantas and Virgin duopoly push out one, probably two, smaller domestic airlines – RIP Rex. These huge, powerful corporations will do anything in their power to keep control of their markets, and this means that we are all paying top dollar for our food, for our phones, for internet and for our travel. We need the Labor government to stop this anti-competitive behaviour. We need competition to ensure that prices do not continue to be controlled by the big two no matter which industry we are talking about, and we need these companies to be made to stop price gouging. Duopolies mean higher prices and less choice. Tear them down.

## Syriac Catholic community

**Evan MULHOLLAND** (Northern Metropolitan) (09:51): It was such an honour for my colleague Trung Luu, a member for Western Metropolitan Region, and I to attend the opening and inaugural mass of the Holy Spirit Church of the Syriac Catholic community. It has been a thrill to watch this new church go from plans on a piece of paper to construction of a new church with an army of faithful volunteers to build the first ever purpose-built Syriac Catholic church in Australia. Congratulations to Reverend Monsignor Fadhel Alqass Ashaq for making this happen. It was wonderful to have His Beatitude Patriarch Mor Ignatius Joseph III Younan preside over the opening mass, and it was great to see all the clergy from the Eastern Churches attend a special dinner with many colleagues. I would note that many in the Syriac Catholic community supported the successful campaign to keep the Lord's Prayer in this place.

## Nepalese Association of Victoria

**Evan MULHOLLAND** (Northern Metropolitan) (09:52): On another note, it was also wonderful to attend the Nepalese Association Victoria's annual community volunteer awards and to award some great contributors to the Nepalese community. Congratulations to outgoing president –

*Members interjecting.*

**The PRESIDENT**: Mr Mulholland, that second item, can you start from the start of that, not your first item? Can people keep the noise out, please?

**Evan MULHOLLAND**: It was wonderful to attend the Nepalese Association of Victoria's annual volunteer awards and to give thanks to some of the great contributors in the Nepalese community. I want to pay tribute to outgoing president Mr Prem Raj Upreti for his tireless work for the entire community, and it was great to celebrate the real volunteers in the community. I was honoured to receive the friends of Nepal award from that community. I will continue to support the Nepalese community.

## Syriac Catholic community

**Enver ERDOGAN** (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (09:53): I also rise today to congratulate the Syriac Catholic community of Melbourne. It was very exciting last month to join the inauguration of the first ever Syriac Catholic church here in our state – in our country in fact. It was fantastic to be joined by the federal member for Calwell Maria Vamvakinou at this special occasion. The Syriac Catholic community is a community that has suffered great hardships, and it was inspiring to hear their story, as a new refugee community in this country, of coming together and building their place of worship. As was explained on the evening and was very visible from the stories, this church is more than just a place of faith – it is a place where they can come together and share their culture and religion not only for themselves but also for future generations growing up in a multicultural society like Australia. The new church is a new beginning for this community, a community that had to escape persecution in Iraq and Syria, and it was fantastic to hear of all the generous donations and contributions made by community members to bring this project to fruition.

On another note, I especially want to thank Father Fadhel Alqass Ashaq for his enduring leadership of this community, a community that in such a short time has grown to over 1300 families, and they continue to grow. To bring this vision to reality was fantastic. It was fantastic to be there with the community at that moment, and I look forward to their future success.

## Homelessness and family violence

**Rachel PAYNE** (South-Eastern Metropolitan) (09:54): Disasters are usually a confluence of factors. The disaster I want to speak about is the risk of homelessness for women escaping family violence. This is the perfect storm: a domestic violence emergency coupled with a national housing crisis. Last financial year the number of women killed by an intimate partner in Australia rose by nearly 30 per cent. Meanwhile, a growing number of people are sleeping rough. In 2023 more than 57,000 Australians asked for help with accommodation but were not able to get it. Once homelessness workers tried to find people a home; now they are just grateful if they can find them a car to sleep in. Homelessness Australia said that violence is the biggest cause of homelessness for women and children. It takes courage to leave a violent relationship. The tragedy is that women often find themselves homeless. In the last budget the federal government put an extra billion dollars into crisis accommodation for women and their children fleeing domestic violence. In leading international Homelessness Week, I want the Victorian Allan Labor government to continue to work to ensure that these families have long-term secure accommodation and a brighter future. If we do not achieve that, we risk more violence towards women and children.

## Rod Fyffe

**Gaelle BROAD** (Northern Victoria) (09:56): I rise to inform the house of the passing of a man who made an extraordinary contribution to the Bendigo community over many years. Cr Rod Fyffe OAM passed away on 12 July at the age of 75. Rod Fyffe had a big heart for Bendigo and everyone in it. He gave a lifetime of service with a smile on his face, and his legacy will always be remembered. Rod served as a councillor in Bendigo for 38 years and as a teacher at the Bendigo Senior Secondary College for over 30 years. He was mayor four times, deputy mayor twice and worked with 12 mayors and 12 CEOs. Rod was well known for his flamboyant hairdo, which earned him the nickname of 'the mayor with the hair'.

Rod would often be seen walking around town and was always happy to stop and have a chat and say 'Hello, worker' to people he would meet in the street. His passion for Bendigo was evident in everything he did. He served our community with unwavering commitment, always striving to improve the lives of those around him. He was particularly fond of the Bendigo Art Gallery and the View Street precinct. He was a quiet philanthropist and would often appear at the gallery to donate a particularly special piece.

His funeral was held at the Bendigo town hall and drew people from all the different parts of his very full life, including the Bendigo Chinese Association, Bendigo Senior Secondary College, Golden Square Football Netball Club and a range of other community organisations. Rod was a warm and caring individual, a friend to many and a mentor to those who sought his guidance. Condolences to Rod's family and friends. He will be sadly missed.

## Eastern Victoria Region

**Tom McINTOSH** (Eastern Victoria) (09:57): Right now in Orbost the iconic Snowy River Railway Bridge is being restored after sustained community advocacy, being backed by $3.5 million from the state government. This project will be an incredible boost to the region's local tourism, protecting the heritage of the bridge and providing cyclists with a quality track. Thanks to the amazing volunteers who met me onsite to discuss the works and the future for stage 2 – May Leatch, Gail Wright, Leecia Angus, Claire and Garry Bailey – and thanks for the continuing advocacy of Liz Mitchell.

There is also huge investment in Orbost Regional Health. Director of clinical and aged care services Kylie Foltin showed me around the location of both the new $2 million endoscopy facility and the preparation of works for the $45 million redevelopment of Lochiel House and Waratah Lodge aged care wing – that is not to be confused with Lochiel Street Reserve, the home of the Orbost Snowy Rovers, which has recently completed a $250,000 lighting upgrade.

I dropped in up the road to see Lachlan and Luke from building company Built QA, who have partnered with Dahlsens, to see their new steel truss and frame plant that is directly supporting workers from the native timber industry, supported by a $500,000 state government timber transition investment.

I also joined a big group from the community of Lakes Entrance at the new Slipway; it is officially open. Once the old boat yard, this landmark has been brought back to life, creating a community space and economic hub which brings together local craft, agriculture and business, backed by the state government. Congrats to all involved.

## Venezuela

**David LIMBRICK** (South-Eastern Metropolitan) (09:59): Venezuela is the nation with the word's largest oil reserves and is also one of the latest countries to try socialism. We know the socialism Venezuela tried is real socialism because millions of people have fled the country. According to the United Nations nearly 82 per cent of remaining Venezuelans now live in poverty and 53 per cent in extreme poverty, which means they cannot afford a basic basket of food. Animals in zoos have reportedly been slaughtered for food, and children are not growing properly because of malnutrition. Some Venezuelan Australians have been on the steps of Parliament House this week to draw our attention to alleged fraud in their elections. This will be a time of instability for this nation, and I can only wish that this be resolved peacefully and according to the will of the people. I want Venezuelans to know that we are watching and we are thinking of them during this hard time.

## John Louis Blazé

**Ann-Marie HERMANS** (South-Eastern Metropolitan) (10:00): Given that there has been a condolence mentioned today, I would like to pay respects to my father, who passed away on 16 May, and give credit to him and to all those that helped him in his time starting up some of the first

Sri Lankan organisations in the south-east that operated throughout the whole of Victoria, namely the Australia Ceylon Fellowship, which actually helped people migrate to Australia. They worked very hard getting a grant for 100 people, which they all paid back – except for one – in full.

My dad's name was John Louis Blazé. He went on to also start up the Burgher Association, which also helped migrants, and then of course the voluntary outreach club, which continues to send money to Sri Lanka and provide meals for people who are destitute and in trouble. I really miss my father. He was a wonderful man. He never received an OAM or any awards for the things that he did, except through Rotary. Really, sometimes some of the best people that do the most work do not need the awards, because they know that what they are doing matters because it makes a difference in someone's life.

## Lord's Prayer

**Ann-Marie HERMANS** (South-Eastern Metropolitan) (10:01): I also want to mention the petition for the prayer in Parliament. I did not get to speak on it. We only had half an hour to debate. I was on the list but missed out. Of course I support prayer in Parliament. It is a tradition that has been going on for nearly 150 years in this chamber.

## Paris Olympics

**Jeff BOURMAN** (Eastern Victoria) (10:01): One of the things I like about shooting is it is really gender blind and size blind. It does not really matter; as long as you are not blind, basically, you can shoot. I am going to make a bit of a mention in recognition of a lot of the shooters that are out there doing their thing in the Olympics. Most of them are female. We have the trap shooters, Catherine Skinner from Mansfield, who is from Mansfield Clay Target Club, and bronze medal winner – so far our only one in shooting, which is pretty unusual – Penny Smith from Camperdown. The male trap is James Willett. Then we have Aislin Jones from Lakes Entrance, who is a junior from Bairnsdale Field and Game. We have Mitchell Iles, who lives in Carlton. In the rifle stuff there is Jack Rossiter shooting smallbore and air rifle, and a strange one is Caitlin Parker from Dromana in boxing. It is good to see people from my electorate and my interests.

**Bev McArthur** interjected.

**Jeff BOURMAN**: Yes, and yours too, Mrs McArthur. But it is good to see people out there giving it a go on the world stage.

## Surrey Park Model Boat Club

**Richard WELCH** (North-Eastern Metropolitan) (10:02): I would like to send a very warm thankyou to commodore Garry Bellairs and the Surrey Park Model Boat Club for having me for lunch, for the very warm welcome and for showing me around and letting me try out some of their vessels. The craftsmanship and technology on show when creating these functional scale models is very impressive, and I encourage anyone in the Box Hill area to come down any Wednesday morning or Sunday morning to give it a go.

## Blackburn Lake Sanctuary

**Richard WELCH** (North-Eastern Metropolitan) (10:03): I would also like to shout out to the Blackburn Lake Sanctuary and their launch of the new wetlands regeneration program. The sanctuary is a beautiful part of our local ecosystem, and thanks to the efforts of volunteers it will continue to be so into the future. I wish them all the best at the start of their project this weekend.

## Chinese Cancer and Chronic Illness Society of Victoria

**Richard WELCH** (North-Eastern Metropolitan) (10:03): Finally, I would like to thank Dorothy and the Chinese Cancer and Chronic Illness Society of Victoria. It was great to visit their centre to understand their diverse range of programs and the services they provide to those with chronic illness, including palliative care, social rapport and free home-cooked meals to patients – using produce from

their own garden in fact. Dorothy is a force of nature – an incredibly impressive woman leading an incredibly impressive group. Thank you to Dorothy and her team for all the fantastic impactful work they do in our local Chinese community.

### Country Fire Authority Traralgon South brigade

**Melina BATH** (Eastern Victoria) (10:04): When the Traralgon South CFA volunteer brigade turned up to a vehicle fire this week, little did they know that it would be their own slip-on vehicle that the community's generous donations and the CFA had raised funds for. Yes, there were some recalcitrant people who broke into the Traralgon South CFA, not only stealing their slip-on vehicle but also a whipper snipper, a chainsaw, a leaf blower, a filing cabinet and donations. That is a pretty low act. I would like to say a sincere thankyou to all of those wonderful Traralgon South CFA volunteers and that community that has got behind such a wonderful organisation that continues to protect life and property and serve our community. I also know that when the Minister for Emergency Services receives an application for a grant for a new slip-on vehicle she will be most sympathetic to the loss for this community – the loss of this piece of equipment that served our community so well.

### Country Fire Authority Morwell brigade

**Melina BATH** (Eastern Victoria) (10:05): I would also like to congratulate the Morwell fire brigade, who are having their annual presentation dinner on 16 August. I would like to congratulate all those people who will receive service awards and their supporters. Our CFA volunteers do the most amazing job right across my Eastern Victoria Region, and we are forever in their debt.

## *Business of the house*

### Notices of motion

**Lee TARLAMIS** (South-Eastern Metropolitan) (10:06): I move:

That the consideration of notices of motion, government business, 278 to 511, be postponed until later this day.

**Motion agreed to.**

## *Bills*

### Parliamentary Workplace Standards and Integrity Bill 2024

*Second reading*

**Debate resumed on motion of Jaclyn Symes:**

That the bill be now read a second time.

**Evan MULHOLLAND** (Northern Metropolitan) (10:06): I rise to speak on behalf of the Liberals and Nationals opposition on the Parliamentary Workplace Standards and Integrity Bill 2024. I will state our position and then speak on our amendments.

It is worth considering how we got to this point, why this bill exists and why integrity is a concern for this Parliament. We have a 10-year-old Labor government which from its inception has treated ethics and integrity as things that could be discarded for expediency. This is a government that was born with the whiff of scandal and continues a decade later to be defined by rorting and dodginess. From red shirts to big rorts, when the history of this Labor government is written it will be a case study in the misuse of taxpayer funds for political ends.

I strongly recommend that all members take the time to read the words of my colleague the member for Malvern in the other place on this bill. He gave an excellent history of the Labor Party's greatest hits, from Mr Nardella's caravan to former minister Herbert's doggy chauffeur service, a former Speaker's Queenscliff home, the phantom members for Ringwood and South Barwon, the member for Mordialloc's stamp collection and of course Labor's origin story, the genesis, the red shirts scandal, where they fought every step of the way, all the way to the High Court in Canberra, to hide the truth.

This Labor Party stole over $388,000 from taxpayers, which was forced to be repaid – for shame! We stand here looking to restore integrity and trust in the Parliament because of a decade of Labor's rorts and misbehaviour.

As the member for Malvern outlined, this bill seeks to establish a Parliamentary Workplace Standards and Integrity Commission in legislation to investigate allegations of parliamentary misconduct and public interest complaints referred from IBAC. It also seeks to establish a Parliamentary Integrity Adviser in legislation. This is a role that already exists, but the bill will strengthen the role and position. The bill also seeks to establish a Parliamentary Ethics Committee in legislation to foster an ethical parliamentary workplace through the promotion of the members code of conduct and other obligations in the Parliament and in the community.

The first question that must be looked at is how the role of commissioner is to be appointed. Labor's original plan was a simple majority of the Integrity and Oversight Committee, which would of course be stacked with Labor MPs to make sure a Labor mate got the gig – a legislated wink and a nudge. They then tried to propose a two-thirds majority, which again failed to address the fact that this commission and the commissioner are not creatures of the government, they are creatures of Parliament and therefore must be endorsed by both sides of politics – all sides of politics – in this place and the other place. The system is about trust and must start from a position of mutual trust within the Parliament. I am pleased that the government has seen the light on this and has agreed with the Liberals and Nationals that the appointment of this commissioner must be unanimously agreed to by the Parliament's committee.

One issue that still does exist where we are seeking to amend the legislation is around the disqualifying terms for a candidate for commissioner. As it stands, a candidate is ineligible if they, in the last five years, have been a member of the Australian Parliament, a councillor of an Australian local council, a member of a registered political party or registered on the register of lobbyists. Candidates are already disqualified if they are a candidate for election to a Parliament or to a council. We do not believe that five years is good enough. Given Mr John Setka resigned form the Labor Party in 2019, technically, under this bill, he could be a candidate. As the old saying goes, Caesar's wife must be above suspicion, so we are seeking to amend this to 10 years to put this above reproach – a decade – and to ensure the candidate is completely removed from the fray of politics. For context, 10 years ago, in 2014, the number one hit on the ARIA charts was Pharrell Williams's *Happy*, and it would make the opposition very happy if the government and the chamber would agree with us on this integrity measure.

Our final amendment is around the appointment of an acting commissioner. Any acting commissioner can be in the role for up to a year – six months, with the option for renewal – so they have the real potential to make a big impact in the role. Under Labor's legislation, though, our Integrity and Oversight Committee only needs to be consulted, whatever that means. We know through countless stakeholder groups that they are always consultold by this government, so the Integrity and Oversight Committee only really needs to be consultold about an acting commissioner, who has all the same powers as the commissioner, who requires a complete consensus. This is completely unacceptable to the Liberals and Nationals. This bill allows for there to be up to three commissioners, including a chair. How on earth is it acceptable to this chamber that a commissioner appointed through due process and with the unanimous consent of members of the committee could be rolled and overruled by two Labor mates who have been appointed with no due process and no oversight and who would then wield enormous power over the perceptions of integrity and trust which the Victorian public hold this place to? This amendment is about closing a loophole, really. We have worked closely with the government around commissioners being unanimously appointed by the Integrity and Oversight Committee, but a loophole exists where the government could appoint an acting commissioner to the role to stack out the commission. We do not think that is right, and this amendment is about closing that loophole to ensure integrity in the entire process.

There is another issue in this bill that must be addressed. The Premier in her second-reading speech mentioned the integrity of the Westminster system, so it would be good if the government actually

respected it. Under the Westminster system of government we are all members of Parliament. In addition to that, some members are fortunate enough to be called to higher office as members of the executive, and ultimately the executive is beholden to the Parliament. I believe there might be some movement on this, but that position has not quite landed yet. Under Labor's bill, members of the executive – ministers and parliamentary secretaries – are potentially able to access support for legal assistance in relation to dealing with complaints made about them in their capacity as a member of Parliament through the Victorian Managed Insurance Authority. This support is not available to backbench members of the government, not available to the opposition or shadow cabinet members and not available to the crossbench.

We have a two-tiered system that is completely unfair: some members, just because they so happen to be ministers or parliamentary secretaries, get their legal costs covered for this process. That is a two-tiered Parliament. That is something that is completely unacceptable to us, and I know that is something that is completely unacceptable to many of the government backbenchers as well, so we are continuing to work through with the government to land a position. Where a complaint is about a member's conduct as a member, legal advice and support should be available to all or none. This is not us simply saying we want coverage. This is saying that the access point should be equal to all. We accept that this support would be available to ministers and parliamentary secretaries only when the complaint about them is in relation to their capacity as such. But again, this process has not been finalised so our position on the bill will remain unresolved until that issue is finalised and the government sorts it out.

I hope they are sorting it out. I have to say the conversations have been amicable and respectful and there is a lot of work that has gone on on both sides into making this a reality. There are good people working together, and I want to thank my colleague Michael O'Brien for all the work that he has done, but I know there are many on the other side that are working together to get an outcome for the whole of Parliament, because if we cannot resolve this issue, I know there are plenty on the government backbenches that will be quite frustrated that there is a two-tiered system in terms of legal costs. We are working hard to make a system that has integrity, that has a level playing field.

The operation of the bill is as follows: it will set up an independent commission, and the commission will be open to complaints from all. The commission will have the power to refer complaints on to more appropriate agencies such as Victoria Police, IBAC, the Ombudsman or others as needed. One aspect that I am sure that members who have spent time in their electorate offices – so not all members – will agree is important is the power contained in this bill for the commission to decide not to continue with a complaint where it is clearly trivial, frivolous or vexatious or it lacks substance. This is important because sometimes there are complaints that lack rigour and substance. That is a fact. We cannot have a situation where members have to respond to complaints that are without basis, and the Liberals and the Nationals believe it is appropriate that this bill does contain safeguards in that regard and that complaints can simply be dismissed. We see it in the political theatre all the time. There might be a contentious policy issue that a particular party do not agree with and they will throw around allegations of corruption or misbehaviour or something lacking integrity. The threshold really needs to be high. If this is to work for all of the Parliament, we need to make sure that they are legitimate complaints, that they are not vexatious, because that will take the micky out of the whole process.

After an investigation, which is the third avenue available after referral and dismissal, the commission can determine whether parliamentary misconduct has occurred, and there are varying levels of seriousness to the misconduct. Outcomes can be as simple as a public apology or mediation and meetings with the affected person. The commission can also order the withdrawal of services, the removal of access to certain facilities or other personal restrictions relating to the functions of an MP. If the finding is of serious parliamentary misconduct, the report goes to the Privileges Committee of the relevant house, and the committee may then make a public finding, which we welcome as a piece of transparency. Indeed this new process of an independent commissioner, rather than in-house

dealings with the Presiding Officer and Privileges Committee, does really increase transparency overall, which can only be a good thing.

Sunshine, they say, is the best form of disinfectant, and we have seen that, over the last decade of Labor MPs, it is going to take a little more than a bottle of Glen 20. Other measures worth noting include a Parliamentary Ethics Committee. It is a welcome show of good faith and transparency from this government that the committee will be legislated to not be government controlled. I explained the amendments before, but I might ask that they be formally circulated if they have not been already.

**Amendments circulated pursuant to standing orders.**

**Evan MULHOLLAND**: As I was saying before, our position is still unresolved on this bill, and hopefully the government is working hard on some final details so that we can get a good outcome. I know that there is a lot of distrust in the community. They see things like members being booted out for bad behaviour and allegations thrown around the Parliament and they cast it over all politicians – they do. They see South Barwon or Ringwood. They see us yelling at each other, and they cast it over all politicians. That is just not true. Most politicians come in here with integrity, wanting to work hard and wanting to do right by their constituents. There are good people on all sides. Hopefully this is an example where people can work together, the majority of politicians can work together, in good faith to get a good outcome on restoring integrity in this place. A tough cop on the beat can only be a good thing after all the behaviour we have seen over the last 10 years, and we look forward, hopefully, to the commission and the commissioners holding all members to account for their behaviour.

**Sarah MANSFIELD** (Western Victoria) (10:23): The Greens commend the government for finally bringing an integrity bill before this house, because if there has been a single theme emerging from all the non-government business in this place during the 60th Parliament, it has been a common desire to push through some integrity legislation this term. Note that private members bills strengthening aspects of the Victorian integrity framework have passed this house only to be immediately blocked by the government in the other place. We are genuinely excited that there may finally be some progress from the government to strengthen political integrity rather than continuing to block all attempts to raise standards. An unfortunate characteristic of stronger governance and integrity standards is that as a general rule they are only introduced retrospectively, after instances of serious misconduct and scandal are exposed and where extensive media coverage forces otherwise insouciant leaders to finally act. Leaders, whether in government, in corporations or on boards, are naturally reluctant to proactively improve governance and integrity standards, believing that doing so will invariably mean placing themselves under greater scrutiny. Sadly, this was the case with this bill introduced by the Labor government.

Here I want to recognise the efforts of my colleague Dr Ratnam, during the previous term, who sought to move amendments to create an office of a parliamentary integrity commissioner proactively, which were blocked by the Andrews Labor government. We cannot be sure whether if Labor had not blocked establishing this office back in 2019 it would have helped prevent some of the many serious cases of misconduct and allegations of corruption and appalling behaviour that finally led to the government reversing its position now, some five years later. While nearly all of these allegations since this time have been made against Labor ministers, parliamentary secretaries and MPs, the Greens take no partisan pleasure from this fact, because we know that it does not matter which side politicians come from. As Mr Mulholland has just pointed out, poor behaviour ultimately ends up meaning all of us get tarred with the same consequence, which is a growing perception of mistrust, cynicism and contempt from the public towards politicians. Those of us who are trying to do the right thing to make a positive difference by engaging and representing our constituents lament how the poor conduct of a few makes all of our jobs even harder.

At its essence the bill provides a means to make complaints of parliamentary misconduct against members of Parliament to a newly established independent workplace standards and integrity

commission, a process for the commission to investigate and report on these complaints and finally a process for the commission or Parliament to impose sanctions if necessary.

I am not going to go into the specific details of all the aspects of this bill, as this has been very well done already in other contributions on this bill in this place and the other place. However, we note that the government has genuinely and broadly engaged across the Parliament and beyond in developing this bill. While many of the aspects of this bill we commend and support, particularly in regard to matters relating to improving workplace behaviour, we do take exception to the claim made in the second-reading speech that this bill will promote:

> … the highest standards of accountability, integrity and behaviour of all Members of Parliament … including Ministers and Parliamentary Secretaries.

Now, 'highest standards' is a superlative. For this statement to be true, there must be no higher standards of accountability, integrity and behaviour which we could reasonably raise through this bill. We know that this bill falls substantially short of holding parliamentarians and the executive to the highest possible integrity standards. It does not implement all of the recommendations of IBAC's Operation Watts report, and it selectively implements other recommendations, overlooking some of the stronger measures. It does not address the significant weaknesses in IBAC's jurisdiction, it does not fix the enforcement of ministers and staffers codes of conduct, it does not legislate for rules for political lobbyists, it is silent on the government's refusal to comply with standing orders regarding the claiming of executive privilege and it does not strengthen parliamentary committee oversight functions. To put it bluntly, while this bill is a step forward in terms of upholding higher standards in workplace behaviour by members, it still leaves the overall integrity standards required by members and ministers in Victoria light-years behind those required in other Australian jurisdictions.

The Greens have a number of amendments we believe are within the objectives of this bill to fully implement the recommendations of relevant integrity reports and hold members and ministers to the highest standards, as is claimed in the bill's second-reading speech. Under the standing orders, I request kindly that those amendments now be circulated.

**Amendments circulated pursuant to standing orders.**

**Sarah MANSFIELD**: My amendments 1 to 10 provide the commission additional powers to further investigate and report should a member fail to comply with a sanction previously imposed upon them. This includes the commission being able to make a finding that noncompliance constitutes serious parliamentary misconduct, effectively upgrading its initial finding.

The Operation Watts report also contains significant discussion on the current problems and ineffectiveness of the privileges committees in investigating MP misconduct and recommending sanctions. Recommendation 3a of the Watts report is unambiguous:

> the privileges committees of each House be reformed to dilute the capacity of the majority in each House to determine the privileges committees' priorities and decision making

The privileges committees are proposed in this bill to play a meaningful new role in relation to the commission's reporting and investigatory functions. It is very strange, to say the least, that recommendation 3a will not be acquitted by this bill, particularly as the government's response to the Watts report stated that they would bring legislation to reform the privileges committees before the Parliament. My amendment 18 will acquit recommendation 3a of Operation Watts and the government's own commitment to reform privileges by amending the Parliamentary Committees Act 2003 to provide that not more than half the members of the respective Privileges Committee in each house be members of a political party forming the government and that the chairperson of the Privileges Committee must not be a member of a political party forming the government.

Finally, my amendments 11 to 17 propose to ensure that the chair and composition of Parliament's investigatory committees are likewise sufficiently independent from the government of the day. This is particularly important for the Integrity and Oversight Committee, which is proposed to have

significant additional oversight functions of the Parliamentary Workplace Standards and Integrity Commission in this bill, including a veto power over the minister's proposed appointment of a commissioner. However, we note that other investigatory committees under the Parliamentary Committees Act have the same functions and responsibilities as the IOC, including veto powers over ministers' appointments to independent integrity agencies, including the Public Accounts and Estimates Committee's veto of proposed appointments of the Parliamentary Budget Officer and PAEC's direct appointment of the Auditor-General under the Constitution Act 1975. For these legislated veto functions to provide a legitimate check on partisan appointments by government ministers, the membership of these committees must also be sufficiently independent of the government of the day.

What is more, we have witnessed ongoing examples of blatant partisan conduct by government members on these government-dominated committees where the primary objective seems to be to shield the government and the executive from proper scrutiny and oversight. Some government members have quite literally pulled the plug on the working of committees to ensure that uncomfortable facts and criticism of the government and ministers are not heard. It simply defies logic that the bill recognises this inherent problem of government-dominated joint committees in the proposed new ethics committee, yet it fails to fix exactly the same problem in all the other committees. The Greens strongly believe that it is this failure of Parliament's investigatory committees to provide proper, rigorous oversight of government policy and legislation which has contributed in large part to Victoria's reputation as the national capital for political scandals, corruption and misconduct as well as poor planning and decision-making, leading to regular cost blowouts and cancellation of major projects.

This is not a partisan criticism of this Labor government. Regardless of who is in power, this pattern will not end until there is proper oversight of the state government of the day. The second-reading speech said that this bill was about upholding the highest standards of integrity; it did not say doing the barest possible we can get away with. The Ombudsman called Victoria the national laggard on integrity. The Centre for Public Integrity rightly points out that Victoria has the weakest and least democratic parliament in Australia. The bill, unamended, does not change these facts. The endless scandal after scandal, the budget blowouts and the subsequent time wasted in this place as we have to have a political fight every time as to whether to create another new committee to investigate these things could all be prevented to a significant degree if we just got our Parliament's joint investigatory committees to finally start doing what they are supposed to be doing, and that is properly scrutinising, not shielding, the government of the day. Today we have the opportunity to say enough is enough. Victorians deserve the highest standards, and this means passing this bill with our amendments.

**John BERGER** (Southern Metropolitan) (10:34): Today I rise to speak on the Parliamentary Workplace Standards and Integrity Bill 2024. In doing so I want to emphasise the importance of what we are doing. It has taken time because we knew we had to get this right, and we want to get this right because this is important to all of us. The bill is wide ranging and makes consequential amendments to many acts, including the Independent Broad-based Anti-corruption Commission Act 2011 – the IBAC act; the Judicial Commission of Victoria Act 2016; the Local Government Act 2020; the Ombudsman Act 1973; the Parliamentary Salaries, Allowances and Superannuation Act 1968; the Public Administration Act 2004; the Racing Act 1958; and the Victorian Inspectorate Act 2011.

This bill has 182 pages and, on top of that, has an explanatory memorandum 73 pages long, because we are doing this right. We are doing this to deliver on our commitment to introduce legislation that strengthens the standards of the Parliament and the integrity regimes of Victoria's Westminster system of government, which will critically bolster the integrity of the parliamentary standards for workplace accountability and behaviour both within the chamber and in our activities as representatives in the community. Victorians should have a strong expectation that their Parliament operates with the highest standards of accountability and integrity, and that is what this legislation will do.

Every workplace should be a respectful and safe environment, whether it be a shop, a hospital, a construction site or of course this Parliament. The Allan Labor government is therefore acting on recommendations from IBAC and the Victorian Ombudsman's report on Operation Watts, ensuring parliamentary standards are in line with community expectations. We will be doing this by first establishing the Parliamentary Workplace Standards and Integrity Commission, enshrined in legislation, to investigate allegations of parliamentary misconduct and to investigate public interest complaints referred to it by the Independent Broad-based Anti-corruption Commission. This bill will also establish a Parliamentary Integrity Adviser to provide confidential advice and training to members of Parliament and ministers, including parliamentary secretaries. The bill will establish a Parliamentary Ethics Committee in legislation to foster an ethical parliamentary workplace through the promotion of the members code of conduct and members' obligations to the Parliament and the community. These bodies will ensure that our workplace is a safe and respectful one while ensuring public confidence and trust in our activities as elected representatives.

The crux is establishing the Parliamentary Workplace Standards and Integrity Commission, which is critical to a 'no wrong door' approach to reporting and investigating misconduct. The commission is accountable to seven fundamental principles which are key to its effective functioning. These are: integrity, independence from political bias or influence, effectiveness, accountability, transparency, respect, safety and fairness. Critically, the role of the commission is to provide an independent and clear mechanism through which reports of misconduct can be made and delivered. Where appropriate the commission may refer the matters to bodies that already exist with jurisdictions over a subject matter. We will have this commission established this year. It will commence operation on 31 December. With $11.9 million set out in the latest budget to support its establishment, this does not include a further $3 million each year going forward to support its operations, which itself is on top of a $8.52 million investment from this government into parliamentary services to support the implementation of Operation Watts recommendations.

In creating this commission it is important that we centre confidentiality and safety in reporting while deterring vexatious complaints and weaponised political attacks. That is why we are ensuring its independence, with the Integrity and Oversight Committee of Parliament monitoring, reviewing and reporting to both houses on its activities and performance as well as having the Victorian Inspectorate for independent oversight of the commission, holding responsibility for ensuring its compliance with procedural fairness and receiving complaints and investigating conduct with the commission and its representatives. This commission allows for those impacted by misconduct in parliamentary workplaces to accept anonymous reports where otherwise individuals or bodies may hesitate to disclose for fear of consequences, and the commission will be able to handle any reports of this nature made from the time of its establishment.

The commission will be comprised of three commissioners, one full-time acting as chair and two that can be appointed on a full-time or sessional basis. This is derived from one of the key elements of the Jenkins report, citing the need to have commissioners with the right skills to deal with inappropriate workplace behaviour and to improve culture. These commissioners will have the authority to receive and address complaints about members of Parliament, ministers and secretaries about parliamentary misconduct. The bill has clearly defined parliamentary misconduct in ways to ensure accountability, integrity and respect in all activities of a member. They include a contravention of the MPs code of conduct, which has, additionally, within this bill been defined to foster a direct obligation on MPs to ensure a respectful and safe workplace and a demonstration of respect for parliamentary standards and integrity; wilful, repeated or deliberate contravention of the members register of interests; wilful, repeated or deliberate use of work-related parliamentary allowances; wilful, repeated or deliberate misuse of electoral office and communication budgets; and inappropriate parliamentary workplace behaviour, including bullying, harassment, sexual harassment, discrimination, victimisation and occupational violence or aggression.

In the case of ministers or parliamentary secretaries, specifically pertaining to their role, parliamentary misconduct is defined as inappropriate parliamentary workplace behaviour, as I have just described. 'Serious parliamentary misconduct' has been defined in this bill as parliamentary misconduct that can be the best described as intentional, wilful or deliberate, occurring frequently or which forms part of a pattern of behaviour or that is serious enough to provide reasonable grounds for a member having to vacate their seat. The commission will have the capacity to refer matters to other appropriate bodies if it is deemed necessary. Criminal matters are expected to be referred to Victoria Police and alleged corruption to IBAC, in line with community expectations. We are centring the needs of victim-survivors by ensuring that the commission does not limit their reporting to other bodies if it has already been reported to them.

This bill has been designed to ensure efficient dispute resolution, minimising formality and facilitating early confidential resolution in appropriate situations. Complaints can be deemed appropriate to be managed through this dispute resolution process at any time in order to achieve that goal as an alternative to conducting an official investigation. If a complaint is regarded to have insufficient evidence to warrant a response, the commission will be required to dismiss it, protecting these processes from being weaponised for political motives. Furthermore, the commission will have the discretion to dismiss any case they determine to be unreasonable and lacking in substance, including vexatious or frivolous complaints.

To reinforce the fact that the commission will not act on politically motivated cases, they will be required to publish guidance on how they come to a decision of dismissal. Any person who provides false or misleading information to the commission can face penalties of up to 12 months imprisonment under this bill. If the commission finds that no parliamentary misconduct has occurred in relation to an investigation, the relevant member or minister will be able to express a preference. It will be up to them as to whether they would like the matter to remain confidential or for it to be brought to Parliament.

This commission has a myriad of provisions and powers to investigate and deal with cases of misconduct, and as such it is critical that there are strict consequences for any attempt to abuse the mechanisms for political gain. If the commission elects to pursue an investigation on a matter, the bill will provide it with the appropriate powers to gain information with consideration to procedural fairness. If a current or former member who is party to an investigation refuses to comply with a reasonable request of the commission, they can face consequences such as the closing of an investigation and sanctions for noncompliance akin to those applied to serious parliamentary misconduct and the reporting of noncompliance to Parliament, which then can be referred to the Privileges Committee to investigate, as would any case of breaching parliamentary privilege or helping to facilitate any motion of contempt against a member to be passed. This holds members accountable to the reasonable investigation process of the committee, further ensuring integrity of its activities.

Following the finalisation of an investigation the committee will prepare a report for the Privileges Committee, or in the case of inappropriate workplace behaviour of a minister or parliamentary secretary, to the Premier. They will in turn be required to table those reports in Parliament unless it is determined not in the public interest by the commission itself. If sanctions for serious parliamentary misconduct or failure to comply with an investigation request are recommended by the commission's report, the Privileges Committee must invite the implicated member to provide a written response to the sanctions, ensuring procedural fairness at all points of the process. Any sanctions determined by the Privileges Committee or the Premier that are at odds with the commission's recommendations must be justified in these reports. These provisions will ensure transparency and procedural fairness in any consequence administered following an investigation of both public and parliamentary complaints. Confidentiality requirements through this bill act to protect the referrer of a complaint and investigated parties in the process of an investigation, and the bill creates an offence if the commission knowingly releases information pertaining to an investigation without the authority to do so.

This legislation will establish the current Parliamentary Integrity Adviser role in legislation as an independent officer of Parliament. The integrity officer will be able to give confidential advice, written or verbal, to members of Parliament who seek that advice on a range of complex integrity and ethical issues. Continuing that confidential training and advice to members is crucial to building a safer and more respectful workplace.

Supporting that will be a new Parliamentary Ethics Committee, which this bill establishes as a joint house committee. In that nature it will comprise an equal number of members from each house of Parliament, and then the number of government members will be limited to no more than half, with the requirement of a non-government member on board. The ethics committee will play a role in the appointment of the aforementioned Parliamentary Integrity Adviser, ensuring and upholding the principle of integrity and independence from partisan politics. This sets out a model consistent with Operation Watts, where the ethics committee can promote the MP code of conduct in Parliament and monitor the effectiveness of such activities.

Given the scale and scope of this legislation it is appropriate that there is a review of its operations. Every two years from the bill's coming into effect a statutory review will take place. This will allow all those with an interest in the legislation to provide feedback, making clear what is working well and where the bill could be enhanced, with strong accountability and strong oversight and a sound reporting and compliance structure drawn from consultation and from recommendations from Operation Watts.

This legislation sets out an overhaul of workplace standards. As I say with most bills, we consulted widely, and you can imagine why, with a bill like this, it is vital. So what stakeholders were consulted? The bill has been informed by consultation, and that consultation was extensive and we engaged with a wide range of stakeholders. That includes government and non-government MPs. It includes our integrity agencies. Acting President, you may know it includes our Presiding Officers, clerks of the Parliament and current Parliamentary Integrity Adviser Professor Charles Sampford, someone I am looking forward to meeting one day. And of course we also consulted with one of the experts in public office across the law, workplace standards, human rights, equal opportunity and gender equality.

At the end of 2023 and again from March to April this year we consulted with the following bodies: IBAC; the Victorian Ombudsman and Victorian Inspectorate; the Privileges Committee; our compliance officers and the Integrity and Oversight Committee; the Department of Parliamentary Services; the Victorian Equal Opportunity and Human Rights Commission; the Commission for Gender Equality in the Public Sector; the Office of the Victorian Information Commissioner; WorkSafe Victoria; the Victorian Auditor-General's Office; the Victorian Independent Remuneration Tribunal; the Accountability Round Table; the Centre for Public Integrity; the Victorian Trades Hall Council; the Community and Public Sector Union SPSF branch, which I note is doing fantastic and diligent work representing electorate officers and Parliament staff in Victoria, and I encourage all staff to become members; the Office of Public Prosecutions; the Supreme Court of Victoria; and Victoria Police. The reality is most stakeholders supported the features of this bill, and we thank them for their input. We thank them for their help and their assistance in getting it done. I note they include integrity agencies, who typically agreed that the bill acquits relevant recommendations from Operation Watts, but we will continue to collaborate closely with stakeholders.

We will work right across the aisle to support the passage of this bill through this place and the other to ensure that entities that are established can operate as intended. The Allan Labor government understands the importance of strong parliamentary standards and integrity, and that is why we are bringing these standards up to community expectation. Everybody deserves to feel respected and safe in a workplace, and Parliament is no exception to that. The establishment of strong oversight, upheld by the commission, built in the spirit of and with recommendations from Operation Watts and the joint ethics committee comprising all sides of politics, sets out clearly the Allan Labor government's commitment to integrity. We know current arrangements are inconsistent and inadequate in contrast

to other workplaces, and that is why we are getting this done. I hope today the whole chamber will join to support this important bill.

**Georgie CROZIER** (Southern Metropolitan) (10:49): I rise to speak to the Parliamentary Workplace Standards and Integrity Bill 2024, and I do so to make a few points following my colleague Mr Mulholland's contribution on this important matter that we are debating today. My colleague in the other place Mr O'Brien has eloquently spoken on this issue in his contribution. He has laid out what the genesis of this bill is all about, and of course we know and the public know what it is all about. It is about the unfortunate and very undignified behaviour of some MPs. They have conducted themselves in a way that is not befitting and not appropriate, and for members of Parliament standards should be much higher. I am talking about a number of Labor MPs – a former Speaker and Deputy Speaker in the Legislative Assembly – who disgracefully rorted taxpayers money. A former minister used his taxpayer-funded ministerial car to chauffeur dogs around – his pet dogs, no less. Extraordinary. We have seen through many years –

**Evan Mulholland** interjected.

**Georgie CROZIER**: That was Mr Nardella supposedly living in a caravan, yet no-one ever saw him in the caravan park. He rorted taxpayers money, Mr Mulholland. It is extraordinary. We saw through the red shirts saga that unfortunately the public did not understand the extent of what that meant. We just listened to Mr Berger talking about integrity – there was no integrity with what went on with the red shirts and the disgraceful abuse of taxpayer-funded money under Labor. A Labor Speaker of the Parliament, a Labor Deputy Speaker, a Labor minister, Labor MPs and ministers were involved in red shirts, and now we have got two Labor MPs sitting on the backbench because they have been booted from Labor in this term of Parliament because of their conduct. I am saddened that we have to be speaking to this bill, but that is the genesis of it.

Can I remind members that Operation Watts was a referral from this house by the Liberals and Nationals to look into that rorting by Labor MPs. So it is in the culture of Labor to undertake these issues, and it is extraordinary to hear the words come out of Labor MPs to even speak about integrity. They really need to take a good hard look at themselves and understand what integrity means – it certainly does not mean ripping off the taxpayer, which they have done. If we look at the recent allegations around CFMEU misconduct – and the close associations of that rorting of taxpayer money with ghost shifts, overblown budgets, kickbacks and a whole range of things – the government is not serious about that rorting either. But I digress from the importance of this bill.

What this bill will do is respond to a number of recommendations that the Independent Broad-based Anti-corruption Commission, IBAC, and the Victorian Ombudsman made in Operation Watts, the joint investigation by those two important agencies into the misbehaviour of various Labor MPs and their misuse of public resources. As I said, that investigation was actually instigated by the Liberals and Nationals, and I am pleased to say that we took it seriously, and that is why the matters were referred to these important agencies. There were 21 recommendations as a result of that, and there are a number of those recommendations that the government is acting upon. In Mr O'Brien's and Mr Mulholland's contributions they talked about how the actual commission will work, what the bill intends to do, how the commission will be set up and what it intends to do to be able to take complaints around bullying, sexual harassment and misconduct – all of those serious allegations and obviously the misuse of taxpayer-funded money – in our roles as MPs.

I have got to say when this bill was first drafted and came to the opposition, there were many flaws in it. It has taken a long time to get to this point where we are debating it in this house today, and there are still issues with it that remain unresolved. I have to commend my colleague Mr O'Brien on the work that he has done – considering where the bill started from – in pointing out the issues around the inconsistencies in the bill and the issues that we still strongly believe in, and I will come to one of those in a moment.

But it has come a long way, and that is as a result of not only the opposition but other crossbench members who have also given feedback and had input into what they consider to be important. I want to commend the Greens for their efforts in this too, and I know that they have put a number of amendments. One of those amendments is to look at the seriousness of the nature of misconduct being elevated, if need be, and that is entirely appropriate. However, there are some concerns around what we do see as an unlevel playing field in relation to legal representation should an MP's complaint go to the commission. While ministers have a legal defence or legal support from the Victorian Managed Insurance Authority (VMIA), every other member of the Parliament does not. So that is a concern to us. That is not fair.

If you look at it, while we are talking about this, it was the officeholders of the highest order in this place, the Speaker and Deputy Speaker, who actually rorted the system in the most disgraceful manner – ministers abusing taxpayer-funded money through chauffeuring dogs in their taxpayer-funded cars. They would essentially have support with legal representation, whereas if anyone else had a complaint against them and were seeking for it to be put forward before the commission, they would have to pay their own legal fees. That is not fair, and that is not right, given the nature of what has gone on. Let us not forget the red shirts rorts, which was cooked up by the former Premier Daniel Andrews and a bevy of ministers who were involved in that red shirts scandal. Why should they have legal representation if a complaint like that comes before the commission yet again? Acting President Galea, you as a backbencher would not have that legal support, and I think you, like me, are quite concerned about that, as you probably should be. I do not want to put words in your mouth, but I am sure, by the look on your face, that quite rightly there are concerns around this issue. As I said, I do not want to put words into your mouth on that, but I am just looking at your expression, because –

*Members interjecting.*

**Georgie CROZIER**: I apologise, Acting President. I do not want to reflect on you, but it is quite a serious matter and we do need to get this right. The point is I think we need to get it right on behalf of all MPs, and that is the point that Mr O'Brien has very much been in dialogue with the government over for many, many months around this issue, and it is one that is a sticking point for the Liberals and Nationals.

There are a range of other things that the commission may be able to do should such a complaint come before them in relation to what they may be able to do. They may direct a referral at any time to a specified entity where more appropriate, such as an integrity body like IBAC; the Ombudsman; a law enforcement agency such as Victoria Police if there was a very serious complaint made about an issue; a prosecutorial body; the Victorian Equal Opportunity and Human Rights Commission; the coroner; the Privileges Committee; or the Presiding Officer of a house, either the Speaker or the President, as we can do now. Of course we can also do that with the Privileges Committee, a very important committee of this Parliament and a committee that needs to uphold its independence and be able to do the work that it needs to do in the interests of what the Parliament is here for on behalf of the Victorian community and to be able to hold that important position. The commission may also redirect a referral to a person or body with an appropriate public or official function and a prescribed person or body, as outlined in clause 14 of the bill.

The other issue in relation to anything around these referrals from the commission is that they have got to be done as expeditiously as possible and with as little formality as is appropriate, meaning that you do not want a complaint that has come before, say, an MP to be hanging around. If this body is set up, then that complaint needs to be dealt with. Obviously there could be, from time to time, vexatious complaints, and the commission can look at those and rule them out accordingly, because they diminish the serious nature of some of the very serious complaints that I have referred to that need to be addressed. The commission will be able to rule out any vexatious or minor complaints, and that is why a referral must be acted on immediately or thereabouts.

There is a huge amount in this bill. There has been a lot of discussion around it. There are a whole range of issues in it. It has been a complex matter, and I have to say again that from the outset when the bill was first provided to the opposition, it has come a long way. I am not sure that those issues have been completely resolved as such, but we will find out as the debate goes on. I do not want to be speaking on this bill, to be honest, but we are speaking on the bill. It has come about because of what has happened – the history in this place over recent years. It is those Labor MPs that cannot be trusted, whether it is the rorting of taxpayers money or whether their behaviour has been completely inappropriate and unbecoming to members of Parliament and very demeaning for those that are affected. It is a real shame that I have to be up here speaking about it.

It is up to all of us to understand that the positions that we hold in here as elected representatives of our communities are incredibly important. They should not be diminished; they should be absolutely respected. Unfortunately, as I said, I do not think the community knew the gravity of the red shirts rorts. They bunch us all into this unfortunate area of not being able to be trusted. The community needs to have faith in the process, in the government, in the officials that are the executive of government and in the officials, the department secretaries and those that are actually making decisions on their behalf. It is incredibly important that we uphold those very sound principles around what it means to be in this place.

Unfortunately, the systemic actions of the Labor Party have brought us to debating this bill. It is that simple. That is something that I just cannot get away from, because it is extremely disappointing for the rest of us that have to be caught up in the scrutiny and the strict adherence to what we are expected to do. We should not have to do that; we should just know it. Nevertheless there is integrity that needs to be brought back to this place because of the rorting and the bad behaviour and misconduct by some Labor MPs in recent years, as I have outlined, and this bill goes to restoring that integrity.

**Samantha RATNAM** (Northern Metropolitan) (11:04): I am just going to speak briefly on this bill as the second speaker for the Greens, because I think Dr Mansfield outlined our position very clearly. I also want to thank all members across the chamber for their contributions. I think this was one of those times where everyone contributed something useful and interesting to the debate on the bill, which is always pleasing and especially important for the gravity that this bill brings to this house.

Back in 2019, on behalf of the Greens, I did move amendments to a government bill titled the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019 to create the office of parliamentary integrity commissioner with investigation and reporting powers with regard to members conduct – very similar to what has been proposed in this bill today. Even back then I think we all knew it was obvious that we needed an independent commissioner if we were to lift the standards of behaviour of MPs. Certainly the former Leader of the Government in this place Gavin Jennings was a big proponent of establishing a commissioner, but his plans were blocked by the former Premier and Labor also ended up voting against our amendments.

As we now know, the government's improving Parliament standards bill of 2019 did not improve the conduct of members of the Victorian Parliament. I am not going to go into all of the allegations and scandals one by one. Suffice to say, if anything, member standards actually appear to have steadily regressed the passage of that bill, so I certainly regret the fact that a commission was not established half a decade ago, and it would be really interesting to know if the former Premier too now regrets that he blocked establishing a commission back then given subsequent events. I bring up this history not in order to gloat or to say to the government 'We told you so' but because I think it provides an example of the important point my colleague Dr Mansfield raised, which is that far too much action on improving integrity, governance and standards is implemented retrospectively and only after the scandals have been splashed all across our newspapers, forcing the government to finally act.

When we know that there are objective integrity standards that Victoria is currently failing to meet, that the Ombudsman recently labelled Victoria the national laggard on integrity and when we know other Australian jurisdictions have stronger anti-corruption commissions, more democratic

parliaments, more powerful parliamentary oversight committees, actual laws in regard to political lobbying and more transparent FOI schemes, is it really acceptable for the Victorian government to keep on doing nothing to improve political integrity and block other efforts to do so until it is forced to because of *60 Minutes* running a story on industrial-scale branch stacking or Robert Redlich writing a letter accusing government MPs of improper conduct on committees or persistent complaints of inappropriate workplace behaviour by government MPs?

We have an opportunity with the belated introduction of this bill to actually take some proactive steps to raise standards with regard to Parliament's joint investigatory committees. I urge all MPs in this chamber to support Dr Mansfield's amendments, because we cannot have a situation where this Parliament recognises that government-dominated joint committees cannot effectively undertake their oversight functions and hold the government of the day to account, including the potential veto of government appointments – as this bill recognises in regard to requirements on the make-up of the proposed new ethics committee – while at the same time leaving all the other investigatory committees, such as the Public Accounts and Estimates Committee (PAEC) and the Integrity and Oversight Committee (IOC), which have the same oversight role and the same kinds of veto powers on appointments dominated by government.

For those non-government members who have been talking a big game on improving political integrity; who throw around accusations of government corruption, secrecy and cover-up in every utterance; who call for select committee after select committee seemingly every month; who shrill endlessly about government chairs on committees running defence for ministers as witnesses; and who claim that they are all about shining a light on Labor's largesse and waste, I say to you: here is your moment. Here is your opportunity to have strong, ongoing committees that will be able to forensically examine the performance of government ministers and departmental heads, similar to what we see in the Commonwealth estimates system. Here is your opportunity to hold as many powerful inquiries into government rorts, stuff-ups and cost blowouts as you care to allege. Most of all, here is your opportunity to be able to legitimately show Victorians that you would hold yourself to a higher integrity standard were you to be granted the privilege of forming government in the future. Will you seize this moment, or will you show Victorians that you have no more integrity and transparency than the current Labor government?

Today we all get to see if the state opposition is genuine about improving political integrity in Victoria, fixing the broken system and ending corruption in this state both now and into the future or if it is all big talk on integrity or just theatre. These changes we are proposing will test if the opposition are more concerned with principles or performances. To be or not to be – that is the question for the opposition on Dr Mansfield's amendments. I fear once again they may choose not to be and that the opposition will lose the name of action, as Shakespeare wrote so many years ago.

I have amendments to the bill that effect a weaker change to what has been proposed by Dr Mansfield in regard to reform of the joint investigatory committees by seeking to reform the IOC and PAEC separately as discrete amendments. I kindly ask that these be now circulated, and I will speak more to them in the committee stage.

**Amendments circulated pursuant to standing orders.**

**Jacinta ERMACORA** (Western Victoria) (11:10): This bill will deliver a significant overhaul of parliamentary oversight. It promotes the highest standard of conduct and integrity of all members of Parliament, ministers and parliamentary secretaries. The bill empowers the Parliamentary Workplace Standards and Integrity Commission to independently receive, manage, investigate and resolve complaints about MPs, ministers and parliamentary secretaries. It enables the commission to impose or recommend sanctions where complaints have been substantiated. It provides for the Parliamentary Integrity Adviser to provide confidential advice and education to MPs, ministers and parliamentary secretaries on ethical and integrity matters. This is critical as there can be no place for ambiguity or lack of understanding when it comes to upholding ethical standards.

This bill has been quite unique because there was extensive consultation across the Parliament and with all of the parties over months and months as it was being developed. I do thank the team who worked on that consultation and made the changes in response to the feedback, whether it was feedback from the Liberals or Labor or the Greens or others. That has really made for a better piece of legislation, and I am genuinely interested in the amendments that will be coming forward today and in following their progress. If we look back in history, I would say that both sides of this chamber and this Parliament have had the occasional inappropriate conduct, and I am not going to pass any judgement on any of that history. None of us is really in a position to pointscore in this space, and I do not intend to.

This bill enables the Parliamentary Ethics Committee to monitor the effectiveness of the statement of values and the MP code of conduct. It will promote the MP code of conduct in Parliament and to the community. Critically, it will encourage an appropriate culture at Parliament around workplace standards and integrity by preparing guidance materials and information and training for MPs on integrity and ethical issues. I have to say I did have occasion to google the MPs code of conduct, and it is pretty much still in the legislative format. It is not really like what you would normally see, say, in the public sector code of conduct, which is formatted in a much more accessible and useful and interpreted version, so I look forward to that.

The bill also updates the MP code of conduct to create positive obligations for MPs to ensure a safe workplace and demonstrate respect for parliamentary standards and integrity. This bill is about reinforcing that a safe and respectful workplace is not negotiable. Victorians expect the parliamentary system to operate with the highest standards of integrity and accountability. The current arrangements are inadequate and do not meet the standards of other workplaces, and this bill seeks to remedy that. After all, we should all try to work, to live and to conduct ourselves to the same standards that this place legislates for across our state.

The bill is informed from the extensive work done in the Jenkins report and Operation Watts. Seven recommendations from the IBAC and Victorian Ombudsman report from the operation will be implemented with this bill. This is no tiny piece of legislation. This is perhaps the most significant overhaul of parliamentary oversight in this country. It will see the very first legislated parliamentary investigation commission in Australia and perhaps, most importantly, the only parliamentary investigation commission that covers ministers. This year we will see the commission established, with this bill commencing at the end of December 2024. The commission itself will be an independent body with up to three commissioners appointed. As taken from the Jenkins report, the commissioners will need to have the right skills to deal with any reports or investigations into inappropriate workplace behaviour and to improve culture within the workplace. Just to correct something that was said previously this morning, the skilled commissioners will be fully independent, and a person will not be eligible to be a commissioner if they have been a member of an Australian Parliament, a member of a local council, a member of a registered political party or on the register of lobbyists within the last five years. Commissioners will have skills and expertise in critical areas such as government, law, public governance, industrial relations or public sector ethics and integrity.

The Allan Labor government has ensured that the commission will have the ability to take complaints about the parliamentary conduct of MPs, ministers and parliamentary secretaries. Importantly complaints can be made anonymously by any person to the commission. Allowing anonymous complaints encourages and emboldens people who might not feel comfortable making a public complaint. A 'no wrong door' approach will adopt a positive lean towards that option. This will ensure that all matters are dealt with by the most appropriate integrity body. Adopting this approach also means the commission can receive public interest disclosures regarding current or former MPs, ministers or parliamentary secretaries. These disclosures will be referred to IBAC for assessment. A disclosure that meets the definition of parliamentary misconduct can be referred back to the commission for investigation. Again, I think this is a really important triage process. Just because a

complaint or a disclosure may be lodged does not automatically mean that there will be an investigation; they need to meet a certain standard.

Parliamentary misconduct where it relates to a current MP is defined within the bill as breaches of the MP code of conduct; wilful, repeated or deliberate contravention of the members register of interests; wilful, repeated or deliberate misuse of work-related parliamentary allowances; wilful, repeated or deliberate misuse of the electorate office and communications budget; and inappropriate parliamentary workplace behaviour. These levels of misconduct are not some small thing, and they will ensure that all MPs and ministers are very clear about their responsibilities. Parliamentary misconduct is defined as inappropriate parliamentary workplace behaviour and applies to all current and former MPs, ministers and parliamentary secretaries if such conduct was engaged in whilst they were in their role as an MP, so it can be retrospective but not prior to the start of the bill.

The protection of the rights and wellbeing of all people involved in the reporting and investigation process is paramount. That is why the bill contains appropriate safeguards on the commission's discretion and powers. These safeguards include the commission having the power to issue confidentiality notices to ensure the privacy, safety and welfare of those involved in an investigation. To the best of this bill's ability this will prevent the politicisation of this integrity process. I know that some of my colleagues in the chamber have mentioned concerns about that, and I think it is very important that we acknowledge that.

All investigations will be subject to appropriate procedural fairness and protections. This bill will ensure that the commission will not prejudice legal or criminal investigations or proceedings conducted by other integrity agencies. It provides for a criminal offence for a person providing false or misleading information to the commission, and it refers to vexatious referrals as well. Where a complaint is received by the commission, they will first be required to determine whether or not the complaint is within their jurisdiction or if it is for another more appropriate integrity body. Complaints that relate to conduct prior to the commission being established must be dismissed, which is that reassurance that this is not retrospective legislation. Where a complaint is not supported by sufficient evidence it must also be dismissed, and again this will prevent that misuse of it for political purposes.

Discretion will be afforded to the commission to dismiss a complaint – and I think this is absolutely important – where it lacks substance and credibility; it is trivial, frivolous or vexatious; it has not been made in good faith; it relates to an allegation or conduct engaged in at a time that is too remote to justify investigation; or it is otherwise unjustifiable or unnecessary to deal with. The commission will also have discretion to dismiss any complaint that has been dealt with by another integrity body, a law enforcement agency, an entity with powers to require production of documents or to answer questions or a prescribed entity. The commission will deal with complaints as quickly and with as little formality as possible. Justice is also about swift justice.

As this is an important part of the commission's framework, several avenues will be open to the commission, such as appropriate dispute resolution processes. Dispute resolution will occur when all parties agree to this process. I think that is very important because sometimes in some workplaces, private or public, broadly speaking, the use of mediation inadvertently on occasion has the impact of retraumatising the victim or putting the victim in an unsafe environment. It is sometimes quite naively used in that way, and the management do not even realise. An outcome report will be prepared by the commission at the conclusion of a dispute resolution process, unless it is determined not to be in the public interest to do so.

Any current or former MP that does not comply with the investigation request without a reasonable excuse may be reported by the commission to the relevant house. The commission does not have coercive investigative powers. The commission is required to issue guidelines regarding its function and must outline a person's rights and responsibilities when they are issued with an investigation request. Where sanctions are recommended or required there are several remedies available to the commission, who may directly impose those sanctions. If a complaint is found to be of a serious nature,

improper conduct or detrimental action matters are found to be substantiated, the commission may only recommend a sanction to a relevant oversight entity such as the Premier or the Privileges Committee. Other sanctions may include withdrawal of services, removal of access to certain facilities or any other personal restriction.

Just before I close, I want to say that this bill – as is often the case with a piece of legislation, but not always – is needed because a very small minority of MPs, historically over many previous parliaments a small number, have not conducted themselves according to the traditions, protocol and respect that this place deserves and the rules around the handling of money and conflicts of interest and roles. I would say that on the whole, from my experience in the 60th Parliament, most but not all of my interactions I have noted to be of a very appropriate and respectful nature. This bill is the result of extensive consultation across the political landscape. It is literally the Parliament's bill. Planning has already begun to establish the commission this year, and I look forward to the establishment of the commission and seeing it begin to complete its incredibly important work.

**Sheena WATT** (Northern Metropolitan) (11:25): Thank you for the call today on the Parliamentary Workplace Standards and Integrity Bill 2024. I understand that there are a range of speakers coming to join us in the debate on this bill before us today, so before I continue on with my remarks can I take a moment to say thank you and to acknowledge the work that has gone on to bring it before us today, including the contributions made by members already in this chamber. As I understand it and as has been said, there are a range of contributions and feedback and some really collaborative efforts that have gone into bringing this bill to us today. My thanks to members for those efforts. I too have looked into this bill with great interest and enthusiasm, because as members of Parliament it really is the expectation that we act with the utmost composure and credibility worthy of the offices that we all hold. This bill before us aims to ensure that the high standards of behaviour for all members of Parliament are met. Every Victorian indeed has the right to a safe and respectful workplace free from harm, mistreatment and harassment. Whether you work in an office here or at the other end of the city or indeed anywhere out in our community, can I just say in this place that you deserve to feel safe and secure every day you go to work.

The new Parliamentary Workplace Standards and Integrity Commission will play a key role in examining the behaviour of members of Parliament, ministers and parliamentary secretaries, including bullying, harassment, sexual harassment and victimisation. It also will provide a really crucial avenue for complaints to be heard and investigated through a proper process. There is some honesty that has been shared in this room already. I will continue to say that we know that current arrangements are inadequate, and I too would lend my voice to that and say that there is inconsistency with the standards that we uphold here in the Parliament with respect to other workplaces right around the state. It is our job as community leaders to stamp out this toxic behaviour in any way that we can, and as members of Parliament we must be kept accountable for misdeeds and provide avenues for people to call out really disgusting behaviours that have no place in our community so that we can all enjoy a Parliament and politics that is free from harm, free from victimisation and free indeed from abuse of any kind.

Whilst we all have some very firm views as members of Parliament – and I understand that many members have made some very substantial contributions in the development of this bill – I also think it is worth noting and calling out and providing a vote of thanks to all the people who have helped inform this view by standing up, by being brave enough to share their stories and by calling out bad behaviour when it has happened, when they have seen it or indeed when they have survived it. This bill before us is in part because of your bravery and your stories and your resilience. We are adding more protections to staff and the staff of the future through increased accountability for MPs. Can I also say that I am very happy to report that this bill draws on the groundbreaking work of the Australian Human Rights Commission's Jenkins report, led by Kate Jenkins, whose work would be known to so many of us. It allows for the commission to investigate the behaviour of MPs as well as implementing all seven recommendations from the IBAC and Victorian Ombudsman's report into Operation Watts. This change will be the most significant overhaul of parliamentary oversight in the country and a

welcome change and commitment from this government to the safety and security of everybody in this place.

When an MP's behaviour is not meeting the expected standards, there are a wide range of sanctions that are available to be used either by the commission, by a chamber or indeed by the Premier. If a parliamentary misconduct matter is substantiated, the commission, a house of Parliament or the Premier will have the power to directly impose or recommend sanctions of any of the following – and I think it is worth listing them for the benefit of the chamber. It may be the issuing of a public apology in a manner and form determined by the commission. It may be to give a written apology or explanation to an affected person. It may be to participate in an education or training program determined by the commission, participation in mediation with an affected person, or to enter into a behaviour agreement with the Presiding Officer of the house of which they are a member. It may be a requirement to give a written apology or explanation to an affected person; a requirement to participate in a facilitated meeting with an affected person; withdrawal of services, removal of access to certain facilities or any other personal restriction relating to functions of the minister or parliamentary secretary or member; any other sanction that the commission considers appropriate; and lastly, discharge from a parliamentary committee. These sanctions aim to ensure that when members of Parliament behave badly they can be handled appropriately and managed in a way that keeps up with the high standards and expectations demanded by the Victorian public.

These commissioners will be independent officers of Parliament, similar to the heads of the other independent bodies, like the commissioner of IBAC or the Ombudsman. The bill before us outlines the required skills and experience for commissioners. One that I think is really important includes expertise in public sector ethics and integrity, industrial relations or gender-based violence issues. You see, different kinds of methods can be used to instil really a sense of confidence within the processes of the Parliament, and that is why we are ensuring that these major positions surrounding integrity are not politically motivated. That is why, in order to maintain public confidence and avoid potential conflicts of interest, the bill actually specifies that to be considered for the commissioner role you cannot have held the role of a current or former member of any Australian Parliament, not just the Victorian Parliament – that is an important thing to note there, that it is any Australian Parliament – within the last five years. This is really a simple and practical step to ensuring transparency and accountability for all those in this place.

The Integrity and Oversight Committee of Parliament has been mentioned by previous speakers, and I will just add that that committee will monitor, review and report on the commission's performance to ensure support for proposed commissioners from all MPs regardless of their political party affiliation. This is the most significant parliamentary oversight reform in decades. It is really critical that the reform has broad support and that appointed commissioners have the confidence of all members of Parliament, as integrity and accountability must really be multipartisan. We are the only government in Australia undertaking such ambitious changes to holders of public office. Under the bill before us, the Victorian Inspectorate will provide independent oversight of the commission by ensuring compliance with procedural fairness, monitoring the commission's use of its investigation powers, receiving complaints about the commission and investigating the conduct of the commission and its officers.

This bill is truly designed for true claims – and I think this is important to really examine here – that should be based entirely in fact. No-one wants a parliament wasting its time on politically motivated complaints that have no bearing on real misconduct. The commission will be empowered to dismiss complaints on a range of grounds, including if they lack substance or credibility, are not made in good faith, are unsupported by sufficient evidence or are trivial, vexatious or made on frivolous grounds. The bill also empowers the commission to dismiss complaints if the person who made the complaint has been aware of the alleged conduct for more than 12 months.

The bill also includes confidentiality protections to protect the integrity of investigations and the privacy of people involved in matters. In investigating, the commission will be bound by the rules of

procedural fairness, and we will require the commission, with the bill before us today, to issue guidelines on how it will dismiss complaints, including complaints that are unfounded or politically motivated, as I mentioned before. As I said, we are very much keen to ensure that anyone in this place who wants to weaponise or politicise the work of the commission is very much limited. The bill introduces commissioners as independent officers of Parliament.

There is so much more that I could speak to, but can I take a moment in what few minutes I have got left to talk about the commission and how complaints may be received, because I think it is really important to note that the commission will promote a sort of 'no wrong door' approach for complaints about misconduct and be able to give and receive referrals to ensure matters are dealt with by the most appropriate integrity body. It is fair to say that not all complaints would go through this body – there may be other appropriate integrity and oversight bodies to investigate claims. This includes the commission's ability to receive public interest disclosures about current and former members of Parliament, ministers and parliamentary secretaries. You will see in the bill there are some references to disclosures to IBAC for assessment as a clearing house for public interest disclosures. If IBAC in fact determines that a disclosure is a public interest complaint that meets the definition of parliamentary misconduct, it can refer it back to the commission for investigation.

In relation to any current MP, the bill defines 'parliamentary misconduct' as breaches of the MP code of conduct; wilful, repeated or deliberate contravention of the members register of interests; wilful, repeated or deliberate misuse of work-related parliamentary allowances; wilful, repeated or deliberate misuse of the electorate office and communications budget; and inappropriate parliamentary workplace behaviour. In relation to a person in their capacity as a minister or parliamentary secretary, the bill defines 'parliamentary misconduct' as 'inappropriate parliamentary workplace behaviour'. Parliamentary misconduct applies to former MPs, ministers and parliamentary secretaries if the conduct was engaged in when they were an MP, minister or parliamentary secretary – I think that is really important to note. Parliamentary misconduct also applies to former members of Parliament in their capacity as a former member if it relates to a breach of section 15 of the Members of Parliament (Standards) Act 1978, which applies to former members, who must not take improper advantage of any office held as a member of Parliament after they cease to be a member.

There is more to speak of in this. Can I just say that the commission will have the power to issue confidentiality notices to protect the privacy, safety, welfare and reputation of those involved in an investigation as the circumstances obviously require. It is a step that can protect those wishing to do the right thing. No-one should be punished for telling the truth. People subject to such notices will still be able to seek advice and support as appropriate, and additional investigations will also be subject to appropriate procedural fairness protections. The commission will be mandated to not prejudice legal or criminal investigations or proceedings by other integrity agencies, and it will be a criminal offence to provide false or misleading information to the commission, such as false complaints. I am very pleased to commend this bill to the house, and I look forward to other contributions by members today.

**Sonja TERPSTRA** (North-Eastern Metropolitan) (11:40): I also rise to make a contribution on the Parliamentary Workplace Standards and Integrity Bill 2024, and I am very pleased to do so. This is an important bill. It gives voice to and deals with a number of important issues. As parliamentarians in this place, we should all ensure that we uphold behaviour of the highest standards. This is a workplace. We should all ensure that each of us in here has a safe and respectful workplace.

Our workplace is unique. Obviously, there is rough-and-tumble in here. There is robust debate and the like, but I do think a line can be drawn about that. Sometimes I actually think in here that we do work in a very toxic and hostile workplace. I think there is a line to be drawn. I think sometimes in here that people do in fact cross that line. I will just point out that even yesterday, in my contribution on the motion with the CFMEU integrity inquiry that got defeated, I think I had only been on my feet for less than a minute or so before those opposite were hurling abuse at me – and interjections. Interjections are fine. That is what happens in this place, but excessive interjections are unruly. I think what it does

is raises the level of the debate to where then all voices are raised and we all end up shouting at each other. I think sometimes kinder kids are better behaved.

We need to remind ourselves too that parliamentary proceedings are live streamed, so people can actually see us behaving like this. I sometimes think that some people think it gives them licence to really unleash their true inner self and behave in ways that are not really appropriate or are really nasty, and that is not appropriate. I think it is also good for us just as individuals to reflect on how we conduct ourselves in here as well. Some people will take up that opportunity as a consequence of this bill coming into place, which is a great thing. Others will not, because they love it, and that is a matter for them. But we all bring our whole selves to work, and we need to remind ourselves of that. So as I said, we need to remember that this is a workplace.

The new Parliamentary Workplace Standards and Integrity Bill sets up a commission, and it will have a key role in examining the behaviours of members of Parliament, ministers and parliamentary secretaries, including bullying, harassment, sexual harassment and victimisation. These are things that should not happen in this workplace. Up until now, if you were experiencing those things, it was actually quite difficult to make a complaint or even have it dealt with, because there is actually no process. I think one of the things that is really critically important in any workplace is that there needs to be a process to deal with behaviour – complainants need to be able to come forward without feeling that they may be victimised or intimidated in any way – and a process that can fully ventilate someone's complaint and afford the other person procedural fairness and natural justice in being able to respond to that.

Sadly, I have also seen in this place people make fake allegations and fake complaints about other members, and I think that is disgusting. I really think it is disgusting. I myself, as a former trade unionist, would never, ever make a false allegation about somebody, no matter what I felt about them. It is just not within my personality to do that. I understand that in here, like I said before, we have robust debate and we may disagree on things, but making a fake complaint is really beneath contempt. There have absolutely been examples of that. I myself have experienced it in this chamber this year as well from a number of people. Bullying and harassment absolutely need to be stamped out.

The bottom line – we need to remember and reflect on this – is that bullying or harassing someone or intimidating someone or victimising someone does not change one vote. It does not change a single vote. So then I ask why people think that it is okay to treat each other in that way. Do they think that it is going to force the government into capitulating on something? I really do not know. I really have no idea. But as I said, I think sometimes some people in this place really like to think that it gives voice to their true inner selves, and they are not really pleasant people or people with a pleasant way of operating. As a former trade union official I know that I have been called in to look at workplaces that have been hostile and toxic. Whilst it may not be able to be pinned down to particular actions or processes or whatever, the general culture in a place – I do not want to use the words 'the vibe of the thing', because it kind of demeans what I am talking about, but culture matters. The way that –

**Ryan Batchelor** interjected.

**Sonja TERPSTRA**: Absolutely. It is about how the way that we treat each other within this culture creates hostility and toxicity. That is something that I look forward to in the work of the commission perhaps in the future and further down the track. Whilst they will be looking at our processes and practices there may be opportunities to look further and a bit deeper into the role that Parliament has in the way that we conduct debates.

This bill will strengthen Victoria's parliamentary standards and integrity framework by establishing the existing Parliamentary Integrity Adviser in legislation to provide confidential advice and training to members of Parliament, ministers and parliamentary secretaries. The integrity adviser is already on the beat. You can go to him and ask for advice about any actions that you may take as an individual, and he will give you advice as to whether there are any integrity issues about it.

The bill will also establish a Parliamentary Ethics Committee in legislation to foster an ethical parliamentary workplace. Ethics is a really interesting thing. As a lawyer I have also been trained in ethics. Sometimes people might have different points of view about ethics, but it is not appropriate to come in here and make baseless accusations about unethical practices just because people might think that it is politically expedient to do so. I am sad to say that there has been a lot of rhetoric about corruption, unethical practices and the like that really does not pass the pub test. It is just a way of trying to throw mud at the government and government members as well. I have noticed that government members particularly get singled out, not only by the Liberal opposition but also by crossbenchers who think that they can make baseless accusations about all manner of things. I think that is something that is inappropriate, but it continues to happen, and it goes back to my earlier comments about the way that people think that they can conduct themselves.

There is also just the general tone of making threats to MPs. There were earlier scenes, prior to the break earlier this year, where some MPs stood out the front of Parliament. There was abuse hurled at people, and even threats about retribution that MPs might face because of their particular stance or non-stance on an issue. Really, MPs have a duty and an obligation as leaders in their community to set standards. It is not appropriate to incite people to be in such a state that they might think that it is okay to take steps to threaten or commit acts of violence or even vandalism. We saw this year that MPs' offices were damaged and attacked. These are things that I find particularly disappointing that as leaders in our community some members of Parliament wholeheartedly embrace and think are okay. I think they are disgraceful acts, and we all need to remember that those actions will not change one vote.

Whether I am in here in the Parliament or whether I am in my electorate office or even working in my electorate, that is my workplace. That is my entire workplace, and I would like to think I could go about my elected duties. People like the Victorian public in my region elected me to represent them, and I should be able to go about my duties without feeling threatened, intimidated or like at any moment my electorate office and my staff – quite frankly I take very seriously their health and safety and wellbeing – might have to deal with someone who is completely violent and has come to my electorate office to vandalise or inflict damage on the office. That is something that they need to deal with as well. Again, I urge members in this place to think about the consequences of their actions, because it is not going to change one vote if you vandalise an MP's office – it is just not. So it is also important that this bill will be amending the Members of Parliament (Standards) Act 1978, including updating the MP code of conduct to create positive obligations for members to create a safe workplace and demonstrate respect for the commission and the Parliamentary Integrity Adviser, and amending other relevant acts to integrate the commission and the Parliamentary Integrity Adviser into Victoria's existing parliamentary standards and integrity framework. These are important matters.

Under the bill members of Parliament will have a positive obligation to foster a healthy, safe, respectful and inclusive environment in the parliamentary workplace that is free from bullying, sexual harassment, assault and discrimination. These are the things that I just spoke to previously. These are important, and we can do better. All of us in this place can do better. There is nothing wrong with disagreeing with someone and forcefully putting your views, but there is a line, and like I said earlier, I think in this place that line is often crossed. There are ways in which you can prosecute your view, and like I said, disagreeing with someone is not bullying and harassment. Asking for something to be done in a competent way is also not bullying and harassment. Doing what you are asked to do by somebody and then a person saying, 'Hey, that wasn't what I asked you to do; I'd like you to now do what I've asked you to do' – that is not bullying or harassment. But that goes to what I am concerned about, actually, which is fake complaints. Someone who might be trying to cover up their incompetence on a matter or something they have done will then say, 'Well, I feel like I'm being bullied and harassed now, because I've been asked to do my job.' They are concerning aspects to this bill, but the good thing about that now is that we will have a process that can inquire into these types of matters and get to the bottom of what really happened.

Victorians expect and deserve that their elected representatives behave in ways that basically lead. We are leaders in our community, and we need to make sure that we demonstrate respect for parliamentary standards, including respect for the Parliamentary Workplace Standards and Integrity Commission by complying with a reasonable request made. Again, I will just give an example of what happens in this chamber. Like I said yesterday, interjections are fine, but there is a constant stream of interjections from those opposite, and constant and excessive interjections are unruly. Now, government members – I know Mr Mulholland is smiling – are subject to constant attacks. Like I said, there is a line to be drawn. We can do better and we should.

There are a range of complaints that can be made under the bill, and I have just gone to a range of things that can be inquired into, but under the bill the commission will have jurisdiction to receive complaints about members of Parliament, ministers and parliamentary secretaries and about parliamentary misconduct. A person can make a report to the commission, including anonymously. One of things I get concerned about is that if I raise a concern about a member in this place, the next thing I am faced with is, like, 10 complaints back as a way of me being victimised or the retaliation or retribution that I then face. So this is a good thing. It is a good thing that people be able to make a complaint without fear or favour. The commission being allowed to receive anonymous complaints will encourage people to report misconduct, as I said, without fear of reprisal or potential repercussions. This is important, and this is consistent with recommendations from the Jenkins report and is consistent with complaints to IBAC and Victoria's public interest disclosure scheme.

The commission will promote a 'no wrong door' approach for complaints about misconduct and be able to give and receive referrals to ensure matters are dealt with by the most appropriate integrity body. This includes the commission's ability to receive public interest disclosures about current and former members of Parliament, ministers and parliamentary secretaries. The commission will refer these disclosures to IBAC for assessment as the clearing house for public interest disclosures. If IBAC determines that a disclosure is a public interest complaint but also meets the definition of parliamentary misconduct, it can refer it back to the commission for investigation.

In relation to any current MP, the bill defines parliamentary misconduct as breaches of the MP code of conduct; a wilful, repeated or deliberate contravention of the members register of interests; a wilful, repeated or deliberate misuse of work-related parliamentary expenses; a wilful, repeated or deliberate misuse of the electoral office and communications budget; and inappropriate parliamentary workplace behaviour. So again, I look forward to the important work that will happen as a consequence of this bill passing through our chamber. I know there are some amendments that will be no doubt debated and discussed in committee. But I also look forward to the setting up of the Parliamentary Workplace Standards and Integrity Commission, and there will be some appropriate and eminent people appointed to that.

In closing, our workplace is a weird animal of a workplace. It is strange. It is like no other workplace. But it does not mean that we cannot do more or do better to improve things. We will not be here forever. We have also got to remember we want to encourage younger people into the Parliament, to stand in politics, and we want to make sure that they can feel like this workplace is somewhere that they could actually walk into and do the job that they are elected to do. So we learn and grow together, but we also need to make sure that we do better – and we can.

**David DAVIS** (Southern Metropolitan) (11:55): I rise to make a brief contribution – it might necessarily be brief at the moment – to the Parliamentary Workplace Standards and Integrity Bill 2024. The bill follows a long process and follows the Operation Watts report and a range of other integrity reports that have been brought to the Parliament over the recent period. It establishes a workplace standards and integrity commission. It establishes a Parliamentary Integrity Adviser. It seeks to establish a Parliamentary Ethics Committee as a joint committee of the Parliament and make a number of consequential and related amendments.

There are all sorts of issues with this bill. The idea that we need better parliamentary standards is a reasonable one. Certainly last year I spent time in the Westminster Parliament talking to a number of the secretaries of committees over there about the model that they have adopted, and there is I think a lot to learn from what is occurring overseas. Certainly I think in many respects they had a deeper problem than we have had, but I think the idea that there would be some stronger standards here is a reasonable one.

In that sense we are supportive of the general ideas behind the bill and supportive of the general thrust of the bill, but there are some issues. I do personally have cautions to put on the record about the application of these steps to our Parliament. Our Parliament has a lot of protections for MPs, and it does that for good reason – for very good reason. Going back to the Bill of Rights of 1689, article 9 of that lays out significant protections for MPs, and it does so because the sweep of parliamentary history was such that the government – the King in those days, but the government – was in a powerful position to influence, pressure, threaten, cajole and bully MPs. So I am always conscious that that is a base on which we want to build our system. What we do not want to do is erect infrastructure that may actually have a perverse effect, whatever is intended. It might be intended to lift parliamentary standards, but it might act as a vehicle, as a back door, for greater government leverage and government power. And it might also open up MPs in some cases to unreasonable and unfair threats.

There are a raft of issues, and I will no doubt deal with those in the period after question time. But I want to start with that base, that we actually need to preserve the strength of our institutions and with this sort of bill not compromise the essence of our system in any way.

**Business interrupted pursuant to standing orders.**

## *Questions without notice and ministers statements*

### Construction, Forestry and Maritime Employees Union

**Evan MULHOLLAND** (Northern Metropolitan) (12:00): (597) My question is to the Minister for Skills and TAFE. For days the minister has defended the government's decision to continue funding the rotten CFMEU as part of the Skills First training program. Has the minister sought assurances from her department that there are no CFMEU officials who are also organised crime or outlaw motorcycle gang members that are delivering Skills First training?

**The PRESIDENT**: Mr Mulholland, do you mind asking the question again – just the question part of it again, please.

**Evan MULHOLLAND**: Has the minister sought assurances from her department that there are no CFMEU officials who are also organised crime or outlaw motorcycle gang members that are delivering Skills First training?

**Gayle TIERNEY** (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:01): In terms of this question, it goes to process. The Premier was very forceful and very strong in her response, and that is that she has outlined a process that will be independent and there will be an investigation. In terms of all of the issues that you bring into this chamber along these lines, my very strong suggestion is that if you have an allegation or know someone that has an allegation, there is a process –

*Members interjecting.*

**Evan Mulholland**: On a point of order, President, the Premier herself has acknowledged that the CFMEU is rotten and contains criminal elements.

**The PRESIDENT**: That is not a point of order. That is editorialising.

**Evan Mulholland**: On relevance, I was simply asking if she has sought assurances from her department that there are no criminal elements.

**The PRESIDENT**: The minister has had about 39 seconds.

**Gayle TIERNEY**: My answer is that there is a process in place that was outlined by the Premier. Now, if you have got questions or allegations, then I suggest that you deal with the process that has been outlined. Otherwise you are trying to divert the resources and undermine the process –

*Members interjecting.*

**Georgie Crozier**: On a point of order, President, the minister has failed to even address the issue. It is not about the process, it is actually about what she has done as the minister in relation to her own ministerial responsibilities. I know she is shaking her head, but I would ask you to draw her back to the substance of the question and answer it succinctly, as Mr Mulholland expects.

**David Davis**: Further to the point of order, President, the minister may well have delegated some of the authority, but she is still responsible for actions within her department. She is responsible for every item that she has delegated. In that sense Mr Mulholland is asking a very simple and straightforward question, and she should answer the question rather than going on a rant.

**The PRESIDENT**: On the point of order, a member can ask a minister about an interaction with her department. I will call the minister.

**Gayle TIERNEY**: Thank you, President. Of course my department knows that I expect that activities that are conducted in the department or connected to the department should be conducted in a lawful way. That is an expectation, and that is absolutely understood.

**Evan Mulholland**: On a point of order, President, the question was about what assurances she is undertaking. It was not about understandings. It has been over two weeks since these allegations occurred. I was asking her whether she has sought assurances. It is a simple yes or no, Minister.

**The PRESIDENT**: I believe the minister was being very relevant to the question in that part of her answer. As far as semantics around expectations or assurances go, she outlined her expectations to her department.

**Evan MULHOLLAND** (Northern Metropolitan) (12:05): She clearly has not sought assurances. On that note, what was the date of the last spot check into the CFMEU carried out by your department as part of the Skills First training program?

**The PRESIDENT**: I spent the last half-hour reading previous rulings, and there are a number of rulings from presidents who I aspire to be as good as in the future which say that questions cannot have an expectation of or ask the minister to provide a degree of detail she would not have at hand. We have had a number of these questions in previous weeks. Mr Mulholland, I will let you rephrase so you are not out of line with those previous rulings by previous presidents and me.

**Evan MULHOLLAND**: On the ruling, I am happy for the minister to take it on notice if she does not have the information required. I was simply asking the date of the last spot check into the CFMEU. We asked a similar question yesterday in regard to whether there have been any spot checks into the CFMEU. Will the minister make public the date of the last spot check into the CFMEU?

**The PRESIDENT**: I will address Mr Mulholland, which segues to a number of rulings around when the degree of detail asked of a minister is far from what can be expected of a minister to have at hand. Those particular questions should be questions on notice. I am not saying that you cannot ask the question at this time, but that was the suggestion of previous rulings.

**Nick McGowan**: On a point of order, President, I refer to Mr Mulholland's point of order. I have no qualms with what you have said, President, but in respect to this particular question, there have been three days straight of questioning on this particular issue, and yesterday there were questions specifically about the spot checks. I would contest that it is a reasonable expectation that a minister, under those circumstances, would readily have received a briefing, certainly on Tuesday – and if not

Tuesday, certainly on Wednesday, then by Thursday. As you say, it is not something that we are expecting the minister to know off the top of their head, or seek to, but they should reasonably have that information to hand.

**The PRESIDENT**: I think there is nothing in the previous rulings around where an expectation should be, or a build-up of an expectation. I will call the minister to answer the question, but I just wanted to relate to the chamber that a number of these questions having that level of detail would not be expected of a minister.

**Gayle TIERNEY** (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:08): It is a question that was asked yesterday. I answered that question. We have a system in place where, if the department believe that there is something that needs to be looked at, they do spot checks. They do a whole range of things. It is also an understanding in my department that I have a very high benchmark when it comes to allegations or complaints, and that is a way that the relationship works. They know that I take any complaints or allegations very seriously and that they are dealt with expeditiously.

## Women's health services

**Georgie PURCELL** (Northern Victoria) (12:09): (598) My question is for the minister representing the Minister for Health. Share the Dignity recently completed their 2024 Bloody Big Survey, putting together the most comprehensive report on the experiences and attitudes towards menstruation. Despite more than half the population having periods, they remain a taboo subject. Bleeding is natural and happens to many of us every single month, yet some hospitals in this state do not even have supply of period products to provide to their patients. This perfectly encapsulates the lack of support women and menstruating people experience, with their bodily functions not even being accommodated in certain hospitals. How many hospitals in Victoria have government-funded period products available?

**Ingrid STITT** (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:10): I thank Ms Purcell for her question. I know that the Minister for Health is very focused on women's health, and I am sure she will provide you with a written answer in accordance with the standing orders.

**Georgie PURCELL** (Northern Victoria) (12:10): Thank you, Minister, for referring that on. Patients can access bandaids and all levels of painkillers in hospitals, yet they are not guaranteed to have access to period products. They are sometimes left to free-bleed while they are already in a vulnerable, sick or painful state in hospital. Share the Dignity has stepped up in place of the state government, using its own fundraising to fund period products in both public and private hospitals in Victoria. Will the minister advocate to the federal government for a mandate to ensure period products are supplied in hospitals in Victoria?

**Ingrid STITT** (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:10): Thank you, Ms Purcell, for your supplementary. I will provide that to the minister for a written response also.

## Ministers statements: Victorian Training Awards

**Gayle TIERNEY** (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:10): We are celebrating the outstanding achievers of our vocational training system, with finalists recently announced for the 70th annual Victorian Training Awards. The Victorian Training Awards celebrate Victoria's world-class apprentices, students, teachers, trainers, TAFEs and employers. Congratulations to all 40 finalists from right across Victoria. These include three world-class finalists who have been nominated for Apprentice of the Year: Bonnie, Trey and Matt.

Bonnie Inkster is following her dream to work in motorsports as an apprentice at a leading Australian motor-racing team. Starting with a trade course with the Bendigo Kangan Institute's Docklands

Automotive Centre of Excellence, Bonnie is now fabricating parts for supercars thanks to the certificate III in engineering fabrication from Chisholm Institute.

Trey McAuley is completing a certificate III in carpentry at the Gordon TAFE, following a family tradition of a career in trade. Trey will compete in the Olympics of vocational training later this year, the WorldSkills competition in France, and wants to mentor the next generation of chippies.

While completing his biomedicine degree at uni, Matt Tyquin realised he wanted a hands-on career like his high school job cleaning at Ashburton Meats. So right afterwards he started an apprenticeship with William Angliss Institute and found his way back to Ashburton, this time as a butcher. Matt even took home the title of World Champion Butcher Apprentice at the World Butchers' Challenge in the US in 2022.

I want to wish good luck to all of these fantastic finalists and congratulate them on their well-deserved recognition.

## Construction, Forestry and Maritime Employees Union

**David DAVIS** (Southern Metropolitan) (12:12): (599) My question is to the Minister for Corrections. Minister, the CFMEU has been unmasked as a gangster organisation that has taken over Victoria's construction industry under Labor's watch. I therefore ask, Minister: can you as minister provide an assurance to the house and the community that no CFMEU members who are also members of organised crime or bikie organisations have been employed or subcontracted to work on Victoria's correctional facilities?

**Enver ERDOGAN** (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (12:13): I thank Mr Davis for his question and his interest in our corrections system. As a government we have been very clear: we are proud of our investments in modernising our corrections system across the board. We have made improvements – new units, new health facilities and new technologies to improve safety for staff. I am very proud of them, because it is a much better system than what we inherited 10 years ago. In terms of the membership or otherwise of workers that work on sites, that is a matter for those individuals. I am sure that some of the construction workers that worked on improving these facilities are CFMEU members; some are probably not CFMEU members. I do not have that information.

**David DAVIS** (Southern Metropolitan) (12:14): Let it be recorded that the minister appears to have no system or approach to assure the house or the community that there have not been such extraordinary CFMEU members onsite. Minister, I ask: have any allegations of misconduct by the CFMEU been raised with you formally or informally?

**Enver ERDOGAN** (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (12:14): No.

## Housing

**Katherine COPSEY** (Southern Metropolitan) (12:15): (600) My question today is for the Minister for Housing. Minister, we recently requested documents that underpin your government's plan to demolish 44 public housing towers; I acknowledge a portion of the original request has now been provided. One of the few documents released was 259 Malvern Road's existing conditions review and building regulations assessment report. This report was prepared by Approval Systems, who were engaged to identify features of the building that did not comply with building regulations and assist the government to select an option for the redevelopment of the site. The compliance assessment was a high-level assessment only, based on a desktop review of a handful of documents and one single-site visit, which was confined to common corridors, lobbies, stairs and equipment rooms. No physical assessment was undertaken of the actual homes. Minister, beyond this document, did the government undertake any further analysis to determine the feasibility of refurbishment of the Malvern Road site?

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:16): Thank you, Ms Copsey, for that question and for your interest in the work that needs to be undertaken to develop housing for people who have for generations lived in and called home places that are no longer fit for purpose. We have undertaken a range of assessments and received independent advice from structural engineers across the entire inventory of the housing estate that is the subject of this redevelopment. From an asset and facilities management consultant, the estimate is that it would be about $2.3 billion over 20 years just to keep the towers in a habitable condition. This includes all of the towers that have been named as part of that 44-site development.

It is really important to note also that within that $2.3 billion we are not looking at the cost of additional escalations in price since that calculation was first developed, nor are we not looking at the fact that this sort of refurbishment would bring the towers only to a habitable condition. When we are talking about lift wells, stairwells, sewer stacks, when we are talking about common areas, we are also talking about the sorts of things that fail regularly. When we talk about electrical circuitry that is built into the concrete slab construction, we are also talking about amenity that cannot cope with the increasing demand, particularly as people use appliances such as heating because the insulation is so poor.

We have recently seen at another tower an entire floor needing to be relocated because of failures in the sewer stacks, and we have ever-increasing challenges around reletting these towers because of the lack of amenity. In addition to that, the $2.3 billion would also –

**Katherine Copsey**: On a point of order, President, apologies, I do appreciate the broad context, but my question was specifically about the Malvern Road site.

**The PRESIDENT**: The minister no doubt will address that in the minute remaining.

**Harriet SHING**: Thank you. As I indicated, Ms Copsey, in my answer earlier, the work that we have done covers all of the sites, and we are continuing to assess those sites as they stand up to or indeed increasingly fail the standards for amenity because of their age and because of changes to the standards in design that should apply to modern standards for housing that we all deserve. If we were to refurbish, retrofit these towers to make them habitable, it is really important that you understand we would also still need to relocate every single person across those towers for the duration of that retrofit to only make them habitable. This is where again it is hard work, it is difficult work for a range of reasons, including the very strong connections that people have, including to the Malvern Road site. We are determined to continue to engage and to engage well with communities as this work goes on. It is intergenerational work, and it is about making an intergenerational change.

**Katherine COPSEY** (Southern Metropolitan) (12:19): I want to come back to the nature of the condition reports, which was actually the heart of the substantive question that I asked. The report that has been provided does not state that demolition is the only feasible option for Malvern Road or that refurbishment is not possible. This is the only condition report that your government has released of the 44 towers set for demolition. I appreciate your confirmation that you have done assessments across the other sites. Surely the government would have undertaken to provide a thorough justification for demolition with detailed rather than only high-level assessments such as this condition report. Of the condition reports that you have prepared for the other 43 towers, is the standard of assessment taken at Malvern Road representative of the remaining 43 condition reports that have not been released by your government?

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:20): Thank you, Ms Copsey, for that question. As I said earlier, we are seeing increasing numbers of faults and of breakdowns, of failures in everything from sewer stacks to lift wells, of challenges around the amenity in our towers, and we also know the market speaks for itself. In one tower we are making around 10 offers for a property and only one person is turning up. That is a 10 per cent uptake on the offers that are being made for stock that is available there. We will keep assessing –

**Katherine Copsey**: Thank you, Minister, I appreciate we have got limited time. On a point of order, President, I would appreciate it if you would bring the minister back to the substance of the question, which is the nature of the assessments and condition reports prepared.

**The PRESIDENT**: I will bring the minister back to the question.

**Harriet SHING**: Ms Copsey, the towers have been built using concrete construction, which provides a measure of uniformity across the entire stock. These buildings fail against modern standards across the board for noise, sustainability, energy efficiency, ventilation, access to private open space, seismic, flood and fire standards and minimum amenity. We will not take a backward step in providing housing that everybody deserves to the standards that apply now.

## Ministers statements: homelessness

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:21): I rise today in my capacity as the Minister for Housing. The fact that I was joined by so many people from across this chamber and indeed all over the Parliament yesterday was testament to the well-understood, universal commitment to doing more to address the challenges of homelessness here in this state. It was really hard to miss the 6000 origami houses that lined the steps of Parliament yesterday. Ahead of national Homelessness Week, it was an important opportunity for us to come together irrespective of party lines and talk about what we need to do, what has been done and how we need to actually have enduring approaches to making sure that homelessness is rare, brief and non-recurring.

I want to thank the Victorian Homelessness Network for bringing the sector and members of Parliament together ahead of Homelessness Week. It is a multifaceted issue that does require multifaceted solutions. We need to make sure that we are not just building more homes but also providing the wraparound services, support, engagement and connection that people deserve to turn humiliation into hope and into the opportunity to thrive. Last time I was here we had 9400 big housing builds completed or underway, with 4000 households either moving in or getting ready to move in. Now, five weeks later, we have 9600 homes underway with 4400 homes moved into. Together with other capital investments, we are building more houses, like through the innovative ground lease model and the Regional Housing Fund. We have now got over 13,200 homes complete or underway and over 8000 complete. We know there is more to do, but that is progress. Thank you to Mitchell Burney from Quantum Support Services, Rebecca Cleaver from Wombat Housing Support Services, Rhonda Collins from Latitude: Directions for Young People, Deborah Di Natale of Council to Homeless Persons and Jason Russell, who spoke of his lived experience of homelessness and his efforts to recover his life, his pride and his connections.

## Construction, Forestry and Maritime Employees Union

**Melina BATH** (Eastern Victoria) (12:24): (601) My question is to the Minister for Mental Health. We know that CFMEU officials on taxpayer-funded worksites have bullied, have intimidated, have threatened, have abused and have harmed the mental health of workers across Victoria for years and the government was warned about this misconduct. Minister, is it the Labor government's policy to expend the mental health of Victorian workers in favour of appeasing CFMEU officials and delegates?

**Ingrid STITT** (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:24): That is an absolutely despicable and embarrassing question to put. I completely reject that. It is a grubby, grubby question. Our government will never, ever put –

*Members interjecting.*

**The PRESIDENT**: Thank you. Minister.

**Ingrid STITT**: Thank you, President. Our government takes incredibly seriously the health and safety and the mental health and wellbeing of all Victorians, including those working across the Victorian economy, indeed including the construction industry.

The Premier has been very clear about our government's position in relation to these matters. She has condemned the behaviour that we saw on the *60 Minutes* program a couple of weeks ago, and she has outlined very strongly what the government will be doing in response. That includes having an independent investigation into these matters and into the construction sector. It includes having a review of enterprise bargaining agreements in place across our construction projects in Victoria. It includes working closely with the federal government on matters to do with industrial relations, given that those opposite referred those powers to Canberra about 30 years ago.

In relation to the mental health and wellbeing of Victorians, the kind of behaviour that we have seen is completely unacceptable. We have condemned it, and we will continue to make sure that we roll out every recommendation of the royal commission into mental health and wellbeing in our state so that we can make sure that people get the support they need, where they live, when they need it. The reality is this: no worker in any workplace deserves to be subjected to that kind of behaviour. We have been absolutely clear about that. We will never – never – stop fighting for the health and safety of Victorian workers.

*Members interjecting.*

**The PRESIDENT**: We have got a pretty small chamber, and there are not as many of us here as in the other chamber. I like the thing where we do not eject people. I like it. I think it is good. I will tell you: I am close to ejecting myself. If people can respect the person that has got the call, that would be great.

**Melina BATH** (Eastern Victoria) (12:27): Minister, have any allegations of misconduct by the CFMEU been raised with you, formally or informally?

**Ingrid STITT** (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:28): No.

## Gender services

**Moira DEEMING** (Western Metropolitan) (12:28): (602) My question is for the minister representing the Minister for Health. The Minister for Health has assured me multiple times, and in all caps, even when I did not ask, that transgender affirmation surgeries are not performed on patients at the Royal Children's Hospital. My question is: from exactly what age does the Royal Children's Hospital begin referring patients to other clinics to be assessed for transgender affirmation surgeries?

**Ingrid STITT** (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:28): I will refer the member's question to the Minister for Health.

**Moira DEEMING** (Western Metropolitan) (12:28): The Minister for Health has also assured me multiple times, even when I did not ask, that transgender affirmation surgeries are life-saving, medically necessary interventions and that they are in line with the world's best practice for treating gender dysphoria. My supplementary question is: if, as the minister assures me, these transgender affirmation surgeries are legal and ethical in every aspect, why is it then that this government has failed to ensure that Royal Children's Hospital patients can access these supposedly life-saving surgeries onsite at the best paediatric hospital in this state?

**Ingrid STITT** (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:29): I will refer the supplementary question to the Minister for Health.

### Ministers statements: kindergarten funding

**Lizzie BLANDTHORN** (Western Metropolitan – Minister for Children, Minister for Disability) (12:29): I rise to update the house on the Allan Labor government's Building Blocks partnership with Melbourne Archdiocese Catholic Schools Early Years Education. Recently I had the pleasure of visiting St Lawrence of Brindisi Catholic Primary School to announce the first Building Blocks partnership in the non-government school sector, alongside the member for Melton from the other place. This $88.5 million partnership with MACS Early Years Education will provide more than 2100 new kindergarten places across six local government areas. I am proud to say that it is the Allan Labor government with this announcement taking the first step in acquitting its 2022 election commitment to build and upgrade 60 kindergartens on low-fee non-government school sites, and we are well on our way to achieving it. The first nine of these projects will be delivered for the 2026 kindergarten year. I look forward to seeing how these projects benefit their local communities on their completion, because all Victorians deserve the very best education, and that all starts with kinder.

This side of the house understands the importance of early learning, and that is why we are supporting Victorian children by expanding early learning through our $14 billion Best Start, Best Life reforms. Partnerships like this one with MACS are not the only improvements we are making through these nation-leading reforms. We are also introducing free kindergarten, pre-prep, three-year-old kinder and establishing and upgrading hundreds of kindergartens across Victoria. This includes of course the recent announcement that I was pleased to make with Mr Galea and Mr Tarlamis at Lysterfield Primary School for a kindergarten on the school site. This brings the total up to 21 kindergartens on new and existing school sites across Victoria that will be ready for term 1 2026 alongside the nine partnership projects with Melbourne archdiocese, helping families ditch the dreaded double drop-off and helping children to have a smoother transition between kinder and school. It is not just kinder, it is where children begin to learn the skills they need to succeed in school and in life, making it an incredibly important part of a child's lifelong education. I am proud that we on this side of the house are telling you week after week how we continue to expand and improve Victoria's early education system. I look forward to seeing these services opening over the coming years and working with MACS on their completion.

### Construction, Forestry and Maritime Employees Union

**David DAVIS** (Southern Metropolitan) (12:32): (603) My question is to the Minister for Housing. The 2026 Commonwealth Games village project, for which you were the minister responsible, had a secret preference clause for the CFMEU, ETU, PPTEU and Trades Hall. Minister, do government procurement arrangements for housing projects that you are responsible for contain a preference clause for the CFMEU, either specifically or alongside other unions?

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:32): Thank you, Mr Davis, for that question. I am not quite sure about the extent to which your question, beginning as it did – relating to a previous portfolio – is relevant to the current general order. So what I will say is that the development of housing across two of the former village sites actually sits with precincts development work, and that is within the work of Minister –

**David Davis**: On a point of order, President, the question was not about other parts. It was about housing projects for which the minister is responsible.

**The PRESIDENT**: I am going to rule the point of order in. I think there may have been confusion from the minister. She was concerned at talking about a previous portfolio that she is no longer responsible for, but the question is around housing. Mr Davis, just the question – can you ask the question again?

**David Davis**: Minister, do government procurement arrangements for the housing projects for which you are responsible contain a preference clause for the CFMEU, either specifically or alongside other unions?

**Harriet SHING**: No.

**David DAVIS** (Southern Metropolitan) (12:34): Minister, what checks or controls are in place to ensure that the CFMEU does not exploit its position on sites to threaten, bully, cajole or force members to join the CFMEU or be thrown off sites?

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:35): I would be very happy to ask for the leave of the house to extend the time necessary for this question, but I suspect, Mr Davis, you are not going to quite like what it is that I have to say. It is really unfortunate that you do not understand the way in which right-of-entry provisions work, the way in which the federal law works, the way in which registered organisations regulation works and the way in which the coverage rules and eligibility rules apply. Mr Davis, should you wish to inform yourself at any point, to go into the detail of how it is that people are entitled to be represented by a union that has coverage of the work that they do, then please let me know, because the betrayal of your ignorance is, frankly, embarrassing.

**David Davis**: On a point of order, President, I did not ask for a general burst from the minister. I asked what checks and controls are in place, and she does not seem to be responding to what the checks and controls are.

**The PRESIDENT**: I think the minister was relevant to the question.

**Harriet SHING**: Thank you. Mr Davis, you did interrupt me, which shows yet again that perhaps you are not as interested in learning about the way in which right-of-entry and eligibility rules apply. Mr Davis, what I will say to you is that should you wish to become engaged in how it is that workplace relations operate to the extent that people are entitled to be represented by a union that has coverage of the work that they do, please just let me know.

**David Davis**: On a point of order, President, again, this is a serious question, and the response did not deal with the checks and balances and protections. It actually did not mention those, and it did not engage with them. It offered a briefing of some type, but that is a different thing from actually answering the question.

**The PRESIDENT**: I believe the minister was relevant. But, Mr Davis, I can commit to you that as it was pretty hard to hear, I am happy to review what was said and take up your point of order.

## Poultry industry

**Jeff BOURMAN** (Eastern Victoria) (12:37): (604) My question is for the Minister for Agriculture, represented by the Attorney-General. The chicken industry is currently suffering from the debilitating effects of bird flu, leading to shortages of eggs on the shelves and higher prices for chicken meat – in the middle of a cost-of-living crisis, no less. Recent reports of relentless campaigns in other states from animal activists targeting our embattled chicken producers raises concerns of what might happen should the activists start invading egg farms here in Victoria. So my question is: what is the Victorian government doing to protect chicken producers at risk of trespass onto their property from overzealous campaigners encouraged by these groups?

**Jaclyn SYMES** (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:38): I thank Mr Bourman for his question. There are range of measures that I am sure the Minister for Agriculture will be happy to provide you further information on.

**Jeff BOURMAN** (Eastern Victoria) (12:38): I thank the minister. We have quite weak trespass laws in this state, which leads to activists sometimes getting away with invasions on private property. What changes will the minister propose to Victoria Police to be better able to respond to these types of incursions so that our chicken producers and others are protected?

**Jaclyn SYMES** (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:38): I thank Mr Bourman for his question and indeed his interest in the safety of farmers and agricultural

producers as well as biosecurity issues. The Minister for Agriculture – the former agriculture minister here is having a bit of FOMO – will indeed provide you with a detailed answer.

### Ministers statements: Palestine Australia Relief and Action

**Ingrid STITT** (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:38): I recently had the honour of welcoming to Victoria members of our newly arrived Palestinian community at a welcome dinner organised by Palestine Australia Relief and Action (PARA). The evening of love, healing and connection was an opportunity to come together and create a new sense of belonging for a community that has fled months of war and devastation. Speaking with these families, they shared stories of hardship and courage, heartbreak and loss but above all a desire for peace.

In the middle of this dinner there was a really powerful demonstration of why events like this are so important. Two friends who did not know that each other had survived and fled Gaza were reunited at the dinner, in the same city on the other side of the world, eight months after hostilities began. It is moments like this that really remind us of the human toll of war. Regardless of where you were born or what you believe in, war's greatest impact is always on ordinary people and on innocent civilians who just want to be able to go about their lives without the fear of violence. For these two men it was a bittersweet moment of reunification, and for so many of us it is a moment that we will never have to deal with. These families have been through so much.

I want to sincerely thank PARA and their CEO Rasha Abbas for hosting this heartwarming event. I am proud that the Allan Labor government has been able to support PARA in their important work to foster belonging and social cohesion here in Victoria. As Victorians we should all be so proud to continue as a community to open our arms to those in need. In times of conflict and war that is more important than ever.

### Written responses

**The PRESIDENT** (12:40): That ends questions and ministers statements. Minister Stitt, thank you, will chase up with the Minister for Health, in line with the standing orders, the questions from Mrs Deeming and Ms Purcell. And Minister Symes will chase up Mr Bourman's questions to the Minister for Agriculture.

## *Constituency questions*

### Southern Metropolitan Region

**Ryan BATCHELOR** (Southern Metropolitan) (12:41): (989) My question is to the Minister for Roads and Road Safety. Can the minister please detail how the Victorian government is continuing to keep roads safe in the Southern Metropolitan Region? Recently I was at the shops down at Black Rock, a suburb on the bay with a bustling little high street with lots of people around. Local residents were pleased to hear that the speed limit at these shops is going to be reduced to 40 kilometres an hour from 60 kilometres, on a stretch of Bluff Road from Stanley Street down Balcombe Road to Tandara Court, thanks to funding from the urban speed package, a project delivered jointly by the Victorian and Commonwealth governments. Research shows that the likelihood of fatality of pedestrians in a collision at 40 kilometres an hour is around 26 per cent, but that increases to more than 80 per cent when speeds are over 50 kilometres an hour. There have long been calls to put the safety of road users and pedestrians first in Black Rock, and that is exactly what this state Labor government is doing.

### Western Victoria Region

**Bev McARTHUR** (Western Victoria) (12:42): (990) My question is for the Premier. I know she is busy failing to read emails detailing CFMEU thuggery, but I have now asked her two parliamentary questions on behalf of the voters of South Barwon. Why have allegations serious enough to warrant their local member's sacking never been detailed, denied or investigated? Question 821, asked on 1 May, due 15 May, is still unanswered. Question 891 from 29 May, due 12 June, is still unanswered.

Yesterday's Assembly question time farce just underlined that the member for South Barwon cannot do his job even when he does bother to turn up. Luke Griffiths's excellent analysis in today's *Geelong Advertiser* includes an online poll. Of 1753 votes, just 6 per cent believe Mr Cheeseman can be an effective MP; 94 per cent want a by-election now. Premier, when will you respond to my questions and to the people of South Barwon and call for Mr Cheeseman to immediately quit Parliament?

**Northern Victoria Region**

**Georgie PURCELL** (Northern Victoria) (12:43): (991) My constituency question is for the Minister for Environment. Last month more than 65 eastern grey kangaroos were found illegally shot and deliberately run over by vehicles in Gobarup, in my electorate. Three kangaroos were still alive when help arrived but had to be euthanised due to their horrific injuries. Two joeys were saved and placed in the care of a wildlife shelter. Three others were found inside the pouches of their dead mums but were far too young to be saved. Despite the conservation regulator attending the scene promptly to gather evidence, the community is left feeling doubtful that any real action will be taken. The truth is the severity of wildlife crimes is escalating but penalties are rarely, if ever, imposed. My constituents want to know when the minister will provide an update on the investigation into this illegal kangaroo slaughter in my electorate.

**Northern Metropolitan Region**

**Sheena WATT** (Northern Metropolitan) (12:44): (992) I have a constituency question today. Victoria has one of the most vibrant and welcoming queer communities in the world. I have seen it firsthand at Pride and Midsumma, where the LGBTIQA+ community is out and about, loud and proud. These are events the Allan Labor government is proud to support with our Pride Events and Festivals Fund, which has helped fund over 180 different Pride events all across Victoria and is giving our rainbow community the resources they need. These celebrations are one of the reasons why Avery, one of my newest constituents, who recently moved into Abbotsford, reached out to my office earlier this week about available services in the area. My question today to the Minister for Equality is: how is the Allan Labor government supporting LGBTIQA+ Victorians in my electorate of Northern Metropolitan?

**Southern Metropolitan Region**

**Georgie CROZIER** (Southern Metropolitan) (12:45): (993) The Royal Children's Hospital is one of our most treasured hospitals and does an extraordinary amount of work for Victorian children and families. The CEO Bernadette McDonald, who is currently on leave, reports that senior clinicians, senior doctors and nurses, are outraged by the department and government's directive for her to leave and then apply to be reappointed into that role. It is going to leave the Royal Children's Hospital without a CEO and with no continuity in that important role as the government pushes ahead with its plans to merge that hospital with other hospitals, the Royal Melbourne and the Royal Women's. I join with those doctors and nurses and am absolutely outraged with the process. What is more, a global search will be undertaken. My constituents want to know – I have had a request from them – what is that global search going to cost for the replacement of Ms McDonald, should it occur?

**Western Victoria Region**

**Sarah MANSFIELD** (Western Victoria) (12:47): (994) My question is for the Minister for Public and Active Transport. Melton is the fastest growing area in Victoria, yet it has been left behind when it comes to infrastructure and services. A huge issue is the bus system, which was once again raised with me by constituents there. Despite the rapid growth of the suburb of Brookfield over recent years, the bus service timing for route 453 has remained unchanged, with only one bus an hour. Residents, including students and workers who rely on this bus, find the service inadequate and unreliable, impacting their ability to run on time, often having to stand around for extended periods in poor weather, waiting for the next bus. Minister, when will you review the frequency and routes of buses in Brookfield?

### South-Eastern Metropolitan Region

**Michael GALEA** (South-Eastern Metropolitan) (12:48): (995) My constituency question is for Minister Blandthorn in her capacity as Minister for Children. In fact as the minister outlined in her ministers statement today, I had the privilege of joining Minister Blandthorn and Mr Tarlamis at Lysterfield Primary School recently to visit the site of one of the eight new co-located kindergartens on primary school sites that will be open from next year. Co-locating kinders with primary schools is a great way to support parents, avoid the double drop-off and of course provide kids with that meaningful pathway, making that transition from kinder to prep that little bit less daunting. It is very exciting to see this come into play for Lysterfield. The school community is very excited to be welcoming its new kinder onsite, and it was terrific to visit there with the school community, principal Adam Wight and an absolutely terrific group of grade 6 school captains, who were good enough to show us around the school as well. Minister, what benefits will the Lysterfield kinder have for my constituents in Lysterfield?

### South-Eastern Metropolitan Region

**Rachel PAYNE** (South-Eastern Metropolitan) (12:49): (996) My constituency question is for the Minister for Health Ms Thomas. My constituent is a resident of Seaford, and he lives with a disability. Like many people who live with a disability, he requires access to specialist public health services that can accommodate his needs. This includes accessible dental care. While there once existed a local dental service that could accommodate his disability, this has since closed. He is left with no choice but to travel to the Royal Dental Hospital in Carlton, which is almost an hour away. On his last visit he waited 3 hours only to be put on a three-year waiting list and sent home to Seaford. So my constituent asks: what is the government doing to ensure accessible dental services for all within Seaford, including those living with a disability?

### North-Eastern Metropolitan Region

**Richard WELCH** (North-Eastern Metropolitan) (12:50): (997) My question is for the Minister for the Suburban Rail Loop. Residents in Burwood are particularly concerned about the proposed property developments, which will destroy the character of their community and affect their open space. Twenty-storey towers are set to be built in suburban streets and directly next to Gardiners Creek despite clear feedback from the community that they would prefer these to be built along Burwood Highway and away from our precious open space. Furthermore, these towers will cast long shadows across Gardiners Creek and open space, destroying their amenity. We saw in Box Hill community consultation telling us that there would be 20-storey buildings. We were then told that there would be 40-storey buildings, and we are now told that there will be 50-storey buildings. Will the minister commit to the community of Burwood to ensure that these towers will not increase in height and further commit that he will not allow these to overlook open space?

### Eastern Victoria Region

**Tom McINTOSH** (Eastern Victoria) (12:51): (998) My question is to the Minister for Education in the other place. Access to a healthy breakfast is one of the most important things for our kids so that they can start the school day right. Eating a balanced diet has been shown to lower the risk of disease, increase energy levels and contribute to better overall quality of life as well as to improve focus and motivation in the classroom. For lots of reasons not every family can send their kids to school with a healthy breakfast, and that is why the government's school breakfast program is so important. So often I go to a local primary school and hear about the importance of this program from principals who are doing incredible work every day to nurture the next generation of Victorians. In Lakes Entrance I heard from principal Simon Prior that school breakfasts are an important part of how they support kids in the community. Simon runs a school that is doing terrific work with the local community and achieving across the board, with exciting developments underway with a new kinder on the school site and an over $6 million upgrade committed at the last election. Minister, how is the school breakfast

program ensuring that government schools and students in Eastern Victoria are best supported to learn every day of the year?

### Southern Metropolitan Region

**David DAVIS** (Southern Metropolitan) (12:52): (999) My matter for a constituency question today concerns Nangare, a retirement village just off Burwood Highway in Burwood, and it is for the attention of the Minister for the Suburban Rail Loop. I visited that village. There are 21 units there. I sat down with the committee in their common room. I listened to their concerns about vegetation and traffic and the fact that their retirement village is in that narrow zone, well within the 1.6-kilometre zone, and very close to the site of works for the Suburban Rail Loop. They are very concerned about the outcome, and it would be very helpful for the minister to assure them on certain matters around that. In particular they want an assurance that they are not going to have compulsory acquisition of the site. It is owned by the church; nonetheless these are older people, and if that site was to be compulsorily acquired, that would be concerning. They would be moved. They need a commitment, a guarantee, that there will not be compulsory acquisition of that site.

### Northern Victoria Region

**Rikkie-Lee TYRRELL** (Northern Victoria) (12:53): (1000) My constituency question is for the Minister for Agriculture. The community of Bobinawarrah in my electorate of Northern Victoria have been fighting against the proponents of Meadow Creek solar farm, one of the largest proposed solar energy generation facilities in the electorate. For months they have been asking for their concerns to be heard by both the government and the proponents of this facility. In recent days it has come to light that the plans for the facility have been changed and expanded without consulting with the community. The location of the battery storage facility and substation has been moved, it has been increased in size from 250 megawatt hours to 1 gigawatt hour and it has also been moved to a site that is within the vicinity of five homes. Meadow Creek solar proponents have also told the community that the facility could be used for the grazing of sheep, which concerns them, as the land is generally not suitable for sheep grazing, due to the prevalence of flooding and it remaining waterlogged after rain. My constituents are asking for the Minister for Agriculture or their relevant advisers to come and visit the area and see the idyllic agricultural land for themselves.

### Northern Metropolitan Region

**Evan MULHOLLAND** (Northern Metropolitan) (12:54): (1001) My constituency question is to the Minister for Roads and Road Safety. Can the minister advise of any works to repair the Northern Highway in Wallan? The recent RACV My Country Road survey showed 64 per cent of 7000 residents now rate potholes and poor road condition as the biggest threat to road safety. Every week my office receives dozens of calls from locals in Wallan complaining about the state of the roads. Labor continues to neglect regional roads in Victoria, with the road maintenance budget 16 per cent below what it was in 2020. An astonishing 91 per cent of Victorian roads were rated 'poor' or 'very poor' in a government survey last year. Over 800 Wallan locals have signed my petition to fix Wallan potholes. In the last three years almost 2000 Victorians have lodged claims for vehicle damage. It is time for the government to get on and do their job and properly fund our roads.

### Western Victoria Region

**Joe McCRACKEN** (Western Victoria) (12:55): (1002) My matter is for the Minister for Roads and Road Safety as well and does again follow on from the RACV report on the My Country Road survey. Some of the roads that are mentioned that are in the top 10 worst roads are the Western Highway between Trawalla and Beaufort, the Princes Highway between Colac and Stonyford, Bacchus Marsh Road between Balliang and Lara and the Princes Highway between Warrnambool and Portland, all very significant roads in my electorate. The top issues identified were potholes, with other ones including narrow lanes, intersection safety issues and limited overtaking lanes. Top solution: fix the roads. So my question to the minister is: what are you going to do about it? Given that funding to

road maintenance has been cut to just $33 million, down significantly from previous years, this does not seem to be a great start. Will the minister reverse these cuts and reinstate funding or will the country communities I represent continue to be ignored?

**South-Eastern Metropolitan Region**

**Ann-Marie HERMANS** (South-Eastern Metropolitan) (12:56): (1003) My question is to the Minister for Health and relates to the Frankston Hospital, which I note has an inappropriate CFMEU flag flying – inappropriate of course due to the concerns about its criminal activities and associations. I also have to note the $1.1 billion that has been spent on this redevelopment, which is up from the $562 million which was initially promised in 2018. My question is to the minister: why has there been no provision to provide dental services for people with special needs in this development? My constituent has impacted teeth and a cavity and was referred from the dental services at Frankston Hospital to Carlton dental hospital. There was a two-year waitlist there. He finally got an appointment at Carlton and was initially told that the treatment now would require an anaesthetic and there was a three-year waitlist for that. He went to the Monash hospital in Clayton, where there was a six-month waitlist, and was told there was a two-year wait for treatment. He then went to Dandenong Hospital, where there is now a further six-month wait. It has been 18 months now; my constituent is still waiting. This is an appalling situation where vulnerable people are forced to suffer for a basic need, and all the while Frankston Hospital's inadequate development costs have nearly doubled.

**Sitting suspended 12:58 pm until 2:02 pm.**

***Bills***

**Parliamentary Workplace Standards and Integrity Bill 2024**

*Second reading*

**Debate resumed.**

**David DAVIS** (Southern Metropolitan) (02:03): I am pleased to continue my contribution. I was talking to the chamber before about the importance of article 9 of the Bill of Rights and the need to ensure that nothing in this bill impinges on that, not least so-called independent committees or independent officers, who might in many cases be the most exemplary people but are not always so. We have seen the situation in this Parliament indeed – in this Parliament of Victoria. We have seen the situation from time to time where high and mighty officials have bullied and belted, figuratively, MPs so that MPs are fearful and unable to discharge their duty and are unable to raise matters that –

**A member** interjected.

**David DAVIS**: I am not going to name them; I am making a point of principle here. I am making the point that we cannot have independent individuals who may be appointed and then cannot be removed but can actually impact very negatively on democracy. The government has sought in its changes to deal with that matter, and I think they have had a measure of success there. The decision to discipline, as I see it, an MP largely falls to the chambers and ultimately to a relevant ethics committee of that chamber, and the ability to make those decisions does fall in the end to parliamentarians, which protects against some of the concerns that I am raising.

I am just going to say something briefly about the amendments that have been produced. There are a number of worthy amendments that the Greens will bring forward, and there is some agreement on a number of them which our Liberals and Nationals have worked with the Greens on. I understand that we may not agree with all of these amendments. We think that greater independence, greater unshackling from the executive, of parliamentary committees is by and large a good feature, and we understand that the Greens are seeking to do that on a wide scale. Our proposals are more modest, but we do understand what the Greens are seeking to achieve there. Mr Mulholland will move some amendments, which we obviously think are very sensible amendments.

The reality is that greater independence of some of these committees is important, but there are some concerns that we do have. One of those in particular relates to issues around the legal support of MPs. The truth of the matter is that a referral to one of these committees and one of these offices will have a very significant impact on an MP, who could be from any party. There will be media interest, there will be pressure and the complaint may be fair or it may be unfair. There is obviously a balance to be struck to ensure that MPs are not targeted and that does not occur in an unreasonable way. I do note that the legal support that is available to ministers through the Victorian Managed Insurance Authority (VMIA) is very significant. I am concerned that that legal support is available to ministers but not to those on the backbench in government or in the opposition or on the crossbench. This means that there is a very uneven legal playing field here, which means that ministers about whom complaints are made may well have a greater ability to withstand and to push back against those complaints than an MP who is just a backbencher in government or indeed on the crossbench or in the opposition. We think that that is a significant flaw that the government has not addressed.

Michael O'Brien, our Shadow Attorney-General, has obviously done a lot of work on this bill, working with the government collaboratively, and I do put on record that there has been a significant collaboration on that. I think that the government has moved on a number of areas, and I know that Michael has made suggestions, some of which I think have been heavily supported inside government, including by the Premier and others. I think it is important to state on the record that we are not blindly opposing parts of this. We are indicating that those collaborations have occurred, the bill has been improved from a much earlier point and the agreed changes that will be made are further improvements.

I think the one area of particular concern that is outstanding – there are probably dozens of smaller areas – is the big area of legal support for ministers through the VMIA. A number of us in this chamber have had circumstances where legal actions have been launched. We have had ministers who have been part of launching those legal actions who have had VMIA support, and opposition members, even when they became ministers in some cases, who did not have VMIA support because it was relating to cases that were prior to them becoming ministers. But you still had individuals who had been ministers as participants in the case with full VMIA support. It becomes like heavy cavalry charging towards a sole person with a small shield and their own capacities and their own resources – you have got the armoury and the heavy cavalry of government marching forward at high pace in a cavalry charge to overwhelm a single backbench MP. That is a circumstance that I think is deeply concerning.

This is not an academic point that I am making here. I am making reference to a specific case, but there are other cases where government ministers have had the resources of government and the resources of the VMIA insurance backup and are able thereby to put up a very, very strong position. To some extent here what I am saying is what is good for the goose is good for the gander. That is perhaps a gendered phrase these days, but nonetheless I think people know what I am saying. The reality is that this is an important bill and we have to get it right. I urge the government to rethink this part of it, noting as I do that there has been a hell of a lot of good work done collaboratively across the chamber with minor parties and with government, and I want to put on record particularly the work of Michael O'Brien in that process.

**Rachel PAYNE** (South-Eastern Metropolitan) (14:12): I rise to make a brief contribution to the Parliamentary Workplace Standards and Integrity Bill 2024 on behalf of Legalise Cannabis Victoria. Because we are talking about integrity, I thought we should have a little bit of fun today, so I would like to begin my speech with a little bit of trivia that speaks to the need for checks and balances when it comes to parliamentary powers. What do you think the last member of the Victorian Parliament to be expelled was expelled for? Edward Findley was his name. Was it (a) multiple attempts to fight other MPs on the floor of Parliament, was it (b) for being an editor of a newspaper that published an article criticising the Crown or was it (c) that he had terrible dress sense?

**Ryan Batchelor**: It has to be (c).

**Rachel PAYNE**: I don't think anyone in this place has terrible dress sense, do they? But this does not apply to us. I would love to be able to provide that answer now, and of course you can Google it, but I think that I will wait until after my speech just to keep you intrigued along the way.

This bill comes in the wake of decades of scandals: MPs misusing parliamentary entitlements, bullying, sexual harassment and systemic cultural problems in parliamentary workplaces. There has been incident after incident of inappropriate behaviour and misconduct on all sides of this place. People have been kicked out of their party and even banned from the parliamentary precinct. It is my hope that we have finally reached a turning point. The last few years have been a watershed moment for discussions about bullying, sexual harassment and sexual assault in parliamentary workplaces.

Federally, in 2021 the independent review into Commonwealth parliamentary workplaces led by the former Australian sex discrimination commissioner Kate Jenkins published the *Set the Standard* report. It found that over half of all responding staff at Australian Parliament House had experienced workplace bullying, sexual harassment or sexual assault, and it led to serious reforms. In Victoria we are not faring any better, and unlike our federal colleagues, we still have a bar in our Parliament. We have had Operation Watts, an investigation into the Victorian Labor Party for alleged misuse of public funds for party political purposes. The investigation found taxpayer-funded employees were tasked with factional work during office hours, there was branch stacking, and unqualified relatives and factional allies were parachuted into jobs. Much like Operation Daintree, Operation Watts found poor accountability and an urgent need for significant reforms to the ethics and integrity regime for members and ministers.

Parliaments are unique workplaces with severe power imbalances. When it comes to misconduct, often there is no formalised process, and this means there is no guarantee of consistency, due process or any transparency. This bill addresses several of these recommendations. It will establish a Parliamentary Ethics Committee and a parliamentary integrity commission and enshrine the role of Parliamentary Integrity Adviser into legislation. It has been pleasing to see this government undertake extensive consultation on this bill, and we thank them for their engagement and for acting on our feedback. Parliaments should be the nation-leading examples of good workplace culture and integrity. Unfortunately, this is currently not the case, but working together will help us get there.

Last year the Australian Public Service Commission conducted a trust and satisfaction in Australian democracy survey. It found that less than half of those surveyed thought Australia performed well when it came to conducting enough checks to ensure politicians and officials cannot abuse their power. For those dissatisfied with how Australian democracy works, this was their number one area of concern: ensuring that politicians and officials cannot abuse their power. We are in a time of political polarisation and distrust in government. We need to address this head-on or we may lose our chance.

This bill is not perfect. It is a good start, but there are aspects that need to be improved upon. We are disappointed by the decision to disallow the commission from being able to receive retrospective referrals. We have been advised that this is standard when introducing new laws and that retrospective provisions would only ever be included in exceptional circumstances. We understand the practicalities of this decision, but I would say that we have seen exceptionally severe misconduct in the past and it is a shame that this commission wipes its hands clean of it.

More generally, given the control the minister has over the tenure, appointment and suspension of commissioners and integrity advisers, it is not fair to say that they will be truly independent. Another concern of ours stems from sanctions that may be imposed by the commission. With the power to recommend any other sanction the commission considers appropriate, the commission has powers to recommend an MP be expelled. We understand this is a matter for the commission, but they have the power to make guidelines on its functions. However, the expulsion of MPs is a tricky thing. It is part of the privileges, immunities and powers inherited from the UK House of Commons and vested in our state's constitution. These powers have been used in Victoria a total of five times – another bit of trivia.

This gives us the award for being the state that has expelled more members of Parliament than any other in Australia.

Back to my trivia question, you will be pleased to know that the answer was (b). The last member to be expelled was Edward Findley way back in 1901, as I mentioned earlier. He was expelled for seditious libel because the *Tocsin* newspaper, of which he was editor, published an article criticising King Edward VII. The Commonwealth Parliament abolished the power to expel its members in 1987. Prior to this time the power had been used only once: in 1920 Hugh Mahon was expelled for seditious and disloyal utterances following a speech in Melbourne in which he criticised British policy and urged Australia to become a republic. I would expect that we are not so fearful of criticising the monarchy in this day and age, but it is concerning that this power still exists here in Victoria. These powers could be enlivened by future bad operators. In the past it was disloyalty to the monarchy, but who knows what it could be in the future. I would like to see the commission and the Victorian Parliament proactively develop policy to address this grey area. This could include developing criteria to guide the use of these powers and protect against political weaponisation.

I will leave you with that plea and move on to some of the highlights of this bill. Firstly, there is the establishment of the Parliamentary Workplace Standards and Integrity Commission to receive, manage, investigate and resolve allegations of misconduct by MPs, ministers and parliamentary secretaries. Secondly, the amendment to the Members of Parliament (Standards) Act 1978 creates positive obligations for members to create safe workplaces and demonstrate respect for parliamentary integrity. It is unfortunate that it needs to be said, but it clearly does. I hope this positive obligation encourages all MPs in this place to reflect upon the workplace culture they cultivate. If you need to make a change, now is your time to do it. I commend the inclusion of anonymous referrals, consistent with other disclosure schemes and outlined in the *Set the Standard* report. Particularly when it comes to sexual harassment, we know that people often do not come forward because of the heavy burden of reporting. It is also great to see that the Parliamentary Integrity Advisor will be enshrined in legislation to provide confidential advice and ongoing training alongside the Parliamentary Ethics Committee. Hopefully these discussions will foster more ethical workplaces and an environment where people will proactively seek out advice before issues escalate.

Turning now to the proposed amendments, both the opposition and the Greens have put forward amendments to this bill. The opposition's amendments extend to the periods of ineligibility around the appointment of a commissioner and require a majority of the Integrity and Oversight Committee to appoint an acting commissioner. These reforms will go some of the way to safeguarding against these bodies being politicised. The Greens amendments will provide important clarifications about the penalties for noncompliance, with sanctions by the commission. Their broader amendments to the Parliamentary Committees Act 2003 will require that for all joint investigative committees not more than half the members may be members of a political party forming the government and that the chairperson must not be from the government. This is consistent with the findings of Operation Watts. The government of the day should not have direct control of the privileges committee's priorities and decision-making. It is important that politicisation in government integrity bodies is avoided at all costs. It undermines all the hard work we have done to reach this point. This bill represents important, albeit overdue, integrity reforms. We are glad to offer our support to it and to amendments that will further strengthen these integrity measures.

**Ryan BATCHELOR** (Southern Metropolitan) (14:22): I am pleased to rise to speak on the Parliamentary Workplace Standards and Integrity Bill 2024 and will do so in great detail. Before I commence I did just want to take up the contribution that Ms Payne made about Edward Findley, who obviously was a former Labor member for Melbourne in the other place. He was expelled for seditious libel for denigrating in his publication Edward VII. Given you are in the chair, Acting President McArthur, I will not go anywhere near anything that could remotely accuse me of denigrating our sovereign, because that would be contrary to standing orders. But only to provide people with a bit of reassurance and hope, if you look at what happened to Edward Findley after he was expelled from this

place, for those who fail to meet the standards of the Victorian Parliament there is a home. For Edward Findley that was the Australian Senate and a ministry in a Labor government. He was a minister without portfolio in the Fisher government, representing the Minister for Home Affairs in the Senate, no doubt a role that would keep anyone busy in 1911 or 2024.

But that is not why we are here, to talk about Victorian political history, although we could probably spend a long time doing so. We are here to talk about the Parliamentary Workplace Standards and Integrity Bill, which is a very important and nation-leading addition to the accountability of members of Parliament for their actions to promote the higher standards of integrity and accountability for all of us who hold elected office including, uniquely amongst the regimes that exist, those who hold executive office as a minister.

The bill before us today is the implementation, as the government committed to at the time it was handed down, of the recommendations from the Independent Broad-based Anti-corruption Commission in their report on Operation Watts. This is the implementation of some of those key recommendations, around seven of them in total, and it is the first legislated investigatory commission of its kind in the nation and certainly the only one that has its powers extended not only to the members of Parliament in their capacity as members of Parliament but also to holders of office in the executive, namely ministers of the Crown, which I think provides all of us with confidence that this body in its design has been developed thoughtfully with consideration to how to best give effect to the intent of those recommendations arising out of IBAC's special report on Operation Watts. But also more broadly, drawing on the experience we have seen from things like the Jenkins review coming out of the Australian Human Rights Commission, looking at culture and workplace culture in and around Parliament, it will establish proper investigatory processes for complaints, including anonymous complaints, against the conduct of members of Parliament, and that extends to how they have gone about the use of their benefits and entitlements, which is an important safeguard.

I think one of the other features of how we got here to the bill today is that this bill has been the subject of extensive consultation over the last several months, certainly since the end of last year, whether that be with members and representatives of their parties or with some of the key parliamentary committees. We have had extensive consultation on the content of this bill, and I think that has been a really important process for it to go through so that not only is there cross-partisan buy-in to the concepts that this bill is trying to achieve but also, with the mechanisms by which that is sought to be enacted, everyone has a clear and common understanding about what is likely to occur and is also given ventilation and the opportunity to provide feedback. It has certainly been a process that has been marked by extensive consultation, engagement and improvements in various ways on propositions that have been put before it.

The government has also, through a prior budget, provisioned for upwards of $11 million over the forward estimates period to assist in the establishment of the new commission, to provide it with resources for its commissioners and to engage staff, and then ongoing funding has been provided to enable the commission to continue to do its work. The government clearly takes these issues exceptionally seriously, with detailed legislation, extensive consultation and adequate provisioning of establishment and ongoing costs. It is a demonstration that the government takes these matters very seriously, as evidenced by the way it has gone about the development of the legislation before us today.

The bill will establish the Parliamentary Workplace Standards and Integrity Commission to receive, manage, investigate and resolve allegations of parliamentary misconduct and public interest complaints. It will establish a Parliamentary Integrity Adviser in legislation to provide confidential advice and training to members of Parliament. It will establish a Parliamentary Ethics Committee in legislation, which will be a forum to discuss and foster ethical standards in the parliamentary workplace so that we have somewhere that is providing us with the sort of guidance that is often useful and required about the sorts of conduct that constitute ethical behaviour. That is an important function so that we not just are viewing this through a compliance lens – this is not just an exercise in having an investigatory body to ensure compliance with rules – but have established mechanisms through the

integrity adviser and through the ethics committee to foster a better culture, to foster a place that can look at what better and best practice is. If we as members of Parliament rise to the opportunity to engage with that process and turn our minds and our actions to how we best utilise the new legislated Parliamentary Integrity Adviser and also the work of the ethics committee, then we will be in a position of strengthening the ethical foundations of this Parliament and its conduct. I think those two things, not often remarked upon, are essential ingredients in improving how this Parliament conducts its behaviour.

We are amending through this legislation the Members of Parliament (Standards) Act 1978, which contains a codified code of conduct, a statutory code of conduct, for members of Parliament, which places on us a range of obligations. One of the new positive obligations that this bill will include in the Members of Parliament (Standards) Act is a positive obligation for us to create a safe workplace and to demonstrate respect for our colleagues, for our staff and also for the commission and the adviser. The bill will enable the new Parliamentary Workplace Standards and Integrity Commission to receive complaints and investigate where we have not lived up to that legislative code. It gives life to the code in a way that perhaps it may not have had in the past. It gives us a body and a mechanism for where we are alleged to have fallen short of those standards, where our conduct is alleged to have fallen short of what is expected in the law. There is now a mechanism that can make a determination as to whether that in fact is the case. That sort of behaviour is what Victorians expect and what they deserve from their elected representatives.

But I also think it will create through this integrity architecture a place where we as members can be assured that there is an independent process that is able to look at conduct which some may think impugns the standards and make an independent, objective determination. That will give us a new forum that will provide us all with the sort of guidance on what is acceptable and what is not at an objective standard, at a standard that is not part of the political fray, that is not part of the daily cut and thrust of political debate and that can sit and reflect potentially with a slightly cooler head than you would get in the cut and thrust of day-to-day politics. Hopefully, that mechanism and that spirit will vastly improve the way that these matters are handled when transgressions are brought to light but also will give confidence to everyone else who comes to work with us, who comes to work for us, that the environment that they are coming to work within is one that is based on mutual respect and one that fosters a culture where that is implicitly and expressly recognised as being incredibly important.

The new commission in its structure will have a full-time commissioner, who under the terms of the bill will be required to have certain characteristics, including not being a member of Parliament for a certain period of time prior to their appointment, but the bill will also facilitate the appointment of part-time commissioners so that different expertise can be brought to the commission as a whole. We are not expecting one person to hold all of the wisdom in all matters that may come before the commission, but through the panel of commissioners, with the full-time and two part-time commissioners that will be established under this bill, we can get a breadth of experience and perspectives that can then turn their wise and cool heads to the matters that are brought before the commission.

To ensure that the appointments to this commission are ones that everyone in the Parliament can have confidence in, the appointments are going to be run through a process where a relevant minister will recommend appointment, but that process will involve a requirement to obtain the support of the members of the Integrity and Oversight Committee of the Parliament, which is one of the joint investigatory committees of the Parliament and the one that is charged with oversight of our state's independent integrity agencies. As a member of that committee since the start of this term of Parliament, those are functions that the committee takes exceptionally seriously, and I have no doubt that the members of the Integrity and Oversight Committee will apply the same degree of care, thought and consideration to this new body that the committee will need to oversight and to their important role in the appointment of those commissioners.

The commission will be empowered to take a range of reports of conduct, including those which are delivered anonymously, promoting a real 'no wrong door' approach to complaints so there is every

way possible to make a complaint, including public interest disclosures, about current and former members, referring on to other integrity bodies in appropriate circumstances or undertaking investigations itself on things like wilful, repeated or deliberate contravention of the register of interests; wilful, repeated or deliberate misuse of work-related allowances or offices or budgets; and inappropriate parliamentary workplace behaviour.

It is a significant bill. A lot of work has gone into it. It is a demonstration of the government's commitment to the implementation of the recommendations of Operation Watts and improving the culture of parliamentary behaviour and parliamentary workplace standards in this state. It is a very comprehensive package that in many ways leads the nation in terms of what it seeks to achieve. I think we should all benefit from the bill's passage and introduction here in the state of Victoria.

**Jeff BOURMAN** (Eastern Victoria) (14:37): I rise to make a short contribution on this bill. I have been around here a while now. I have seen some of the highs of this place and I have seen some of the lows. Integrity in this place is unfortunately a bit of a rubbery thing. I have been listening to some of the contributions. Stuff that is tolerated and encouraged in this workplace would end up in prosecution in a lot of other workplaces. The bullying, the pressure, the promises made and then broken – it just really would not fly. I understand that is Parliament, that is politics. I am not having a whine about it. It is more of a statement that sometimes this place lends itself to problems. Sometimes this place works towards issues just through how it works.

I think a lot of the time how we get somewhere is nearly as important as getting there. This is very results oriented. The government of the day wants to get some legislation through both houses – boom, out the door, it gets royal assent and we move on. From time to time it gets tight and you get pressure – I speak to it only as a crossbencher of course – from both sides. That is life, but it kind of leads me on to an issue I have in general, and that is the Victorian Managed Insurance Agency funding for ministers and nobody else. I am aware of a situation where a sitting minister of the day defamed someone in the opposition – they personally defamed the opposition of the day – and got VMIA funding, whereas the person who had been defamed had to do it themselves. When the matter was settled the minister had retired but was still covered by the VMIA. That is going back quite some time now, but it does really lend itself to a problem where the backbenchers of the government could find themselves in a situation where their ministers are covered but they are not. The opposition is not covered, whether they are shadow ministers or not. I am not covered and the Greens are not covered. The inequity of this is staggering. If one of the ministers decided to defame me – I will just pick me because we could go anywhere – outside of their portfolio, outside of the cut and thrust and outside of the chamber, I would have to fund my own legal defence and they would not. That is not really fair. I am a firm believer in these sorts of things. Everyone should get it or no-one should get it. Now, having said that, the ministers deal with their portfolios and there is a level of protection that they should get in dealing with vexatious complaints and things like that which we will not get, but to leave individuals hanging when someone else has cover is kind of gross. You wonder why people do not like getting involved in politics, and it is because of things like these.

There is inequity in the way this place works. I do not mean in terms of power because power is kind of absolute – you have got enough power to get in government and you need to do what you have got to do – but in terms of just making sure we are all fighting on the same plane. This could have been dealt with in this bill. What this bill is to me, if I were really to simplify it, is instead of problems going from the chamber to privileges, there is now another body which then answers to privileges. So there are problems with the whole system still. In the end you have partisan politicians deciding how other partisan politicians will be dealt with.

Changing that gets problematic because you also do not want unelected people having the ability to get rid of elected people. For criminal acts it is one thing, but for misbehaviour it could go in a number of ways. So there are a few missed opportunities. I am all for making people responsible for their actions. I am all for making sure that people are answerable. I have got to say in my time I do not think I have ever used privilege in this place, and I hope to finish up never having used it. I would like other

people to do this, but they can roll how they roll. I say what I mean and I mean what I say, and what I say I will say outside of here. If I cannot say it outside of here, I will not say it in here. So I am actually not entirely sure how I am going to vote on this bill if it comes to a division. There are some amendments, and as uncomfortable as it makes me feel to say it, some of the Greens ones are not bad.

**Samantha Ratnam**: That's as good as it gets, isn't it?

**Jeff BOURMAN**: I know – I will take up that interjection. I may need a shower later, but we will work through that. There are times in this place where there is an opportunity to fix things. I have seen some breathtaking treachery in this place that would never have been dealt with through any committees because that is the cut and thrust of politics, but other things could well have been dealt with. So just in summing up, I am going to wait and see how the amendments go and listen to the questioning. I think that it is disappointing when there is a chance to fix some endemic problems in this place and it is missed.

**Tom McINTOSH** (Eastern Victoria) (14:44): This new Parliamentary Workplace Standards and Integrity Commission will have a key role examining the behaviour of members of Parliament, ministers and parliamentary secretaries. This will provide an avenue for complaints to be heard and investigated through a proper process. We know current arrangements are inconsistent with standards in other workplaces. The model in the bill draws on the groundbreaking work of the Australian Human Rights Commission Jenkins report and allows the commission to investigate the behaviour of MPs. It will also implement seven recommendations from the IBAC and Victorian Ombudsman report on Operation Watts. This will be the most significant overhaul of parliamentary oversight in the country. It will be the first legislated parliamentary investigatory commission in Australia and the only parliamentary investigatory commission which will cover ministers.

The bill has been informed by extensive stakeholder consultation. Consultation commenced in October 2023, and it has been widespread. We have consulted with non-government members, and their feedback has resulted in significant changes to the bill. We have also consulted with the Presiding Officers, clerks of Parliament, integrity agencies and other experts across law, workplace standards, human rights, equal opportunity and gender equality. It is important that we get this model right; this is Parliament's bill. The commission will be established this year, with the bill commencing on 31 December 2024. The 2024–25 budget invested $11.9 million to support the establishment and operations of the commission, and over $3 million is ongoing. This builds on the $8.52 million that the government has provided to the Department of Parliamentary Services to support the implementation of Operation Watts recommendations that relate to the operation of Parliament.

To outline some of the key features of the bill, as noted, the bill will establish a Parliamentary Workplace Standards and Integrity Commission to receive, manage, investigate and resolve allegations of parliamentary misconduct and public interest complaints. The bill will also strengthen Victoria's parliamentary standards and integrity framework by establishing the existing Parliamentary Integrity Adviser in legislation to provide confidential advice and training to members of Parliament, ministers and parliamentary secretaries; establishing a Parliamentary Ethics Committee in legislation to foster an ethical parliamentary workplace; amending the Members of Parliament (Standards) Act 1978, including to update the MP code of conduct to create positive obligations for members to create a safe workplace and demonstrate respect for the commission and Parliamentary Integrity Adviser; and amending other relevant acts to integrate the commission and Parliamentary Integrity Adviser into Victoria's existing parliamentary standards and integrity framework. Under the bill members of Parliament will have a positive obligation to foster a healthy, safe, respectful and inclusive environment in a parliamentary workplace which is free from bullying, sexual harassment, assault and discrimination. This is what Victorians expect and deserve from their elected representatives. Members of Parliament will also be required to demonstrate respect for parliamentary standards, including the Parliamentary Workplace Standards and Integrity Commission – for example, by complying with a reasonable request made.

A new, independent Parliamentary Workplace Standards and Integrity Commission is a key feature of the bill. There will be up to three commissioners: one full-time commissioner, who will also be the chair of the commission, and two that can be appointed on a full-time, part-time or sessional basis. The three-commissioner model is one of the key elements taken from the Jenkins report, namely the need to have commissioners with the right skills to deal with inappropriate workplace behaviour and improve workplace culture. Commissioners will also be independent and appropriately skilled. A person will not be eligible as a commissioner if they have been, in the last five years, a member of an Australian Parliament, local council, registered political party or on the register of lobbyists. Commissioners will have complementary skills and expertise in areas such as government, industrial relations, law, public sector governance or administration, and public sector ethics and integrity.

Under the bill the commission will have jurisdiction to receive complaints about members of Parliament, ministers and parliamentary secretaries about parliamentary misconduct. Any person can make a report to the commission, including anonymously. Allowing the commission to receive anonymous complaints will encourage people to report misconduct without fear of reprisal or potential repercussions. This is consistent with recommendations from the Jenkins report and complaints to IBAC and Victoria's public interest disclosure scheme. The commission will promote a 'no wrong door' approach to complaints about misconduct and will be able to give and receive referrals to ensure matters are dealt with by the most appropriate integrity body. This includes the commission's ability to receive public interest disclosures about current and former members of Parliament, ministers and parliamentary secretaries. The commission will refer these disclosures to IBAC for assessment as a clearing house for public interest disclosures. If IBAC determines that a disclosure is a public interest complaint that also meets the definition of parliamentary misconduct, it can refer it back to the commission for investigation.

In relation to any current MP, the bill defines parliamentary misconduct as breaches of the MP code of conduct; wilful, repeated or deliberate contravention of the members register of interests; wilful, repeated or deliberate misuse of work-related parliamentary allowances; wilful, repeated or deliberate misuse of the electorate office and communications budget; or inappropriate parliamentary workplace behaviour. In relation to a person in their capacity as a minister or parliamentary secretary the bill defines parliamentary misconduct as inappropriate parliamentary workplace behaviour. Parliamentary misconduct applies to former MPs, ministers and parliamentary secretaries if the conduct was engaged in when they were an MP, minister or parliamentary secretary. Parliamentary misconduct also applies to a former member of Parliament in their capacity as a former member if it relates to a breach of section 15 of the Members of Parliament (Standards) Act 1978, which applies to former members and provides that they must not take improper advantage of any office held as a member of Parliament after they cease to be a member.

To protect the rights and wellbeing of all parties involved in the reporting and investigation process the bill contains appropriate safeguards on the commission's discretionary powers. The commission will have a power to issue confidentiality notices to protect the privacy, safety, welfare and reputation of those involved in an investigation as the circumstances require. People subject to such notices will still be able to seek advice and support as appropriate. Investigations will also be subject to appropriate procedural fairness protections. The bill requires the commission to not prejudice legal or criminal investigations or proceedings by other integrity agencies. It will be a criminal offence to provide false or misleading information to the commission, such as false complaints.

The commission will first need to determine whether it has jurisdiction to deal with a complaint. The commission must dismiss any complaint that relates to conduct that occurred before it was established or where the complaint is not supported by sufficient evidence. The commission will have discretion to dismiss complaints which are lacking in substance or credibility, trivial, frivolous or vexatious, not made in good faith, related to an allegation of conduct engaged in at a time that is too remote to justify an investigation, otherwise unjustifiable or unnecessary to deal with. The commission will also have discretion to dismiss a complaint that has already been dealt with by an integrity body, a law

enforcement agency, an entity with the power to require the production of documents or the answering of questions or a prescribed entity.

The commission will then have discretion to decide how to deal with the complaint but will be required to deal with it as quickly and with as little formality as possible. All parties want complaints to be dealt with as quickly and with as little formality as possible, so this is an important aspect of the commission's framework. This will include the use of appropriate dispute resolution processes. An appropriate dispute resolution process may only take place if all the participants agree to the process. This is important as there may be some matters that all parties wish to see mediated. Following an appropriate dispute resolution process the commission will prepare an outcome report unless it is not in the public interest to do so. The report, if produced, will be provided to the Premier if in relation to a person in their capacity as a minister or parliamentary secretary or otherwise to the relevant Privileges Committee if in relation to a member of Parliament or the Premier.

If the commission decides to investigate or is otherwise required to investigate if a matter is a public interest complaint, the commission will have the appropriate powers to investigate, including the power to request any document, information or other thing the commission considers necessary for an investigation and request a person to attend an interview. If a current or former member of Parliament does not comply with an investigation request from the commission without a reasonable excuse, the commission has the power to report the current or former member of Parliament to the relevant house. The Parliament will then have discretion to decide whether to take any action. The commission will be also able to recommend sanctions for noncompliance as part of its final investigative report.

The commission does not have coercive investigation powers, as these are generally only appropriate in exceptional circumstances such as anti-corruption investigations. The commission is also required to issue guidelines about its functions and will need to outline a person's rights and responsibilities whenever they issue an investigation request. Re baseless complaints, this is a reasonable bill designed for reasonable and legitimate complaints. No-one wants the commission dealing with baseless or politically motivated complaints. As noted above, the commission will be empowered to dismiss complaints on a range of grounds, including if they lack substance or credibility, are not made in good faith, are unsupported by sufficient evidence or are trivial, vexatious or made on frivolous grounds. The bill also empowers the commission to dismiss complaints if the person who made the complaint has been aware of the alleged conduct for more than 12 months. Under the bill it is a criminal offence punishable by up to 12 months in prison to give false or misleading information to the commission.

The bill has confidentiality protections to protect the integrity of investigations and privacy of people involved in the matter. In conducting an investigation the commission will also be bound by the rules of procedural fairness. The bill also requires the commission to issue guidelines on how it will dismiss complaints, including complaints that are unfounded and politically motivated. The last thing anyone in this place wants are attempts to weaponise or politicise the work of the commission.

At the conclusion of an investigation the commission will be required to prepare an investigative report. The bill provides for various requirements relating to investigative reports, such as providing a member of Parliament or minister with an opportunity to respond to an adverse comment or finding and maintaining the confidentiality of the person who made the referral as required. The investigative report will be provided to the Premier if in relation to a person in their capacity as a minister or parliamentary secretary or otherwise to the relevant Privileges Committee if in relation to a member of Parliament or the Premier. Consistent with the existing lines of responsibility in Victoria's system of government, investigative reports relating to the conduct of an MP, including the Premier, will be provided to the relevant Privileges Committee for their consideration and tabling in Parliament.

Investigative reports relating to ministers, parliamentary secretaries and the cabinet secretary will be provided to the Premier for consideration and tabling. It will then be the responsibility of the relevant Privileges Committee or the Premier to ensure the report is tabled in Parliament within the timeframes set in the bill. If the commission's investigative report recommends sanctions in relation to serious

parliamentary misconduct, improper conduct or detrimental action, the Privileges Committee or the Premier will also be required to prepare their own report in response to address the recommended sanctions. If the final sanctions recommended by the Privileges Committee or imposed by the Premier depart from what was recommended by the commission, the Privileges Committee or the Premier will have to include in their report any explanation for these differences. Investigative reports will generally have to be tabled in Parliament unless it would not be in the public interest to do so. The commission will decide whether it is in the public interest and will provide a summary report as appropriate to be tabled if so. Once the report is tabled in Parliament the commission will then be able to publish the report on its website.

There are a range of sanctions that can be imposed by either the commission, a house of Parliament or the Premier. If a parliamentary misconduct matter is sustained, the commission will have the power to directly impose sanctions, including a requirement to issue a public apology in a manner and form determined by the commission, give a written apology or explanation to an affected person, participate in an education or training program determined by the commission, participate in mediation with an affected person or enter into a behaviour agreement with a Presiding Officer of the house of which they are a member. In relation to serious parliamentary misconduct, improper conduct or detrimental action matters that are substantiated the commission will only be able to recommend a sanction to the relevant oversight entity, such as the Premier in relation to a minister, or the Privileges Committee of the house to which the member belongs. In relation to the Premier this includes a requirement to give a written – *(Time expired)*

**Lee TARLAMIS** (South-Eastern Metropolitan) (14:59): I move:

That debate on this bill be adjourned until later this day.

**Motion agreed to and debate adjourned until later this day.**

## *Business of the house*

## Orders of the day

**Lee TARLAMIS** (South-Eastern Metropolitan) (14:59): I move:

That the consideration of order of the day, government business, 2, be postponed until later this day.

**Motion agreed to.**

## *Motions*

## Budget papers 2024–25

**Debate resumed on motion of Jaclyn Symes:**

That the budget papers 2024–25 be taken into consideration.

**Ryan BATCHELOR** (Southern Metropolitan) (15:00): It is very pleasing to be given the opportunity to make a contribution in the chamber today about the state budget, which is an important document. Obviously there is a lot of material contained in the state budget, and it is incredibly important, very useful in fact, to be able to be given the opportunity following the budget to make some contributions about the important initiatives that have been funded in this year's state budget, which was handed down by the Treasurer in May, and to talk a bit further about the impacts that the budget and its initiatives are having in our local community.

I want to start with what I think is probably one of the most important, if underdiscussed, elements of the budget, which is in the economic framework that the Treasurer has taken to thinking about as necessary expenditure that the budget provides for, and that is in the early intervention investment framework that the budget establishes. This is a multibillion-dollar investment framework that seeks to invest in the sorts of early intervention social programs we need in our communities to help those who are particularly vulnerable, who are particularly disadvantaged, because we know that giving

them the support and the help that they need when they may be in the early stages of crisis will deliver significant benefits to the community but also to the state budget in later years. That early investment in the sorts of services to support some of the most vulnerable in the community not only has the potential but has been demonstrated to yield the need for less investment in those people by our social services later on in their lives. That is the fundamental basis on which the early intervention investment framework works, and it is something that has been particularly driven and championed by the Treasurer. I want to give him an absolute big pat on the back for the approach that he has taken to making sure that we are investing early to support the most vulnerable in our community.

One of the measures that was invested in under the early intervention investment framework in this year's state budget was the Journey to Social Inclusion program, which is led by the Sacred Heart Mission on Grey Street in St Kilda. I had the absolute pleasure of visiting Sacred Heart with the Minister for Housing and the member for Albert Park recently to hear firsthand about this program they run called the Journey to Social Inclusion program, which is targeted at those experiencing homelessness and those who are rough sleeping to provide them with the security and certainty of three years of extensive support, skills development, housing and other forms of wraparound support so that they can help get their lives back on track. We visited Sacred Heart Mission with the minister and the member for Albert Park shortly after the budget to confirm that $45 million out of the early intervention investment framework was going to fund the Sacred Heart Mission, along with some of its other non-government sector partners including Uniting and the Salvation Army, to provide the Journey to Social Inclusion program with additional funding over the coming years.

We had the opportunity to meet with some of the individuals who are benefiting from the support that the early intervention investment framework provides. Those often are not the headlines that you see on budget night, the $45 million that we are putting in to support those who are homeless or rough sleeping. But they are investments that are the hallmark of this Labor government, and they are the investments that will be able to change the lives of some of the most vulnerable in our community. I wanted to start my contribution taking note of this budget by calling out how important those early intervention frameworks are and how important the investment in homelessness and support services is for so many in our community. I am absolutely proud to be part of a government that believes in that sort of investment.

The other thing that I think is a hallmark of this budget is the further assistance that the Treasurer announced on budget day about delivering cost-of-living support to families. We absolutely know from the discussions that we have with members of our community on a weekly basis just how difficult many families are finding it with the rising cost of living. We hear, we understand and we listen. That is exactly what the budget this year demonstrated: that the government is listening to families, who have been telling us they are struggling with the cost of living. It has some really critical measures contained within it to support families with the cost of living.

Obviously the big-ticket item, the headline item, in our cost-of-living package for families in the state budget was the $400 school saving bonus, providing for the next calendar year – calendar year 2025 – $400 for every student in government schools into an account to be spent on things like school uniforms, excursions, class lists and consumables, those sorts of materials that are the added extras that many families have got to dip into their pockets to pay for. Thanks to the Allan Labor government, thanks to this year's state budget, in the next school year $400 will be there for every child in a government school to benefit from, significantly easing the worry that I know many parents face when they are trying to figure whether they can afford to send their kids on a school excursion, whether they can afford to send their kids on a school camp, whether their kids are going to have a school uniform. Relieving those pressures, relieving that stress and providing the benefits to those families is exactly what the $400 school saving bonus, funded in the state budget this year, delivered next year, is absolutely all about. And it is on top of the other cost-of-living relief that we are providing as a state government to families with kids in schools.

We have tripled the Glasses for Kids program. Another $6.8 million was invested in this year's state budget in the Glasses for Kids program, tripling that program and allowing 74,000 more prep to grade 3 students at 473 government schools across the state to get access to that glasses program. It provides free screening and glasses for students who need them, helping to identify vision issues in kids early on, because if you cannot see the blackboard, you cannot see the chalkboard and you cannot see the teacher, you cannot learn in our classrooms. It is why our government is providing support for those who need it, to give our kids the glasses so that they can learn in the classroom. It is a very similar approach that we take to oral health care in our schools. The Smile Squad also had funding continued in this budget, giving kids who are eligible, when the Smile Squad van visits their government schools, the opportunity to get their dental check-ups. It means no longer having to do the administrative juggle of getting kids to the dentist and avoiding additional out-of-pocket costs.

There is also an extension in the state budget of the Get Active Kids vouchers. We have already provided 140,000 of these vouchers to help young Victorians play the sport that they love. This budget provided an additional $6 million to extend the program, which provides vouchers of up to $200 to help eligible families cover the cost of sports. That is in addition to the active schools program, which is providing $116 million to help schools to run things like swimming and water safety programs for their students. We know how important it is for kids to have structured active activities. We also know how important it is for them to learn how to be safe around the water, and that is what our investments are delivering on. I think just there you have an example of the sort of cost-of-living support, the cost-of-living relief, that the Allan Labor government is providing to families, because we know families need support. We know that families are under pressure with the cost of living. We are listening to what they are telling us, and we are delivering the support that they need.

I just want to make brief mention of some of the other initiatives that were of particular benefit in the state budget to some of the schools in Southern Metropolitan Region. In particular many of the Jewish schools in the Southern Metropolitan Region have had increased concerns about security. There was a Jewish community security infrastructure program as part of a $6 million package. Local faith-based schools have received major funding to help maintain and improve security measures. The safer Victorian faith-based schools package included several schools in the Southern Metropolitan Region, which received support. Yeshivah college received $120,000 for building access controls. Beth Rivkah, which I went and had a visit with on budget day, received $100,000 for building access controls. Leibler Yavneh College received $120,000 to fund additional registered security guards and install additional CCTV cameras – again, I was there on budget day. It was great to meet with principal Shula Lazar and David Fisher from the school. And Sholem Aleichem College received $162,000 to fund additional security upgrades. We are out and about, talking with members of the Jewish community in Southern Metropolitan Region, and we understand the increased concerns that they have, particularly for their children, at a time of increased tensions in our community. We do see them manifest in a range of ways. We are proud in this budget to be providing support to the Jewish community through the safer faith-based schools initiative to provide necessary assistance to improve security at these schools.

I also had the great delight on budget day of going down to the tennis centre on Royal Avenue in Sandringham. The tennis club is going to get $150,000 to install some new LED light towers. Tim, who runs the tennis centre on Royal Avenue near the council offices in Sandringham, was very delighted to receive the news, which will enable them to put on more classes, put on more sessions and lessons, particularly at night. We know that not everyone during the day has the time, given work and study and other family commitments, to get out and do the kind of active participation in sport and recreation that they would like, and the provision of lights like this enables them to do that after hours.

We also had, shortly after the budget announcement, funding for lighting upgrades at the Dane Road Reserve in Moorabbin for the Racing Rugby Club of Melbourne. They are, in partnership with the City of Kingston, getting the installation of new LED light towers, which will enable both the rugby

club and cricket club who use the facilities at Dane Road, next door to Moorabbin Primary School, to have both training and competition facilities available to them for extended periods through the year. Often in winter it gets dark early, and the club has been unable to train at their ground on Dane Road. The installation of these new lights will be of significant benefit to them.

The last thing briefly I will mention is the important investment that the budget is making in some of the facilities at the Alfred, obviously one of the state's pre-eminent trauma centres – an important hospital for the state but also for residents in Southern Metropolitan Region. The budget allocated $118 million for capital works at the Alfred hospital – for maintaining operating theatres, intensive care and inpatient units and continuing their life-saving work – demonstrating the importance of the continued investment that this budget is making in our health system, in our health infrastructure. I visited the Alfred recently with the Deputy Premier and my colleagues, including Mr Berger, touring some of the exceptional research facilities at the Burnet, but also we had a look around the cardiovascular unit at the Alfred to see the extensive work that they are doing. I have also had the opportunity to visit some of the other wards in previous visits. $118 million for the Alfred – a continuation of the investment that we are making. This budget delivers for Victoria.

**Joe McCRACKEN** (Western Victoria) (15:15): I too am pleased to talk on this take-note budget motion. I guess there are many that would characterise this budget as pretty nonchalant, because it really does not do much to help Victorians. It is a careless budget that is inflicting a lot of damage on the future prospects of this state. When you see the path that this budget leads us down where we will have debt of $188 billion, you have to wonder who is really at the forefront of those thoughts. Interest will be $25 million a day every day. This government has ladled all this debt on every single Victorian. Who pays for that debt? It may not be the people in this room. It is future generations of young people that are tomorrow's taxpayers. They are the ones that will have to pay it back through higher property taxes, through higher taxes on basically every activity they want to do and perhaps even on dying soon unfortunately – we have heard reports that that could be the case. The debt hole is so deep that it might even get to China. We are just digging our way to China, aren't we? If you pop out the other end, you might see your old boss Daniel Andrews there. It is intergenerational debt that is the problem here, and that is what Victorians are going to be faced with.

Let me go through some of the challenges that we have with this budget. Major projects have had, over the course of Labor governments here, $40 billion in blowouts. Forty billion dollars is no small amount at all when I think of the local projects that could have been funded in Ballarat, in my area. The budget certainly did not fund a train platform opposite Mars Stadium. We know that the Commonwealth Games have been cancelled and $600 million was wasted, and that is only the tip of the iceberg. Six hundred million dollars was wasted, and the government cannot even fund a train platform opposite Mars Stadium. We know that the government have put together a package that is meant to have a regional athletics facility in the Mars Stadium area, but they expect people from Ballarat to get off a train at the station and get an Uber or a bus or something to Mars Stadium instead of building a platform right opposite when the train line literally goes right past the stadium. It just beggars belief. It is the most commonsense project that could have been handed to the government on a silver platter, and it was ignored. Well, that is not unusual, because all regional Victorians get ignored by this state government.

Let us look at the Suburban Rail Loop. That is meant to cost over $200 billion over the course of that project, all spent from Cheltenham to Box Hill. What happens to country Victoria? We are barely able to get our roads fixed properly, yet $200 billion will be spent in the city. It is so unfair. The Big Build and the cost overruns there – we know the involvement with the CFMEU, don't we? They love the CFMEU, love bikie gangs but hate workers, because they are the ones that are suffering and they are tarnished through this. It is really unfortunate that the alleged corruption has taken place in this state, and it has been very well reported. But what happens? Nonchalant, turning a blind eye, did not really see anything here.

We have only had the Premier overseeing this. She had been in construction portfolios for the last 10 years. She ignored the problem, and then when it did come up – 'I didn't know anything about this. Where did this come from? I'd better do something.' The fact is she has been forced to do something about it. It is an absolute disgrace. We need accountability, but I daresay we will not get that. Much like she would not appear before the Commonwealth Games inquiry, I dare say the Premier will not appear before any other inquiry, because we know that the government did not want to set one up, as we saw yesterday, to get some truth and honesty and integrity around these matters.

The housing crisis continues to affect Victorians every single day, and we see homelessness on the rise, which is extremely unfortunate. I have had locals in Ballarat trying to develop land, and they cannot because they have had so many difficulties dealing with government departments and the holding costs of land have continued to increase. One developer who I was talking to only the other day has 300 lots that they could bring online. Last year they paid $80,000 in land tax. They have just got a bill for $180,000 this year, which is more than double. Why would anyone want to develop land in Victoria when they are slugged like that?

While we are on taxes and charges, land tax is the big killer. It is a total cash grab. I had a lady that came into my office and told me that her garden was taxed because it was on a separate title. I asked her to please, please, please go off to the State Revenue Office and explain that this is clearly wrong. I just worry that that might be the one case that I have been able to detect. We have hopefully helped her to not fall through the cracks. How many others are in similar situations that just have not had the time, the energy or the know-how to work through the system to make sure that they do not fall through the cracks as well and end up being slugged? This lady was slugged nearly $1000 just for her garden. How many others would have suffered?

I have also had other constituents in my office literally crying because they cannot afford to pay their land tax. It is all because you guys cannot manage money, and we are paying the price for it. WorkCover premiums have increased dramatically – there are reports that it has been between 40 and 60 per cent. One of my local businesses in Ballarat, a glass manufacturing firm that employed 14 people, has closed down because WorkCover premiums have gone up. That is just not sustainable, and clearly jobs are going because of it. This is a very honest, hardworking business that has been around since the 1960s in Ballarat – gone. Apparently this is the party of the worker that supports workers. Well, no, it does not; it actually gets them out of a job.

The Property Investors Council of Australia have put up some statistics as well. They have completed a very good report about where investors are going in Victoria. They are not staying; they are heading away from Victoria. They are going to Queensland and WA. They are not staying around here at all because they know it is very, very difficult to run a business or hold property, and that is an absolute shame. Of all places, they are even going to Adelaide. Adelaide is more of a preference than Victoria. Surely that is a cause for shame.

When I look in the budget and I think about roads, roads is probably one of the biggest issues that impacts my constituents. To see the roads maintenance budget for country roads slashed to just $32 million is pretty scary. I have driven along the Western Highway many times, and the Western Highway was one of the major roads that was cited in the recent RACV report which listed a whole heap of different roads across regional Victoria. A number of other roads include the Princes Highway as well as the road from Balliang to Lara. I do not know why we spent $200 billion on a project in Melbourne when we cannot even get basic safety concerns addressed on country roads. Potholes galore – it is like an obstacle course trying to navigate country roads sometimes. We even had in the past the Treasurer label it 'Liberal Party propaganda', which is just completely false. If anyone here has driven on a country road, you would know that they are quite treacherous, particularly between Trawalla and Beaufort, which was named in the recent RACV report. Major roads and arterial roads are just continually neglected, and we are certainly paying the price for that.

We have also heard hospitals are going to have their departmental budgets cut. I know that there are a number of different health services in my area that are concerned about these alleged cuts. Beaufort and Skipton Health Service, East Grampians Health Service – which is in Ararat – and Maryborough District Health Service are just some that are very concerned about what might be coming. We have seen it very well reported in the media about these savage cuts to hospital beds that are going to happen because of a lack of resources.

Education – you know, we always hear from this opposite about education and how they are building new schools. They do not talk about the ones they already have on their books, though. My old primary school in Beaufort has been on the books of the Department of Education for a number of years. It has been vacated and it was consolidated with the Beaufort high school, but the site has still remained in the hands of the Department of Education and has been sitting there vacant for a number of years. It has been vandalised, it has got graffiti everywhere and the building is in a state of disrepair, sadly. For me, when I look at that school I have very fond memories of that place. It is number 60 in the state, so it is one of the very early schools, yet the heritage-listed building and a number of the outbuildings have been let go to rack and ruin, which is just such a shame. For all the talk of these new schools that are being brought online, the ones that are currently on the Department of Education books do not get maintained at all. $800,000 was committed as part of the state budget in recent times to make sure that the works were done at the school to do a master plan and to get early works at least started. I visited the school the other day and I can tell you nothing is happening at all. You have to ask why.

I have also got to talk about this school saving bonus of $400. This has been touted as cost-of-living relief, but it is not cost-of-living relief for everyone. You only get this bonus if you go to a public school or you are in an independent or Catholic school and you are eligible for a healthcare card. That is not fair. There are a number of Catholic schools that do not get access to this – a lot of students in Catholic schools do not. The Catholic education diocese in my area of Ballarat did a study on this, and they found that schools in the suburb of Canterbury, which is a well-established, high-income suburb, do get 100 per cent benefit at Canterbury Primary School, but at St Francis Xavier in Melton, which has average house prices half that of Canterbury and average income of less than the average wage, 23 per cent of students are eligible. The rest get nothing, nothing at all. Cost of living does not see what school you go to, cost of living does not see religion, but the government is very happy to discriminate on those terms against the people that need this help the most. So much for caring for the battler and the worker.

Public transport – the Ballarat railway station is a classic case. $51 million – it was up from last year's budget; an extra million dollars for the Ballarat railway station – and it has been sitting there. The draft designs that are out for the station are just awful. They do not fit in with the heritage precinct of beautiful Lydiard Street and the heritage landscape that typifies central Ballarat. I do not know anyone that fights disability access to railway stations. I am in full support of that, and I am very happy to put that on record. What I am against is a solution which is not in keeping with the heritage surroundings that the beautiful Ballarat railway station is in. It is over 160 years old, this station. It should be protected and enhanced, but the draft designs that the government put out do not enhance it. They are Lego-like designs that may well fit into Fitzroy, they may well fit into other parts of Melbourne, but they do not fit into Ballarat, and I really do encourage the government to reconsider the options that they put forward.

It might also be a good time to sit around and have a think about how we could restore the heritage gates to proper full function as well, as they had been for so many years, but I do not think those calls have been heeded. Save Our Station, or SOS Ballarat, have been campaigning on this for a significant period of time. There is physically no reason why the heritage gates cannot be restored, because as I said, they have been safely operating for a number of years. It would be good for the government to explore this a bit further, maybe eat some humble pie and consider a way that we can enhance the heritage precinct around Ballarat station instead of diminishing it and taking away from it and destroying it.

I hope the government considers making a few changes to this budget. It is digging a deep black hole of debt with more deficits coming on the horizon. It is future Victorians, the young people of today, who are going to be the taxpayers of tomorrow, and they are the ones that are going to have to pay the price for this. We are all paying for it now, and it will be not just the next generation but the one after that and the one after that and the one after that. I do not know how we are going to get this debt lower, but jeez, we have got to start trying, and I would really encourage the state to start trying as well because we need to pay it back.

**Sheena WATT** (Northern Metropolitan) (15:30): I rise to speak on the motion, which lays out the Allan Labor government's 2024–25 budget, which is all about helping families and easing cost-of-living pressures. We know that in Victoria and beyond, inflation is increasing the prices of food, bills, appliances and services. That is why our state budget places emphasis on supporting families who are juggling the many costs of living.

For parents and guardians the many costs associated with raising children – school-related costs especially – can accumulate, with uniforms, camps, excursions and sports expenses adding up. We are helping to ease this cost-of-living pressure by providing a $400 school saving bonus for every student enrolled in a government school and eligible families at non-government schools. You know what, parents and guardians should not carry the burden of their child missing out on school activities. That is why this $400 school saving bonus will truly be game changing. We are also tripling our free Glasses for Kids program and providing more vouchers to cover the costs of kids sport to ensure that students get the most out of school and feel supported in exploring their passions. We want every kid to feel encouraged to involve themselves in school activities, and we want every family supported to do so.

Schools are the place where young kids become young adults, and it is crucial they are in an effective learning environment. We are continuing to upgrade school buildings and classrooms all across Victoria. It was wonderful to visit Carlton North Primary School and deliver the great news to Principal Corben that $8.4 million will be invested in upgrading and modernising the school. Within the Northern Metropolitan Region I am very delighted to let you know that Brunswick North Primary School, Kensington Primary School, Fitzroy Primary School, St Michael's Primary School and Thornbury Primary School are also being supported with upgrades – and they are just some of the schools closest to us. You see, Principal Corben told me herself how much this funding means to Carlton North, and I am excited to see the new purpose-built school space and the refurbishment of their 150-year-old school building, which will be facilitated by this funding. Students are the leaders of tomorrow, and that is why the Allan Labor government is getting on with it and improving learning conditions. The Victorian Labor government is ensuring all families have access to a great local school. The funding to Carlton North for upgrades is part of the $753 million investment in maintaining and upgrading schools right across Victoria.

Coming to broader statewide matters, can I say we have promised to build 100 new schools by 2026. We have already opened 75, and that number has probably gone up since I wrote this speech the first time. In fact secondary and specialist schools have opened up at the locations where they are needed most, and primary schools – well, we need them just about everywhere. An additional six schools are currently in the construction process, with another three in planning and design. The 2024–25 budget has invested an additional $1 billion to build the remaining 16 new schools and deliver on our promise to Victoria families. This funding will also cover planned additional stages at two recently opened schools – there you go.

Alongside this we know that more needs to be done to prevent family violence and support the safety of women. That is why in the budget the Allan Labor government is investing $269 million in preventing family violence. This funding will facilitate crucial work in supporting women's safety across our state.

On another matter of safety, can I talk about road safety. The 2024–25 budget is taking considerable measures to prioritise safety on Victorian roads. I was very proud to see in my neighbourhood on

budget day, and I was happy to announce via social media and some Fun Time video clips, that Nicholson Street in Coburg is getting a safety upgrade. This is $1.27 million in upgrade funding to go towards improving this stretch of road. What my constituents tell me time and time again is that people go too fast too often, placing all road users at risk.

The Allan Labor government is listening and this funding, the $1.27 million, as I said, will prioritise safety initiatives, including the implementation of electronic variable speed limit signs, some electronic travel speed warning signs, some dragon-teeth markings and some yellow road surfacing at the pedestrian crossing. Can I thank the Pedestrian Safety for Nicholson Street Coburg group, who have shared their concerns for pedestrian safety with me and with the member for Pascoe Vale in the other place Anthony Cianflone. I know that he was particularly delighted to see this funding announcement on budget day. Can I just say that it is our shared mission to support our community to make Nicholson Street safer for all road users. The funding for Nicholson Street is part of the metropolitan roads upgrade program, which is distributing $16.5 million for Victorian roads, and that is going to improve the network efficiency, the road safety, the freight capacity and of course, crucially, travel times.

Another critical aspect of safety for our healthcare system here in Victoria, which continues to be of the utmost importance, is of course our public health system. With the 2024–25 budget we invested a record $13 billion so that all Victorians can access care in a timely and accessible way. Every Victorian should be supported and given the health care they need when they need it, and when times are tough we fall back on healthcare workers who provide such life-saving treatments to give us world-class care. Our hospitals also need world-class facilities, and the budget is delivering $1.7 billion to build and upgrade hospitals and health facilities across the state.

One that pleased me a great lot, I must confess, is funding to improve the Northern Hospital, located in Epping. As it is one of the busiest hospitals in the state, this funding will be well utilised to start construction on the new emergency department and the dedicated paediatric zone – how exciting is that. There is also a mental health, alcohol and other drugs hub and additional inpatient beds. We are ensuring better health care for all Victorians, with $2.1 million allocated to delivering access to trans and gender-diverse health services and operating two multidisciplinary gender-affirming-care clinics, in Ballarat and Preston, supporting LGBTIQA+ Victorians.

This budget – you have heard me speak about it earlier this week, and I will say it again – is further facilitating our work as we walk on the path to treaty here in Victoria, leading us to a fairer future. We are pressing ahead with treaty, walking with First Nations people in Victoria. Alongside the First Peoples' Assembly of Victoria, we established Australia's first formal truth-telling process, the Yoorrook Justice Commission, in 2021. We are building on our existing commitment of $1.9 billion towards reconciliation in our state, and the budget just passed invests $273 million in First Peoples' self-determination, including $6.8 million to support the extension of the Yoorrook Justice Commission in their work – and with that I mean the formal truth-telling processes with Aboriginal Victorians and the government and also our broader Victorian community. Ministers in the Allan Labor government and even the Premier herself have so far fronted up to the Yoorrook Justice Commission to speak truth on our history here in Victoria, and indeed I was really happy to see that. I know, though, that there is still very much a long way to go. Victoria is on a path to action for closing the gap as well between Indigenous and non-Indigenous Victorians, and I am really proud that the funding supports this critical journey to reconciliation.

I am going to carve out a moment, actually, to talk about climate action and how Victoria is leading the way in cutting carbon emissions. As the Parliamentary Secretary for Climate Action, I am really proud of some recent investments in the energy transition. As you are well aware, we have brought back the SEC to provide to Victorians reliable and affordable government-owned energy. The first investment from the SEC's initial $1 billion will support the build of one of the world's largest battery projects. That will drive down energy prices, and that is very good news indeed.

The other thing is that a little further from our shores will be some offshore wind, and that will play a significant role in our renewable energy future. The budget invests $18 million to plan for offshore wind generation projects and $17 million to ensure the planning and design of a renewable energy terminal at the Port of Hastings. For further renewable energy projects we are investing $10 million to improve some spatial risk mapping and guidance to save investors time and money and give them some assurances that Victoria is a place to invest. This is accompanied by a further $47.3 million to ensure that environmental assessments really are finished in a timely manner, further driving investor confidence in renewable energy here in Victoria.

As we press ahead in the transition towards renewable energy, we know that some members have expressed a real interest in energy more broadly and will know that an additional $12 million has been committed to fund VicGrid to coordinate the planning and development of the state's transmission infrastructure. Whilst I am excited to see offshore wind and I am excited to see so much new renewable power come online here in Victoria – because this really is the renewable powerhouse of our nation – I do know that we need that renewable power to be stored in those giant batteries that are coming online and we also need that power to be moved across the state to where Victorians need it. That will happen now with VicGrid. You will recall in a sitting not too long ago we actually had quite a strong piece of legislation come before us regarding the rollout of the new VicGrid organisation, so congratulations to all of those people that were involved in that one.

While I am here talking about renewable energy I have got more to talk about. I want to highlight the $38 million that has been invested to continue the enormous success of Solar Victoria, which is facilitating an additional 35,000 energy-efficient hot-water rebates. I know that when folks have a hot-water system that has seen better days and has got no more days ahead they are looking for energy-efficient solutions. There is support that can come to Victorians care of our Victorian energy upgrades. Can I just highlight how much that will be supported by members of our government, as we invested $38 million in the continued success of Solar Victoria. There is an investment that not only helps you have a warm shower but also helps drive down the cost of living and energy bills. By switching to a heat pump or even a solar hot-water system, just to give you some sense of the savings you will be looking at, the average Victorian household will save up to $400 a year on their electricity bills just from that one unit. I know that you will be pretty keen and interested to explore that, as I was.

While I like talking in this chamber about all these exciting initiatives, what gives me the greatest joy is going out and speaking to the Victorian community. I must say I had the great joy not too long ago of heading out with the Minister for Climate Action, Lily D'Ambrosio from the other place, to cook together on electric induction cooking. Whilst some folks might run a scare campaign about induction cooking, I have got to tell you there are chefs of some very elite restaurants right here in Melbourne that are loving induction cooking. It is being taken up with such gusto, and now members of our community are getting on board with it as well. So despite my cooking being not the best at that fancy cooking school, it was a great opportunity. I could go on and on and on talking about our budget, but I know that there are more speakers and I am happy to leave it to them.

**Trung LUU** (Western Metropolitan) (15:45): I rise today to speak on the motion on the budget put forward by the Labor government. As we know, budget papers are very important in forecasting, planning and delivering Victorians' future. Victorian lives are getting harder by the day. Victorians are paying more for goods and services and getting less as the cost of living rises, and we all have endured and experienced hardship in recent months. I would like to speak on parts of this budget that will affect my constituents in Western Metropolitan Region.

The recent budget shows us that this Labor government cannot manage money. With recent revelations concerning the corruption, kickbacks, standover intimidation and worksite bullying allegations within the construction branch of the CFMEU, the community now sees a clearer picture as to why all the state's major infrastructure projects have been delayed in delivery with cost blowouts in the billions of dollars under Premier Allan's responsibility. Victoria has the largest debt of all states

in Australia, surpassing the debts of New South Wales, Tasmania and Queensland combined. When debt is out of control, projects and services that Victorians rely on face the axe.

In the Western Metropolitan Region, my electorate, the election promise of electrification of the Melton and Wyndham Vale railway lines was scrapped, despite it being a commitment of this current Labor government during the 2018 and 2022 election campaigns. Initially deemed viable by Premier Allan, who was at the time the Minister for Transport Infrastructure, these projects have now been cancelled in favour of the Suburban Rail Loop in the eastern suburbs. This has left my community questioning the benefits for the west and the value for money for Victorians in this budget, with all the successive cancellations of major infrastructure projects, including the shelving of the Melbourne Airport rail link.

Suburbs in my electorate, such as Tarneit, Wyndham Vale and Truganina, are eagerly awaiting vital improvements to public transportation systems to support the area's rapidly increasing population. However, the west continues to struggle and endure Melbourne's most congested, dangerous roads, with narrow carriageways, potholes and poor surface conditions. The shelving of projects and the abandoned railway upgrade have forced many of my constituents' families to rely on overburdened and poorly maintained local roads. Brimbank City Council has recently communicated with the Minister for Roads and Road Safety its inability to shoulder most of the cost of maintaining arterial roads. This budget's cuts to roads and rail are making life harder for services and families across the state, especially those in my electorate in the west.

The Allan Labor government has cancelled rail and major infrastructure projects and paused the upgrades of Ballan Road in Werribee and the Point Cook Road–Central Avenue intersection in Altona Meadows. At the same time Premier Allan has continued to sign contracts and pumped $212 billion into the Suburban Rail Loop. This dreadful budget's cuts to road funding will see road asset management funding reduced by $19 million, a 2.7 per cent decrease from the 2023–24 budget.

Anyone who has driven across the West Gate Bridge would have experienced the gridlock, slow-down zones and dangerous intersections that are all too common. Infrastructure in the west has taken a back seat once again in Premier Allan's recent budget. The Melbourne Airport rail link and the *Western Rail Plan*, both deemed critical infrastructure to meet the demands of a growing population and for connectivity of Victoria's west, have been put on hold. Not only did Premier Allan's Labor government cut funding to roads, they also cut funding to public transport. Tram services experienced a substantial cut of $52.1 million, marking a drop of 10.5 per cent – not that there are many tram services in the west, for a start. There is not even one tramline connecting the city to the west. The only tram available is the number 82, which runs from Footscray to Moonee Ponds, approximately 6 kilometres from the CBD. That is what kind of service we are getting out in the west under this Labor government.

Unfortunately, Premier Allan has consistently prioritised the eastern suburbs over the west. This government prefers to spend $212 billion on existing train lines for the east rather than developing new lines and upgrading overcrowded stations in the west to cater for the growing population. Instead of rail improvements, enhancing bus services in the west, extending tramline networks and repairing old roads, the Premier has a greater preference for high-profile projects that have no costings and no plan and are steered by corrupt CFMEU leadership, costing Victorian taxpayers billions of dollars.

The budget shows Premier Allan and the Labor government cannot manage money. They have no control over the costs of major construction projects that are strongly influenced by the CFMEU leadership over the cost, delivery timeline and who can get to work on the worksite. The proof is in the pudding, and we, the Victorian taxpayers, are paying the costs. The Melbourne Metro railway tunnel project suffered a $2.7 billion budget blowout, pushing it close to $13 billion, a 26 per cent budget overrun.

The Victorian Homebuyer Fund, a very important program in a developing region like the west, in my electorate, worth $2.8 billion, has been scrapped by this Allan Labor government. Premier Allan scrapped this scheme, making the dream of home ownership harder for young Victorians. Not only is the Premier making it harder for young people to buy a home, she is also cutting vital infrastructure projects. The $10 billion airport rail link project has been shelved for four years, even after Melbourne Airport agreed to the location of the railway station, leaving its future uncertain. Every Labor government since Steve Bracks in 1999 has promised to deliver this project, and if I may note, every Labor government has failed. This is another Labor budget that has failed to deliver for the western suburbs.

Infrastructure is not the only major service to be cut in this budget. The budget also had a significant impact on various health services. Public health has seen the most substantial reduction, with $207 million cut, marking a 33.8 per cent decrease in funding and cutting both research in the lab and frontline services. This comes at a time when the Allan government is cutting 75 per cent of funding to the Victorian Comprehensive Cancer Centre. The home and community care program for young people has also been cut by $41 million, a 20.9 per cent decrease. This output includes a range of services involving community-based nursing, allied health and support resources that allow young people to maintain independence and participate in the community. Labor is hiding its financial mismanagement, and in doing so it is putting the lives of thousands of infants at risk.

Dental services have also been slashed, by $36 million, a 14.9 per cent reduction. Victorian dentists are concerned that people are delaying their routine care and, in the worst-case scenario, are forgoing dental care altogether. This often leads to dental care centres being overcome with an influx of emergency patients, because patients are delaying preventative and urgent treatment. With Labor at the helm, dental care seems to be a luxury rather than an essential need.

Young families with children are also worse off under this Labor budget. An area that is of great concern to my constituents is schooling. In one of the most disadvantaged and fastest growing metropolitan regions in the state, good schools provide a ticket out of poverty for thousands of kids in my electorate. Premier Allan has scrapped a $24.6 million Melton South Primary School upgrade. Manorvale Primary School in Werribee is also left out in this budget. Families in the west are facing higher costs without receiving adequate services in return. Victorians are especially burdened by the state's debt, leading to the highest taxes in the country for the local taxpayer. An average Victorian pays $5073 in tax, more than what residents pay in other states. To give you an example, the amount is 74 per cent higher than Tasmania – we pay $2173 more; 70 per cent higher than South Australia – we pay $2103 more; and even Queensland – Victorians pay 23 per cent more, amounting to an extra $1426. Victorians not only face higher taxes but also carry the largest debt among all states. This raises concern about economic management under Premier Allan's Labor government, which now seeks additional funds from taxpayers.

To wrap up, I wanted to say it is time Premier Allan and the Labor government focus on taking care of all Victorians and making sure all parts of Victoria get the attention and the resources they need. Rather than focusing on the east, they need to focus on all Victorians. In this budget the Western Metropolitan Region and the western suburbs, which are in my electorate and are the constituents that I represent, have not been given what they need and what they deserve. It is time for change. A Liberal–Nationals government will deliver that change.

**Tom McINTOSH** (Eastern Victoria) (15:57): It is a delight to stand up and talk to this budget take-note motion. There were so many incredible things to come out of the budget for the electorate that I am fortunate to represent in Eastern Victoria. It was really a big time, budget day. We got to get out with community and celebrate some amazing things.

We started off at the Paynesville Bowling Club, where we were so fortunate to be able to announce to the local members $330,000 for a new synthetic green. For the club it is really, really big. The club there own their own land and look after it well, but there are costs of maintaining the green. The time

when there are lots of tourists in town, during the middle of summer, is often when they have to do maintenance, whilst there are not bowling comps. This synthetic green means that those maintenance costs can be put back into the club. It means that over the summer, instead of those prolonged periods of maintenance, they are able to get tourists in to come and play barefoot bowls, come and get active, play bowls, spend time with other people and buy some food or drink from the club, which helps generate more money, more income, for the club. All in all this investment by the state government, which has been incredibly well received by people at the club and around town, is going to be an incredible asset not only for the members of the club but also for tourists and others in town who want to play barefoot or social bowls and for the school, because the club has been fantastic in connecting in with the youth at the school and teaching them bowls and getting them into regional and state comps. They are already seeing some really talented young bowlers come out of the town through the club.

Talking of the school, it was just sensational to be able to go to the school with the principal, with teachers and with students and celebrate the $4 million-plus that has been announced for the school. They had funds for planning work, and now this money means they can get on and deliver upgrades to the school for a town that we know is growing, a town where there is the demand for more families, more kids and for education. It was just so good to be able to celebrate that with families at Paynesville. We know that with the upgrades at AJ Freeman Reserve the female-friendly change rooms will enable the footballers and the netballers to fully participate in sport in a safe and efficient manner. If you look at the female toilets that were below the netball courts beforehand, it was a little brick box that just was not fit for purpose. Now we have a beautiful building as long as this chamber alongside the netball courts, with good access to the footy oval, that is going to be a real asset for the town for a long time to come, as have been the upgrades to the cricket nets. I was fortunate enough to be able to join with the community to celebrate there as well. To be able to get a community, particularly a regional community like Paynesville, to come together and celebrate is a really important thing, as it is to have the other pieces like the investment we have made with the RSL, the investment in the new ambulance station and the investments down by the waterfront. It is really important for a growing town that we are able to make those supports.

I was next able to join locals up near Sale on the alternative truck route. The state government has committed $10.89 million to ensure that we have better freight routes for trucks to use. We are taking what has been a complicated intersection and improving that to make it safer and better for locals and freight haulage to use as well. Then I was able to celebrate with the Fish Creek community at the football and netball clubs. After the tragic circumstances where their rooms burnt down last year, to be able to join the club and tell them that there was half a million dollars for them in the budget was a special thing and important to the club in being able to get on with their rebuild.

After Fish Creek I was able to join all the kids playing soccer at the Korumburra rec reserve. It was fantastic to be able to let them know that there was money for a synthetic pitch on the old disused netball courts before the footy and netball club moved down to the ag society oval. It will mean that the cricket club can use it and the soccer or football teams can use it. It just gives that all-year-round multipurpose synthetic pitch for another really active growing club with huge participation rates. From memory, there are something like 160 people playing soccer there up at the rec reserve and of course many more playing cricket, so it is a really, really active spot. That is alongside other investments, with the footy clubroom upgrades that are going on and the netball club upgrades. That building is basically complete thanks to the $800,000 invested in that. It is alongside the $5 million for the new community hub, not to mention the $13 million that we had for the high school. I was fortunate enough to have Deputy Premier and Minister for Education Ben Carroll join me and the community to cut the ribbon to officially open the school there, which is a fantastic thing.

While I was there I bumped into members from the RSL. I was actually fortunate enough to have the Minister for Veterans Natalie Suleyman join me to celebrate the works that occurred at the RSL thanks to the support of the state government for their roofing and weatherboarding. Their space, their place which they have opened their doors up to the community, has been a real place of community. We

were able to celebrate that. It is a really important thing around town. Of course with the kindergarten at the back of the primary school we are avoiding the dreaded double drop-off. People around town have said how much it means to have that new 66-place kinder up there onsite next to the primary school, which is doing such incredible work. There are other investments like the men's shed upgrade, using the old locomotive shed and getting it into use. The investment there, I think it was about $80,000, has seen the members of the men's shed being able to move out of the old goods shed. They are doing incredible things. That will be a space that they open up to the community upon completion, which is just sensational.

The next morning I was able to get across to Eastbourne Primary. I think it was about $8 million for Eastbourne, a really, really important sum of money for the school there. For them to be able to get on with their plans and build top-notch, upgraded, new classrooms is sensational. Just from walking around with their previous principal, who had been there for I think close to 15 years, and their new principal, they are just doing such incredible work not only with the kids and the students but the families and the community more broadly. Then I was able to catch up with Paul Mercurio on the peninsula, which was great, to celebrate the cross-peninsula bus – and we had minister Gab Williams join us – putting in that missing connection between Mornington and Hastings. To be able to see that infrastructure to get people across the peninsula is really important. I know it is something that has been important to member for Hastings Paul Mercurio. I congratulate him on his work and his advocacy, which has seen that go ahead. It has been really important.

This just builds on the investments that the state has made across Eastern Victoria. Minister Shing is here. There is so much in her area, close to her office. There is Latrobe Regional Health, the investments and the staging of works that continue to build on the capacity of the hospital, and Wonthaggi Hospital. Frankston Hospital, a billion-dollar hospital only minutes from the seat of Mornington, is an incredible asset for the community of Eastern Victoria. In Mornington we have had $2.9 million for the upgrade of Alexandra Park. That facility is about to come on line. It is incredible. There are lighting upgrades at Emil Madsen Reserve and $300,000 for the Mount Martha tennis courts in conjunction with the Mornington shire council, an incredible facility with four courts looking out over the bay. We have had a basic rebuild, new fencing, new lights and new carded gates so members and the community can book the courts and come in and use them in a stunning place. That is something that has set that club up for generations to come.

I also joined Paul Mercurio at the Mornington Racecourse for the announcement of the $478,000 they have to make upgrades to the racetrack. The Mornington Special Developmental School also have $6.769 million. We have massive upgrades for Mt Eliza North in the planning. I am looking forward to those works, when they are able to commence. From an infrastructure perspective we have the Mornington Fishermans Jetty, the Rye Pier and the Dromana Pier; these investments we have made have been so beneficial not only for locals but for tourists, enabling people from a recreation perspective. Whether it is fishing, whether it is getting out walking or whether it is using boats, these investments are just so crucial to keeping people active, keeping people connected. The $2 million in funding for Red Hill Recreation Reserve, up there with the club, has been important for them as an expanding club with growing membership.

Principal Lisa at Rosebud Secondary College showed me the sensational work that has happened at Rosebud. I might mention that former member Chris Brayne put a lot of work and effort into advocacy to support the school and support the town, and that has been an incredible, incredible lift, those new buildings for the school. Dromana Primary School is another investment that was advocated for by Chris Brayne, the $9.783 million. Again, hats off to everyone at the school and in the community who worked with Chris Brayne to secure that funding to be able to get on with those works.

At Rye Primary School we were able to secure funds for the playground. It was great to be able to drop in and talk with the principal Lachie Featherston and talk to kids, but the current playground is over 30 years old. To be able to upgrade that is fantastic for the kids and the school. As those kids get older there is $4.3 million for the multipurpose southern peninsula integrated youth services hub across

the way from the shire building. The shire have done a power of work on this. It is critical in supporting our youth on the peninsula, and for it to be centrally located, where it is, is really important from a geographic perspective on the peninsula.

Other investments to reflect on include the upgrades to the Foster indoor stadium for the Foster show this year. It is such a great asset to the town for the show to be able to use that facility, not to mention the works that happened under the ground. They were finished this year. The horses were able to get out and about with $150,000 of new irrigation and drainage. It was great to see everyone able to be back on the footy oval, on the grass, throwing things, riding things – all the sorts of things that were going on. I have run out of time. There is so much more to talk about, but I will have to leave it there.

**Lee TARLAMIS** (South-Eastern Metropolitan) (16:12): I rise to speak on the budget take-note motion and in particular the many benefits to the South-Eastern Metropolitan Region that I represent. This is the first budget for the Allan Labor government. It extends and builds on the work of the Andrews Labor government and its nine budgets. It continues the focus on core issues that matter to Victorians including education from the early years through primary and secondary schooling years to TAFE and lifelong learning, world-class healthcare services, continually improving our transport network to make it better and safer, building stronger and fairer communities, creating jobs for Victorians and easing the cost-of-living pressures for families.

We continue to demonstrate our commitment to Victoria as the Education State with a range of investments in this budget. We have already opened 75 new primary schools and specialist schools, with a further nine in construction or planning or design stage, and we are well on the way to the 100 we promised by 2026. In growing areas of our state such as the south-eastern suburbs this focus is of particular importance and shows we are not only conscious of the current needs but preparing for the future needs of our community. This budget includes a $948 million investment in the remaining 16 schools, which include in my electorate Clyde Creek North Primary School, Clyde Creek North Secondary College and Casey Central Primary School, all located in South-Eastern Metropolitan Region, as well as the new Ballarto Road primary school just outside of my region in the Bass electorate.

We also investing $226.7 million to continue our program of upgrading and modernising schools across Victoria, fulfilling our election promise from 2022. This includes projects which shared in funds last year to plan and prepare for these upgrades and now in this 2024–25 budget we are funding construction work to get the job done. Six of these are in my region: James Cook Primary School in Endeavour Hills will receive $9.1 million; Lyndhurst Secondary College will receive $13.6 million for upgrades including of blocks A and E; $6 million will enable Mulgrave Primary School to undertake the next stage of their upgrades, which includes refurbishing the school's old, small hall to convert it into a new library; $12.45 million will rebuild the main classroom at Clayton South Primary School and construct a new playground; Seaford Primary School be able to move on to the next stage of their master plan thanks to an $18.2 million investment; and $9 million will upgrade and modernise Cranbourne Scondary College. We build these new schools and we make these investments to existing schools because families should be able to count on having a great local school no matter where they live.

Our commitment to early childhood education has been clearly demonstrated previously, because we know how important the early years are for a child's development. We have already invested $6.2 billion to transform early childhood education and care, rolling out universal three-year-old kinder and delivering free kinder for all families with three- and four-year-olds. We have continued this in this budget, with an additional $129 million to deliver free kinder and continue the rollout of three-year-old kinder and $19 million for more grants to kinders so that they can refurbish and renovate their premises.

We have also recently announced eight new locations for 2026 through our kindergartens on school sites program, which adds to the 13 already announced that will be open in term 1 of 2026. This

includes Lysterfield Primary School, which I had the pleasure of visiting recently with Minister Blandthorn and my colleague in the South-Eastern Metropolitan Region Michael Galea. It also includes new schools that I mentioned earlier, Casey central primary school in my electorate and Ballarto Road primary school in the Bass electorate, which will have kinders on their sites when they open as well. Locating kinders on or close to school sites supports children to get the most out of their early learning, makes drop-off more convenient for busy parents and carers and helps with a smoother transition to primary school.

We have continued to deliver with regard to community hubs as well. We are providing funding to support the important work of the community hubs located in 41 primary schools across Victoria. These community hubs are places where families from diverse backgrounds, particularly mothers and preschool children, come together, share and learn. They help bridge the gap between families and the wider community, connecting families with each other and their school with the local services and supports. We have 10 of these community hubs in schools across Greater Dandenong and the City of Casey in the South-Eastern Metropolitan Region that I represent.

We are also continuing our commitment to free TAFE, which has already helped more than 170,000 Victorians get the skills they need for the jobs they want. $394 million in this budget will further boost access to vocational training and free TAFE, saving even more Victorians tuition fees and helping us to build the workforce we need. The budget also invests $31.6 million for the Skills First Skill Sets initiative, delivering subsidised training for the skills needed in industries facing skills shortages and enabling Victorians to complete accredited short courses and quickly upskill in growth sectors like transport, new energy, disability and construction.

The budget's investment in health infrastructure, totalling $1.7 billion across the state, includes the promised expansion of the Monash Medical Centre, which serves my region. $535 million will deliver a new seven-storey tower above the newly expanded emergency department, with operating suites, birthing suites and pre- and post-op beds. This upgrade will allow for an extra 7500 surgeries every year and create 1500 local jobs during construction. This builds on previous investments and upgrades that service my region, which have included the expansion of the Monash Medical Centre emergency department, the new Victorian Heart Hospital, the Casey Hospital expansion, the Frankston Hospital redevelopment and the Cranbourne community hospital currently underway, to name just a few of the major projects. We are also boosting hospital capacity across the state, including at Monash Medical Centre, and giving hospitals funding certainty with the single biggest multiyear investment in our healthcare system in Victorian history.

With the opening of the Metro Tunnel in 2025 approaching quickly, we are getting ready for day one of operation and funding $233 million for the recruitment and training of drivers and customer service teams and preparing customer information, timetables and final testing. The Metro Tunnel will transform our train network and is particularly significant for commuters on the Cranbourne and Pakenham lines, which serve large parts of my electorate. Along with the Sunbury line, the Cranbourne and Pakenham lines will connect directly to the new tunnel. It is also a massive boost for all train commuters across the region and across the entire metro area, and it will create more capacity in the city loop and allow more trains to run on our network.

In addition to the many major projects that we have underway, we continue to invest in local roads and bus services. The section of Stud Road near McFees Road and the Dandenong Stadium in Dandenong North is a notorious section of road that has been the site of some tragic events. I am very pleased that following strong local advocacy, including from the member for Dandenong in the other place and the mayor Cr Lana Formoso from the City of Greater Dandenong Council, we saw the speed limit here lowered to 60 kilometres per hour, and funding in this budget will see the intersection of Stud Road and McFees Road signalised. This will make crossing Stud Road and accessing the Dandenong sports stadium, bus stops and the Dandenong Creek parkland trails much safer and easier.

Our bus networks, a key part of our transport system, will also receive several key boosts as a result of this budget. Services on the popular route 800 Dandenong to Chadstone bus will be extended to Sundays and into evenings, and funding for improvements to routes 784 and 785 will also enable them to operate more efficiently and improve travel times to both Frankston station and Mornington town centre. There will be further progress on the new cross-peninsula route from Hastings to Mornington, with funding to deliver bus stop infrastructure along the route following community consultation later this year to identify the appropriate location for these stops. These investments complement the recent growth areas infrastructure contribution funding for extended bus services on route 831 in Casey and the extension of route 798 to Clyde North.

There is also a continued commitment to grassroots sport in this budget, with new and upgraded community sports facilities funded across Victoria, including more change rooms, courts, sports fields, pavilions and skate parks. $23 million will provide new and improved community sports infrastructure and initiatives to boost participation and inclusion in local sports clubs, including $350,000 towards upgrades of playing greens and clubroom facilities at the Mordialloc Bowls Club. Also included in this investment is $5 million to continue the 2024–25 Local Sports Infrastructure Fund, providing more competitive grant opportunities for new and upgraded facilities. Because we know how important sport is for our youngest Victorians and how the cost of living can be challenging for families, we have also committed $6 million to extend our Get Active Kids program. These Get Active Kids vouchers, which give eligible families $200 to help buy sports equipment and uniforms or pay membership fees, support kids becoming and staying involved in sport and also ease pressures on families' budgets.

While I am on the topic of cost of living there are several other measures in this budget which assist with these challenges that will benefit families in my region. Our one-off $400 schools saving bonus will help families with the cost of school essentials and the extracurricular activities that make school fun – things like uniforms, camps and excursions. This $400 bonus will help families with children at government schools and families at our non-government schools who need it most. It will make sure our kids have everything they need for the school day, and we will work with schools to make it available for the start of the 2025 school year.

We are tripling the size of our free Glasses for Kids program, which is already helping 34,000 students across Victoria to see clearly in the classroom. Free screenings and glasses for students who need them mean we can identify vision issues early and stop them holding young learners back. Now $6.8 million will expand the program to reach a further 74,000 prep to grade 3 students and 473 government schools across the state. The popular school breakfast clubs program, which provides free healthy breakfasts for students, is also being expanded to every government school across Victoria. Since 2016 our school breakfast clubs program has delivered more than 40 million healthy and nutritious meals as well as practical cooking classes for families at a hundred schools, building food literacy, increasing daily consumption of fresh fruit and vegetables and supporting cheap and healthy meal planning. We know that kids cannot learn on an empty stomach, so we are making sure that no student starts the day hungry and helping families with cost-of-living pressures at the same time.

We also remain committed to providing support to our diverse communities, in particular to working with our most recent and emerging communities. South-Eastern Metropolitan Region is a particularly diverse area and one with many strengths, something we can all celebrate. This budget delivers funding to continue and expand the *Victorian African Communities Action Plan* education initiatives. It includes continuing the 14 African Australian led homework clubs across Victoria, several of which are located my region, supporting Victoria's African communities to have a strong sense of connection and belonging by providing a safe and culturally appropriate environment for students who require additional support.

Funding will also support up to 10 school liaison officers across 24 Victorian primary and secondary schools to strengthen engagement, participation and achievement of students and their families, again benefiting my region. It will also increase funding to our state's community language schools by

$11 million, with a further $3.9 million to meet demand for interpreting and translating services in our schools and early childhood facilities, and $6 million will assist our faith-based non-government schools with additional security upgrades to help communities feel safe, because there is no place in Victoria for discrimination, antisemitism or Islamophobia.

As you can see, this year's budget continues to build on the many, many important initiatives and projects that we have been rolling out in our previous nine budgets. We continue to address the needs in the community and provide what the community needs to make it a better place, and we look forward to continuing this work. This is yet another budget that helps Victorian families, and I am proud to be part of a team that is delivering it.

**Joe McCRACKEN** (Western Victoria) (16:25): On behalf of Mr McGowan, I move:

That this item be now adjourned until later this day.

**Motion agreed to and debate adjourned until later this day.**

## *Bills*

## Parliamentary Workplace Standards and Integrity Bill 2024

*Second reading*

**Debate resumed on motion of Jaclyn Symes:**

That the bill be now read a second time.

**Jaclyn SYMES** (Northern Victoria – Attorney-General, Minister for Emergency Services) (16:26): I have the honour of summing up on the Parliamentary Workplace Standards and Integrity Bill 2024. I do thank members not only for their contributions to today's debate but for a lot of constructive engagement over many months across the Parliament, because as we know and in the words of the Premier, this is not a government bill, this is a Parliament bill. It affects each and every one of us, and I do want to thank those that have participated in ensuring that we have a piece of legislation that is robust and does what it needs to do for a modern, fit Parliament. As we know, this is over and beyond what other states have done, so we should be proud of our efforts in that regard.

I will therefore, rather than go through the content of the bill, which has been well canvassed by previous speakers, use my time to run through some house amendments and to advise the house of some further negotiations and words of comfort around the concerns about legal fees that many people have spoken about today. Of course that is an issue that government have been working to come up with a solution on, and I have got some information for the house in that regard. Obviously the house amendments that I am sponsoring today are a combination of ideas and indeed formal amendments that other members may have put up, so that makes several redundant. Therefore I do want to thank those that have had the ideas behind some of the work that I am putting forward today. We did consider many of the suggestions. We do want to get this right. As I said, some of those ideas indeed will feature in the house amendments that I am proposing.

We have accepted the Greens amendment which provides the commission with a function to monitor compliance with sanctions that it imposes for parliamentary misconduct and included two additional amendments to give full effect to the commission's new function. This function will allow the commission to seek information to determine if someone has complied with a sanction that it has imposed. If the commission is satisfied that the person has failed to comply within a reasonable timeframe, it will be required to prepare a noncompliance report, which it must provide to either the Privileges Committee or the Premier depending on whether the person who was sanctioned was the Premier, MP or minister or parliamentary secretary. The commission will be able to recommend further sanctions in line with a finding of serious parliamentary misconduct in its noncompliance report.

Parliament and the Premier will have their own discretion to monitor compliance with sanctions imposed for serious parliamentary misconduct, improper conduct, detrimental action, failure to comply with an investigation request without a reasonable excuse and any sanction for noncompliance. If someone fails to comply with these sanctions, they may be referred back to the commission, as this could be considered a failure to uphold our parliamentary standards and integrity. Parliament may also decide to refer them directly to the Privileges Committee.

The commission must afford procedural fairness regarding noncompliance reports. This amendment provides that the commission must not prepare a noncompliance report unless the commission has given the person an opportunity to respond to the proposed report and considered any response by that person. A noncompliance report must include certain details, including the details of the commission's finding that the person has failed to comply with the sanction; the sanctions, if any, that the commission recommends be imposed on the person; and any response by the person to the proposed report. The government house amendments provide for an additional amendment that will also outline that a noncompliance report must not include the following: information that is likely to lead to the identification of an individual referral or affected person without their consent, a finding or opinion that a person is guilty or has committed an offence, or a recommendation that a person be prosecuted for an offence. This additional amendment will ensure that noncompliance reports are prepared in the same way as the investigative report, and the commission must provide a noncompliance report as soon as practicable to the following: the individual referrer, if there is one, who made the referral for which an investigative report was prepared and the sanction was imposed; the person who is the subject of the noncompliance report; and any other person or body to whom the commission provided the investigative report.

The government amendments will also ensure that the bill clearly reflects the commission's function to monitor compliance with sanctions imposed and to issue reports in respect of noncompliance. More generally the bill has been drafted so that all investigative reports will be tabled in Parliament, except when it is not in the public interest to do so. This is intended to encourage people who have had a sanction imposed to comply with that decision.

There is a Liberal amendment that has been adopted in relation to acting commissioner appointments. The government has accepted the Liberal amendment to the Integrity and Oversight Committee's oversight of commissioner appointments so that the committee's unanimous support is required before any acting appointment can be made. The bill already requires the IOC's unanimous support for the appointment of commissioners, and this amendment will extend to that of acting commissioner appointments.

In the spirit of working across the chamber the government is moving these amendments suggested by the Liberals and the Greens because we do accept that they enhance the bill. The house amendments seek to improve compliance with sanctions imposed and the independence and integrity of commissioners, which are both important matters to the functioning of the new commission.

I will take an opportunity to just refer to some correspondence that has been prepared by the Premier and provided to the Shadow Attorney-General. I do thank the Shadow Attorney-General for his constructive participation and feedback in relation to the workability of the bill. As this has been raised by a number of members in this place and the other place across the political spectrum in relation to legal costs arising out of referrals to the Parliamentary Workplace Standards and Integrity Commission – and if it is okay with you, Acting President – it might be easier just to read the letter into *Hansard*. This is, as I said, a letter from the Premier addressed to the Shadow Attorney-General:

> Further to conversations between the Government and the Opposition, I confirm that the Government will implement a policy to assist members of parliament with legal costs arising out of referrals to the Parliamentary Workplace Standards and Integrity Commission matters broadly consistent with the attached draft document, subject to the matters raised below.
>
> The attached document states that the policy will be time limited. The intention is that the policy will be reviewed at the same time as the statutory review of the Parliamentary Workplace Standards and Integrity

> Bill (subject to its passage) and may be updated. I confirm that, notwithstanding any changes are made to the policy at that time, the approach of maintaining the same level of coverage for all members of parliament, regardless of whether they are also ministers and parliamentary secretaries will not change.
>
> The draft policy currently refers to a deductible payable by a member of parliament when making a claim for assistance. It is the government's intention that no deductible will be payable under this scheme.
>
> There are two outstanding issues to be resolved:
>
> 1. Whether an MP should be entitled to seek legal costs where an adverse finding is made against them in relation to a minor infraction. The draft policy currently provides that a member of parliament will only be entitled to seek legal costs when the Commission has not made any adverse finding against them.
> 2. Whether there are any circumstances in which an MP should be entitled to seek at least some of their legal costs in circumstances where the Supreme Court has found that they did not have a reasonable excuse for non-compliance.
>
> I confirm that the Government will work with the Opposition in good faith to resolve these issues.

This is correspondence to confirm that the government is indeed conscious of the concerns and working towards a solution that has the purpose of ensuring that appropriate legal costs are able to be recouped in circumstances related to the implementation of this new commission.

In summing up, the government has, I confirm, worked with every interested party on this bill. A number of independents have also been involved to ensure that the model is right, and all of the feedback has been thoroughly considered. Significant changes to the bill have occurred along the way following input from MPs. We think the model set out in the bill is an appropriate one to enhance the standards of accountability and integrity in our Parliament. As members have said during the debate, this is of course what Victorians rightly expect. The bill will do this while being true to the traditions of Parliament and maintaining role the role of privileges committees in the two houses in sanctioning their own members.

In summary, we know that the bill will establish the Parliamentary Workplace Standards and Integrity Commission to receive, manage, investigate and resolve allegations of misconduct by members of Parliament, ministers and parliamentary secretaries; establish the existing Parliamentary Integrity Adviser in legislation; establish a Parliamentary Ethics Committee; amend the Public Interest Disclosure Act 2013; amend the Members of Parliament (Standards) Act 1978, including to update the MP code of conduct to create positive obligations on members to create safe workplaces and demonstrate respect for parliamentary integrity; and make consequential amendments to the Independent Broad-based Anti-corruption Commission Act 2011, the Judicial Commission of Victoria Act 2016, the Local Government Act 2020, the Ombudsman Act 1973, the Parliamentary Salaries, Allowances and Superannuation Act 1968, the Public Administration Act 2004, the Racing Act 1958 and the Victorian Inspectorate Act 2011.

When it is established at the end of the year, the commission will be the first legislated parliamentary integrity commissioner in Australia with the ability to investigate the conduct, as I have said, of MPs, regardless of whether they are ministers and parliamentary secretaries as well. The legislation will promote the highest standard of accountability, integrity and behaviour from all members of Parliament, and as I have said before, this is the bare minimum of what Victorians should expect of us. We have said time and time again that the right to a safe and respectful workplace is non-negotiable, and we hope that with this bill we reaffirm that commitment. I commend the bill to the house.

I have talked through all of the amendments, and I would like to take the opportunity to formally table those.

**Amendments circulated pursuant to standing orders.**

**Motion agreed to.**

**Read second time.**

*Instruction to committee*

**The ACTING PRESIDENT (Jacinta Ermacora)** (16:38): I have considered the amendments on sheet SMA19C, circulated by Dr Mansfield, and in my view, amendments 11 to 18 are not within the scope of the bill. Therefore an instruction motion pursuant to standing order 14.11 is required. I remind the house that an instruction to committee is a procedural motion. I call on Dr Mansfield to move her instruction motion.

**Sarah MANSFIELD** (Western Victoria) (16:38): Contingent on the Parliamentary Workplace Standards and Integrity Bill 2024 being committed, I move:

> That it be an instruction to the committee that they have power to consider amendments and new clauses to amend the Parliamentary Committees Act 2003 to require that all joint investigatory committees and privileges committees must have not more than half of their members from a political party forming the government and a chairperson who is not from such a party.

**Council divided on motion:**

*Ayes (24):* Melina Bath, Jeff Bourman, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Moira Deeming, David Ettershank, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Rikkie-Lee Tyrrell, Richard Welch

*Noes (15):* Ryan Batchelor, John Berger, Lizzie Blandthorn, Enver Erdogan, Jacinta Ermacora, Michael Galea, Shaun Leane, Tom McIntosh, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

**Motion agreed to.**

**Committed.**

*Committee*

**Clause 1** (16:47)

**Sarah MANSFIELD**: Attorney-General, this bill is a start, but we are very aware that there are outstanding reforms recommended by multiple IBAC reports with regard to the enforcement of codes of conduct for ministers and ministerial advisers, including strengthening dealings with political lobbyists. These reforms are equally important as those in this bill. Will the government legislate to implement these vital reforms?

**Jaclyn SYMES**: I thank Dr Mansfield for her question, which is clearly outside the scope of the bill. However, we are working on lobbying reforms, and I agree with your characterisation that this bill is a start. There is always room for further integrity measures across Parliament and across government, and that work is always ongoing. The answer to your question is I am not in a position to specify the specifics because they are being developed as we speak.

**Sarah MANSFIELD**: Just to clarify that, if they are being developed as we speak, can we expect that legislation to come before this Parliament before the end of the term?

**Jaclyn SYMES**: I can only confirm, Dr Mansfield, that we have supported in principle the IBAC special report from October 2022. It would be our intention to do that this term.

**Sarah MANSFIELD**: The government has had over two years since the Watts report was handed down, and on the day it was handed down the then Premier was absolutely clear and unequivocal that the government would implement each and every recommendation. This bill confers even more responsibility to the Privileges Committee, but after two years you still are not implementing recommendation 3a, which is to dilute government dominance of privileges. What is the reason for waiting over two years to do what you said you would do?

**Jaclyn SYMES**: Well, Dr Mansfield, you are asking me for an opinion, pretty much. But I think, as you would appreciate – because I know that the Greens political party has been involved in a lot of the consultations – this is quite complex and there are a lot of views. We want to make sure that we get things right, and we also want to make sure that we provide ample opportunity for consultation. Times blow out when you are inclusive and have everybody's views on board; there is pretty much a clear example with the bill before us today. But in regard to the topics that you have raised, they are in policy development, and we would like to consider taking everyone's feedback on board.

**Sarah MANSFIELD**: It is good to hear that lots of different views are being canvassed on this. But the government did make a commitment to implement the recommendations of that report, and I guess we are interested in understanding when you will acquit your commitment to reform privileges.

**Jaclyn SYMES**: Dr Mansfield, I have answered that question.

**Bev McARTHUR**: Minister, can you confirm that there are confidentiality provisions for MPs under investigation?

**Jaclyn SYMES**: Yes.

**Bev McARTHUR**: Can you also confirm that the threshold for investigation is lower than IBAC's, which means the commissioner can launch an investigation without having a good-faith basis of a finding?

**Jaclyn SYMES**: Mrs McArthur, I would draw your attention to the bill.

**Samantha RATNAM**: I wanted to follow up on Dr Mansfield's question just previously, because I do not believe the question actually was answered. It was a specific question about when we will see those reforms to the Privileges Committee, given there has been at least a two-year time lapse since some recommendations were made. I hear that consultation is occurring, but the specific question was: when can we expect to see the reform of the Privileges Committee before this house and this Parliament?

**Jaclyn SYMES**: It is outside the bill that is before us today. It would be good if we could get through the bill and get these reforms started. As I have indicated, there is ongoing policy work in relation to other matters that are under close consideration and will be subject to ongoing consultation.

**Samantha RATNAM**: This bill is about integrity reform in this state. While you might rely on technicalities, there is something that needs to be provided to this chamber and this Parliament that reassures us that we are on a pathway to improving integrity in this state – a long-fought battle. At least we are here with this step forward, but there are so many more to go. For us to be able to support a whole tranche of reforms that are being put forward and also to have some comfort that the other reforms that have been promised by the government are coming, we are asking questions about when those next stages will occur. They are linked to what is being presented in this bill today because your government has been saying that you want to entertain some reform to the integrity systems. The Greens have been pushing for it for a number of years. We are seeking some assurance about those timeframes. Is it going to be one year, five years, 10 years, 20 years? Even a ballpark would do at this stage.

**Jaclyn SYMES**: Asking for a ballpark is not something that I am prepared to entertain. I have given you a commitment that the government's work is ongoing. I think that it is important to note that this bill before the house today is the biggest overhaul of parliamentary oversight in the country. It is for a new legislated commission that does not exist anywhere else. It covers MPs, it covers ministers, it covers parliamentary secretaries. This is significant work. The way you want to approach this bill and how you want to vote is a matter for your political party, Dr Ratnam, but I do appreciate your involvement to date and your consultation on the bill that is before us today. My answers to your previous questions stand.

**Clause agreed to; clause 2 agreed to.**

**Clause 3** (16:55)

**The DEPUTY PRESIDENT**: Attorney, I invite you to move your amendment 1, which tests your amendments 2 to 6 and 10 to 14.

**Jaclyn SYMES**: As I took the opportunity to go through the house amendments in my summing-up, I will formally in the committee stage move:

1. Clause 3, page 5, after line 29 insert –

"***non-compliance report*** means a report prepared by the Commission under section 32A(1);".

**Sarah MANSFIELD**: The Greens will obviously be supporting these amendments. We thank the government for accepting these amendments and moving them. We feel that they are an improvement on the existing legislation before us. As the Attorney said, she has outlined the different purposes of these amendments, and I did so in my second-reading contribution. We are very supportive of these.

**Evan MULHOLLAND**: The opposition will be supporting these amendments. I thank all parties for working together to secure this outcome.

**Amendment agreed to; amended clause agreed to; clauses 4 to 32 agreed to.**

**New clauses** (16:59)

**The DEPUTY PRESIDENT**: Attorney, I invite you to move your amendment 2, which inserts new clauses.

**Jaclyn SYMES**: I move:

2. Insert the following New Clauses to follow clause 32 –

"**32A Non-compliance with sanctions imposed by Commission**

(1) Subject to subsection (2), if the Commission is satisfied that a person has failed to comply, within a reasonable time, with a sanction imposed under section 30, the Commission –

(a) must prepare a report of that failure; and

(b) may recommend that one or more sanctions be imposed on the person as if the Commission had made a finding of serious parliamentary misconduct by the person.

(2) The Commission must not prepare a non-compliance report unless the Commission has –

(a) given the person an opportunity to respond to the proposed report; and

(b) considered any response by the person.

(3) A non-compliance report must include the following –

(a) the details of the Commission's finding that the person has failed to comply with the sanction;

(b) the sanctions (if any) that the Commission recommends be imposed on the person;

(c) any response by the person under subsection (2)(b).

(4) A non-compliance report must not include any of the following –

(a) information that is likely to lead to the identification of –

(i) an individual referrer without their consent; or

(ii) an affected person without their consent;

(b) a finding or opinion that a person is guilty of or has committed an offence;

(c) a recommendation that a person be prosecuted for an offence.

(5) The Commission must provide a non-compliance report as soon as practicable to the following –

(a) the individual referrer (if any) who made the referral for which an investigative report was prepared and the sanction was imposed;

(b) the person who is the subject of the non-compliance report;

(c) any other person or body to whom the Commission provided the investigative report under section 28(7) or (8).

**32B Presentation of non-compliance report to Parliament – Privileges Committee**

(1) Subject to subsection (2), if a Privileges Committee receives a non-compliance report, the Privileges Committee must –

(a) consider the report; and

(b) in the case that the report includes sanctions that the Commission recommends be imposed on the person who is the subject of the report –

(i) invite the person to provide within 30 days a written response regarding the sanctions recommended; and

(ii) consider any response provided within 30 days by the person; and

(c) prepare and cause to be transmitted to its House, no later than 10 sitting days after the period referred to in paragraph (b), a report that contains –

(i) the non-compliance report; and

(ii) the recommendations of the Privileges Committee regarding sanctions; and

(iii) an explanation for any differences between the recommendations of the Commission and the recommendations of the Privileges Committee.

(2) As soon as practicable after a Privileges Committee receives a non-compliance report, a Member of the Privileges Committee who has a direct or indirect interest in the subject-matter of the report, being an interest that could conflict with the performance of their duties as a Member of the Privileges Committee in considering the report, must –

(a) recuse themselves from the consideration of the report until the Privileges Committee has caused a report to be transmitted to its House in accordance with subsection (1)(c); or

(b) resign from the Privileges Committee.

(3) For the purposes of subsection (2), a direct or indirect interest in the subject-matter of a non-compliance report does not include being a member of the same political party as the person who is the subject of the report.

(4) A Privileges Committee must not reconsider or review any finding of the Commission in a non-compliance report.

**Note**

See section 112 for general requirements relating to transmission of reports to Parliament.

**32C Presentation of non-compliance report to Parliament – Premier**

(1) If the Premier receives a non-compliance report, the Premier must –

(a) consider the report; and

(b) in the case that the report includes sanctions that the Commission recommends be imposed on the person who is the subject of the report –

(i) invite the person to provide within 30 days a written response regarding the sanctions recommended; and

(ii) consider any response provided within 30 days by the person; and

(c) prepare and cause to be transmitted to the House of which the person who is the subject of the report is or was a Member, no later than 10 sitting days after the period referred to in paragraph (b), a report that contains –

(i) the non-compliance report; and

(ii) a statement of the actions that the Premier has taken in response to the non-compliance report; and

(iii) an explanation for any differences between the recommendations of the Commission and the actions taken by the Premier.

(2) Subsection (1) does not apply in respect of a non-compliance report that is related to an investigative report received by the Premier under section 28(8).

(3) The Premier must not reconsider or review any finding of the Commission in a non-compliance report.

**Note**

See section 112 for general requirements relating to transmission of reports to Parliament.".

My amendment 2 is in relation to acting commissioner appointments. That has been subject to consultation with the opposition and just extends the same provision so that unanimous Integrity and Oversight Committee (IOC) approval to appoint a commissioner also extends to the appointment of an acting commissioner.

**Evan MULHOLLAND**: The opposition will obviously be supporting this amendment, and I would like to thank my colleague Mr O'Brien but also thank the Attorney and members of the government for the way in which they have very maturely negotiated with the opposition on this bill. I think what Mr O'Brien has been able to secure on behalf of the entire Parliament is nothing short of stunning, and I know that Mr O'Brien has many new-found friends on the government backbench in particular in regard to assurances around legal costs as well. This amendment closes a loophole whereby an acting commissioner would be appointed at the same standards as a commissioner. I think, as I was saying earlier, there are often many comments from outside this place casting shade on politicians for always disagreeing with each other and being angry with each other, but this is one where all sides have worked very closely together.

**Sarah MANSFIELD**: The Greens will be supporting this amendment as well. Similar to the previous amendment that was moved, this was one of the amendments that we had put forward, and we are thankful to the government for working with us and agreeing to move this amendment.

**Jaclyn SYMES**: For everyone who is following along with the run sheet, in my error I was following the grouping numbering and not the amendment numbering and therefore I was inadvertently referring to group 2 which is not until amendment 7, which we all agree on so we can probably skip over that when we get to 7. We are currently at my amendment 2, which is a consequential amendment to the amendment that we all agreed to in amendment 1.

**New clauses agreed to; clauses 33 to 40 agreed to.**

**Clause 41 (**17:04**)**

**Jaclyn SYMES**: I move:

3. Clause 41, lines 1 and 2, omit "**investigative report or summary report**" and insert "**reports**".
4. Clause 41, line 4, omit "or a summary report" and insert ", a summary report or a non-compliance report".
5. Clause 41, lines 6 to 7, omit "or a summary report" and insert ", a summary report or a non-compliance report".

**Amendments agreed to, amended clause agreed to; clauses 42 to 44 agreed to.**

**Clause 45** (17:05)

**Jaclyn SYMES**: I move:

6. Clause 45, page 62, after line 13 insert –

"(da) monitoring compliance with sanctions imposed by it and issuing reports in respect of non-compliance;".

This is the additional amendment that is related to noncompliance reports that I outlined in my summing-up, which the government has effectively added to the Greens amendment.

**Amendment agreed to; amended clause agreed to; clauses 46 to 48 agreed to.**

**Clause 49** (17:06)

**Evan MULHOLLAND**: I move:

1. Clause 49, page 65, line 7, omit "5" and insert "10".
2. Clause 49, page 65, line 9, omit "5" and insert "10".
3. Clause 49, page 65, line 15, omit "5" and insert "10".
4. Clause 49, page 65, line 17, omit "5" and insert "10".

This would take the eligibility criteria and rules set out in the bill from five years to 10 years. This is an integrity measure to ensure that the appointment that we get of a commissioner is above reproach. If you are a member of a political party, if you are a councillor, if you are a lobbyist – if you are part of the game, in a sense – we think that threshold should be increased. One topical example: someone that might not have been a member of the Labor Party for five years, say, one John Setka or someone else, might be able to be a member, after five years, of this committee. We do not think that that is high enough, and so the suggestion that we have put is 10 years. You are well and truly out of the game, maybe. Once, younger in life, a bit more inexperienced, you might have been a member of any political party but left that political party, and you have later become a real person of integrity. I think 10 years is a valid period of time to wash yourself of your previous sins.

**Jaclyn SYMES**: The government will not be supporting Mr Mulholland's amendment. I have been in this place 10 years. It is a long time. We think that five years is a more than appropriate level for eligibility in all the circumstances. I would add that given the Integrity and Oversight Committee effectively have a right of veto in relation to needing a unanimous vote to approve a commissioner, we think that that is the appropriate safety net, and if people come into the remit of that job and they are appropriate, we think that the IOC would be well equipped to ensure that somebody that is appropriate between five years and 10 years might actually be a good fit. So we think five is a safe spot to land.

**Sarah MANSFIELD**: We will be supporting this amendment to lift the timeframe to 10 years. We think that it is a reasonable timeframe. We have seen plenty of examples where there is a bit of 'jobs for mates' that goes on, and so yes, the Greens will be supporting the Liberal amendments on this one.

**Council divided on amendments:**

*Ayes (21):* Melina Bath, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, David Limbrick, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nick McGowan, Evan Mulholland, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Rikkie-Lee Tyrrell, Richard Welch

*Noes (17):* Ryan Batchelor, John Berger, Lizzie Blandthorn, Enver Erdogan, Jacinta Ermacora, David Ettershank, Michael Galea, Shaun Leane, Tom McIntosh, Rachel Payne, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

**Amendments agreed to.**

**Amended clause agreed to; clauses 50 and 51 agreed to.**

**Clause 52** (17:16)

**Jaclyn SYMES**: I move:

7. Clause 52, line 14, omit "or 51(1)" and insert ", 51(1) or 58(1)".

Just to repeat my earlier description of this amendment, this is adopting the opposition's proposal to ensure that the IOC must be unanimous in appointing not just a commissioner but an acting commissioner as well.

**Amendment agreed to; amended clause agreed to; clauses 53 to 57 agreed to.**

**Clause 58 (**17:17**)**

**Jaclyn SYMES**: I move:

8. Clause 58, line 15, omit "The" and insert "Subject to section 52, the".
9. Clause 58, lines 32 to 34, omit all words and expressions on these lines.

These continue as consequential amendments in relation to the noncompliance report.

**Amendments agreed to; amended clause agreed to; clauses 59 and 60 agreed to.**

**Clause 61** (17:18)

**Jaclyn SYMES**: I move:

10. Clause 61, page 73, after line 2 insert –

"(fa) a function under section 32A (preparing and providing a non-compliance report);".

**Amendment agreed to; amended clause agreed to; clauses 62 to 82 agreed to.**

**Clause 83** (17:19)

**Jaclyn SYMES**: I move:

11. Clause 83, page 94, line 29, omit "reports and" and insert "reports,".
12. Clause 83, page 94, line 30, after "reports" insert "and non-compliance reports".
13. Clause 83, page 95, line 1, omit "reports and" and insert "reports,".
14. Clause 83, page 95, line 2, after "reports" insert "and non-compliance reports".

**Amendments agreed to; amended clause agreed to; clauses 84 to 138 agreed to.**

**Clause 139** (17:19)

**Sarah MANSFIELD**: I move:

11. Clause 139, line 6, before "In" insert "(1)".
12. Clause 139, after line 8, insert –

'(2) After section 21(4) of the **Parliamentary Committees Act 2003 insert** –

"(5) Not more than half of the members of a Joint Investigatory Committee may be members of a political party forming the Government.".'.

I spoke about these in my second-reading contribution, but to refresh the chamber, these amendments propose a uniform requirement under the Parliamentary Committees Act 2003 requiring joint committees to have not more than half of their members, and not chairs, from the political party forming the government. The purpose of these amendments is to ensure that the government oversight functions are sufficiently independent of the government of the day for effective oversight. They are there to avoid real or perceived perceptions of executive or partisan interference in committee functions. They are there to ensure the legitimacy and effectiveness of each committee's respective legislative veto powers with regard to statutory appointments recommended by ministers, including the Integrity and Oversight Committee's veto in relation to workplace standards and integrity commissioners proposed in this bill. They ensure the consistency and the membership requirements of all investigatory committees, and they also promote members' obligations to undertake committee work in the interests of the people of Victoria and the Westminster principles of responsible government.

We all know that obviously a government cannot be asked to mark its own homework by scrutinising its own decisions. This is not a partisan attack on the current government; this is about having the highest level of integrity, transparency and accountability of government in Victoria, whoever is in power. I think it is incredibly disappointing that we have not been able to recognise the value that these sorts of changes would bring in terms of integrity, particularly around the Public Accounts and

Estimates Committee. I think PAEC at the moment really fails to perform its function in the interests of this Parliament and in the interests of the Victorian people. This is really a missed opportunity to not reform that.

I think the opposition in particular could have taken this opportunity to reform PAEC and really hold the government to account. Instead of having to resort to putting up things like select committees to investigate individual issues when they occur, we could have used our joint investigatory committees to do exactly the sort of work that you are asking to be done by a select committee. That could be done through our existing committees if they were reformed to function properly, with independent chairs and majorities that are independent of the government of the day. You passed up that opportunity to do so on all of these investigatory committees. I think this was a real opportunity missed here for the Parliament. Instead we will see more select committees being put up to try and do this work, and you will have to resort to walking out of question time. But if you really wanted to change things, if you really wanted to hold the government to account, what you could have done is support these changes that are here before us. I urge you to still consider doing that.

These are reforms that have been long recommended by integrity experts. Victoria really is a laggard compared to other states and territories and other jurisdictions when it comes to the strength of the oversight functions of these committees. The Greens will continue to push for these changes to be made. We hope that at some stage we will see all parties recognise the value of them. I still urge all members in here to consider supporting these amendments because we believe that these are genuine improvements in integrity and oversight that this state is desperately calling out for.

**Evan MULHOLLAND**: The opposition will not be supporting these amendments, and there are a few reasons for that. We do agree, however, on the next one, on the IOC in particular. There is a lot of disparagement towards the opposition. I will just remind the Greens that it was actually Tim Read who said that the current Integrity and Oversight Committee arrangements, which changed this term, would not be possible without the Liberals. You talk about these committees needing to be independent of government. Well, it is clear after yesterday, when you sided with the Labor Party to cover up the corrupt dealings of the CFMEU, that the Greens political party is not independent of government and does not actually value integrity in this place, when you are willing to do deals to cover up the actions of the corrupt criminal enterprise known as the CFMEU. So I will not be taking lectures from the Greens on integrity when you were not willing to set up a select committee to see how taxpayer money is being rorted and fleeced by criminal enterprises on construction sites. I will not be taking lectures from the Greens on that, and we will be opposing this current amendment, but we are happy to support the following amendment in regard to the IOC.

**Ryan BATCHELOR**: Just a question for Dr Mansfield: essentially your argument here appears to be, and I do not want to paraphrase, that there is a potential conflict around the chair's exercise of functions and partisan interests – you have talked about partisan interference in committee functions. You have said that being a member of the government is one of those instances where there is a potential incompatibility in being a chair of the joint investigatory committee. Are there any other circumstances that you think could give rise to the chair of a joint investigatory committee having a similar actual or perceived conflict of interest or an incompatibility or circumstances where there might be partisan interests that take over from committee interests?

**Sarah MANSFIELD**: Those are hypothetical questions. I am not really sure what you are trying to get me to answer there. Just to –

*Members interjecting.*

**Sarah MANSFIELD**: They are very simple, the changes we are putting up. We are proposing that if we have investigatory committees that are meant to be holding the government of the day to account chaired by members of the government with a government majority, it is very hard for that work to be done.

**Jaclyn Symes** interjected.

**Sarah MANSFIELD**: PAEC is 100 per cent about government accountability. It is the opportunity to question the government. These are investigatory committees. It is about holding the government of the day to account. We do not believe that a committee that has a government majority and a government chair – maybe they are doing a wonderful job, but for the public to have confidence in the functions of those committees, we do not believe that is an appropriate make-up of the committee. So it is very simple, what we are putting forward. That is the intention of the amendments. I think I have spoken to them at length, and that is the issue we are seeking to address.

**Samantha RATNAM**: I would like to speak to Dr Mansfield's amendments. This may be the first time for me speaking to amendments saying that the chamber should support another member's amendments over my own. I have made the point in my substantive contribution: if this place fails to pass these amendments, it is essentially saying that it knows that government-dominated joint investigatory committees do not work and that ministers should not be able to directly make appointments to independent oversight agencies without effective checks and balances, but at the same time it is only going to fix this issue for a few committees and not others. It will be saying that to uphold the integrity of joint committees, we must have a pandemic committee and an ethics committee not controlled by the government of the day, but we can leave the Electoral Matters Committee (EMC), the Scrutiny of Acts and Regulations Committee (SARC), the IOC and PAEC without the same levels of integrity. We will be saying that the Parliamentary Integrity Adviser can only be appointed where an effective non-government-controlled committee veto power over the appointment is legislated but ministers can appoint their mates to head other integral agencies, such as IBAC, the Victorian Auditor-General's Office (VAGO) and the Parliamentary Budget Office (PBO) because they know their party colleagues that dominate the other joint committees will never veto these appointments. Victorians deserve the same standards of integrity from all of the Parliament's joint investigatory committees. The only reason for not reforming all of them today is political expediency in its purest form, which is on full display in this chamber today.

**Ryan BATCHELOR**: Just to go back to the question I asked Dr Mansfield, what I am getting at is that not all of the functions of joint investigatory committees are about oversight of the executive. Some of them have other functions. In those circumstances, do you think that the same principle that you are articulating about partisan interference applies?

**Sarah MANSFIELD**: I think what is at issue here is that oversight of the executive is the most important function of these committees. There may be other functions. If there are issues around conflict of interest, they are dealt with. There are procedures to deal with those in all our committees, and they should be dealt with as they already are. This is about the ability of that committee to execute that important function that this Parliament requires, and that the Victorian public really expects this Parliament to be able to do, and that is to hold the government of the day to account. We believe that is the most important function of these committees. At the moment most of the committees are unable to do that effectively. We see that time and time again. Again, PAEC is one of the best examples of that. Large parts of that process are a joke. It is Dorothy Dixer after Dorothy Dixer. It is a large waste of time for a lot of people. It really is a waste of time. It could do so much better. If we had more non-government members and a non-government chair, I think we would find that it was much more effective. It would actually benefit the government of the day to be held to higher account, because we might avoid some of the scandals that we are seeing regularly because of that lack of parliamentary oversight. We would avoid things like select committees being put up to deal with individual issues because we would be able to use the existing committees to perform that very important function around providing oversight to the government of the day.

**Ryan BATCHELOR**: Just very briefly, I do take issue with the concept that there are not important oversight functions that joint investigatory committees play. They do have important functions that are not related to the oversight of the exec. There are important oversight functions that parliamentary committees play that are not related to the executive, and I think that we should bear that in mind.

The other point – and I will leave it at this – is that I think you have made a very good point about the importance of committee chairs not letting their own partisan interests get in the way of the way committees are conducted. You have also made a very good point about the need to deal with those when those conflicts do arise and when there is a conflict between partisan interests and the interests of the committee. I think it would be good if we all, in thinking about how that moves forward, committed ourselves to practising the integrity that we preach when those come into conflict in the future, or perceived conflict, and I would seek your support in adopting that principle.

**Council divided on amendments:**

*Ayes (10):* Jeff Bourman, Katherine Copsey, Moira Deeming, David Limbrick, Sarah Mansfield, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Rikkie-Lee Tyrrell

*Noes (28):* Ryan Batchelor, Melina Bath, John Berger, Lizzie Blandthorn, Gaelle Broad, Georgie Crozier, David Davis, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Tom McIntosh, Evan Mulholland, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt, Richard Welch

**Amendments negatived.**

**Samantha RATNAM**: I am disappointed that Dr Mansfield's amendments have not passed. It appears that fixing our integrity system and framework properly is still a step too far for some, and we must adopt a piecemeal approach to reforming committees. I move:

1. Clause 139, line 6, before "In" insert "(1)".
2. Clause 139, after line 8 insert –

'(2) After section 21(1) of the **Parliamentary Committees Act 2003** insert –

"(1A) Not more than half the members of the Integrity and Oversight Committee may be members of a political party forming the Government.".'.

I am moving amendments here which insert clauses into the Parliamentary Committees Act 2003 to require the Integrity and Oversight Committee to have not more than half of its members and not its chair from a political party forming the government.

I have separate amendments, which I will move next, which insert clauses into the Parliamentary Committees Act to require the Public Accounts and Estimates Committee to have not more than half of its members and not its chair from a political party forming the government.

While it is our preference that all joint committees will reform consistently to ensure the highest standards of probity, we believe at a minimum this committee first must be made sufficiently independent of the government of the day, given the weight of their oversight role over government decisions.

We note too these committees have veto or direct appointment powers with regard to appointments to our most important independent integrity agencies, including the appointment of the commissioner of IBAC, the appointment of the Auditor-General, the appointment of the Parliamentary Budget Officer, the appointment of the Victorian Inspector and the appointment of the Parliamentary Workplace Standards and Integrity Commissioners as proposed in this bill.

For Victorians to have faith in our integrity agencies, the process for these appointments must be legislated to illustrate they are protected from partisanship, whether it is real or it is perceived.

**Evan MULHOLLAND**: I rise in support of Dr Ratnam's amendments on the Integrity and Oversight Committee, which lock in an existing arrangement that was agreed to. I will note that it was only agreed to to avoid our inquiry in the upper house, through negotiation. But indeed Mr Read, the member for Brunswick in the other place, did state that the current arrangements of IOC would not

have happened if it were not for the Liberal Party, so that is something. We will be supporting the continuation of the existing arrangement.

**Jaclyn SYMES**: The government will also be supporting this amendment, but I do take issue with the description that Dr Ratnam has used of the amendment, in the fact that it avoids perceptions of partisanship. That is effectively saying that non-government members are not partisan, and that is not my experience. Nonetheless we will not be opposing this amendment.

**Amendments agreed to.**

**Samantha RATNAM**: I move:

3. Clause 139, before line 9 insert –

'(3) Before section 21(2) of the **Parliamentary Committees Act 2003 insert** –

"(1B) Not more than half the members of the Public Accounts and Estimates Committee may be members of a political party forming the Government.".'.

Firstly, I welcome the chamber's support for the previous amendment. This is a really significant reform, something that we have been advocating for for a number of years, joining with the community, especially a number of integrity experts and agencies, who too have been calling for permanent reform of our integrity systems, starting with a non-government chair of the Integrity and Oversight Committee, which we achieved in a temporary sense with the appointment of a non-government chair in the last year or so. That amendment that we have just passed will now make it a permanent arrangement in legislation, which is something that is long overdue but certainly very, very welcome.

In that vein, and for the same reasons that the majority of this chamber – all of this chamber – supported those amendments, they are the same arguments that carry for why we should have a non-government chair of the Public Accounts and Estimates Committee, which is our version of the federal Senate estimates system. I understand that the government and the opposition will speak to this themselves, but they have indicated they will not be supporting this amendment, which is deeply, deeply disappointing. Actually it is very despairing. There are days in this place where the roadblocks to progress and integrity and transparency and accountability really unmask themselves and stare back at you literally in this chamber – to your face. When people are wondering why this state is plagued with scandal after scandal, you just have to look at the opposition to really sensible reforms backed by experts and backed by the community to understand why things never get better.

For the opposition to say this week especially, 'We're here to scrape out the rot; we want to clean up the system,' well, if you do not support this reform you have no integrity left and Victorians can never trust a thing you say. After every single year at PAEC we have the media essentially laughing at the Victorian Parliament for the spectacle that is PAEC. We have the opposition going out year after year in all the years they have been opposition saying, 'This system is broken; we cannot interrogate the government properly.' But now that you think you might one day be in government you do not want the scrutiny applied to yourselves, which tells you about the integrity standards you are offering the Victorian community – which are low. They are so low they are meeting the government's – the same government that you are criticising every day, that you get out there in front of the media and lambast, but you are the same.

So today, as my colleague so rightly exposed this morning, there is another duopoly in action, stymieing progress, stymieing what is in the best interest of the Victorian community, and we have it unmasked. We have the roadblocks unmasked in this chamber, and for every scandal that happens from this day forward let us remember this day when you had a chance to reform the system and you chose not to. Every time there is a cost blowout on a project and every time you are questioning an appointment on some government project let us remember this day, when you could have had a non-government chair and a non-government majority on PAEC, and remember that you blocked the reform.

At least what we have is on full display – what Victorians can expect from the major party duopoly, the Labor and the Liberal parties. 'The sames' we call them – absolutely the same. So no matter who is in the government chair we are going to get the same low standards of integrity and no appetite for reform. All Victorians can hope for one day is that neither of your parties are sitting on those aisles in the future. Do not worry, we are coming for you. We look forward to the day that we are there, because we will lift the standards of this place.

Just as a final point in conclusion and to take up some of the points and assertions that have been made about partisanship, let us be clear what we are talking about when we talk about interests and partisanship in the context of non-government majorities and non-government chairs in the context of this debate. What we are talking about is partisan power and how governments use partisan power to distort the outcomes and transparency on these committees. Over the last few years many in this place have talked about how the government have misused their power. They continue to misuse their power, blocking appropriate questions in those committees, shielding their ministers from interrogation. We have the commentary – the media who report on this year after year – saying, 'Why doesn't the Victorian Parliament get on with reforming this circus?' Today we have seen the duopoly back in the circus, and none of you have any right to complain about the system before us after this day when you had the chance to reform it.

So let us talk about partisan power. The reason we are putting this forward is because the government have demonstrated to the Victorian public and certainly to all of us here that they cannot be trusted without checks and balances on their power, because they have abused it for years on end, which is why Victoria sits at the bottom when it comes to integrity standards across this country. And while the government says today, 'Look, we've got a reform package which is really, really significant,' well, it is coming off the lowest base. That is why it has to do so much – it is coming from the lowest base. I am glad we are catching up finally, but we have a long way to go, and I can tell you that neither of your parties is going to assure Victorians of the integrity standards that we need. So I look forward to this side of the Parliament growing in the future. With more displays like that, that is what is going to happen.

**Evan MULHOLLAND**: Dr Ratnam, if you like the system of federal estimates so much, perhaps you should run for federal parliament. Now, I have seen the Greens so many times almost at a deal. We have put up a proposal and then they have come in and said, 'We've done another deal; we've seen a reassurance from the government,' and then let us down softly. Well, in a similar way, we received a stunning assurance applying parallel similar legal costs for all MPs to be the same. It was a stunning agreement by my colleague Mr O'Brien that I am sure members of the Greens will be very happy about. Perhaps the member for Richmond will be very happy about that. So sometimes you have to make very mature agreements. The Greens have often come in here with assurances from the government and then folded on different pieces of amendments. I will not be lectured to by the Greens about integrity, given they sided with the Labor Party to cover up their CFMEU mates. You are complicit. We have a rogue criminal enterprise of a union fleecing taxpayer dollars and accepting kickbacks with taxpayer dollars, and you vote with the government to vote it down, so do not lecture me about integrity. Hypocrisy, thy name is the Greens political party.

**David LIMBRICK**: I would just like to speak briefly on this amendment. I know it is very exciting. I think that was some of Dr Ratnam's best work, maybe, and I always like to see the Greens and the Liberal Party fighting each other. I will be supporting this amendment because I support PAEC reform. I would also like to make the point that although the Liberal Party is attacking the Greens for not supporting the select committee and the Greens are attacking the Liberal Party for not supporting PAEC reform, the Libertarian Party are supporting both.

**David DAVIS**: I just want to make a very brief contribution here. First, I want to compliment Mr O'Brien on the arrangements that he has negotiated in particular with the government and in parts with the minor parties too. There is something in all of this that we can all look to. But I do think Dr Ratnam's contribution was intemperate and I do think it was unfortunate.

She well knows that on many occasions we have sought to reform committee structures. I only need to think back to the last Parliament with the pandemic and the issues around the pandemic. There were three initially but later four Labor-voting independents that supported Labor slavishly again and again and again, covering up the mismanagement of the pandemic and covering up the calls for a proper system and a proper approach to actually holding the government accountable. Massive power was being exercised by government – enormous power. Businesses were closed, houses were closed and people's lives were destroyed, and the Greens did not stand up at that time. The other three that were with them waved through the government's extraordinary arrangements that were the greatest assault on freedom and the greatest assault on people's rights that we have seen in 100 years or more.

I had not intended to speak at this point, but I was moved to do so. We put forward arrangements to reform PAEC at that time and ensure that there were proper oversight arrangements from PAEC as one alternative, and even made attempts to get proper oversight on projects, but the Greens and the other three Labor-voting independents were slavishly, limpet like attached to Labor. They could not be broken free. It would be like trying to break a limpet from a rock. The truth of the matter is that in those circumstances I do not think it was right to try and strike the particular note that was struck.

**Sarah MANSFIELD**: I rise to speak in support of my colleague Dr Ratnam's amendments that were put forward, although I am disappointed my amendments earlier, which would have seen more wideranging reform were defeated. I believe that at the very least we could be supporting these individual committees that we have put forward. I hear a lot in this debate: 'Well, you can't expect us to support this because you didn't support that in the past or you did this.' There is a lot of tit for tat here. This is above that. You have the opportunity before you to reform –

**Georgie Crozier** interjected.

**Sarah MANSFIELD**: Yesterday is yesterday. We never agreed to support the select committee; we do not think that is the appropriate mechanism. This is an ongoing mechanism that could look into all the issues, not just one issue that comes up but all the issues going forward, and you know this. You have an opportunity right here in front of you with this amendment to change something that would actually benefit everyone in this chamber. But if you had to pick who it was going to serve the interests of the most, it would be you.

There are all sorts of agreements that happen. That is how the amendments and different decisions that are made in this place occur. You can hold a grudge about that if you like, but you have an opportunity right here before you to make a significant reform to an oversight committee that would really go to the heart of a whole lot of the issues which we hear various members across this place who are not in government stand up and express concern about. We would have a much greater opportunity to prosecute those arguments, to ask the questions that we need to of all of the ministers, if we had a more functional PAEC. We have that opportunity here right before us, and I would really urge members to consider taking that opportunity. We will continue to push for it again and again, and I am sure at some point someone will see the interest in doing it.

**Samantha Ratnam** interjected.

**Sarah MANSFIELD**: Yes, one day the tables will turn and maybe this will seem like more of an attractive prospect. But it should not be about self-interest. This is about the interests of the Victorian people and holding the government of the day to account. You have an opportunity right here before you now, and I would urge all members to consider what they are voting for or against in this situation.

**Jaclyn SYMES**: I was not going to say too much in relation to this amendment – the government will not be supporting this amendment – but I did take issue with Dr Mansfield's plea to the Liberal and National parties as to why they should support their amendment and that it would 'serve you'. I think that we are not here to serve ourselves, we are here to serve the Victorian public. You are not actually arguing for more effective oversight, you are arguing for more opportunities for partisan pointscoring and the ability to frustrate the executive. You have tried to cover that and mask that with

your claims of accountability, but I think it is pretty clear that you are calling on the opposition to support it because it will serve them. And then you are calling on the government: 'Hey, when you're in opposition it might best serve you.' That to me shows your true colours as to why you want to pursue this amendment. I do not think it is a democratic amendment, and we will not be supporting it.

**Aiv PUGLIELLI**: I concur with the Attorney-General. This change I think would serve the Victorian people, which is, as my colleague has put, why we are seeking to move it as an amendment. I look forward to the day perhaps when the Labor political party stand in opposition. They might see sense and see why actually listening to Dixer after Dixer after Dixer in the PAEC process is perhaps not in anyone's interests. We could have some real accountability with this reform.

**The DEPUTY PRESIDENT**: The question is that Dr Ratnam's amendment 3 be agreed to, and this is a test for her amendments 4 and 6.

**Council divided on amendment:**

*Ayes (11):* Jeff Bourman, Katherine Copsey, Moira Deeming, David Ettershank, David Limbrick, Sarah Mansfield, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Rikkie-Lee Tyrrell

*Noes (28):* Ryan Batchelor, Melina Bath, John Berger, Lizzie Blandthorn, Gaelle Broad, Georgie Crozier, David Davis, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan, Tom McIntosh, Evan Mulholland, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt, Richard Welch

**Amendment negatived.**

**Amended clause agreed to; clause 140 agreed to.**

**Clause 141** (18:06)

**Samantha RATNAM**: I move:

5. Clause 141, line 27, before "or" insert ", the Integrity and Oversight Committee".

This is just a consequential amendment that was approved by the house.

**Amendment agreed to; amended clause agreed to.**

**New clause** (18:07)

**Sarah MANSFIELD**: I move:

18. Insert the following New Clause to follow clause 141 –

'**141A New section 50A inserted**

After section 50 of the **Parliamentary Committees Act 2003** insert –

"**50A Membership and chairperson of Privileges Committee**

(1) Not more than half of the members of a Privileges Committee may be members of a political party forming the Government.

(2) The chairperson of a Privileges Committee must not be a member of a political party forming the Government.

(3) In this section –

***Privileges Committee*** means the parliamentary committee of the Assembly or the Council that is responsible for determining whether there has been a breach of parliamentary privilege or a contempt of that House or of the Parliament.".'.

The Greens are proposing to amend the bill in order to acquit recommendation 3a of IBAC and the Ombudsman's Operation Watts report that:

> the privileges committees of each House be reformed to dilute the capacity of the majority in each House to determine the privileges committees' priorities and decision making

The amendments propose changes to the Parliamentary Committees Act 2003 to provide that not more than half of the members of a Privileges Committee may be members of a political party forming the government and the chairperson of a Privileges Committee must not be a member of a political party forming the government. The need for this reform was discussed in detail in the Operation Watts report, which led to recommendation 3a, which the current government has previously indicated it would support and legislate. The establishment of the Parliamentary Workplace Standards and Integrity Commission in this bill makes the reform even more important as the bill proposes to confer additional functions to the Privileges Committee with regard to investigating and reporting. Once again, this is an opportunity to make a significant reform to our integrity and oversight systems in Victoria.

It may be encouraging to hear that the Attorney indicated that the government is consulting on this and that it is considering these changes; however, we were unable to get a commitment as to when the government plans to implement the changes to the Privileges Committee. Once again, there is an opportunity for the opposition to join us in making this change to these committees. I understand, at least at some point, there was some value seen in these changes. You were able to support these changes at least temporarily and have decided for some reason, we believe, to change that position. I look forward to hearing the explanation for that. But as we have said, the government has had two years since it committed to implement these changes. We have not yet seen really any firm indication of a commitment to an implementation process or timeline. We would urge all members of this place to support this amendment to undertake this very important reform so we can acquit the recommendation of IBAC and the Ombudsman in their Operation Watts report.

**Evan MULHOLLAND**: The opposition will not be supporting these amendments, as previously signalled. Sometimes you come into this chamber after receiving assurances on things, as the Greens political party do all the time, and alter your position on things, and I am glad that the government has committed to working with members of the Privileges Committee on a review on how the committee of each house is constituted and operates, which is really important.

I take issue with some of the language coming from over there about 'old parties' in particular. The Greens political party was founded in 1992, when I was three years old. It has been around for a while, and the Greens are an establishment party. It is why you see the Greens going further and further to the troppo left on supermarkets and all sorts of other stuff, because you have got the Victorian Socialists and Legalise Cannabis Victoria and everyone else nipping at their heels. You see them being even more radical. The Greens are an establishment party. Again, you might lecture us, but I have seen plenty of times where we have agreed on things and then you have changed your mind, because you have come in here and said you have got an assurance from the government, so just take a bit of your own medicine.

**Jaclyn SYMES**: The government will not be supporting this amendment. I have contributed to further work and things that will happen in due course after this bill. But just in relation to the Privileges Committee specifically, I was on the Privileges Committee last term, and I did not know much about privileges until I was on the committee. The current make-up of the Privileges Committee for the Legislative Council includes Minister Blandthorn, Mr Bourman, Ms Crozier, Ms Lovell, Mr Mulholland, Ms Shing as chair and Minister Tierney. They obviously have an understanding of what happens on Privileges, and as Leader of the Government, when I sought interest in who would like to be on committees, because that is obviously done across party lines, I am pretty sure that there was no Greens nominee for the Privileges Committee. As I volunteer, my understanding of the

Privileges Committee was quite limited until I was on it, so I just do question whether you have really had the opportunity to understand the purpose of your amendment today.

**David LIMBRICK**: Mr Mulholland spoke of assurances from the government. I would like to ask the Attorney-General exactly what those assurances are.

*Members interjecting.*

**The DEPUTY PRESIDENT**: We are on the amendment, so we are asking questions about the amendment not about other clauses that we have already passed.

**David LIMBRICK**: No, but Mr Mulholland said that he received assurances from the government, which is why the opposition is not supporting this.

*Members interjecting.*

**David LIMBRICK**: Maybe I have misunderstood.

**The DEPUTY PRESIDENT**: Did you want to answer that, Attorney?

**Evan Mulholland**: She doesn't have to; it's not her amendment.

**Jaclyn SYMES**: Yes, it is not mine to question.

**The DEPUTY PRESIDENT**: The question was put to the Attorney, but we are asking Dr Mansfield questions about her amendment.

**David LIMBRICK**: Maybe I will ask Dr Mansfield about any assurances. Maybe she can shed some light on it.

**Sarah MANSFIELD**: Thank you, Mr Limbrick, for that question. I think that is a very good question. I can only speculate as to what the arrangement was because that was not made explicit here.

**The DEPUTY PRESIDENT**: The committee stage is not for speculating. This has to be a question about your amendment.

**Sarah MANSFIELD**: As I understand it, there was a statement made earlier by the Attorney that the government has provided some assurances to the opposition – some indemnity arrangements that will be dealt with through regulation for all MPs. It will be similar to what is being proposed for ministers if they were to have any sort of misconduct allegations –

**The DEPUTY PRESIDENT**: I think we are getting into dangerous territory here in committee stage, because we are speculating about what was being said.

**Sarah MANSFIELD**: This was what was identified earlier.

**The DEPUTY PRESIDENT**: I think that this question is not relating to the actual amendment.

**Sarah MANSFIELD**: It is in the sense that the government spoke to this earlier. Our understanding, as Mr Mulholland indicated, is that the opposition changed their mind on supporting this as a result of receiving that assurance. It is not an assurance related to privileges or any other change that would benefit the broader Victorian public, but it is an assurance about some things that will benefit individual MPs.

**Council divided on new clause:**

*Ayes (11):* Jeff Bourman, Katherine Copsey, Moira Deeming, David Ettershank, David Limbrick, Sarah Mansfield, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Rikkie-Lee Tyrrell

*Noes (28):* Ryan Batchelor, Melina Bath, John Berger, Lizzie Blandthorn, Gaelle Broad, Georgie Crozier, David Davis, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nick McGowan,

Tom McIntosh, Evan Mulholland, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt, Richard Welch

**New clause negatived.**

**Clauses 142 to 189 agreed to; schedules 1 to 3 agreed to.**

**Reported to house with amendments.**

**Jaclyn SYMES** (Northern Victoria – Attorney-General, Minister for Emergency Services) (18:23): I move:

That the report be now adopted.

**Motion agreed to.**

**Report adopted.**

*Third reading*

**Jaclyn SYMES** (Northern Victoria – Attorney-General, Minister for Emergency Services) (18:24):

That the bill be now read a third time.

**Motion agreed to.**

**Read third time.**

**The PRESIDENT**: Pursuant to standing order 14.28, the bill will be returned to the Assembly with a message informing them that the Council has agreed to the bill with amendments.

## Aboriginal Land Legislation Amendment Bill 2024

*Introduction and first reading*

**The PRESIDENT** (18:24): I have received the following message from the Legislative Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Aboriginal Lands Act 1970** and the **Aboriginal Lands Act 1991** and for other purposes.'

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:24): I move:

That the bill be now read a first time.

**Motion agreed to.**

**Read first time.**

**Harriet SHING**: I move, by leave:

That the bill be read a second time forthwith.

**Motion agreed to.**

*Statement of compatibility*

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:25): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the **Charter**), I make this Statement of Compatibility with respect to the **Aboriginal Land Legislation Amendment Bill 2024** (the **Bill**).

In my opinion, the Bill as introduced to the Legislative Council, is compatible with human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.

**Overview**

The Bill amends the *Aboriginal Lands Act 1970* (1970 Act) and supports the implementation of the Victorian Government's response to the recommendations of the independent review of the 1970 Act. Specifically, the Bill improves the processes for share transfers; strengthens governance provisions; and modernises terminology in the 1970 Act.

The Bill also amends the *Aboriginal Lands Act 1991* (1991 Act) to remove the Transfer Restriction and Use Restriction for the Ebenezer Mission Cemetery and Ramahyuck Mission Cemetery in line with the aspirations of the titleholders and Traditional Owners for these two sites.

**Human Rights Issues**

The Bill engages the right to take part in public life (section 18), cultural rights (section 19) and property rights (section 20) under the Charter.

For the following reasons, having taken into account all relevant factors, I am satisfied that the Bill is compatible with the Charter and, if any rights are limited, the limitation is reasonable and justified in a free and democratic society based on human dignity, equality and freedom in accordance with section 7(2) of the Charter.

*Right to take part in public life*

Section 18(1) of the Charter provides that every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. A person participates directly in the conduct of public affairs by, for example, by taking part in popular assemblies which have the power to make decisions about the affairs of a particular community.

The 1970 Act establishes a Committee of Management as the governance body for a Trust. Clause 10 of the Bill disqualifies a person from being a member of the Committee of Management of a Trust if the person is convicted or found guilty of an offence that involves dishonesty and is punishable by imprisonment for at least three months or is disqualified from managing corporations under the *Corporations Act 2001* (Cth) (Corporations Act).

By potentially disqualifying a person from being a member of the Committee of Management of a Trust, the Bill may limit a person's ability to make decisions about the affairs of the Trusts in certain circumstances, and therefore, a person's right to take part in public life.

The purpose of this limitation is to ensure the proper governance and administration of the Trusts in accordance with standard governance practices, without unduly restricting who can become a member of the Committee of Management of a Trust.

The limitation is reasonable and justified in the circumstances. The legitimacy and integrity of decisions by the Committee of Management are dependent on these restrictions, noting that a person can only be disqualified in certain limited circumstances. Disqualifying a person from being a member of a Committee of Management Trust on these grounds is consistent with standard governance practices established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and the Corporations Act. A Trust's governance model should be consistent with the current provisional standards that are applied to all land rights and corporation legislation in relation to the disqualification of a person from decision-making bodies.

Accordingly, I consider the potential limitation reasonable, necessary, justified and proportionate in the circumstances. The Bill is consistent with the right to take part in section 18 of the Charter.

*Cultural rights*

Section 19(2) of the Charter prohibits the denial of Aboriginal persons to enjoy their identity and culture; maintain and use their language; maintain their kindship ties; and maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

The Preamble to the Charter provides that human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.

The 1991 Act provides for a Transfer Restriction and a Use Restriction on title granted under the Act. Clause 33 of the Bill will remove the Transfer Restriction and Use Restriction for the Ebenezer Mission Cemetery to enable Traditional Owners to exercise their cultural and land rights over the site. These changes are in line with the aspirations of Goolum Aboriginal Co-Operative as the titleholder and Barengi Gadjin Land Council Aboriginal Corporation as the Traditional Owner Group Entity which represents the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples of the Wotjobaluk Nations (WJJWJ Peoples) as the Traditional Owners of the land encompassing Ebenezer Mission.

Clause 33 of the Bill will also remove the Transfer and Use Restriction for the Ramahyuck Mission Cemetery to enable Traditional Owners to exercise their cultural and land rights over the site, in line with the aspirations of Gippsland and East Gippsland Aboriginal Co-Operative as the titleholder.

For both Ramahyuck and Ebenezer Mission Cemeteries, the requirement that transfer be made to Traditional Owners will (as distinct from any third party) ensures that any rights that may be available in relation to those sites under s 47A of the *Native Title Act 1993* (Cth) to native title holders in the area may continue to be available. This preserves the existing native title rights of relevant groups through the new legislation.

The Bill will retain the Transfer Restriction and Use Restriction for the Coranderrk Mission Cemetery, in accordance with the wishes of the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (Wurundjeri) as the titleholder and Traditional Owners of the land encompassing Coranderrk.

The three cemeteries protected under the 1991 Act are highly culturally significant for the respective local Aboriginal communities and Traditional Owners, who hold deep, longstanding connections to the land, and because many of their ancestors are buried at the sites.

The Transfer Restriction and Use Restriction on the land contained in the 1991 Act do not reflect current government policies which seek to promote Aboriginal self-determination, including in relation to property rights and interests.

During consultations on amendments to the 1991 Act, the titleholders and Traditional Owners of the Ebenezer and Ramahyuck Mission Cemeteries noted that the Transfer Restriction and Use Restriction represent a level of government intervention in Aboriginal decision-making that no longer appropriately serves their interests of self-determination. In this way, the titleholders and Traditional Owners of the Ebenezer and Ramahyuck Mission Cemetery asserted their cultural rights to determine the future use of their respective cemetery sites. Wurundjeri exercised their cultural rights by electing to retain the land Transfer Restriction and Use Restriction as the titleholder and Traditional Owners for the Coranderrk Mission Cemetery.

By rectifying the 1991 Act's limitations on the cultural rights of Aboriginal Victorians, in accordance with the aspirations of the titleholders and Traditional Owners of the land, the Bill promotes the distinct cultural rights of Aboriginal Victorians as described under section 19(2) of the Charter.

Accordingly, the Bill is consistent with the distinct cultural rights of Aboriginal persons under section 19(2) of the Charter.

*Right to property*

Section 20 of the Charter states that a person must not be deprived of their property other than in accordance with law. Property is likely to include all real and personal property interests recognised under general law (including interests in land and shares) and may include some statutory rights, especially if the right includes traditional aspects of property rights, such as the rights to use, transfer, dispose and exclude. The right requires that a law (whether legislation or the common law) authorising the deprivation of property is clear and precise, accessible to the public, and does not operate arbitrarily.

The 1970 Act recognises shares as personal property of shareholders, with provisions for dividends, acquisition, and sale of shares. However, limitations on share transfers are imposed, restricting transfers to the Trust, other Trust members, the Crown, and limited family members. Despite these provisions, the 1970 Act lacks clarity regarding the definition of a "proper instrument of transfer" and the necessary information for such transfers.

Clause 3 of the Bill will empower the Governor in Council, upon recommendation of the Minister, to prescribe an instrument of transfer. This aims to ensure that transfers of shares are executed in accordance with the 1970 Act, thereby reinforcing the property rights of shareholders while promoting legal certainty and compliance with legislative requirements.

Furthermore, Clause 4 of the Bill mandates that the entity maintaining the share register provides written notice of any share transfers to all members listed in the register. Additionally, it ensures that the share register is accessible for inspection upon receiving a written request from a member of the Trust or the Minister. These measures enhance transparency and accountability in share transfers, safeguarding the property rights of shareholders and facilitating fair and equitable treatment.

The Bill does not extinguish shareholder rights under the 1970 Act and does not deprive a person of their property. The proposed amendments outlined in Clauses 3 and 4 of the Bill aim to strengthen property rights by enhancing the legitimacy, transparency, and procedural fairness of share transfers, thereby promoting the protection and proper handling of personal property.

The 1991 Act provides for Transfer Restriction and Use Restriction on title granted under the Act. Clause 33 of the Bill will remove the Use and Transfer restrictions for the Ebenezer Mission Cemetery and Ramahyuck Mission Cemetery to enable titleholders to exercise their land rights and transfer the sites to Traditional

Owners. The requirement to transfer to Traditional Owners (as distinct from any third party) ensures that any rights that may be available under s 47A of the *Native Title Act 1993* (Cth) to native title holders in the area may continue to be available. The Bill will retain the Transfer Restriction and Use Restriction for the Coranderrk Mission Cemetery, in accordance with the wishes of Wurundjeri as the titleholder and Traditional Owner for the land.

The 1991 Act does not reflect contemporary government policy which seeks to promote Aboriginal self-determination, including in relation to property rights and interests. The Bill promotes the right to property by enabling titleholders for the Ebenezer Mission Cemetery and Ramahyuck Mission Cemetery to freely exercise their land rights and return the sites to Traditional Owners.

The Bill does not remove the Transfer or Use restrictions for the Coranderrk Mission Cemetery, which limits the Wurundjeri's property rights as titleholder. However, this limitation is reasonable and justified in the circumstances.

Wurundjeri expressly chose to retain these restrictions during submissions in 2021 and 2023 to the review of the 1991 Act. The retention of the Transfer and Use restrictions for the Coranderrk Mission Cemetery acknowledges and honours the wishes expressed by Wurundjeri and is for the purpose of promoting Aboriginal self-determination over their property rights. Additionally, the decision to retain the Transfer Restriction and Use Restrictions represents a deliberate decision to preserve the cultural significance and heritage of the site.

Importantly, consultation on the limitations imposed on the Coranderrk Mission Cemetery will remain ongoing. The Victorian Government remains open to revisiting and amending the 1991 Act in the future should the aspirations of Wurundjeri change over time. This underscores the government's legal obligation to engage in meaningful consultation and accommodation of First Peoples' rights.

Accordingly, I consider the potential limitation reasonable, necessary, justified and proportionate in the circumstances. The Bill is consistent with the right to property in section 20 of the Charter.

**Hon Jaclyn Symes MP**
**Attorney-General**
**Minister for Emergency Services**

*Second reading*

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:25): I move:

That the bill be now read a second time.

**Ordered that second-reading speech be incorporated into *Hansard*:**

I acknowledge the Traditional Owners and custodians of the land on which this Parliament stands, the Wurundjeri Woi Wurrung People of the Kulin Nations. I pay my respects to their Elders and ancestors; Elders from all Victorian First Peoples, and any Elders and other Aboriginal people who join us here today. Since time immemorial, First Peoples have practiced their laws, customs and languages, and nurtured Country through their spiritual, material and economic connections to land, water and resources. Victoria's First Peoples maintain that their sovereignty has never been ceded.

The reality of colonisation involved the establishment of laws and policies with the specific intent of excluding First Peoples people and their customs, cultures and traditions. I acknowledge that the impact and structures of colonisation still exist today. For generations, First Peoples have called for treaty and land rights to secure structural change, and to ensure First Peoples have the freedom and power to make decisions that affect them, their communities and Country.

*Amendments to the Aboriginal Lands Act 1970*

The *Aboriginal Lands Act 1970* (1970 Act) is a landmark piece of legislation created in direct response to the Framlingham and Lake Tyers Aboriginal communities' advocacy for land rights. As former mission sites, Framlingham and Lake Tyers represent the State's past racist, segregationist, and assimilationist laws which actively sought to deny First Peoples any form of self-determination.

On the 1st of January 1968, residents of the Framlingham and Lake Tyers communities were listed in the Victorian Government Gazette as members of the respective Framlingham or Lake Tyers Aboriginal Trusts and allocated shares in the Trusts, thereby granting them freehold title of the land. Under the scheme created by the 1970 Act, each member holds part of their Trust, and that Trust owns the land; in that way, the members indirectly own the land. When it was enacted, the 1970 Act was nation leading. It was the first time that the Victorian Parliament recognised Aboriginal land rights and the government's first attempt to recognise the

self-determination of First Peoples in Victoria, specifically the Trust communities' right to own and make decisions about land.

While the 1970 Act was historic in returning land ownership to the Framlingham and Lake Trusts' communities, it is now outdated and inadequate at promoting self-determination, enabling good governance and economic independence for the Trusts' shareholders and non-shareholder residents. Not once in the 54 years that the 1970 Act has been in operation has government sought to introduce major reforms to the 1970 Act, nor create a review mechanism to ensure the 1970 Act keeps pace with our advancing work with First Peoples.

Periodic minor legislative amendments over the past five decades have failed to ensure the 1970 Act remains consistent with its original purpose of *"giving back to the people of Framlingham and Lake Tyers the dignity which was theirs in their original ownership of [the land]."*

Though the Victorian Government is proud of the progress made in Aboriginal Affairs, it is unacceptable that the 1970 Act has not kept pace with other legislation, shifting attitudes and policies concerning First Peoples in Victoria and other jurisdictions, including the Victorian Government's evolved understanding of First Peoples' self-determination.

In response to ongoing systemic issues, the Victorian Government publicly committed to reviewing the 1970 Act in July 2016, with the aim of improving governance and enabling greater self-determination for the Trusts' communities. The Independent Review of the *Aboriginal Lands Act 1970* (Independent Review) concluded in 2021. The Independent Review made a series of recommendations aimed at strengthening governance and share transfer mechanisms and increasing the Trust communities' understanding of the 1970 Act's requirements and its shareholding system.

In September 2023, the Victorian Government publicly committed to implementing all the recommendations of the Independent Review in two phases.

This Bill gives effect to phase one of the Victorian Government's response to the Independent Review and will implement 22 legislative recommendations supported in full. Phase one reforms focus on the Trusts' governance, easing unfair administrative requirements on the Trusts, which has, and continues to, impact their ability to comply with the legislation; resolving issues with the shareholding system and improve processes for share transfers; strengthen the accountability and transparency provisions in the governance arrangements of the Trusts; provide the Trusts with powers to carry out business on Trust land; and provisions to modernise terminology in the Act.

The Bill will also entrench improvements to the governance and composition arrangements of the board of administrators' model under the 1970 Act, and remove the duplicative financial reporting requirements.

Government is concurrently progressing six non-legislative amendments. Together, these actions will acquit phase one of the Victorian Government's response to the Independent Review.

Phase two will consider implementation of the remaining 14 (13 legislative and one non-legislative) recommendations, subject to further analysis, community engagement and the implementation of interdependent recommendations in phase one, including clarification of shareholdings at both Trusts.

Reforms to the 1970 Act will not end with implementing all the recommendations of the Independent Review. The path ahead must be one consistent with self-determination, where the State supports the Framlingham and Lake Tyers communities to be self-governing and use the Trust lands for the benefit of residents and shareholders alike.

The Victoria Government stands committed to proceeding apace with required short-term changes to the 1970 Act and a renewed effort to resolve longstanding issues. The amendments proposed in this Bill, in conjunction with the other phase one recommendations, will provide the groundwork for future reform to the 1970 Act.

*Amendments to the Aboriginal Lands Act 1991*

Efforts to redress some of the impacts of the Victorian Government's past racist laws were also reflected in the enactment of the *Aboriginal Lands Act 1991* (1991 Act). Under this Act, freehold title was granted over three Aboriginal burial sites at the former Coranderrk, Ebenezer and Ramahyuck Missions to Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation, Goolum Goolum Aboriginal Cooperative, and Gippsland and East Gippsland Aboriginal Cooperative respectively, these being the only Aboriginal-led community organisations in those regions at the time.

While the 1991 Act succeeded in transferring culturally significant land to Aboriginal organisations, it conversely restricted First Peoples' self-determination by prohibiting them from transferring their respective interests in the land (Transfer Restriction) and restricting their use of the lands to Aboriginal cultural and burial purposes (Use Restriction).

This Bill will remove restrictions on the Ebenezer and Ramahyuck Mission Cemeteries and allow for the transfer of these cemeteries to the Traditional Owners, thereby preserving rights under section 47A of the *Native Title Act 1993* (Cth), enabling for previous extinguishment of the sites to be set aside, should those groups decide. All references to the Coranderrk Mission Cemetery are to remain unchanged in line with the aspirations of the Wurundjeri Traditional Owners. These changes are in line with the respective wishes of the title holders and Traditional Owners – to empower Aboriginal organisations to freely exercise their land rights and return the Ebenezer and Ramahyuck Mission Cemeteries to Traditional Owners.

Importantly, these amendments to the 1991 Act will also fulfil the Victorian Government's legal commitment in its Recognition and Settlement Agreement (RSA) under the *Traditional Owner Settlement Act 2010* to use best endeavours to return the ownership of the Ebenezer Mission Cemetery to the Barengi Gadjin Land Council Aboriginal Corporation who is the Traditional Owner Group Entity which represents the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples of the Wotjobaluk Nations (WJJWJ Peoples) as the Traditional Owners of the land encompassing Ebenezer Mission.

These changes to the 1970 Act and the 1991 Act are emblematic of how the Victorian Government should work with First Peoples – listening, appreciating the uniqueness of different Aboriginal groups, and working to give these groups power and control over their affairs.

I see the work to reform the 1970 Act as a critical step on our pathway towards self-determination. Finding a way for the Trust communities to exist beyond the restrictions of the 1970 Act is critical to enable the Trust communities to govern their own affairs, with government support, not intervention.

I commend the Bill to the House.

**Georgie CROZIER** (Southern Metropolitan) (18:25): On behalf of my colleague Mr Davis, I move:

That debate be adjourned for one week.

**Motion agreed to and debate adjourned for one week.**

## State Sporting Legislation Amendment Bill 2024

*Introduction and first reading*

**The PRESIDENT** (18:26): I have a second message from the Legislative Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **ANZAC Day Act 1958** to change the description of an area in which sports are held on ANZAC Day, to amend the **Kardinia Park Stadium Act 2016**, the **Melbourne and Olympic Parks Act 1985**, the **Melbourne Cricket Ground Act 2009** and the **State Sport Centres Act 1994** in relation to trust membership, leasing powers and other miscellaneous amendments, to amend the **Professional Boxing and Combat Sports Act 1985** in relation to acting appointments and for other purposes.'

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:27): I move:

That the bill be now read a first time.

**Motion agreed to.**

**Read first time.**

**Harriet SHING**: I move, by leave:

That the bill be read a second time forthwith.

**Motion agreed to.**

*Statement of compatibility*

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:27): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, (the **Charter**), I make this Statement of Compatibility with respect to the State Sporting Legislation Amendment Bill 2024 (the **Bill**).

In my opinion, the Bill, as introduced to the Legislative Council, is compatible with human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.

**Overview**

The Bill implements reforms in relation to trust membership, leasing powers and acting appointments for trust and board members through amendments to the following Acts (the **State Sporting Acts**):

- *Kardinia Park Stadium Act 2016* (the **KPS Act**);
- *Melbourne and Olympic Parks Act 1985* (the **MOP Act**);
- *Melbourne Cricket Ground Act 2009* (the **MCG Act**);
- *Professional Boxing and Combat Sports Act 1985* (the **PBCS Act**); and
- *State Sport Centres Act 1994* (the **SSC Act**).

The amendments to the State Sporting Acts include:

- Streamlining membership and chairperson appointments and responsibilities including for acting members and acting chairpersons;
- Enabling the Minister to delegate the power to approve leases that are not major leases for Kardinia Park Stadium Land under the KPS Act, the National Tennis Centre and Olympic Park under the MOP Act and the State Sport Centres Lands under the SSC Act, to the Secretary or persons employed under Part 3 of the *Public Administration Act 2004* (the **PA Act**) as an executive, in the Department of Jobs, Skills, Industry and Regions (the **Department**);
- Providing the Minister with the power to nominate persons for membership to the Melbourne and Olympic Parks Trust (the **MOP Trust**), including from Tennis Australia Limited and the Victorian Tennis Association;
- Providing the Minister with the power to make floodlight determinations (under the MCG Act);
- Enabling the Minister to make event management declarations (under the KPS Act); and
- Abolishing of the Kardinia Park Advisory Committee (under the KPS Act) and the State Netball and Hockey Centre Advisory Committee (under SSC Act).

The Bill also amends the *ANZAC Day Act 1958* (the **ANZAC Day Act**), to modernise the description of the area in which sports are held on ANZAC Day, and makes several statute law revisions and amendments to gendered language to enable inclusive application across the MOP Act, the MCG Act, the PBCS Act, the SSC Act, and the ANZAC Day Act.

**Human Rights Issues**

I have considered the Charter's application to the Bill. The human rights protected by the Charter that are relevant to the Bill are:

- Recognition and Equality before the law (section 8);
- Freedom of Movement (section 12);
- Taking Part in Public Life (section 18); and
- Property Rights (section 20).

To the extent that the Bill limits any Charter rights, such limits are minimal and, in any event, are clear, reasonable, proportionate and justifiable in accordance with section 7(2) of the Charter.

***Recognition and equality before the law (section 8)***

Section 8 of the Charter provides that:

- Every person has the right to recognition as a person before the law.
- Every person has the right to enjoy their human rights without discrimination.

- Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.
- Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

The Bill promotes the right to recognition and equality before the law by removing gendered language in the MOP Act, the MCG Act, the PBCS Act, the SSC Act, and the ANZAC Day Act. These amendments promote this right by:

- clarifying that the provisions in these Acts are inclusive of all persons, including women and non-binary persons; and
- improving the readability of the State Sporting Acts and ANZAC Day Act by clarifying the persons or office holders to which relevant provisions apply, by replacing references to gendered pronouns with formal office titles, as is standard under such revisions.

For these reasons I am of the view that the Bill promotes the right to recognition and equality before the law across the MOP Act, the MCG Act, the PBCS Act, the SSC Act and ANZAC Day Act.

***Freedom of Movement (section 12)***

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria, to enter and leave it, and has the freedom to choose where to live. This right extends to accessing public spaces, such as the ability of individuals to move through, remain in, enter or depart from public spaces, including freedom from physical barriers and procedural impediments.

The Bill provides that the Minister may delegate the power to approve certain leases over Crown land, including:

- Kardinia Park Stadium Land (**KPS Land**) (under the KPS Act, clause 9 of the Bill); and
- National Tennis Centre land or Olympic Park land (under the MOP Act, clause 14 of the Bill); and
- State Sport Centres lands (**SSC Land**) (under the SSC Act, clause 50 of the Bill).

KPS Land, National Tennis Centre land, Olympic Park land, and the SSC Land are Crown lands reserved under the *Crown Land (Reserves) Act 1978* (the **CLR Act**) for the purpose of public parks. The Kardinia Park Stadium Trust (the **KPS Trust**) manages KPS Land under section 6 of the KPS Act and may grant leases over KPS Land with approval of the Minister under section 31 of the KPS Act. The MOP Trust manages the National Tennis Centre and Olympic Park under section 6 of the MOP Act and may grant leases over these areas with the approval of the Minister under section 7(1)(a)(i) of the MOP Act. The State Sport Centres Trust (the **SSC Trust**) manages the SSC Land under section 6 of the SSC Act and may grant leases with the approval of the Minister over the various parcels of SSC Land under sections 25B (Melbourne Sports and Aquatic Centre land), 26B (State Netball and Hockey Centre land) and 26FD (Knox Regional Sports Park land and Lakeside Oval Reserve land) of the SSC Act.

These amendments engage the right to freedom of movement by altering the framework that manages the movement of individuals on Crown land. This is because leases may confer exclusive rights of access to a particular area, causing potential restrictions to freedom of movement. The purpose of enabling the Minister to delegate their power to approve leases that are not major leases, is to reduce administrative burden on the Minister by providing discretion for the Minister to delegate the power to the Secretary or Departmental executives. Delegating power is a necessary part of public administration, and the powers will not remove the mechanism of approval for the granting of leases by the KPS Trust, MOP Trust and SSC Trust. Leases granted by these trusts must still be approved by the nominated delegate, who is required to give proper consideration to relevant human rights in accordance with section 38 of the Charter when making the decision to approve the grant of leases.

The amendments do not alter any rights or obligations of tenants in how they exercise those rights and obligations over the lands, and do not reduce or prevent public access to the lands.

For these reasons I am of the view that clauses 9, 14 and 50 do not limit the right to freedom of movement, and to the extent that the right may be limited, any limitations are lawful and not arbitrary.

***The Right to Take Part in Public Life (section 18)***

Section 18(1) of the Charter provides that every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. Section 18(2)(b) further provides that every eligible person has the right to have access, on general terms of equality, to the Victorian public service and public office. The right to participate in the conduct of public affairs applies to all people in Victoria. However, access to public office is restricted to only 'eligible' persons. The term 'eligible' is not defined in the Charter. Eligibility is to be determined by Victorian

legislation, that is, persons who are eligible to stand for election are those that Victorian legislation provides may do so.

The Bill engages the right to take part in public life by:

- amending the KPS Act and SSC Act to abolish the Kardinia Park Advisory Committee (**KPAC**) and State Netball and Hockey Centre Advisory Committee (**SNHCAC**); and
- amending the MOP Act to change operation of membership procedures for the MOP trust (clause 15).

*Abolition of KPAC and SNHCAC*

The abolition of KPAC under clause 8, and SNHCAC under clause 53, engages the right to take part in public life by:

- removing the opportunity for people to be members of these committees and to participate in public affairs in that capacity; and
- removing the opportunity for the public to engage with these committees.

The current functions of the SNHCAC include to advise the SSC Trust on the operation and management of the State Netball and Hockey Centre and associated land and to operate as forum in which stakeholders of the facilities discuss management decisions and priorities. The SNHCAC primarily operates as an advisory body and does not have any decision-making powers under the SSC Act. Similarly, the current functions of KPAC are to advise the KPS Trust on the operation, management and improvement of the KPS Trust land, and to advise the KPS Trust and the Greater Geelong City Council on the operation, management and improvement of Kardinia Park. KPAC also primarily operates as advisory body that focuses on facility-specific issues at the local level and has no decision-making powers.

Although the Bill abolishes the SNHCAC and KPAC, advisory bodies may still be established on a less formal basis. The Minister may issue a direction to the SSC Trust under section 6A of the current SSC Act in relation to State Sport Centres Land, or to the KPS Trust under section 19 of the current KPS Act in relation to Kardinia Park Stadium land, including to establish an advisory committee. The option to establish an advisory committee in this manner will provide flexibility compared to the current SNHCAC or KPAC, as it will enable many of the substantive functions of SNHCAC and KPAC to be replicated by these bodies established pursuant to ministerial direction and enable a more efficient mechanism for changes to the function and purpose of these bodies in adapting to needs of the SSC Trust and KPS Trust. The option to appoint committees in this manner will also preserve the opportunity for the public to engage on the matters previously managed by SNHCAC or KPAC.

*Amendments to membership procedures for MOP Trust*

The MOP Trust is established under section 5 of the MOP Act and is comprised of 12 members including 2 persons from Tennis Australia Limited and 1 person from the Victorian Tennis Association (**the Tennis Organisations**). Clause 15 of the Bill changes the way in which membership of the MOP Trust operates in terms of membership procedures, by providing for the Minister make nominations for members of the MOP Trust from the Tennis Organisations, instead of the current procedure whereby the Tennis Organisations made their own nominations. Under clause 15 of the Bill, the Tennis Organisations may provide the Minister with recommended persons to consider for nomination as representative members on the MOP Trust. This clause engages with how representatives of the Tennis Organisations are able to take part in public life by giving the Minister oversight and decision-making power over their nominations. However, clause 15 provides that the Tennis Organisations may still recommend persons to the Minister, and the membership of the MOP Trust must include 3 members to represent the Tennis Organisations. This maintains objective, reasonable and non-discriminatory criteria for appointments.

For these reasons I am of the view that these clauses do not limit the right to take part in public life, and to the extent that it may be limited, the limitations are lawful and not arbitrary.

***Property Rights (section 20)***

Section 20 of the Charter provides that a person must not be deprived of that person's property other than in accordance with the law. An interference with property may amount to a deprivation in circumstances where it effectively prevents a person from using or dealing with their property. However, the Charter permits deprivations of property so long as the powers which authorise the deprivation are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public, and are formulated precisely. The Bill engages the right to property by –

- amending the KPS Act, MOP Act and SSC Act to enable delegation of the Minister's power to approve the granting of leases; and
- amending the KPS Act and SSC Act to abolish the KPAC and SNHCAC.

*Delegation of the Minister's leasing powers (KPS Act, MOP Act and SSC Act):*

Whilst clauses 9, 14 and 50 of the Bill, that provide for the Minister's powers to delegate the power to approve the granting of leases under the KPS Act, MOP Act and SSC Act, appear to engage the property rights under section 20 of the Charter, these clauses will not operate to deprive any person of any known proprietary rights that are held in relation to the land, and as such the Bill does not engage the right.

As such, I am satisfied that reforms introduced by this Bill are compatible with the Charter. To the extent that they may limit rights in the Charter, those limits are balanced by the benefits of amendment, and reasonably justified to achieve an important aim of enhancing the governance and administration of Victorian sporting infrastructure.

**Hon Gayle Tierney MP**
**Minister for Skills and TAFE**
**Minister for Regional Development**

*Second reading*

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:27): I move:

That the bill be now read a second time.

**Ordered that second-reading speech be incorporated into *Hansard*:**

The State Sporting Legislation Amendment Bill 2024 (Bill) before the house today makes many important administrative changes across the *Kardinia Park Stadium Act 2016, Melbourne and Olympic Parks Act 1985, Melbourne Cricket Ground Act 2009, Professional Boxing and Combat Sports Act 1985* and *State Sport Centres Act 1994*. The Bill modernises section 4 of the *ANZAC Day Act 1958* by updating the measure of distance and removing an obsolete reference to the General Post Office. It also removes gendered language across a number of Acts.

Although the reforms appear to be relatively straightforward, the continuous fine-tuning of these Acts is essential for the effective governance of our state sporting assets and the regulation of professional boxing and combat sports.

Together, the State's sporting trusts manage in excess of $4.1 billion worth of significant government assets, spread across a number of major and complex sporting venues in Victoria while the Professional Boxing and Combat Sports Board is the body responsible for the regulation of professional combat sports in Victoria, issuing approximately 800 licences, registrations and permits annually. It is critical that our Trusts are provided with a legislative framework that supports them to undertake their roles efficiently and effectively. This Bill seeks to do that.

Firstly, the Bill amends how subordinate instruments are made under the Kardinia Park Stadium Act and the Melbourne Cricket Ground Act.

The change to the Kardinia Park Stadium Act will permit the Minister rather than the Governor in Council to make Kardinia Park Stadium event management declarations. This amendment will significantly reduce the time required to make a declaration however it will not change any of the matters required to be considered by the Minister when determining whether a declaration should be made. This amendment will increase efficiency of process and help to enhance Victoria's reputation as the event capital of Australia.

The Bill also amends the floodlight determination provisions in the Melbourne Cricket Ground Act. Currently, only the Minister may make a determination specifying when the floodlights at the Melbourne Cricket Ground may be operated. The Bill amends the Act to allow the Minister to delegate the making of determinations to the department. This will enhance responsiveness to sector requests by enabling determinations to be made more quickly, especially when applications are made on short notice. Importantly however, the requirement for gazettal of these determinations has been retained.

A number of changes to leasing provisions across various Acts are also made by the Bill. Leases over the National Tennis Centre and Olympic Park are currently granted by the Melbourne and Olympic Parks Trust, subject to the consent of the Minister administering the *Crown Land (Reserves) Act 1978*. This arrangement does not take account of the precinct knowledge held by the Minister responsible for administering the Melbourne and Olympic Parks Act and creates additional administrative burden for the Melbourne and Olympic Parks Trust. The Bill changes the Minister responsible for approving leases at the National Tennis Centre and Olympic Park from the Minister responsible for administering the Crown Land (Reserves) Act to the Minister responsible for administering the Melbourne and Olympic Parks Act. The Minister responsible

for the administration of the Crown Land (Reserves) Act will retain responsibility for approving leases over Gosch's Paddock.

The Bill contains additional red tape reduction measures in relation to the approval of leases over state sporting facilities including amendments that allow the Minister to delegate approval of leases other than major leases to the department. These changes will affect leasing provisions in the Kardinia Park Stadium Act, Melbourne and Olympic Parks Act and the State Sport Centres Act. The amendments will streamline lease processes while maintaining the requirement that the Minister approve more significant leases.

The Bill will improve consistency across Trust appointment processes and reduce red tape and onerous appointment requirements for advisory committees. Consistency will be improved by providing the Minister with the power to appoint an acting chairperson and/or acting members to the Kardinia Park Stadium Trust, Melbourne and Olympic Parks Trust, Melbourne Cricket Ground Trust and Professional Boxing and Combat Sports Board. The Melbourne and Olympic Parks Act and Melbourne Cricket Ground Act will also be amended to allow resignations to be made directly to the Minister rather than the Governor in Council. These amendments will simplify the resignation process and increase efficiency by avoiding resignations being reliant on the availability of the Governor.

The Bill also removes outdated provisions prohibiting Tennis Australia and Tennis Victoria employees from being eligible for payment as members of the Melbourne and Olympic Parks Trust and will give the Minister the power to nominate members of these organisations on the recommendation of the tennis organisations. This will allow the Minister to decline a recommendation made by the tennis organisations and request a new nominee be proposed, enhancing the robustness of appointments made to the nominated positions.

The Bill will increase the maximum number of members on the Melbourne Cricket Ground Trust from eight to nine and it will increase membership of the State Sport Centre Trust from seven to 11 to ensure sufficient resourcing to meet the demands of an expanded infrastructure portfolio.

The final administrative change made by the Bill is to dissolve the State Netball and Hockey Centre and Kardinia Park Advisory Committees and repeal their establishing provisions. These committees are advisory bodies with no decision-making powers and are generally a forum in which stakeholders of the facilities and community groups discuss management decisions and priorities. Members of these committees are currently required to comply with unnecessarily onerous appointment processes which has resulted in several representative nominees declining to be formally appointed. The Kardinia Park Stadium Act and State Sport Centres Act both already contain provisions that will allow similar but less formal bodies to be established by Ministerial Direction with the same practical effect as the current advisory committee provisions but with greater flexibility to encourage stakeholder participation.

I commend the Bill to the house.

**Georgie CROZIER** (Southern Metropolitan) (18:27): I move:

That debate be adjourned for one week.

**Motion agreed to and debate adjourned for one week.**

## Youth Justice Bill 2024

*Introduction and first reading*

**The PRESIDENT** (18:27): I have received a further message from the Legislative Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to provide for the reform of the youth justice system, to amend the **Children, Youth and Families Act 2005** and other related Acts and for other purposes.'

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:28): I move:

That the bill be now read a first time.

**Motion agreed to.**

**Read first time.**

**Harriet SHING**: I move, by leave:

That the bill be read a second time forthwith.

**Motion agreed to.**

*Statement of compatibility*

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:28): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**), I make this Statement of Compatibility with respect to the Youth Justice Bill 2024.

In my opinion, the Youth Justice Bill 2024 (**Bill**), as introduced to the Legislative Council, is compatible with human rights protected by the Charter. I base my opinion on the reasons outlined in this statement.

**Overview of the Bill**

The Bill creates a standalone legislative framework for youth justice in Victoria. The nature and subject matter of youth justice necessarily raises a number of human rights issues, including both giving effect to and promoting human rights under the Charter, and limiting rights where reasonably justified.

**Human Rights in the Bill**

In light of the considerable scope of the Bill and the issues raised, this Statement of Compatibility commences with an outline of all rights engaged by the Bill, with a particular focus on children's rights under the Charter. It then discusses the compatibility of relevant Chapters of the Bill with those rights.

***Children's rights***

Children are entitled to all rights under the Charter, except where the scope or exercise of the right is legitimately restricted on the basis of age, such as the right to vote. The Charter also grants additional rights only to children, which are contained in sections 17(2), 23 and 25(3) of the Charter. In this Statement of Compatibility, the rights in sections 17(2), 23 and 25(3) of the Charter are referred to collectively as **'children's rights'**. These rights recognise the special vulnerability of children, and require measures to be adopted to protect children and to foster their development and education.

*Protection in a child's best interests*

Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in their best interests and is needed by them by reason of being a child. This provision is modelled on article 24(1) of the *International Covenant on Civil and Political Rights* and its scope is informed by the *Convention on the Rights of the Child* and other relevant United Nations materials. The right protects important values, including bodily integrity, mental health, dignity and self-worth.

What is in a child's best interests will depend on the specific circumstances of the child or group of children and the particular decision being made or action being taken. The level of protection required will ordinarily differ depending on the age of the child, in recognition of the progressively developing capacities of the children. Matters that may be relevant to a child's best interests include the child's views, the child's identity, preservation of the family environment and relationships, protection and safety of the child, situation of vulnerability, and the child's rights to health and education.

The scope of section 17(2) in the youth justice context may be informed by the United Nations Standard Minimum Rules for the Administration of Justice ('Beijing Rules'), which require youth justice systems to emphasise children's wellbeing and ensure that responses to children and young persons within the youth justice system are proportionate. The Supreme Court has indicated that the right requires the State to ensure the survival and development of the child to the maximum extent possible. In the context of a youth justice custodial centre, this involves:

- protecting the right of every child to maintain contact with their family;
- providing a physical environment that is separate from adult facilities, has a rehabilitative focus and that gives due regard to a child's need for:
    - privacy;
    - sensory stimuli;
    - opportunities to associate with peers and to participate in sports; and
    - recreation and leisure activities;

- providing children with suitable education and vocational training;
- providing adequate medical care;
- facilitating frequent contact with the wider community;
- ensuring that any disciplinary measures are consistent with upholding the inherent dignity of the child; and
- promoting the positive development of the child, including their capacity to understand the impact of their actions, engage in pro-social behaviours and make better decisions in the future.

Providing access to religious and cultural services, and mechanisms to lodge complaints, is consistent with protecting a child's best interests in a youth justice setting.

*Rights of children in the criminal process*

Sections 23 and 25(3) of the Charter protect the rights of children in the criminal process. In this Statement of Compatibility, the rights in sections 23 and 25(3) are referred to collectively as **'rights of children in the criminal process'**.

Section 23(1) provides that an accused child who is detained, or a child detained without charge, must be segregated from all detained adults. This provision is modelled on article 10(2)(b) of the *International Covenant on Civil and Political Rights* and applies to children remanded in custody. The right does not apply to children serving custodial sentences. While the segregation of children from convicted adults is, as a general principle, a fundamental human right, Victoria's 'dual track' system, which allows young persons aged 18 to 20 to serve custodial sentences in youth detention instead of adult prison in certain circumstances in order to prevent vulnerable young persons from entering the adult prison system at an early age, is considered to represent best practice in this area.

Under section 23(2), an accused child must be brought to trial as quickly as possible. This right has been interpreted as imposing an obligation to take positive steps to proceed as expeditiously as possible within what the circumstances will allow.

Section 23(3) provides that a child who has been convicted of an offence must be treated in a way that is appropriate for their age. Age-appropriate treatment may incorporate matters such as opportunities to continue education or vocational training while in detention, access to leisure activities, minimising stigma, preservation of family relationships, minimal security measures in detention facilities, and primacy given to rehabilitation when sentencing children.

Finally, section 25(3) provides that a child charged with a criminal offence has the right to a procedure that takes account of their age and the desirability of promoting their rehabilitation. This right is directed at ensuring that children can effectively participate in the legal process and are not discriminated against or excluded from criminal proceedings that concern them. It may require procedures that are targeted to child defendants (such as ensuring the provision of age-appropriate explanations) and that assist them to effectively participate in the proceeding. The right in section 25(3) may also require courts to take steps to ensure that the trial process does not expose a child defendant to avoidable intimidation, humiliation and distress, and may require alternative measures to criminal proceedings to be adopted where appropriate.

**Other relevant human rights**

In addition to the children's rights contained in sections 17(2), 23 and 25(3), a number of other human rights protected by the Charter are relevant to the Bill.

***Right to equality***

Section 8(1) of the Charter protects the right of every person to recognition as a person before the law. Legal recognition is related to a person's ability to access and enforce their human rights, and may be limited where a law makes justifiable provision for people who lack legal competence.

Section 8(3) of the Charter provides that every person is entitled to equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. The purpose of this component of the right to equality is to ensure that all laws and policies are applied equally, and do not have a discriminatory effect.

'Discrimination' under the Charter is defined by reference to the definition in the *Equal Opportunity Act 2010* (**EO Act**) on the basis of an attribute in section 6 of that Act, which relevantly includes age, race, gender identity, religious belief and disability. Direct discrimination occurs where a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute. Indirect discrimination occurs where a person imposes a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with a protected attribute, but only where that requirement, condition or practice is not reasonable.

Section 8(4) of the Charter confirms that measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

***Right to protection from torture and cruel, inhuman or degrading treatment***

Sections 10(a)–(b) of the Charter provide that a person must not be subjected to torture or treated or punished in a cruel, inhuman or degrading way. The right is concerned with the physical and mental integrity of individuals, and their inherent dignity as human beings.

Cruel or inhuman treatment or punishment includes acts which do not constitute torture, but which nevertheless possess a minimum level of severity. Degrading treatment or punishment involves acts of a less severe nature but which inflict a level of humiliation or debasement of the victim. Whether conduct meets the necessary threshold will depend upon all the circumstances, including the duration and manner of the treatment, its physical or mental effects on the affected person, and that person's age, sex and state of health.

***Right to freedom from forced medical treatment***

Section 10(c) of the Charter provides, relevantly, that a person has the right not to be subjected to medical experimentation or treatment without their full, free and informed consent. In addition, section 13(a) of the Charter protects a person's right not to have their privacy unlawfully or arbitrarily interfered with. This right extends to privacy in the sense of bodily integrity, which involves the right not to have our physical selves interfered with by others without our consent. The purpose of these rights is to protect a person's personal autonomy and integrity. They recognise the freedom of humans to choose whether or not they receive medical treatment or participate in medical experiments.

***Right to freedom of movement***

Section 12 of the Charter provides that every person lawfully within Victoria has the right to move freely within Victoria, to enter and leave Victoria, and to choose where to live in Victoria. The right extends, generally, to movement without impediment throughout the State, and a right of access to places and services used by members of the public, subject to compliance with regulations legitimately made in the public interest. The right is directed at restrictions that fall short of physical detention (restrictions amounting to physical detention fall within the right to liberty, protected under section 21 of the Charter).

***Right to privacy and reputation***

As mentioned already, section 13(a) of the Charter provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with. An interference will be lawful if it is permitted by a law which is precise and appropriately circumscribed, and will be arbitrary only if it is capricious, unpredictable, unjust or unreasonable, in the sense of being disproportionate to the legitimate aim sought. The right to privacy is broad in scope and encompasses rights to physical and psychological integrity, individual identity, and the right to establish and develop meaningful social relations.

Section 13(b) of the Charter relevantly provides that a person has the right not to have their reputation unlawfully attacked. An 'attack' on reputation will be lawful if it is permitted by a precise and appropriately circumscribed law.

***Right to freedom of thought, conscience, religion and belief***

Section 14(1) of the Charter provides that every person has the right to freedom of thought, conscience, religion and belief, including the freedom to have or adopt a religion or belief of one's choice, and to demonstrate one's religion or belief individually or as part of a community. The concept of 'belief' extends to non-religious beliefs, as long as they possess a certain level of cogency, seriousness, cohesion and importance. While the freedom to hold a belief is considered absolute, the freedom to manifest that belief may be subject to reasonable limitations.

***Right to freedom of opinion***

Section 15(1) of the Charter provides that every person has the right to hold an opinion without interference. The right is concerned with a person's internal autonomy, and embraces not only the right to hold an opinion, but also the right not to hold any particular opinion.

***Right to freedom of expression***

Section 15(2) of the Charter provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. However, section 15(3) provides that special duties and responsibilities attach to this right, which may be subject to lawful restrictions reasonably necessary to respect the rights and reputations of others, or for the protection of national security, public order, public health or public morality.

***Right to freedom of association***

Section 16(2) of the Charter relevantly provides that every person has the right to freedom of association with others. Any provision which places limits on a person's ability to develop relationships will engage this right.

***Rights of families***

Section 17(1) of the Charter provides that families are the fundamental group unit of society and are entitled to be protected by society and the State. The right is principally concerned with unity of family. 'Family' in this context has a broad meaning that encompasses the diversity of families living within Victoria, not only those recognised by formal marriage or cohabitation. The right in section 17(1) is related to section 13(a) of the Charter, which relevantly provides that every person has the right not to be subject to unlawful or arbitrary interferences with their family.

***Cultural rights***

Section 19(1) of the Charter provides that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, declare and practise their religion, and use their language. Section 19(2) of the Charter further provides specific protection for Aboriginal persons, providing that they must not be denied the right, with other members of their community, to enjoy their identity and culture, maintain and use their language, maintain kinship ties, and maintain their distinct spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

The rights in section 19 are intended to protect and promote the cultural, religious, racial and linguistic diversity of Victorian society. The rights are concerned not only with the preservation of the cultural, religious and linguistic identity of particular cultural groups, but also with their continued development.

***Right to property***

Section 20 of the Charter provides that a person must not be deprived of their property other than in accordance with law. This right requires that powers which authorise the deprivation of property, such as powers of seizure and/or disposal of property, are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public, and are formulated precisely.

***Right to liberty and security of the person***

Section 21 of the Charter provides that every person has the right to liberty and security, including the right not to be subject to arbitrary arrest or detention. This right is concerned with the physical detention of the individual, not mere restrictions on freedom of movement. A person's liberty may legitimately be constrained only in circumstances where the relevant arrest or detention is lawful, in the sense that it is specifically authorised and sufficiently circumscribed by law, and not arbitrary, in that it must not be disproportionate to a legitimate purpose or unjust.

***Right to humane treatment when deprived of liberty***

Section 22(1) of the Charter provides that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. The right recognises the particular vulnerability of persons in detention, and applies to persons detained both in the criminal justice system and non-punitive or protective forms of detention such as the compulsory detention of persons with a mental illness. The right reflects the principle that detained persons should not be subjected to hardship or constraint other than that which results from the deprivation of their liberty.

Further, special rights attach to accused persons who are detained and persons detained without charge. Such persons must be segregated from persons who have been convicted of offences, except where reasonably necessary (s 22(2)), and must be treated in a way that is appropriate for a person who has not been convicted (s 22(3)).

***Right to a fair hearing***

Section 24(1) of the Charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The right may be limited if a person faces a procedural barrier to bringing their case before a court, or where procedural fairness is not provided.

***Right to be presumed innocent***

Section 25(1) of the Charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The right is relevant where a statutory provision shifts the burden of proof onto an accused in a criminal proceeding, so that the accused is required to prove matters to establish, or raise evidence to suggest, that they are not guilty of an offence.

***Right to be tried without unreasonable delay***

Section 25(2)(a) of the Charter provides that a person charged with a criminal offence is entitled, without discrimination, to be tried without unreasonable delay. This right reflects the common law principle that justice delayed is justice denied. 'Unreasonable' in the context of this right means 'excessive, inordinate or unacceptable', and what is unreasonable in a particular case will depend on all the circumstances.

***Right to adequate time and facilities***

Section 25(2)(b) of the Charter provides that a person charged with a criminal offence is entitled, without discrimination, to have adequate time and facilities to prepare their defence and to communicate with a lawyer or advisor of their choice.

***Right to be tried in person***

Section 25(2)(d) of the Charter relevantly provides that a person charged with a criminal offence is entitled, without discrimination, to be tried in person. This right reflects the common law principle that the trial of an indictable offence must generally be conducted in the presence of the accused. However, the right may be reasonably limited, for example, where the accused abuses the right by conducting themselves in such a way as to obstruct the conduct of the hearing.

***Right to legal assistance***

Sections 25(2)(d)–(f) of the Charter provide that a person charged with a criminal offence is entitled, without discrimination, to defend themselves personally or through legal assistance of their choice. A person also has a right, if eligible under the *Legal Aid Act 1978*, to legal aid, and to be informed of that right.

***Right to examine witnesses***

Section 25(2)(g) and (h) of the Charter provide that a person charged with a criminal offence is entitled, without discrimination, to examine, or have examined, prosecution witnesses (unless the law provides otherwise), and to obtain the attendance and examination of witnesses on their own behalf under the same conditions as the prosecution. These rights are an aspect of the principle of equality of arms.

***Right against self-incrimination***

Section 25(2)(k) of the Charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against themselves or to confess guilt. This right is at least as broad as the common law privilege against self-incrimination. It applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid.

***Right not to be tried or punished more than once***

Section 26 of the Charter provides that a person must not be tried or punished more than once for an offence in respect of which they have already been finally convicted or acquitted in accordance with law. This right reflects the principle of double jeopardy. However, the principle only applies in respect of criminal offences – it will not prevent civil proceedings being brought in respect of a person's conduct which has previously been the subject of criminal proceedings, or vice versa. Punishment generally refers to sanctions imposed in furtherance of the purpose and principles of sentencing, but the right does not extend to prohibiting other consequences that may flow from a finding of guilt or criminal conviction.

**Chapter 1: Preliminary**

***Part 1.1 – Introductory provisions***

The Bill broadly promotes children's rights under the Charter through its purposes to establish a scheme that provides an alternative process to court for children who are alleged to have committed certain offences, and to ensure oversight and accountability of the youth justice system to protect the rights of children involved, prevent and reduce offending by children and young persons, and support their rehabilitation and positive development.

***Part 1.2 – Criminal responsibility of children***

The Bill furthers the protection and promotion of children's rights in the state of Victoria by providing that the minimum age of criminal responsibility in Victoria is 12 years old, an increase from the longstanding historical minimum age of 10 years old. It does so by providing that it is conclusively presumed that a child under 12 years of age cannot commit an offence (cl 10). Unlike the presumption of *doli incapax* (cl 11), the presumption in cl 10 cannot be rebutted and has the effect that children aged 10 and 11 years old can no longer be subject to criminal proceedings if they engage in criminal conduct.

Raising the minimum age is in line with evidence about children's development and their inability to form criminal intent, which requires an understanding that some behaviour is seriously wrong in a moral sense.

This recognises the unfairness and inappropriateness of responding to young children's behaviour through the criminal justice system. Raising the age to 12 recognises that offending by children aged 10 and 11 years old is rare.

Establishing a minimum age below which children are not to be held criminally responsible promotes rights relating to children under section 17(2) and section 25(3) of the Charter. Accordingly, cl 10 promotes the right of every child to such protection that is needed by reason of being a child (s 17(2)) and a procedure that takes account of a child's age and the desirability of promoting the child's rehabilitation (s 25(3)).

The Bill codifies the common law presumption of *doli incapax*, whereby a child who is under 14 years old is presumed to be incapable of committing an offence, unless the prosecution proves beyond reasonable doubt that the child knew at the time of the alleged commission of the offence that the child's conduct was seriously wrong in a moral sense (cl 11(1)–(3)). The Bill codifies this presumption in line with the case of *RP v The Queen* [2016] HCA 53, which is the most contemporary Australian authority on the presumption of *doli incapax*. The Bill makes it clear that any presumption arising by or under the common law in relation to the criminal responsibility of a child continues to apply and in the event of inconsistency between clause 11 and any common law presumption, clause 11 prevails to the extent of the inconsistency (cl 11(4)).

To support the effective operation of the presumption of *doli incapax*, the Bill introduces procedural reforms that require:

- a police officer to have regard to whether it appears there is admissible evidence to prove the child's knowledge beyond reasonable doubt before deciding to commence proceedings for an offence allegedly committed by a child at 12 or 13 years of age (cl 12(1)), and to consider the matters set out in cl 12(2) as far as practicable when doing so. The Bill introduces a complementary requirement to document this consideration and the reasons in writing if the police officer decides to commence proceedings (cl 12(3)).
- the written reasons prepared in accordance with clause 12(3) to be filed in the court at the commencement of the proceedings (cl 12(4) and 812) and exchanged with the accused at an early time in the proceedings, either upon service of a summons or warrant (cl 813), at the first mention hearing (cl 816) or in relevant brief material (cls 814, 815, 818 and 819).
- police prosecutors to review charges against children who were 12 or 13 years of age at the time of the alleged commission of the offence, which must be an indictable offence tried summarily in the Children's Court (cl 13(1)), as soon as possible after the commencement of the proceeding and, if practicable, not later than 21 working days after that date (cl 13(4)). The police prosecutor must consider the sufficiency of the available evidence in relation to the child's knowledge and each element of the alleged offence, and the prospect of the child being found guilty (cl 13(3)). Prosecutors must take reasonable steps to notify the child or the child's legal representative of the outcome of the review (cl 14) and, if the prosecutor is not satisfied of the matters in cl 13(3), they must consider whether it would be appropriate to withdraw the relevant charges against the child (cl 13(5)). Where the child is charged with multiple offences, the Bill makes it clear that the prosecutor is not required to review charges for the alleged commission of an offence when the child was 14 years of age or older and does not need to consider withdrawal of a charge against the child for the alleged commission of an offence at 12 or 13 years of age if the matters in cl 13(3)–(13(6) are satisfied.

Together, these new requirements are intended to foreground consideration of the presumption of *doli incapax* and, where appropriate, promote earlier resolution of this issue, so that 12- and 13-year-old children can be diverted away from the criminal justice system in circumstances where there are no genuine prospects of the presumption being rebutted.

Allowing for different options and consequences on the basis of a child's age and stage of development promotes children's rights. Specifically, the *doli incapax* reforms promote the right of a child to protection in their best interests under section 17(2) of the Charter, and the right to a procedure that takes account of the child's age under section 25(3). The reforms promote these rights by ensuring the laws that apply to children under 14 adequately account for their special vulnerability compared to adults and recognise the particular developmental stage and capacity of children under 14 years of age. This includes prioritising prevention, diversion and minimum intervention in response to harmful conduct or offending by children, in order to address the causes of their behaviour at an early stage and divert the child away from initial or long-term contact with the criminal justice system.

By providing for different options and consequences on the basis of age, which is (as noted above) a protected attribute, the Bill engages the right to equality and non-discrimination in section 8(3) of the Charter. For the reasons outlined above, I am satisfied that any limits on the right to equality and non-discrimination are reasonably justified.

***Part 1.3 – Guiding youth justice principles***

Children's rights are further protected and promoted through the guiding youth justice principles, set out in Part 1.3 of the Bill, which are intended to promote community safety, minimise and reduce offending by children and young persons, and support their rehabilitation and positive development. The Secretary of the Department of Justice and Community Safety (**Secretary**), the Commissioner for Youth Justice (**Commissioner**), any court or any other person should take into account each guiding youth justice principle to the fullest extent possible when exercising a power, performing a function, making a decision or taking any other action under the Act in respect of a child or young person (cl 17). The guiding youth justice principles promote children's rights in sections 17(2), 23 and 25(3) of the Charter, as well as the rights of families in section 17(1) and the right to equality in section 8, by:

- Affirming that children and young persons are to be treated differently to adults, in a way that recognises that they are developmentally distinct from adults, dependent on others for opportunities to realise their full potential, and have a unique capacity for rehabilitation when properly supported.
- Requiring that children and young persons should be responded to as individuals, and in a way that promotes their human rights; acknowledges their particular needs and characteristics; provides opportunities for meaningful participation in relevant decision-making; minimises stigma; promotes engagement of family, persons of significance and the wider community; recognises the unique vulnerabilities and systemic issues that disproportionately impact upon particular cohorts of children and young persons (such as those with a disability or from a culturally or linguistically diverse background); and contributes to a timely and appropriate outcome.
- Prioritising prevention, diversion and minimum intervention in response to offending by children and young persons, in order to address the causes of offending behaviour at an early stage and divert the child or young person away from the criminal justice system.
- Emphasising the importance of parents, family and persons of significance in a child's or young person's life, and the role they play in caring for the child or young person and helping them positively develop and not offend.
- Acknowledging the shared responsibility of public bodies, police, non-government organisations and the community to support children and young persons to rehabilitate, and the importance of partnership, collaboration and cooperation to achieve this end.

The Bill also contains guiding youth justice principles specific to Aboriginal children and young persons (Division 3), as well as a statement of recognition that Aboriginal children and young persons are overrepresented in the youth justice system as a result of inequality and structural and institutional racism caused by colonisation and historical laws, policies and systems which explicitly excluded and harmed Aboriginal people and culture (cl 23). In seeking to recognise, respect and support the distinct cultural rights of Aboriginal people and their right to self-determination, the Bill promotes cultural rights, as well as family, equality and children's rights under the Charter. In particular, the guiding youth justice principles specific to Aboriginal children and young persons require regard to be had to matters such as respect for cultural diversity and customary lore; valuing and centring of Aboriginal culture, knowledge and expertise; embedding cultural safety in policies, programs and services; ensuring equitable partnerships and transfer of decision making powers to Aboriginal communities with their free, prior and informed consent; and sustainable and flexible funding and resourcing for Aboriginal communities. These principles also affirm that Aboriginal children and young persons who have committed or are alleged to have committed offences should be dealt with in a way that upholds their cultural rights and sustains their ties to family, kin, community, country and Elders. This includes being provided with the opportunity to express their views and being supported to promote their participation in decision-making processes that affect them, as well as the participation of their family, kin and Elders (cl 21).

To ensure that the guiding youth justice principles specific to Aboriginal children and young persons are taken into account, the Secretary, court or other person must make enquiries to determine whether a child or young person in respect of whom a power is to be exercised, a function is to be performed, a decision is to be made or action is to be taken, is an Aboriginal person. This requirement engages the right to privacy under the Charter. The right is not limited, however, because such enquiries are provided for by law and are proportionate to the legitimate aim of enabling the decision maker to take into account relevant principles that protect and promote the cultural rights of the child or young person.

***Parts 2.1 – 2.2 – The functions and powers of the Secretary and the Commissioner for Youth Justice***

Part 2.1 of the Bill deals with the functions and powers of the Secretary, and includes the functions and powers conferred on the Secretary under the Act (cl 27), the power to enter into contracts for the provision of goods or services (cl 28), powers in relation to land (cls 29–31), and powers in relation to intellectual property (cl 32).

The Secretary may delegate certain functions or powers under the Act or regulations (cl 33). The Bill also places an administrative requirement on the Secretary to publish on the Department's website the total number of adverse events relating to children and young persons held in custody in a youth justice custodial centre, disclosed by the Secretary to the Commission for Children and Young People (CCYP) in the relevant quarter (cl 34). This publication requirement furthers the protection of children's rights by ensuring there is a level of oversight of adverse events in youth justice custodial centres. The publication requirement further ensures the accountability of the Secretary who is responsible for the safety and wellbeing of children and young persons held in custody.

Part 2.2 of the Bill establishes the role of the Commissioner (cl 35) and outlines the functions and powers of the Commissioner. The Commissioner's functions include: providing leadership and stewardship of the youth justice system; supporting the rehabilitation and positive development of children and young persons who are subject to youth justice supervision in the community and in custody; coordinating and delivering services and supports to children and young persons; ensuring the safe, stable and secure operation of youth justice custodial centres and the supervision of children and young persons in those centres; establishing and conducting high risk panels, and directing all youth justice custodial officers in the carrying out of their functions and duties (cl 36). The Commissioner is also required to perform any function that is delegated by the Secretary or that is conferred on the Commissioner under legislation (cl 36). The Commissioner also has, and may exercise, all the functions and powers of a youth justice custodial officer (cl 38). The Commissioner may delegate any function or power except for the power to order an unclothed search of a child or young person held in custody in a youth justice custodial centre or the power to authorise the use of reasonable force to carry out an unclothed search (cl 39). The Secretary has and may exercise all the functions and powers of the Commissioner (cl 37). The Bill also creates an offence for obstructing or hindering the Secretary, Commissioner or any person employed under Part 3 of the Public Administration Act 2004 in the Department in the carrying out of that person's duties under this Act (cl 763). These provisions support the smooth functioning of the youth justice system and transparency of youth justice operations.

***Part 2.3 – Aboriginal youth justice agencies***

The Bill introduces provisions governing the registration of Aboriginal youth justice agencies (cls 40–46), with the intention that the principal officers of these Aboriginal youth justice agencies will be able to perform functions and exercise powers of the Secretary in relation to Aboriginal children or young persons (cl 59) once they are registered. The intention of these provisions is to allow the Aboriginal youth justice agency to act in relation to an Aboriginal child or young person, as if the principal officer were the Secretary (cl 61). The Bill additionally requires the Secretary to provide the principal officer of the Aboriginal youth justice agency with reasonable assistance and support (cl 61).

The central requirements for a body corporate to be registered as an Aboriginal youth justice agency are that the principal officer (other than an acting principal officer) must be an Aboriginal person, the board members are elected by the Aboriginal community and that the board operates consistently with principles of Aboriginal self-determination (cl 41). The body corporate must also have the necessary experience to support the rehabilitation and positive development of children and young persons, minimise and reduce reoffending by children and young persons, and be able to meet the applicable performance standards (cl 41). These requirements aim to tangibly support the distinct cultural rights of Aboriginal people and their right to self-determination by creating a pathway for Aboriginal children to have decisions made for them by suitably qualified people from the Aboriginal community.

To ensure the quality of services provided to Aboriginal children, the Bill additionally sets out performance standards for Aboriginal youth justice agencies (cls 47–50), and provisions governing the revocation of registration (cls 51–53) and process for review of the Secretary's decisions (cls 54–55). The Bill requires the Secretary to provide information about the child or young person to the Aboriginal youth justice agency to assist it to make an informed decision as to whether it will accept an authorisation for the child (cl 60). While this may engage a child's right to privacy under section 13 of the Charter, any interference will be lawful and not arbitrary, as the information shared is limited to the specific purposes, and subject to the limits, prescribed in cls 60 and 65. The sharing of personal information is also necessary to allow Aboriginal youth justice agencies to determine whether they are equipped to support the child or young person.

Similarly, I consider that clauses 53(2), 57(1)(c) and 62(2) of the Bill, which relate to documents or records in respect of an Aboriginal child or young person, would not constitute an unlawful or arbitrary interference with their right to privacy under section 13 of the Charter. In respect of clause 57(1)(c), the Secretary may only inspect documents or records that relate to an Aboriginal child or young person who is the subject of an authorisation and, pursuant to clause 57(3), such inspection must be conducted in accordance with the regulations. Clauses 53(2) and 62(2) promote the privacy and wellbeing of a child or young person by requiring records produced in respect of a child or young person to be handed over to the Secretary on any

revocation of an Aboriginal youth justice agency's registration, ensuring the protection of their personal information.

As a whole, these provisions in Part 2.3 of the Bill further the right to protection of families and children under section 17 of the Charter, the cultural rights of Aboriginal children and young persons under section 19 of the Charter, and support Aboriginal self-determination.

**Chapter 3 – Police power to apprehend, detain and transport a child aged 10 or 11 years old**

To support the raise in the minimum age of criminal responsibility to 12 years, Chapter 3 of the Bill provides police with new transport-based powers that can be used as a measure of last resort to protect young children and the community. These powers balance the need to minimise contact between police and children (to avoid any criminogenic effects of police contact) against the fact that police will often be first responders in dynamic and fast-moving situation that may warrant intervention to prevent serious harm to children and other members of the community. For example, it is simply unsafe for children to be left in situations where serious harm could result (to them or anyone else). Such a situation also does not align with community expectation about their safety and the safety of children. The transport-based power will be an additional tool for police to use alongside existing operational strategies (e.g. de-escalation techniques and community engagement) or existing common law and statutory powers that may be available depending on the circumstances (such as breach of the peace powers, child protection, mental health, control of weapons or drugs legislation).

Chapter 3 includes a robust monitoring and reporting framework that uses the specialist expertise of the CCYP in ensuring child safety and wellbeing is maintained. This framework builds on the existing oversight mechanisms that apply, including the role of the Independent Broad-based Anti-corruption Commission (IBAC) in relation to police.

For the reasons outlined below, my view is that Chapter 3 is compatible with the Charter.

***Power to effect safe transportation of 10 and 11 year old children***

The Bill enables a police officer to take a child aged 10 or 11 years old into care and control if the officer believes on reasonable grounds that there is a likely risk of serious harm to either the child or another person as a result of the behaviour by that child and it is necessary to transport the child to minimise the risk occurring (transport power) (cl 68). To promote use of the powers as a measure of last resort, the Bill requires a police officer to take reasonable steps in the circumstances to minimise the risk of serious harm occurring. Reasonable steps could include a warning to the child or asking the child to move on from the area and go home. To maintain the connection between the purpose of the powers to protect individuals from serious harm, the Bill enables a police officer to release a child from care and control before the child is transported, if the officer no longer believes on reasonable grounds that there is a risk of serious harm.

The Bill encourages the swift return of children to their families or placement with an appropriate agency who can take care of them to minimise time spent in the care and control of police. It provides that as soon as practicable after taking a child into care and control, police must either place the child into the care of a suitable person, or an appropriate health or welfare agency (cl 69). Police may also arrange for the child to be collected, rather than transporting the child in a police vehicle. If police are unable to locate a suitable person or appropriate health and welfare agency, they may as a last resort take the child to a police station (cl 69). If this occurs, a child must not be placed in a police gaol or police cell, and police must continue to make reasonable attempts to place the child in the care of a suitable person or appropriate health or welfare agency. A child can only be held at a police station if a police officer believes on reasonable grounds that there is a risk of serious harm as a result of the child's behaviour if the child were released (cl 70).

Recognising the historical context of police interaction with Aboriginal and Torres Strait Islander peoples, if a child who is Aboriginal or Torres Strait Islander is taken into care and control by police, notification processes apply (cl 72). Police must seek assistance from an Aboriginal organisation to identify a suitable person or an appropriate health or welfare agency, unless it is not reasonably practicable in the circumstances. Further, if an Aboriginal or Torres Strait Islander child is taken to a police station, police must notify a parent and arrange for the child to be seen by or to contact a support person or support provider, including an Aboriginal organisation or a member of the child's Aboriginal community as requested by the child.

In my view, the transport power engages but does not limit the right to equality and non-discrimination in section 8(3) of the Charter, the protection against being treated in a cruel, inhuman or degrading way in section 10(b), and the protection of a child's best interests in section 17(2) of the Charter. This is because the transport power contains thresholds which are clear, high and proportionate to the context (e.g., for the power to be available there must be a risk of serious harm not a broad community safety concern or a generalised welfare concerns about the child). Further the serious harm must be connected to actual harm to the child or another individual, rather than a concern about harm to, for example, property. Further, the behaviour of the child and the risk this poses must involve a likelihood of serious harm occurring. Moreover, the Bill prioritises

the safe return of children to a suitable person, who in many cases will likely be their parent or guardian, and enables a police officer to consider the child's views in relation to the suitability of the person. In light of the protective and non-punitive purpose of the powers, their intended use as a measure of last resort and the special vulnerability of children who are 10 or 11 years old, I consider that the transport power does not limit the rights in sections 8(3), 10(b) or 17(2) of the Charter.

While the rights to freedom of movement and liberty in sections 12 and 21 of the Charter are limited by the transport power, these limitations are reasonable and demonstrably justifiable under section 7(2) of the Charter. Any limitation of a child's rights to freedom of movement and liberty will be temporary. The Bill does not include a statutory limit on the length of time a child can be held in care and control recognising that some flexibility is required, for example to enable a suitable person to be contacted and then travel to the location where the child is being held. The time needed to transport a child may be affected by the location (e.g. greater time might be required to account for the distances and available welfare services in regional and rural areas) or the time of day. Requiring police to release a child within an arbitrary time limit even if a risk of serious harm continues to exist is inconsistent with the policy intent of the Bill. Instead, the Bill ensures that police will be able to release the child from care and control if the officer no longer holds a reasonable belief that there is a likely risk of serious harm occurring as a result of the behaviour of the child.

As noted above, the powers have been crafted to apply to risks of serious harm relating to individuals (not, for example, property) that are likely to arise from a 10 or 11-year old child's behaviour. In this way, the provisions of the Bill safeguard against the risk of arbitrary use of the powers and are proportionate to the purpose of the powers, which is to protect children and the community from a risk of serious harm. As discussed above, the Bill requires police to take reasonable steps in the circumstances to minimise the risk of serious harm before taking a child into care and control, which means there are no other less restrictive means that could be applied in the context to achieve the purpose of the provisions. Further, the Chief Commissioner is required to keep a record of each use of these powers and this information will be provided to the CCYP on a quarterly basis, which will enable monitoring the use of the powers (cl 77). The CCYP will also be responsible for preparing an annual report that will be tabled in Parliament to promote public accountability and transparency about the use of the powers.

The Bill also requires a police officer to inform a child they are not under arrest or being charged with an offence as soon as practicable after taking them into care and control (cl 68(3)). Further, children will not be permitted to be held in police cells or police gaols if they are transported to a police station (cl 70(2) or questioned as a witness (cl 71). These requirements specifically support the humane treatment of a child by giving the child information about what is happening to them and mitigates against the risk that a child will perceive they are being subjected to a punitive action rather than a protective action.

***Related powers to search and seize items***

To ensure that children can safely be held in care and control and transported, police have powers to search a child and seize specified items without a warrant. A search can only occur in limited circumstances and police officers must comply with a range of safeguards set out in the Bill (cl 75). For example, only pat-down searches are permitted and no other forms of more invasive searches (e.g. unclothed searches). Before conducting a search, a police officer must inform the child about the proposed search and if safe to do so, must ask the child to handover any dangerous items. Where possible, a search must be conducted by a police officer of the sex or gender identity nominated by, or the same as, the child.

Police are permitted to seize items if the item could present a danger to the safety to the child, could be used by the child to avoid transportation, or if they are stolen or have been used in, or obtained as the result of the commission of an offence (cl 76). Any item that is seized must be returned to the child once the transport has occurred, unless there is a lawful reason for it to not be returned.

As noted above, clause 77 requires the Chief Commissioner of Police to keep a record of each use of the powers, which includes information about whether a child was searched and whether any items were seized. This will enable monitoring of the use of these powers.

The search and seizure powers engage the right of a child to such protection as is in their best interests and is needed by reason of being a child in section 17(2) of the Charter because they affect the welfare of a child while in the care and control of police. In my view, this right is not limited because of the overall purpose of the transport power which is protective, and the supporting role of the search and seizure provisions, which is to enable transport to safely occur. The powers operate within clear limits and many statutory safeguards apply to ensure the best interests of the child is a key factor underlying any exercise of the powers.

Search and seizure powers also engage rights to privacy (s 13) and humane treatment when deprived of liberty (s 22). Given the stringent requirements and safeguards in the Bill noted above, I consider that on the extent to which the Bill engages these rights is reasonable and proportionate to the aim of effecting the safe transport of a child to minimise a risk of serious harm occurring or the aim of monitoring the use of the powers. In

addition, given the clearly prescribed limitations on the seizure and retention of property, I am satisfied that any limitation on the right to property in section 20 of the Charter is compatible with the Charter.

***Related power to use reasonable force and restraint***

Subject to extensive and rigorous safeguards, a police officer may use such force as is reasonably necessary when exercising the transport power, searching a child under clause 75, or seizing a thing under clause 76. This includes restraining a child by using handcuffs (including disposable handcuffs, flex cuffs or handcuff inserts). Before using force, a police officer must, to the extent reasonably practicable in the circumstances, use de-escalation techniques, give an oral warning, and if safe to do so, give a child reasonable time to comply with a warning.

In terms of safeguards, clause 73 of the Bill provides that any use of force must be proportionate and cease once no longer necessary. The Bill absolutely prohibits a range of physical techniques including those inhibiting respiratory or digestive functions and techniques for the purpose of inflicting pain to compel compliance. The Bill requires police officers using force to consider the characteristics and state of the child and to avoid causing pain, injury or fear in specified circumstances. Police are required to continually assess the need for and manner of the use of force, and modify the use of force as required. These safeguards are consistent with the basic principles developed in international human rights instruments and jurisprudence for assessing the human rights compatibility of legal frameworks regulating the use of force. The safeguards are also consistent with other parts of the Bills regulating the use of force in youth justice and police gaol settings (see below Parts 10.4 and 11.2).

As a further safeguard, the Chief Commissioner of Police is required to record whether force was used on a child during the exercise of the transport power (cl 77). This will enable the CCYP to monitor the use of force. The CCYP's annual report prepared under clause 89 must include the number of times force was used on a child to support public accountability and transparency about the use of force.

I am satisfied that the use of force provisions do not limit the protection against cruel, inhuman and degrading treatment in section 10(b) or the right of every child to such protection as is in their best interests under section 17 of the Charter. Nor do they limit the right to humane treatment when deprived of liberty (s 22). I also consider that any limitations of the rights relating to protection of children (s 17) are reasonable and demonstrably justified. This is because the above provisions seek to ensure that any use of force:

- is proportionate to the purpose sought to be achieved through the use of the transport power (i.e. prevention of serious harm occurring through the safe transport of a child aged 10 or 11)
- is used for the shortest possible time and only as a measure of last resort after other techniques have been applied (where reasonably practicable)
- does not involve the infliction of any pain or suffering that could reach the minimum level of severity or intensity required to amount to cruel, inhuman or degrading treatment
- takes into account the particular characteristics of each child
- is subject to express and absolute prohibitions on the use of a range of physical techniques including those inhibiting respiratory or digestive functions and techniques for the purpose of inflicting pain to compel compliance
- is disclosed to parents via the notification requirements outlined below, and
- will be monitored to ensure appropriate use, transparency and accountability.

Clause 74 sets out a range of requirements that apply after police have used force. A police officer must notify a parent of the child if the transport power was exercised and force was used. Importantly, when force is used on a child, police must make all reasonable efforts to ensure that the child is examined by a health practitioner and receives the medical attention and mental health care the child requires while the child is in police care and control, if:

- the child is reasonably suspected of being injured, or
- a child or their parent requests.

If a child is examined, a parent or independent third party must be present unless the medical attention or mental health care is urgent, or it is not reasonably practicable for a parent or independent third party to be present. A health practitioner who carries out an examination must record any clinical observations made during the examination.

In limited circumstances, this provision may engage the prohibition against medical or scientific experimentation or treatment of a person without their full, free and informed consent in section 10(c) and the protection of families in section 17 of the Charter. While it remains an open question as to whether 'treatment' extends to a mere medical examination, I acknowledge that the meaning of the word 'treatment' is to be

interpreted broadly. Under the *Medical Treatment Planning and Decisions Act 2016* the medical treatment decision maker of a child is the child's parent or guardian or other person with parental responsibility for the child who is reasonably available and willing and able to make the medical treatment decision (s 55(4)). In most instances, it is expected that a parent will be present during any medical examination and can provide full, free and informed consent to the conduct of the examination or any subsequent treatment. The Bill does, however, allow for scenarios where the child is not accompanied by an adult with decision making capacity or the child does not otherwise have decision-making capacity and urgent care is required. In these scenarios, the provisions do not oblige the child to participate or consent to any treatment, and any existing laws relating to the provision of urgent medical care will continue to apply. Consequently, my view is that the right in 10(c) is not limited.

***Monitoring and reporting functions and powers for the CCYP***

Chapter 3 of the Bill contains requirements for police to record certain information about the use of the transport power and provide it to the CCYP who will perform an active oversight role through a child safety and wellbeing lens.

The CCYP's new functions are to monitor the exercise of the transport power, prepare annual reports for Parliament about the exercise of the transport power, and prepare own-motion reports about the exercise of the transport power (cl 80). The CCYP's role will complement IBAC's oversight of police misconduct and corruption.

To support the CCYP's monitoring functions, the Bill requires the Chief Commissioner of Police to record certain information about each use of the transport power (including about certain aspects a child's identity, if the information is known to police) and to make the information available for the CCYP's inspection quarterly (cl 77). Further, the CCYP must be given access to documents and information kept by the Chief Commissioner of Police if requested by the CCYP (cl 81). The CCYP may also request relevant professionals to provide any information to assist the CCYP in its oversight functions (cl 83).

The CCYP may use the information it acquires within the clear constraints established by the Bill including:

- prohibiting an annual report from containing information that identifies a child in respect of whom the transport power was exercised (cl 89(2)(a)–(b)), and preventing an own-motion report that identifies a child from being tabled in Parliament (cl 87);
- extending prohibitions in Part 6 of the *Commission for Children and Young People Act 2012* in relation to information use that apply to the CCYP and its staff so they also apply to information acquired under Chapter 3 of the Bill (cl 790); and
- requiring any person or entity that is the subject of an adverse comment or opinion in a CCYP report to be given an opportunity to respond to the comment or opinion (cls 85 and 89).

The CCYP will need to share information with other persons and entities. For example, the CCYP must notify IBAC of matters that it becomes aware of in exercising its powers and functions under Part 3 that it suspects on reasonable grounds involves police personnel misconduct (cl 90). The Bill also recognises that in some cases the CCYP's functions may overlap with functions of other entities. To that end, it provides that the CCYP should liaise with other entities to coordinate and avoid unnecessary duplication of its own-motion reports with other investigations and inquiries (cl 91). The Bill also prioritises integrity and criminal investigations and proceedings, and permits the CCYP to consult with relevant agencies for that purpose (cl 91). Such consultations may involve disclosing information about a 10 or 11-year old in respect of whom the transport power was exercised, or another person.

Chapter 3 engages the Charter right to privacy (s 13) because:

- it creates new requirements to collect and record personal information (e.g. about a child and the suitable person into whose care the child has been placed).
- it provides for the transfer of information between persons and agencies (e.g. Victoria Police must provide access to the information at the request of the CCYP, and relevant professionals may provide the) and its subsequent use (e.g. in an own-motion report) without an individual's consent.
- it is open to the CCYP to make comments or express opinions about a person in its own-motion reports and annual reports.

While the Bill engages the right to privacy, it does not limit the right because any interference is lawful and not arbitrary. The Bill is precise and circumscribed in the information required to be recorded. It only requires the collection of information that is reasonably needed to ensure the new transport-based powers and related powers can be monitored and any trends in their use identified. Or it enables sharing of information between agencies for the performance of their statutory functions and to facilitate coordination. Further, there are a range of constraints (such as those listed above) that limit or prohibit disclosure and publication of personal

information, and the inclusion of adverse comments and opinions in reports. In addition, existing legislated obligations that apply to the collection, disclosure and use of sensitive information established by the *Privacy and Data Protection Act 2014* will apply to the CCYP and to the Victorian public sector entities to whom an own-motion report is provided.

To the extent there could be any limitations on the right to privacy (s 13), I believe they are reasonable and demonstrably justified under section 7(2) of the Charter because of the important purpose for collecting and using the information, the rationale and proportionate connection between the limitation on information privacy and the public interest in monitoring the use of significant powers on very young children, and because there are no less restrictive means to achieve the purpose.

**Chapter 4 – Diverting children from the justice system**

***Part 4.1 General***

The Bill introduces additional diversionary mechanisms in appropriate cases as an alternative to the commencement of a criminal proceeding.

It provides a hierarchy of options for police to deal with a child who is alleged to have committed an offence, from taking no action to charging the child (cl 92). Police must apply the minimum intervention necessary, having regard to certain matters. More serious options can only be taken if the alternatives are 'clearly inappropriate in the circumstances' and reasons must be provided (cl 93). Implementing a hierarchy of minimum intervention actions promotes children's rights under the Charter by prioritising the prevention of reoffending and early intervention, addressing the causes of the offending behaviour and diverting children from contact with the criminal justice system. It furthers the rights of children in the criminal process by providing a procedure that takes into account a child's age, the desirability of promoting a child's rehabilitation and the adoption of alternative measures to criminal proceedings where appropriate.

One of the factors a police officer must have regard to in deciding the minimum intervention necessary is whether the child has a history of offending (including the number and frequency of findings of guilt or convictions: cl 92). While this may be relevant to the right not to be tried or punished more than once under s 26 of the Charter in that the provision provides for further consequences to flow from an earlier criminal conviction and punishment, the hierarchy of options provided for by this provision (including the commencement of a criminal charge) do not constitute 'punishment' for the purpose of this right, and thus do not engage this right.

***Parts 4.2, 4.3 and 4.6 – Youth warnings and youth cautions***

The Bill provides for police officers to give a youth warning or a caution to a child for an alleged offence if there is sufficient evidence to charge the child (cls 95, 103).

Primarily, youth warnings and youth cautions protect and promote children's rights by providing a course of action for the child's offending that diverts children from the justice system. Warnings and cautions are not recorded on the child's criminal record, nor is evidence of a warning or caution admissible in proceedings against the child, minimising stigma associated with offending (cls 101,139, 140). Procedural clauses require officers to explain youth warnings and youth cautions in a way in which is comprehensible to a child, which further promotes children's rights (cls 99, 105).

To be distinguished from a youth warning, a youth caution is a slightly more formal response to offending, and can only be issued with the child's consent. In addition to reasons outlined above, giving a youth caution may promote children's rights by:

- Providing the youth caution to the child expeditiously (cl 107);
- Providing that an appropriate support person attends the giving of the youth caution, who is chosen by the child (cl 109); and
- Providing that the youth caution be given to a child in a place that promotes their safety (cl 112).

The Bill allows for a youth caution to be given by another person, including a respected member of a cultural or religious community with which the child identifies, which upholds and respects a child's cultural rights (cl 108).

The Bill also promotes fair hearing rights by requiring the officer to explain to the child, in a way that the child is likely to understand, their right to seek legal advice with respect to a youth caution (cl 105(1)(c)).

In relation to limits on rights, youth warnings and cautions could be seen as a sanction of sorts, as they are measures designed to address alleged offending. While providing a child with a warning or caution may engage rights such as the presumption of innocence or privilege against self-incrimination (in that there may be an implication that, in issuing a warning or caution, the allegations the subject of the warning or caution are made out), I do not consider that they limit rights. The use of warnings and cautions cannot result in any

finding of guilt, do not involve punishment, do not result in criminal records and offer an alternative pathway to the criminal justice system. The eligibility for a warning or caution is not affected by whether the child denies the offending (cls 96 and 104). Also, admitting to an offence will not constitute self-incrimination as evidence of warnings and cautions is inadmissible in proceedings (cl 92).

***Part 4.4 Early diversion group conferences***

As part of the hierarchy of options for responding to offending behaviour, the Bill provides for a police officer to refer a child to participate in an early diversion group conference (cl 117). The purpose of a group conference is to help facilitate a meeting between the child and other persons (including the victim, if they wish to participate, or their representative and members of the child's family and other persons of significance to the child). Police must be satisfied that there is sufficient evidence to charge the child with an alleged offence and it is not appropriate to take no action or to give a youth warning or caution. Group conferences are a form of restorative justice that provide an avenue to resolve matters arising from the offending, with the aim of increasing the child's understanding of the effect of their offending on the victim and the community, to reduce the likelihood of the child re-offending and to negotiate an outcome plan that is agreed to by the child.

The Bill ensures that the child can effectively participate in the conference by requiring that a child have a legal representative as well as a parent (or other adult of significance) attend alongside them (cl 127). The Bill requires the convenor of an early diversion group conference to ensure that the contributions of each participant are considered and addressed, and endeavour to finalise an outcome plan that is acceptable to all participants, which promotes the child's criminal process rights to participation. In turn, this promotes the rights of the victims of the offending by allowing acknowledgement of the harm done by the child and the seriousness of the alleged offending.

The Bill provides that a police officer must not refer a child for an early diversion group conference if the child denies the alleged offending (cl 118). To do so may engage the right against self-incrimination as the provision could be characterised as enticing a child to confess guilt during the pre-charge process. Referring the child to an early diversion group conference despite a child denying the alleged offending may also engage the right to be presumed innocent, as the presumption also applies to pre-charge stages, and a child's failure to acknowledge responsibility for their behaviour may lead to greater intervention. However, given the restorative justice purpose of the group conference and the level of active participation required to achieve its aims, I consider the group conference not to be an appropriate option for a child who denies their alleged offending as the aims of the group conference, which involve a child assuming a level of responsibility for their offending and behaviour, would likely be obstructed.

Further, the Bill provides for a series of safeguards to ensure these rights are not limited by a child's participation. The Bill provides that certain things are inadmissible as evidence in any criminal or civil proceedings against the child, including evidence of the conduct of the early diversion group conference, evidence of the alleged offending and any statement made or information given by the child in relation to the alleged offending (cls 143 and 144). Further, the fact that a child participates in an early diversion group conference does not rebut the presumption that a child aged under 14 years old cannot commit an offence (cl 146).

Early diversion group conference proceedings are confidential. However, information on the outcome plan may be disclosed to a person who was entitled to participate in the conference or to a person who has a genuine and proper interest in supporting the child to complete the outcome plan (cls 134, 135). Also, information about the child is given to the group conference service, including name and details of the alleged offence. The sharing of personal information will engage the right to privacy and reputation and will engage the right to privacy under the Charter. However, any interference will be lawful and not arbitrary, as the information shared is limited to specific purposes. The sharing of personal information is also necessary to ensure that conference attendees can effectively participate together in the resolution of the matter.

***Part 4.5 Aboriginal-led group conference model***

The Bill inserts provisions to support the development of an Aboriginal-led group conference model (cl 136). It provides a timeframe within which the model should be developed. It requires the model to be co-designed by the Secretary of the Department of Justice and Community Safety, and representatives of the Aboriginal community on justice-related issues. The Bill defines the term 'representatives of the Aboriginal community on justice-related issues', allowing the Secretary to prescribe the representatives or organisations which should be consulted and collaborated with in the development of an Aboriginal-led group conference model. An Aboriginal-led group conference centres Aboriginal culture in the decision-making process, sustains the child's ties to family, community, culture and Country, and thus promotes the Charter right to culture (s 19).

**Chapter 5: Commencing a proceeding against a child**

The Bill introduces special requirements that apply when commencing a criminal proceeding against a child, and when determining whether to bail or remand a child. The child-specific provisions in the Bill, which operate in conjunction with other legislation, are intended to improve the structure and usability for practitioners.

***Part 5.1 – Commencing a proceeding***

The Bill provides that a proceeding against a child for a summary offence must be commenced within 6 months after the date on which the offence is alleged to have been committed (cl 148(1)). This furthers the rights of children in the criminal process by ensuring that an accused child is brought to trial as quickly as possible. Additionally, where a child has given consent to extend the time for commencement of the proceeding beyond 6 months, the Court must be satisfied that the child obtained legal advice (cl 148(3)). This requirement protects children's rights by ensuring that a child charged with a criminal offence will be treated age-appropriately and can effectively participate in the legal process.

The Bill does allow for an informant to apply to the Children's Court for an extension of time to commence a proceeding against a child for a summary offence. This is necessary to avoid arbitrary outcomes and ensure that the proper administration of justice is not obstructed by circumstances beyond the control of informants. Any extension is limited to a 12-month period, and in determining the application the Court must have regard to various factors including the age of the child, the seriousness of the alleged offending, length of the delay in commencing proceedings and whether it was caused by factors outside the informant's control (cls 150, 151). The child is entitled to appear at the hearing of the application and address the Court. While the Bill does provide for such applications to be determined in a child's absence if they do not appear (cl 151(3)), which engages the right to fair hearing (s 24) and the criminal process right to be tried in person (s 25(2)(d)), a child is provided with the right to apply for rehearing, and the Court may set aside the order for an extension if it considers it appropriate to do so and rehear the application. In considering an application for a rehearing, the Court will need to give effect to the right to fair hearing in the Charter. Accordingly, I am satisfied the above provisions strike the appropriate balance and are compatible with the Charter.

***Part 5.2 – Custody, bail and remand***

This section of the Bill sets out child-specific provisions which apply when determining whether a child who is taken into custody should be bailed or remanded.

The Bill includes a presumption in favour of proceeding by summons against an accused child, with a warrant to arrest in the first instance to be issued only in 'exceptional circumstances' (cl 147). This provision promotes children's rights by requiring that the minimum intervention necessary is used, as well providing a procedure that takes into account a child's age and the desirability of promoting a child's rehabilitation. The Bill also requires a child to be released unconditionally or brought before a court or bail justice no later than 24 hours after being taken into custody, promoting the children's criminal process right by ensuring that a child's case is heard as quickly as possible (cl 154(2)).

The Bill requires a child who is remanded in custody by a court or bail justice to be placed in a youth justice custodial centre, with limited exceptions (cl 155). Detaining a child in a youth justice custodial centre serves the important purpose of segregating children from adults so as to prevent criminal exposure to negative peer groups in police cells, which promotes the rights of children in the criminal process.

The exceptions include permitting a child to be temporarily held or detained in a police gaol for no more than two working days for the purposes of facilitating the transportation of the child to or from a court or a youth justice custodial centre, or remanding a child in a police gaol for no more than two working days if in a prescribed region of the State. These exceptions engage children's rights, including that a detained child be segregated from all detained adults (s 23(1)) and treated in an age-appropriate way (s 23(3)). However, these exceptions are necessary and reflect the operational need to hold a child in a temporary location where direct transport to and from court and youth justice facilities is not immediately available or possible, including in regional areas of Victoria. The Bill provides a number of protections to ensure that a child is safe in this environment and to mitigate against risks that a child's right may be limited. The Bill stipulates that the child has a right to be:

- kept in accommodation separate from adults and separated according to the child's sex, unless the officer in charge of the police goal is reasonably satisfied that the child's gender identity differs from the child's sex and it is appropriate and safe for the child to be kept with children other than children of the same sex (cl 569)
- communicated with in a language and matter which the child can understand (cl 570)
- receive visits from parents and relatives, legal practitioners, and Aboriginal Elders in the case of an Aboriginal child (cl 570(b))

Having regard to these factors, and that the child can only be held or detained in a police gaol for the express purpose of facilitating transport, and must not be held or detained for any longer than two working days, it is my view that any limits on the child's rights are reasonably justified.

**Chapter 6: Conduct of a proceeding**

***Part 6.1 – Proceedings Generally***

The Bill provides for indictable offences to be dealt with summarily with the consent of the child (cls 156, 157, 158). It also requires the Court to consider any exceptional circumstances, including the adequacy of sentencing options available to it, the seriousness of the conduct alleged including the impact on any victims of the conduct and the role of the accused in the conduct, and the age and maturity of the child (among other things), when considering suitability of uplift (cls 157–159). The Bill also provides for the transfer of proceedings from the Magistrates' Court to the Children's Court at any stage if the Magistrates' Court is satisfied that the accused is a child or was a child when the proceeding commenced (cl 1160). The purpose of such procedures includes supporting the rehabilitation and positive development of the child and promoting community safety.

Children's rights are also protected and promoted by:

- the Court's power to order a child to participate in an early diversion group conference and the Court's ability to consider the background and circumstances of the particular child when making such an order (cl 161).
- requirements that the Court take steps to ensure the proceeding is comprehensible to the child (cls 167(a)(i), 174).

The Bill also requires the Court to respect the cultural identity and needs of the child, the child's parents and other members of the child's family in any proceeding (cl 167). This provision affirms that children and young persons who have committed or are alleged to have committed offences should be dealt with in a way that promotes their cultural rights and sustains their ties to family, community, culture and Country as relevant.

The Bill also promotes fair hearing rights by providing for the legal representation of children (cl 170–172), access to interpreters (cl 173) and the translation of documents (cl 176).

There are a number of procedural clauses that may see criminal proceedings delayed, including adjourning proceedings to enable a child to participate in an early diversion group conference (cl 162(1)) or obtain legal representation (cl 170).

As the purposes of these adjournments are largely beneficial to the child concerned (i.e. to participate in early diversion group conferences, obtain legal representation, they would unlikely be considered to interfere with, or limit, the right of an accused to be brought to trial without unreasonable delay (ss 21(5)(a), 25(2)(c)). Further, the procedures the subject of these clauses include timeframes within which they must occur and the Children's Court, pursuant to s 6(2)(b) of the Charter, will be obliged under the Charter to give effect to criminal process rights when exercising its discretion to adjourn proceedings.

The Bill also provides for all proceedings to be heard in open court (cl 169), and empowers the Children's Court to order the whole or any part of a proceeding to be heard in closed court. This balances the right of an accused to a public hearing (s 24 of the Charter), and related rights of a person to receive information from open court (s 15(2)), with rights to privacy (s 13) and protection of a child's best interests (s 17). The Bill grants any interested person standing to support or oppose an application to close a proceeding, and the Children's Court will be obliged to give effect to the above Charter rights (and balance competing rights) when exercising its discretion under this clause.

***Parts 6.2 and 6.3 – Court referrals and Diversion***

The Bill provides for the Children's Court to refer matters of protection applications and therapeutic treatment orders to the Secretary to the Department of Families, Fairness and Housing for investigation (cl 180, 181) and obliges the Secretary to prepare reports detailing the results of their inquiry into such matters, any resulting application and the progress and outcomes of any such applications (cl 183–186, 189).

If a therapeutic treatment order has been made, the Bill requires a criminal proceeding be adjourned for the duration of that order. While this adjournment may delay criminal proceedings, the delay is beneficial to the child as the child will be discharged from the criminal proceeding if the Children's Court is satisfied that the child has attended and participated in the program under the order (cls 184–189).

The Bill also permits the Children's Court to adjourn a proceeding to enable a child to participate in and complete a diversion program (cl 193). The purposes of diversion include to divert the child away from the criminal justice system where possible and appropriate and focus on rehabilitation; to reduce the stigma caused by being in contact with the criminal justice system, encouraging a child to accept responsibility for unlawful behaviour; to provide opportunities for the child to strengthen and preserve relationships with

significant adults or others in the child's life and to provide the child with ongoing pathways to connect with education, training and employment (cl 192).

These referral and diversion processes promote the rights of children in sections 17(2) and 25(3) of the Charter by supporting the rehabilitation and positive development of the child, prioritising prevention in response to offending by children, in order to address the causes of offending behaviour at an early stage and divert the child away from the criminal justice system.

A child's participation in diversion may engage the right to self-incrimination and the right to be presumed innocent, due to the threshold for participation and due to the fact of participation in a diversion program being able to be treated as a finding of guilt for the purposes of certain orders, such as compensation or for the suspension or disqualification of a driver licence (cl 198). A child may participate in a diversion program so long as the child does not deny responsibility for the alleged offence (cl 194). This provision could possibly be characterised as enticing a child to admit guilt after court proceedings have been commenced against the child. To mitigate this, the Bill expressly provides that the fact that the child does not deny responsibility for the alleged offence is inadmissible as evidence in a proceeding for that offence and does not constitute a plea (cl 194). The same protection is provided to children who may have already entered a plea of guilty. The Children's Court may refuse to accept a plea of guilty, or allow a child to withdraw a plea of guilty and adjourn the proceedings to allow the child to participate in diversion (cl 193). In such cases, the Bill provides that the withdrawal of a plea is inadmissible as evidence in a proceeding for that offence and does not constitute a plea (cl 193(8)). Given the purposes of diverting the child away from the criminal justice system, providing opportunities to meet the child's needs and assisting with rehabilitation, the ability of the court to discharge the child if diversion is successfully completed, and the express protections against the admissibility of information, I do not consider that the requirement that the child does not deny the offence limits the right against self-incrimination.

***Part 6.4 – Standard of proof***

The Bill protects the rights of children in the criminal process by requiring the Children's Court, on the summary hearing of a charge for an offence – whether indictable or summary – to be satisfied beyond reasonable doubt, by the relevant admissible evidence, that the child is guilty (cl 201(1)). If the Children's Court is not satisfied of this, it must dismiss the charge against the child (cl 201(2)). This is the established standard of proof for criminal proceedings, enshrined in the Bill.

**Chapter 7: Sentencing**

***Part 7.1 – Sentencing principles***

The sentencing principles broadly promote cultural, family and children's rights (ss 17, 19 and 25(3)), including by:

prioritising rehabilitation and positive development of a child, including by preserving and strengthening the child's relationship with their parents, guardians, and significant adults in their life (cl 203);

tailoring sentences to the individual characteristics of the child, such as their Aboriginal, cultural, racial or other identity (cl 205);

making custodial sentences a last resort and for the minimum period appropriate, with a preference toward minimum intervention (cl 208); and

providing additional sentencing principles for Aboriginal children, including that sentences imposed should strengthen the child's connection to family, kin, culture, Elders, community and Country and pay particular attention to the history, culture and circumstances of the child (cl 210).

***Parts 7.2, 7.3, 7.4 and 7.5 – Reports, conferences and other factors to be considered on sentence***

The Bill details the information the Children's Court may take into account when considering the sentence to be imposed, including various types of pre-sentence, medical and specialist reports, submissions and victim impact statements (cl 211–221). Those who provide reports or statements to the Court may be called to give evidence and be cross-examined (cl 216–217).

Rights to privacy (s 13) and freedom of expression (s 15) are engaged by these provisions and related provisions in this Chapter that provide for participation in conferences and preparation of reports (e.g. pre-sentence group conferences (cls 231–234), youth justice planning meetings (cl 291), insofar as the conferences and reports will likely involve the collection and disclosure of personal information to the Court and related parties. However, any interference with the right to privacy will be lawful and not arbitrary. The purpose of these reports is to assist the court in determining a sentence that is appropriate and consistent with the sentencing principles. The proceedings of such conferences and meetings are subject to confidentiality provisions (cls 233 and 292) with specified exceptions permitting disclosure in limited circumstances. Related parties will be restricted in their use of information gained through involvement in these processes.

Any restriction on the freedom of expression through the associated confidentiality provisions will be necessary to respect the rights and reputation of other parties, and provides for disclosure with consent of the subject of the reports. These provisions promote the protection of the child's best interests (s 17).

The Bill provides for pre-sentence group conferences with various participants (including the child and potentially their parents and the victim (cl 230)), the objects of which promote family and children's rights (ss 17(2), 25(3)) by, for example:

- reducing further conduct with the criminal justice system and the likelihood of reoffending; and
- engaging parents, guardians and significant adults in the child's life and providing processes that assist the child to repair harm, self-reflect and restore and strengthen relationships with family and community members (cl 228).

The Bill also provides that the Children's Court must impose a less severe sentence than it would have otherwise imposed if:

- the child has undertaken to assist law enforcement authorities in the investigation or prosecution of an offence after sentence (cl 235), or where the child has already given or is giving assistance to law enforcement authorities at sentencing (cl 236);
- the child pleaded guilty (cl 237); and/or
- the child has participated in a pre-sentence group conference and agreed to the pre-sentence group conference outcome plan (cl 238).

***Parts 7.6–7.12 – Sentencing generally***

*Hierarchy of options for sentencing*

The Bill provides Courts with a hierarchy of options when sentencing a child as follows (cl 240), increasing in severity:

- unsupervised community-based orders (Part 7.7):
    - dismissal of the charge without a formal warning, the objects of which include diversion (cl 243 – Part 7.7);
    - dismissal of the charge with a formal warning, the objects of which are to warn the child about the potential consequences of further offending and diversion (cl 244, Part 7.7);
    - with the consent of the child, imposition of a good behaviour order, the objects of which include diversion, providing clear consequences and encouraging good behaviour (cl 245, 246, Part 7.7);
    - as an alternative sentence to a good behaviour order for children aged 15 or over (and which sits at the same level in the hierarchy), the imposition of a fine after consideration of the child's financial circumstances, the objects of which include diversion, providing clear consequences and reparation (cl 249, 250, 251, Part 7.7);
- supervised community based orders (Part 7.8), which must be made without conviction for children under 15 years old, and may be made with or without conviction for those 15 years or over, all of which can only be made with the child's consent:
    - imposition of a community service order, the objects of which include supporting learning and development of skills and future opportunities to assist the child to move towards a prosocial life, as well as providing the opportunity to make positive and meaningful reparation (Part 7.8, Div 2);
    - imposition of a probation order, the objects of which include providing clear consequences for offending behaviour, allowing participation in community and family life in a supervised and supported way and engagement with activities, programs or services to support rehabilitation and positive development (Part 7.8, Div 3);
    - imposition of a youth supervision and support order, the objects of which include those of a probation order as well as to establish long-term support systems to reduce the likelihood of further offending (Part 7.8, Div 4);
    - imposition of a youth control order as an alternative to detention. The objects of such an order build upon those of a youth supervision and support order by providing a clear consequence for offending behaviour and intensive, targeted supervision to help the child to develop an ability to abide by the law, engaging the child with activities or services to help address the underlying causes of the child's behaviour, engaging the

child in education, training or work, and giving the child an opportunity to demonstrate a desire to cease offending (cl 281) (Part 7.8, Div 5);

- sentences of detention (Part 7.13):
    - imposition of a youth justice custodial order, which, in relation to a child under 14 years cannot be imposed except in certain circumstances (cl 324), and in relation to all children, cannot be made unless, among other things, the Court is satisfied that no other sentence is appropriate (cl 325(2)(c)). If the child is an Aboriginal child, the Court must provide reasons outlining how it has had regard to the sentencing principles in the Bill (cl 325(3)(e)). The objects of such an order are to provide a clear consequence for significant offending behaviour, protect the community from further significant offending, respond to the individual risks and needs and any underlying causes of the child's offending behaviour and to support the child to positively develop and to transition back to the community to assume a positive role in society (cl 326).

A child may also be required to make restitution, pay compensation or pay costs (cl 240(3)).

This sentencing hierarchy promotes children's rights in the Charter by creating a framework in which a court is empowered to impose the least restrictive order to match a child's offending behaviour, which is connected to the provision of relevant supports to address the drivers of the child's offending. Detention remains an option of last resort. This furthers the elements of children's rights that emphasise minimal intervention and rehabilitation, diversion from the criminal justice system and the modification of the criminal process to promote the positive development of the child and protect their particular vulnerability. For example, the requirement that a supervised community-based order or a good behaviour order not be made without the consent of the child promotes children's rights by requiring consideration of the views of the child.

Further, youth control orders, being the most severe of the supervised community-based orders and an alternative to detention, can only be ordered if a youth justice plan has been developed for the child. The aim of youth justice plans is to reduce the likelihood of re-offending and to provide opportunities to receive instruction, guidance, assistance and experiences that will assist develop the child's ability to abide by the law (cl 288). A youth justice plan is developed following a youth justice planning meeting, which may be attended by members of the child's family or other persons of significance in their community, which also promotes family and cultural rights (ss 17(1), 19) (cl 290, 291).

The Bill provides powers to impose a youth justice custodial order which will be relevant to a child's right to liberty. A person's liberty may legitimately be constrained in circumstances where the relevant arrest or detention is lawful, in that it is specifically authorised and sufficiently circumscribed by law, and not arbitrary, in that it must not be disproportionate or unjust. As discussed above, a youth justice custodial order can only be made when, among other things, the Court is satisfied that the circumstances and nature of the offence are sufficiently serious to warrant the making of the order and that no other sentence is appropriate (cl 325(2)(c)). Further, the sentencing principle promoting minimal intervention requires that custodial sentences only be imposed as a last resort and for the minimum period appropriate and necessary (cl 205). The objects of a youth justice custodial order referred to above, including the protection of the community from further significant offending, as well as supporting the child to positively develop and transition back into the community to assume a positive role in society, will help to guide the Court's consideration of when such an order is appropriate. Accordingly, I consider the above framework will ensure that the imposition of such an order will not be arbitrary, disproportionate or unjust, and thus the right to liberty will not be limited by these provisions.

*Core conditions of supervised community-based orders*

The core conditions of a number of the supervised community-based orders may engage the child's right to privacy (s 13) by, for example, requiring that the child notify the Secretary of any change in the child's residence, school or employment (probation orders (cl 271(1)(f), youth supervision and support orders (cl 276(1)(f), youth control orders (cl 283(1)(g)). The right may also be engaged if the Court causes a copy of a community-based order to be given to the child's parents (cl 322(1)(b)). Such a disclosure is not to occur if the Court considers it would pose an unacceptable risk to the safety, welfare or wellbeing of the child.

Any interference with privacy rights will be lawful and not arbitrary, as such information is necessary for the monitoring and enforcement of compliance with orders, and may only be used by the Secretary for limited, specific purposes provided for by law.

A number of the supervised community-based orders may engage the child's right to freedom of movement (s 12), freedom of association (s 16(2)) and/or freedom of expression, particularly the freedom to seek, receive and impart information (s 15(2)).

For example, core conditions of these orders can require a child to perform community service activities at particular places (cl 265); report to the Secretary; not leave Victoria without written permission of the Secretary (cl 271(1), cl 276(1), 283(1)) and attend the Children's Court as directed by the Court; and participate in education, training or work (cl 283(1), 294).

Any limitations on these rights will be justified, given the objects of the orders promote rehabilitation and positive development. Further, the hierarchy of sentencing options requires the Court to consider and prefer less severe options where they are appropriate and any restriction that may be imposed is to be for a certain purpose, such as reducing the likelihood of reoffending, providing a level of supervision less restrictive than detention and/or promoting public safety.

*Special conditions of supervised community-based orders*

Various special conditions may be imposed on certain community-based orders (Part 7.9), including:

- developmental conditions, such as those requiring health-related counselling or treatment, attendance at education or training programs, activities or support services or participation in community service activities that would support rehabilitation and positive development (cl 296);
- restrictive conditions, such as those imposing a curfew, requiring residence at a specified address or with specified persons and restricting access to certain places or areas (cl 296); and
- a restorative condition that requires a child to attend and participate in a group conference (in accordance with the group conference provisions discussed above) (cl 298).

These conditions engage a number of rights, including the rights to privacy, freedom of movement and freedom of expression. To the extent that rights are limited by these conditions, I am satisfied that any interference would be reasonably justified by reference to the Bill's framework and criteria for imposing such conditions. When attaching any special condition to an order, the Court must have regard to, among other things, the sentencing principles, the objects of the order to which the condition would attach, the need to address the underlying causes of offending and the safety of any victim of the child's offending. The Court must seek the child's views on their ability to comply and be satisfied that the child is capable of complying with the special condition (cl 301). The Court must include a statement of reasons for attaching each special condition to an order. The Bill includes powers to vary conditions, including powers to make an order less restrictive if the Court considers a child has satisfactorily complied with the order, or if doing so is in the interests of assisting their future compliance with the order.

*Recording of convictions*

The Bill increases the Court's powers to make orders without recording a conviction, which promotes the rehabilitative elements of children's rights. Recording a conviction against a child can have significant implications for their prospects for finding employment, rehabilitation and prospects for not re-offending.

The Bill provides that no convictions are to be recorded for unsupervised community-based orders (cl 242). A supervised community-based order may be made with or without a conviction recorded if the child is 15 years or older on the day of sentencing and must be made without a conviction recorded if the child is under 15 years of age on the day of sentence (cl 262(1)–(2)). Convictions must be recorded if a Court makes a youth justice custodial order (cl 325(3)(a)).

When determining whether to record a conviction, the Court must consider circumstances such as the child's age at the time of offending and sentencing, the personal characteristics of the child, the impact the recording of a conviction may have of the child's social wellbeing and prospects of finding or retaining employment and the child's prospects of rehabilitation, with the latter consideration to be given more weight than any other individual matter to be considered (cl 262(3)).

**Chapter 8 – Appeals**

Chapter 8 provides for the framework of appeals under the Bill and raises the following human rights issues.

*Right of appeal against conviction and sentence*

The Bill provides for the right of appeal against conviction and/or sentence of a child convicted of an offence by the Children's Court in a summary proceeding in the Criminal Division (cl 331) as well as a right to appeal against a sentence of detention imposed on appeal from Children's Court (cl 375). This gives effect to the criminal process right in s 25(4) of the Charter that provides any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law. The Bill provides that no costs are to be allowed to a party, other than a child, on an appeal or new hearing (cl 399). This differs from the approach in the adult system and recognises the undesirability of awarding costs against children, who may not have the financial resources to pay costs. In turn, this ensures they are able to fairly participate in the criminal justice process by exercising any right to appeal without the concern of having costs ordered against them.

The Bill also promotes the capacity of children to participate in the criminal process by requiring a court hearing an appeal to explain the meaning and effect of any order it makes as plainly and simply as possible in a way which it considers the parties to the appeal will understand (cl 398(1)). The Bill also promotes the criminal process right to obtain legal representation, by requiring a court hearing an appeal, if a child is not legally represented, to adjourn the hearing and not resume unless the child is legally represented (unless satisfied the child had been granted reasonable opportunity to obtain legal representation and had failed to do so) (cl 396(2)).

*Limits on the right to appeal*

The Bill also imposes some limits on the right to appeal, specifically limiting the Supreme Court's jurisdiction as well as precluding a party from appealing their matter further in certain circumstances (where they have appealed on a question of law (cl 374), or where the Children's Court proceeding was constituted by the Chief Magistrate who holds a dual commission as a Supreme Court Judge (cls 375, 381 and 387)). The purpose of cl 374 is to prevent a proliferation of lengthy proceedings in relation to decisions of the Children's Court, where it is clearly in the best interests of a child to have their matter dealt with expeditiously. The remaining clauses prevent scenarios arising where the Court of Appeal is required to essentially review its own decisions, which would be an unusual appellate process.

*Element of double jeopardy not to be taken into account*

The Bill provides for rights of the DPP to appeal a sentence imposed on a child:

- by the Children's Court in a summary proceeding in the Criminal Division if satisfied that an appeal should be brought in the public interest, to be filed by notice within 28 days (cl 334). On hearing an appeal against sentence, the appellate court must set aside the sentence of the Children's Court and impose any sentence the appellate court considers appropriate (which the Children's Court could have imposed).
- in respect of an indictable offence, where the sentence had been discounted because of an undertaking by the child to assist law enforcement authorities, after sentencing, in the investigation or prosecution of an offence, and the DPP considers that the child has failed to fulfil that undertaking (cl 337). Such an appeal can be made at any time. On such an appeal, if the appellate court considers that the child failed to, wholly or partly, fulfil that undertaking, the court may set aside the previous sentence and impose the sentence that it considers appropriate, having regard to the failure of the child to fulfil the undertaking (cl 339).

The Bill expressly provides that, in imposing a sentence with regards to the above appeals, the appellate court must not take into account the element of double jeopardy in order to impose a less severe sentence than the court would otherwise consider appropriate (cl 340). While this clause expressly precludes the common law sentencing principle of double jeopardy, and such, engages the right not to be tried or punished more than once (s 26), in my view the right is not limited as the scope of this right relates to punishment involving a person who has been 'finally convicted'. Proceedings for an appeal made within the statutory time period will not normally engage this right, and a person will only be considered 'finally' convicted or acquitted once the avenues for review and appeal are exhausted. Further, setting aside a sentence and imposing a new sentence in its place due to a failure to comply with the terms of a conditional discount applied to the original sentence would in my view not amount to double punishment to engage this right, even notwithstanding that there is no time limit within which such an appeal can be made.

*Appeals in open court*

The Bill also provides for all appeals to be heard in open court (cl 395), and empowers a court hearing an appeal to order the whole or any part of a proceeding to be heard in closed court. This balances the right of an accused to a public hearing (s 24 of the Charter), and related rights of a person to receive information from open court (s 15(2)), with rights to privacy (s 13) and the protection of a child's best interests, specifically from adverse publicity that may prejudice their rehabilitation and/or development (s 17). The Bill grants any interested person standing to support or oppose an application to close a proceeding, and the Court will be obliged under s 6(2)(b) of the Charter to balance relevant Charter rights relevant to court proceedings when exercising its discretion under this clause. Accordingly, I consider this provision strikes a compatible balance between competing rights under the Charter, and any resulting limits will be reasonably justified in the circumstances.

***Part 8.4 – Reports and conferences (appeals)***

The Bill provides for an appellate court to order the filing of a pre-sentence report, group conference report or youth justice planning meeting report (cls 355, 364, 356, 357, 358 and 368). The author of a pre-sentence report may be required to attend, to give evidence and be cross-examined (cl 353) and is guilty of contempt if they fail to do so without sufficient excuse. While this may engage the rights to freedom of movement (s 12)

and freedom expression (s 15), the author has voluntarily assumed to undertake special duties and obligations that attach to preparing such a report, which includes the obligation to attend court to give evidence on that report. Accordingly, I do not consider their rights to be limited in this context.

These provisions are also relevant to fair hearing rights in the Charter (s 24) in a number of respects.

Firstly, the Bill provides safeguards that protect the equality of arms principle inherent to the right to fair hearing (s 24) and the right to examine witnesses (s 25(2)(h)). If a child the subject of a report disputes any matter in the report, the appellate court must not take that matter into account unless satisfied of its truth beyond reasonable doubt. If a report is disputed and its author fails to attend, the appellate court must not take the report into account without consent (cl 354). This ensures that the appellate court does not give undue weight to disputed aspects of reports to avoid prejudice to a child's case.

Secondly, the Bill provides a discretion to an author of a pre-sentence report to not send copies to of the report to the child the subject of the report if of the opinion the report's content could prejudice that child's physical or mental health (cl 362). This provision is relevant to fair hearing by potentially preventing a defendant in a criminal proceeding from accessing relevant information that will be taken into account by the appellate court in sentencing, while at the same time protecting the best interests of that child (s 17 of the Charter) from any undue psychological or developmental harm. I am satisfied that such a provision strikes the appropriate balance. If the author adopts this position, it must notify the relevant appellate court, who retains the power to order disclosure of the report to the child concerned. The appellate court will be obliged under s 6(2)(b) of the Charter to uphold fair hearing rights (s 24) in exercising its discretion under this provision. Finally, the author remains obliged to provide a copy of the report to the legal practitioner representing the child and cannot withhold it.

Thirdly, the Bill provides the appellate court with discretion to not order the preparation of a pre-sentence report in certain circumstances, and if so, may take into account previous pre-sentence reports in determining a sentence (cls 356(2), 357(2) and 358). This provision is intended to avoid delay incurred through the preparation of unnecessary reports and thus gives effect to criminal process and children's rights to be tried without unreasonable delay (ss 25(2)(c) and 25(3)). It balances any prejudice resulting to an accused by requiring the consent of the child, or the appellate court to be satisfied that ordering a new pre-sentence report is either unnecessary or not in the interests of justice.

*Confidentiality of reports*

Reports provided to the court are likely to contain personal, sensitive or health information. In relation to the right to privacy (s 13), any interference will be lawful and not arbitrary for the following reasons. The collection and use of information are for the important purpose of assisting the appellate court to consider matters relevant to a child prior to sentencing, and are subject to various safeguards. The report author is obliged to inform the person being interviewed that any information they may give may be included in the report (cl 350). Any person who prepares or receives such reports is bound by a confidentiality provision and may not disclose the report to anyone not entitled to receive or access it without the consent of the subject of the report (cl 351). The Bill precisely sets out who is entitled to access pre-sentence reports (cl 362). The Bill specifies the information required to be addressed by each report (cl 359 and 360) and imposes requirements related to relevance of statements contained in the reports (cl 359(3)).

Any restriction on freedom of expression through the associated confidentiality provisions will be necessary to respect the rights and reputation of other parties, and the Bill provides for disclosure with consent of the subject of the reports. These provisions promote the protection of the child's best interests (s 17).

**Chapter 9: Assistance and reports to the Children's Court**

***Part 9.1 – Assisting the Children's Court***

The Bill imposes duties on the Secretary and the DFFH Secretary to assist the Children's Court in criminal proceedings involving children (cl 400–403). The Court may require the Secretary to give assistance or perform prescribed duties. If the Court makes such a request, the Secretary will have a duty to give the Court any assistance it requires (cl 402). The Secretary may also apply to the Court to be heard in a criminal proceeding involving a child, whether or not they are a party (cl 403).

The Court may also order the DFFH Secretary or the principal officer of an Aboriginal agency (if authorised under s 18 of the **Children, Youth and Families Act 2005**) to attend any criminal proceeding to give information or assistance to the Court, provide a report directly to the Court and parties, or to provide information to the Secretary (cl 401). This applies if the child is subject to a protection application or protection order.

These provisions provide the Court with express powers to direct the Secretary and DFFH Secretary to assist in criminal proceedings involving children (not just in relation to a child who has been found guilty of an offence, which is currently the case). Exercise of these powers may result in personal information relating to

children being compulsorily disclosed to the Court, or shared between the DFFH Secretary and the Secretary (and their delegates), which would engage the right to privacy (s 13). However, any interference will be lawful and not arbitrary. The Court's power to make orders is discretionary and information must only be disclosed when orders are made. This provision facilitates the provision of timely, quality and holistic advice to the Court by the Secretary and DFFH Secretary, to assist with the prompt assessment and resolution of criminal matters involving children. I note that disclosure of information to a court necessary for the conduct of its proceedings is generally a legitimate and reasonable ground for disclosure under comparative privacy principles.

Exercise of the Secretary's power to apply to be heard in proceedings also provides another mechanism to assist the Court by providing timely advice. A child's right to a fair trial is protected by the limit on the Secretary's right to be heard which prevents them from providing information on whether the child is guilty of an offence (for which they have not yet pleaded or been found guilty) (cl 403).

Altogether, these measures will promote the right of children to be brought to trial and for matters to be heard and resolved as quickly as possible under s 23(2) of the Charter.

***Part 9.2 – Reports to the Court***

Part 9.2 provides for various specialist reports relating to a child in a proceeding to be provided to the Court. The author of a report may be required to attend to give evidence in a proceeding on the giving of a notice by the child the subject of the report, the Secretary, or the Court (cl 407) and is guilty of contempt if they fail to do so without sufficient excuse. As above, while this may engage the rights to freedom of movement (s 12) and freedom expression (s 15), the author has voluntarily assumed the special duties and obligations that attach to preparing such a report to the Court, which includes the obligation to attend court to give evidence on that report. Accordingly, I do not consider their rights to be limited in this context.

These provisions are also relevant to fair hearing rights in the Charter (s 24) in a number of respects.

As above, the Bill provides safeguards that protect the equality of arms principle inherent to the right to fair hearing (s 24) and the right to examine witnesses (s 25(2)(h)). If a child the subject of a report disputes any matter in the report, the Court must not take that matter into account unless satisfied of its truth beyond reasonable doubt. If a report is disputed and its author fails to attend, the Court must not take the report into account without consent (cl 408). This ensures that the Court does not give undue weight to disputed aspects of reports to avoid prejudice to a child's case.

Secondly, the Court has powers to preclude parts of specialist assessment reports from being given to the child the subject of the report until a later time if the report's content could prejudice that child's mental health or development (cl 412). Additionally, the Bill provides a discretion to the Secretary to not give copies of a pre-sentence or supplementary pre-sentence report, or parts of that report, to the child the subject of the report if of the opinion the report's content could prejudice that child's physical or mental health (cl 420). These provisions are relevant to fair hearing and freedom of expression by potentially preventing a defendant in a criminal proceeding from accessing relevant information that will be taken into account by the Court in sentencing (and from giving proper instructions in relation to that material), while at the same time protecting the best interests of that child (s 17 of the Charter) from any undue psychological or developmental harm. I am satisfied that these provisions strike the appropriate balance. In relation to specialist reports, the Court can only make such an order after having regard to the views of the parties to the proceeding, and any statement by the author of the report that the information contained within it may be prejudicial to the physical or mental health of the subject of the report. In relation to pre-sentence reports, the Court retains discretion to order that the withheld report, or parts of the report, be provided to the relevant person. The Court will be obliged under s 6(2)(b) of the Charter to regard fair hearing rights (s 24) in exercising its discretion under these provisions. The legal practitioner representing the child is still entitled to receive all reports in full and there is no power to preclude the legal practitioner from accessing any of the reports.

Thirdly, the Bill provides the Court with discretion to not order the preparation of a pre-sentence report in certain circumstances, and if so, may take into account previous pre-sentence reports in determining a sentence (cl 414). This provision is intended to avoid delay incurred through preparation of unnecessary reports and thus gives effect to criminal process and children's rights to be tried without unreasonable delay (ss 25(2)(c) and 25(3). It balances any prejudice resulting to an accused by requiring the consent of the child, or the Court to be satisfied that ordering a new pre-sentence report is either unnecessary or not in the interests of justice.

*Confidentiality of reports*

The Bill provides for the Court to order preparation of specified reports during the pre-sentence stage after a child is found guilty, to assist the Court with determining a sentence. This includes a requirement for the Court to order a pre-sentence report if the child has a relevant impairment, or if it appears to the Court that the child

has a relevant impairment (cl 415), which may include assessment records and information about the child's mental health and other health needs (cl 417). These provisions engage rights to privacy (s 13) and freedom of expression (s 15) insofar as the reports will involve the collection and disclosure of personal information to the Court and related parties and those parties will also be restricted in their use of that information by the confidentiality provisions that apply.

In relation to the right to privacy, any interference will be for the important purpose of assisting the Court to consider matters relevant to a child prior to their sentencing, and subject to various safeguards. The report author is obliged to inform the person being interviewed that any information they may give may be included in the report (cl 406). Any person who prepares or receives such a report is bound by a confidentiality provision and may not disclose the report to any one not entitled to receive or access it without the consent of the subject of the report (cl 409). The Bill precisely sets out who is entitled to receive each type of report (cls 412, 420, 427, 429, 431). The Bill specifies the information required to be addressed by each report and imposes requirements related to relevance of statements contained in the reports.

Any restriction on the freedom of expression through the associated confidentiality provisions will be necessary to respect the rights and reputation of other parties, and provides for disclosure with consent of the subject of the reports. These provisions promote the protection of the child's best interests (s 17).

**Chapter 10: Youth Justice custody**

Chapter 10 of the Bill provides the legal framework for youth justice custody, including guiding custodial principles, rights and responsibilities, legal custody and management, prohibited actions and restricted practices, offence provisions related to youth justice custody, and restrictions on change of name and acknowledgement of sex applications.

***Parts 10.1 and 10.2 – Guiding custodial principles and rights***

The rights of children and young persons in youth custody are protected and promoted through the Bill's inclusion of specific guiding custodial principles. Their purpose is to ensure that all acts and decisions made under the Bill are directed toward minimising and reducing offending involving children and young persons and that they are treated in a manner that supports their rehabilitation and positive development. The principles apply to the Secretary, the Commissioner, the Youth Parole Board, youth justice custodial officers and any other entity or person who exercises any power under this Bill, performs any function under this Bill, and engages with a child or young person detained or remanded in a youth justice custodial centre. They do not apply to any child or young person detained in a youth justice custodial centre, their parents, their legal representatives or any person engaging with the child or young person in a private or personal capacity (cl 437). The Bill provides that persons should take into account each guiding custodial principle to the fullest extent possible, to the extent each principle is relevant in the circumstances. The principles also set clear expectations for children and young persons.

Supporting the guiding custodial principles, the Bill enshrines a suite of custodial rights that a child or young person has while held in custody in a youth justice custodial centre (cl 445). These rights operate in addition to rights under other Acts, including the Charter, and the common law. They serve the important purpose of acknowledging that the placement of a child or young person in custody is a profound intervention in a child or young person's life, furthering the need for their protection. The responsibility to act in a way that is compatible with and promotes custodial rights applies to any person who interacts with a child or young person held in custody in a youth justice custodial centre (in addition to the Secretary and the Commissioner), and must be fulfilled to the fullest extent possible.

*Safety, stability and security*

The Bill provides for the guiding custodial principle (cl 438) and corresponding right cl (448) to safety, stability and security. The principle in summary requires that children and young persons be provided with a safe, stable and secure place of accommodation where they are protected from harm, are accommodated in a manner that is the least restrictive necessary in the circumstances, and are afforded a safe, stable and secure living environment that is founded on strong, consistent and respectful relations between youth justice custodial staff and children or young persons and their families. The principle also includes a prohibition on any punishment (beyond the confinement that results from an imposition of a sentence of detention) and that remanded children and young persons be presumed innocent and treated accordingly.

The custodial right expands on this with a right to specific standards including accommodation that is clean and sanitary and upholds privacy and dignity, nutritional food and drink that is compatible with religious or dietary requirements, clean and appropriate clothing that accords with gender identity and cultural and religious customs/requirements, and access to outdoor social, recreation and exercise.

This promotes children's rights in sections 17(2), 23 and 25(3) as well as the rights to privacy (s 15), freedom of religion (s 14), freedom of association (s 16), family (s 17(1)), humane treatment (s 22(1)) and cultural rights (s 19) by:

- prioritising that the child is detained in a safe environment that is stable and secure, where a child is accommodated in the least restrictive manner possible;
- protecting the right of the child to maintain contact with their family;
- providing minimum standards in relation to food, drink and clothing;
- requiring children's clothing accords with the child's cultural and religious customs, ensuring a child's right to enjoy their culture, to declare and practice their religion;
- promoting the right to associate by providing for minimum guarantees to socialising and recreation outdoors; and
- ensuring appropriate treatment of remanded children and young persons to reflect their status as unconvicted persons.

*Positive development*

The Bill provides for the guiding custodial principle concerning the promotion of rehabilitation and positive development of children and young persons detained in a youth justice custodial centre (cl 439) and corresponding custodial right of a detained or remanded child or young person (cl 447) to an individualised program of meaningful structured activities and support. This includes, in summary, programs incorporating evidence-based interventions that address any underlying causes of offending behaviour (or alleged offending behaviour) and encourage the child or young person to build insight into and take responsibility for their actions, education, training and skills development, recreation, and personal skills, including independent living skills (if applicable) to support the reintegration of the child or young person into the community.

This promotes children's rights in sections 17(2), 23 and 25(3) as well as cultural rights in section 19 by:

- ensuring that the primary focus of youth custody is on rehabilitation and development;
- recognising the particular vulnerability and individualised needs of children and requiring programs, structured activities and supports are in place to foster their education and skill development;
- providing children with suitable education and vocational training; and
- requiring programs to be tailored to the individual characteristics and needs of the child.

*Individual responses*

The Bill provides for a guiding custodial principle (cl 440) and corresponding right (cl 450) to individual responses. The principle in summary provides an entitlement for children and young persons to be cared for and supported in a manner that is appropriate for their age, maturity and stage of development, to have their individual risks and needs addressed, to have their abilities and strengths fostered, to be supported in a gender-responsive, inclusive and safe way, to be treated in a manner that values the unique cultural identities and faiths of diverse backgrounds, and to be acknowledge and supported in relation to their disability, health needs, mental illness or mental health needs (where applicable). The custodial right provides for related entitlements, including a right to receive a timely assessment and case plan (that is informed by information provided by other entities and service providers) that is appropriate for the age, maturity and stage of development of the child or young person, and fosters their ability and strengths. The custodial right also includes a right to gender responsive care and provision of sanitary products and maternity care.

These provisions promote the rights to equality (s 8), freedom of religion (s 14) cultural rights (s 19) and rights of children (ss 17 and 23) by:

- taking into account the child's age and the desirability of promoting their rehabilitation;
- requiring female children in custody to be supported in a gender-responsive way and given equitable access to supports, services and facilities;
- ensuring children in custody are supported in an inclusive and safe way and given equitable access to supports, services and facilities that reflect their gender identity, sex characteristics and sexual orientation;
- ensuring all children with a particular cultural, religious, racial or linguistic background are treated in a way that values, acknowledges and supports their identity; and
- supporting children and young persons to overcome systemic barriers of discrimination.

The provisions also give effect to United Nations Standard Minimum Rules for the Administration of Juvenile Justice regarding young female detainees in juvenile justice, who are deemed to deserve special attention as to their personal needs and fair treatment. It also gives effect to broader Victorian Government commitments to support LGBTIQ+ young persons, including embedding LGBTIQ+ awareness and inclusive practice into the custodial operating philosophy and practice framework.

Finally, this aligns with the interim report of the Royal Commission into Victoria's Mental Health System, which notes that people in contact with the justice system are disproportionately affected by poor mental health, that young persons recently in contact with the justice system are at greater risk of suicide, and that connections between service design and Youth Justice are required to ensure a person's holistic recovery needs are met.

*Aboriginal children and young persons*

The Bill provides for an additional guiding custodial principle (cl 441) and corresponding right (cl 452) specific to Aboriginal children and young persons. These clauses provide, in addition to other guiding custodial principles and rights, Aboriginal-specific cultural support for Aboriginal children and young persons and provide guidance for those who have contact with Aboriginal children and young persons in youth justice custody. Their inclusion promotes children's rights (sections 17(2), 23 and 25), cultural rights (s 19), family (s 17) and equality rights (s 8) under the Charter by:

- providing statutory recognition of the over-representation of Aboriginal children and young persons in the youth justice system, and the structural exclusion of, and discrimination against, Aboriginal people and culture;
- promoting and protecting the right to self-determination;
- requiring regard to be had to the manner with which Aboriginal children and young persons are treated in custody; specifically, respect and acknowledgement of their cultural identity;
- valuing and centring Aboriginal culture, connection to family and kinship ties;
- ensuring that an Aboriginal child's or young person's history, culture and circumstances is recognised by those engaging with an Aboriginal child or young person in a youth justice custodial setting; and
- supporting Aboriginal children and young persons in maintaining connection to family, community, Elders and culture and actively supporting and maintaining these connections, recognising that these foundations are needed for Aboriginal children and young persons to thrive.

*Children's and young persons' voices*

The Bill provides for a guiding custodial principle (cl 442) and corresponding right (cl 454) to children's and young persons' participation in matters relating to their detention. It obliges genuine and regular engagement with children and young persons in youth justice custody. This promotes the rights of the child by ensuring children and young persons are respected as individuals and empowered to participate in decisions relating to their rehabilitation. The right also gives effect to international minimum standards concerning the right of detained persons to make complaints about their treatment, and have such complaints responded to.

*Family, community, cultural and religious connections*

The Bill provides for a guiding custodial principle concerning engagement with parents, families, guardians, carers and significant others of a child or young person in custody (cl 443) and a corresponding right protecting, amongst other things, the use of language, practice of religion, participation in culture and maintaining family, cultural and social connections whilst in custody (cl 451).

These provisions promote equality under the Charter (s 8) by requiring children and young persons in custody from culturally and linguistically diverse backgrounds to be treated in a manner that values their unique cultural identities, beliefs, faiths and languages and supports them to express and practice them accordingly. This overlaps with the Charter cultural right (s 19) that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy their culture, to declare and practice their religion and to use their language.

These provisions also promote the best interests of the child and protection of the family (s 17) by requiring that families, guardians, carers, or persons of significance are to be supported in meaningfully participating in and contributing to matters relating to the child. It also requires the provision of regular access to the youth justice custodial centre at which the child is in custody. These measures are intended to maintain a child's connection with their family and community, recognising their value to a child's positive development and rehabilitation.

*Collaboration*

The final guiding custodial principle of 'collaboration' (cl 444) promotes partnership and mutual responsibility amongst all service systems, including Departments, public service bodies, Police and non-government organisations. A collaborative approach will encourage a targeted, whole-of-system effort to support young persons in custody and assist with their rehabilitation, furthering the rights of the child.

*Further custodial rights*

The Bill also provides for further specific custodial rights in addition to those above.

This includes a right that a child or young person in custody must be properly informed (cl 453). This includes being adequately advised of their custodial rights, human rights, complaints processes as well as having reasonable access to news and information. The right ensures children and young persons have adequate communication with the outside world, promoting the right to fair and humane treatment. The provision furthers a child's or young person's rehabilitation as they prepare for their return to the community, as well as empowering a child or young person to enforce the protection of their rights and entitlements.

The Bill provides a free-standing right to receive physical, disability and mental health support as required (cl 449), including access to a registered medical practitioner, dentist, nurse, psychologist or disability service provider. This gives effect to international human rights minimum standards regarding access to adequate medical care. It also recognises the structural issues that disproportionately affect children and young persons with a disability by ensuring access to disability service providers, promoting equal protection of the law without discrimination.

The Bill provides a right to receive confidential visits from the legal representative of the child or young person (cl 455) promoting the capacity of children and young persons to effectively participate in the legal process, furthering the criminal process right to communicate with a lawyer (s 25(2)(b)).

Finally, the Bill provides an express right to external support (cl 456), including, amongst other things, access to community engagement activities, education and training, work opportunities and transitional services upon leaving custody such as safe and stable housing and mental and physical healthcare. This promotes the rights of the child by:

- ensuring the child has access to health, education and work opportunities, acknowledging that children have a unique capacity for rehabilitation and positive development when properly supported; and
- acknowledging the particular vulnerabilities of children by requiring that the external support of Departments, public sector bodies, public sector entities and other service providers are in place to provide support both during custody and on transition into the community.

***Division 2 – Responsibility of children and young persons in youth justice custodial centres***

The Bill empowers the Commissioner to make custodial rules, to set out expectations and standards of behaviour that children must comply with in custody (cls 457, 458). While such rules may lead to limits on rights, the power to make rules must be exercised compatibly with the above guiding custodial principles and rights and a child or young person must be supported in complying with the custodial rules. Further the power to make rules is considered necessary to ensure the Commissioner is able to give effect to responsibilities to establish a safe, stable and secure custodial environment. As a safeguard, the Bill provides that a child will not be liable for an offence solely on the basis of breaching custodial rules (cl 459).

**Part 10.3 – Legal custody and management and operation of youth justice custodial centres**

***Division 1 – Responsibility for youth justice custodial centres and legal custody***

Division 1 provides a legal framework outlining the responsibility and management of children in youth custody. The Bill grants the Secretary legal custody and responsibility for the safety and wellbeing of children and young persons in custody (cl 460). The Bill also provides for legal custody of a child or young person when being transported to youth justice custody after the court has made an order to remand or detain the child or young person (cl 461). The Commissioner is vested responsibilities to determine the form of care, custody, accommodation, treatment and support of a child or young person in custody (cl 462(1)).

That the Bill provides the Commissioner with broad responsibilities to manage and determine the conditions of custody of the child is relevant to a child's right to humane treatment when deprived of liberty (s 22). Section 22 requires, as a starting point, that persons deprived of liberty not be subjected to any additional hardship or constraint other than that which results from the deprivation of liberty. While the scope of these powers is broad and may include measures that limit rights, I consider such powers to be necessary to carry out the proper operation of a youth justice custodial centre and necessary to maintain the safety, stability and security of such a facility, which includes protecting the rights of others. Further, the Bill provides guidance on what should be considered when determining the child's care and custody, requiring the Commissioner

have regard to each child's individual risks, needs and best interests to the extent practicable in the circumstances (cl 462(2)). The Commissioner will also be bound to act compatibly with the custody principles and custodial rights when exercising the powers of management, as well as the Commissioner's obligation as a public authority under s 38 of the Charter to act compatibly with human rights and give proper consideration to human rights when making a decision.

*Photographs and records of a child or young person*

The Bill provides for the Commissioner to take photos of a child or young person upon their arrival into the youth justice custodial centre (cl 463), engaging the right to privacy (s 13) under the Charter. However, any interference will be lawful and not arbitrary, as such information is needed to identify and monitor the child or young person, as is required for proper management of the youth justice custodial centre. Further, that photos may only be used for these limited, specific purposes and will be subject to the general restrictions on use and disclosure of youth justice information.

***Division 2 – Accommodation***

The Bill aims to provide a strengthened framework for ensuring appropriate classification and placement of juveniles within the facility. The accommodation provisions are included for the purpose of assisting or advancing children in custody by requiring the Commissioner to separately accommodate children based on certain characteristics, taking into account their particular needs, status and special requirements. The Bill enshrines three presumptions upon which a child's placement is based:

1. Age-based separation presumption: The Bill provides that children who are under 18 years of age are to be accommodated separately from children and young persons who are 18 years of age or over who are at the same youth justice custodial centre, unless the Commissioner is satisfied that it is appropriate and safe to accommodate children and young persons of different ages together taking into account specified factors, including the safety, security and stability of the youth justice custodial centre (cls 464(1)(a) and 465(1)). This age-based separation presumption promotes the Charter right of a child detained or convicted to be segregated from adults in custody (s 23(1) and (3)). The need for a different response for this age cohort reflects their inherent youth, stage of development, vulnerability and impressionability. Separate accommodation on the basis of age also promotes children's rights by ensuring their protection from harmful influences and risk situations, as well as furthers the right to humane treatment by providing accommodation suited to the physical, mental and moral integrity and wellbeing of the child.

2. Status-based separation presumption: The Bill enshrines the presumption that children or young persons who are on remand are accommodated separately from those serving a custodial sentence (cl 464(b)). The presumption recognises that juveniles who are detained under arrest or awaiting trial are presumed innocent and shall be treated as such, promoting children's rights and the right to humane treatment.

3. Sex-based separation presumption: The presumption that children and young persons are separated according to sex ensures that a child or young person is safe and limits risks that a child or young person's rights will be limited (cl 464(c)). This facilitates a gender-responsive custodial system, reflected through a specific operating model for girls and young women and dedicated sub-precinct for this cohort, enabling equitable access to services and supports. This gives effect to a number of international standards, specifically, the *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)* that require that adult women and men be physically separate in order to protect them against sexual harassment and abuse.

These separation presumptions are directly relevant to the following Charter rights:

- an accused person who is detained or a person who is detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary (section 22(2)).
- an accused child who is detained or a child detained without charge must be segregated from all detained adults (section 23(2)).
- a child who has been convicted of an offence must be treated in a way that is appropriate for his or her age (section 23(3)) – although not strictly a separation requirement, this right could support the principle that a child should be kept separate from other children due to their age.

*Treatment of children and young persons based on certain cohorts*

While the above presumptions that require the Commissioner to provide separate accommodation for certain cohorts broadly promote rights, they may also engage the right to equality and non-discrimination in section 8(3) of the Charter through differential treatment on the basis of protected attributes that may be unfavourable to a particular person's circumstances. I consider any limits to be reasonably justified for the purpose of giving effect to the express separation rights in the Charter discussed above.

To protect against arbitrary outcomes, the Bill affords the Commissioner discretion (cl 465) to not apply the above presumptions if considered appropriate in specified circumstances, which require regard to the child or young person's views, best interests, individual risks and needs, and the likely impact on the safety, security and stability of the youth justice custodial centre, and the health, safety and wellbeing of all persons who would be accommodated with that child or young person. This also includes a discretion not to apply the sex-based separation presumption in relation to a child or young person whose gender identity is not the same as their sex. This approach is consistent with the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules),* which state that the principal criterion for separation of categories of children should be based on the type of care best suited to their particular needs and the protection of their physical, mental and moral integrity and wellbeing.

***Division 3 – Powers relating to visitors***

To ensure the requisite safety, security and stability within the youth justice custodial centre, the Bill provides the Commissioner with powers to approve entry and give orders to visitors entering the youth justice custodial centre (cls 466 and 467). Visitors entering the facility will be required to provide the Commissioner with certain personal information, engaging the right to privacy under the Charter (cl 468). However, any interference will be lawful and not arbitrary, as the information required by the provision is necessary to establish the identity of and credibility of the visitor, which is required to uphold the security and safety of the youth justice custodial centre.

Powers under this provision will allow the Commissioner to refuse or terminate a person from entering the youth justice custodial centre as a visitor (cl 469). That a child may be denied a visit from their parent, carer or other significant person will interfere with the child's ability to maintain contact and preserve relationships with family, engaging children's rights, right to humane treatment and family rights (ss 17 and 22). On balance, I consider any limitations on personal visits will be reasonable and demonstrably justified, having regard to the fact that the Commissioner's powers to terminate a visit may only be used for the limited purpose of protecting the safety and security of children and other persons in the facility. Without the capacity to terminate or prevent visits, the Commissioner cannot effectively discharge their responsibility of providing a safe custodial environment. The power to refuse visits must be exercised compatibility with the guiding custodial principles and rights relating to visit entitlements, and human rights in the Charter. The interpretation of the relevant Charter rights will be informed by the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*, which provides that children are entitled to receive regular and frequent visits, which is in principle a minimum of one visit per week, but no less than one visit per month.

***Division 4 – Temporary leave***

The Bill provides temporary leave permits to be issued to persons in youth justice facilities, for educational, vocational or other important reasons (cl 470). Allowing the child to leave detention facilities for such purposes promotes children's rights, cultural rights and the right to family by:

- supporting the child's transition into the community, promoting rehabilitation and reintegration;
- providing the child access to education and training;
- ensuring the child maintains contact with their family;
- facilitating frequent contact with the wider community; and
- enabling leave for the purpose of building or maintaining connection to culture.

Temporary leave applications will be subject to any conditions, limitations, restrictions or cancellations that the Secretary considers fit to impose (cl 469(4), 471). Conditions may include returning and reporting to the youth justice custodial centre at the time specified on the temporary leave permit.

Similar to the discussion on parole order conditions, a temporary leave permit generally grants a detained person greater liberty and reduces the extent of limits on their human rights that result from their sentence. In this regard, this framework for temporary leave would generally not result in any additional limits being imposed on rights. To the extent that it does, I am satisfied that any limits are reasonably justified in the context of a supervised temporary release scheme where the person is still under sentence and is being granted leave for a specific purpose, and serve important objectives of protecting the community, deterring re-offending and promoting the rehabilitation of the child or young person and reintegration into the community.

*Presumption of innocence in cases of contravention of temporary leave permit*

The Bill provides for an offence of contravention of temporary leave permit (cl 472). The offence provisions provide that it is not an offence if the child or young person fails to return or report to a youth justice custodial centre due to circumstances beyond that person's control (cl 472(2)).

The provision imposes an evidential onus on an accused when seeking to rely on the above exception. Case law has held that an evidential onus imposed on establishing an excuse or exception does not limit the

Charter's right to a presumption of innocence (s 25), as such an evidentiary onus falls short of imposing any burden of persuasion on an accused. The onus in these offence provisions require only that an accused point to evidence of the exception, upon which the burden falls on the prosecution to prove the absence of such an exception beyond a reasonable doubt. Accordingly, the right to presumption of innocence in the Charter is not limited by these offence provisions.

**Part 10.4 – Prohibited actions and restricted practices**

***Division 1 – Prohibited actions***

The Bill promotes a number of rights, including the right to equality (s 8), protection of children (s 17), the protection from cruel, inhuman or degrading treatment (s 10(b)), the right to humane treatment when deprived of liberty (s 22) and the rights of children in the criminal process (s 23) by expressly prohibiting the following actions from being performed on children or young persons detained under the Bill, including:

- use of physical force for the purpose of discipline;
- corporal punishment;
- any form of psychological pressure intended to intimidate or humiliate;
- the use of any form of physical or emotional abuse;
- adoption of any kind of discriminatory treatment; and
- use of isolation for the purposes of punishment, discipline or behaviour management (cl 474).

***Divisions 2 and 5 – Use of force and restraint***

The Bill prohibits use of force except in certain circumstances (cl 475, 479 and 498). The use of force in any context raises many human rights including the protection against cruel, inhuman or degrading treatment (s 10), the protection of children (s 17), the right to humane treatment when deprived of liberty (s 22) and the rights of children in the criminal process (s 23).

International human rights instruments and jurisprudence have developed basic principles for assessing the human rights compatibility of any legal framework regulating the use of force. This includes that any power to use force:

- be precisely prescribed and be aimed at achieving a legitimate objective;
- be necessary, in that the use of force must be necessary to achieve the legitimate objective (in lieu of alternative means which do not use force);
- be the minimum needed to be considered effective;
- must stop once the objective has been achieved or is no longer achievable;
- balance the benefits of the use of force against the possible consequences and harm caused by its use; and
- be accountable and subject to adequate training and governance.

In relation to use of force against children, the *United Nations Rules for the Protections of Juveniles Deprived of their Liberty (Havana Rules)* provides that instruments of restraint and force can only be used in exceptional cases, for the shortest possible period of time, where all other control methods have been exhausted and failed, and must not cause humiliation or degradation.

I am satisfied that the use of force provisions in this Bill are compatible with the above principles. Clause 475 sets out the primary purposes for which force may be used which is where an officer believes on reasonable grounds that force is necessary to prevent, or respond to an immediate threat of a child or young person harming themselves or any other person, damaging property, escaping or attempting to escape from custody, or engaging in conduct that would seriously threaten the safety, security or stability of the youth justice custodial centre. The provision expressly requires that all other reasonably practicable behavioural, relational or therapeutic measures have first been attempted. I note the provision also permits other use of force that is authorised under other law, such as common law self-defence. Reasonable force may also be used to place a child or young person in isolation (cl 485) and to conduct an unclothed search (cl 498), but only if authorised by the Commissioner as a last resort if it is necessary to prevent or prevent the continuation of a serious and immediate threat to the safety of the child or young person or any other person. The prohibited actions clause discussed above applies to the use of force meaning it cannot be used to punish, to discipline or intimidate.

This framework ensures that force is only used as a measure of last resort, and when used, is proportionate and necessary in the circumstances to achieve a safe and secure custodial environment for all children, young persons, staff and persons present in such environments. It employs preconditions with a high threshold requiring the identification of an 'immediate threat', and the belief on reasonable grounds that force is

necessary to prevent or respond to that immediate threat. The Bill also limits the use of instruments of restraint to handcuffs, closeting chains and other instruments either permitted by law or prescribed, and prescribes the limited circumstances in which they can be used (cl 477).

In addition, the Bill includes further safeguards governing the use of force, including an absolute prohibition on the use of restraint techniques for the purpose of restricting or inhibiting a child or young person's respiratory or digestive function, compelling compliance through the infliction of pain, hyperextension or pressure applied to joints and the use of any other technique to be prescribed by regulation (cl 476).

Division 5 provides further general requirements applying to the use of force by a youth justice custodial officer, including that:

- the use of force must be proportionate;
- the use of force must immediately cease once it is no longer necessary;
- force must be applied for the shortest possible time;
- the necessity and manner of force must be continually assessed;
- an officer must have regard to the child or young person's stage of development, physical stature and individual characteristics and background (including factors specified in the Bill such as age, gender, cultural background, physical and mental health, disability and history of trauma); and
- an oral warning must be given before force is used, and reasonable time afforded for the child or young person to comply with the warning.

A youth justice custodial officer must not use force unless the youth justice custodial officer is appropriately trained in relation to the use of physical intervention techniques on children and young persons (cl 505).

The Bill also provides that a child or young person is entitled to examination, medical attention and mental health care after being subject to any use of force (cl 506), their parents are to be notified (cl 506(4)) and an Aboriginal child or young person is entitled to cultural support (cl 506(5)). A child or young person is entitled to additional support as soon as practicable after being subjected to any use of force. The Bill also provides for a right to complain about the use of force (cl 507). All use of force must be reported (cl 521) and recorded with specified details in a Use of Force Register, which is subject to the inspection by the CCYP (cl 526).

Similar to cl 74 discussed above in relation to Part 3.2 in limited circumstances, cl 506 may engage the prohibition against medical or scientific experimentation or treatment of a person without their full, free and informed consent in section 10(c) and the protection of families in section 17 of the Charter. For the reasons outlined in respect of cl 74, my view is that the right in 10(c) is not limited.

Accordingly, I am satisfied the above framework accords with best practice and international standards for regulating the use of force in youth justice, and thus is compatible with human rights in the Charter.

***Division 3 – Isolation***

The Bill provides for a legal framework relating to the use of isolation in limited circumstances. Use of isolation raises many human rights including the protection against cruel, inhuman or degrading treatment (s 10), the protection of children (s 17), the right to humane treatment when deprived of liberty (s 22), the rights of children in the criminal process (s 23) and the right to equality (s 8). As noted above, reasonable force may also be used to place a child or young person in isolation.

International standards strictly prohibit the isolation of a child or young person for 22 hours or more in a 24 hour period without meaningful human contact. Harmful impacts of solitary confinement that have been reported include physiological effects, psychological effects, and a greater rate of self-harm and suicide. The United Nations Special Rapporteur on Torture has stated that the solitary confinement of juveniles constitutes cruel, inhuman and degrading treatment.

The Bill aims to provide a contemporary and strengthened legislative framework for the use of isolation, informed by best practice, human rights and international and domestic standards. This includes giving effect to recommendation made by the Victorian Ombudsman (*OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people* (2019)), the CCYP (*The Same Four Walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017)) and the 2017 Youth Justice Review (*Youth Justice Review and Strategy*, Penny Armytage and Professor James Ogloff) to strengthen legislative safeguards, protections, accountability and reporting. The use of isolation is a valid behaviour management tool when used in appropriate circumstances to address violence or destructive behaviours that have continued despite all attempts to prevent them.

The Bill adopts a broad definition of isolation to ensure that a range of situations involving the separation of a child or young person will be regulated by these provisions (cl 478). The Bill includes an express prohibition against solitary confinement, meaning the physical isolation of a child or young person for 22 or more hours

in a 24 hour period without meaningful human contact, consistent with international principles (cl 479). The Bill then provides that the use of isolation, being the placing of a child or young person (or a group or class of children or young persons) in a locked room or other separate contained area, separate from other children and young persons, and separate from normal routine, is also prohibited unless authorised by the Commissioner (cl 480).

The Bill establishes a framework for authorising the use of isolation, including the purposes for which isolation may be authorised. Isolation of a child or young person may be authorised when it is appropriate in the circumstances and necessary to prevent or respond to an immediate threat of harm or serious property damage, as part of a planned approach to support the stabilisation or moderation of the child's or young person's behaviour, to prevent, detect or mitigate serious risk to the health of a person in the youth justice custodial centre (in accordance with any relevant pandemic order under the **Public Health and Wellbeing Act 2008** relating to infectious disease), or if the isolation is in the interests of the security or safe operation of a youth justice custodial centre. Isolation of a group or class of children may be authorised where it is necessary in the interests of the security or safe operation of a youth justice custodial centre. The Commissioner must not authorise the use of isolation unless satisfied that all other reasonably practicable alternative measures have first been attempted.

In deciding whether the isolation of a child or young person is appropriate, the Commissioner is obliged to have regard to the child's or young person's stage of development and individual characteristics and background (including specified matters such as age, gender, cultural background, physical and mental health, disability and history of trauma), which is intended to promote and protect the right to equality. The duration of isolation must be specified in the authorisation, and be only for the shortest time necessary in the circumstances (cl 483), having regard to the individual factors discussed above. The Bill provides that reasonable force may be used to place the child or young person in isolation (cl 485), which is also subject to the general requirements in Division 5, discussed above, relating to use of force. The Bill requires close monitoring, review and supervision of a child or young person in isolation at regular intervals, to be prescribed by regulation (cl 486), including a requirement to end the isolation if it is no longer appropriate or necessary.

The Bill provides for various rights of a child or young person placed in isolation, including to be informed of the reasons for being placed in isolation, to be examined by an appropriate health professional and receive appropriate care if suspected of requiring medical attention, to request notification of their parents (subject to an exception), to be seen by a support person, support provider, family member or Aboriginal cultural support worker (if applicable), and to be notified about their above mentioned rights and their right to lodge a complaint (cls 491 and 492). The Bill provides for the Secretary to prepare minimum requirements for meaningful human contact during isolation (cl 487), which are to be published and made publicly available. Additionally, the Bill provides rights to access open air and outdoors for a minimum of one hour each day and timely information about the expected duration of their isolation, subject to specified and limited exceptions (cl 493).

As above, any use of isolation must be reported and specified details recorded in the Isolations Register, for inspection by the CCYP (cls 522 and 524).

Accordingly, I am satisfied the above framework accords with best practice and international standards for regulating the use of isolation in youth justice, and thus is compatible with human rights in the Charter.

***Division 4 – Searches***

The Bill provides for a range of search powers to be exercised in relation to a youth justice custodial centre. The range of search powers provided in the Bill are relevant to a person's right to privacy (s 13), as the powers involve an interference with a person's bodily integrity, and in some respects in relation to detained persons, their home. It is arguable that, in the absence of a requirement to seek a warrant, these searches have the potential to arbitrarily intrude into the private spheres of persons, which, even in relation to detained persons, are protected under this right. The prohibition on arbitrariness requires that any interference with privacy must be reasonable or proportionate to a law's legitimate purpose. I am of the view that the interferences with privacy provided by this power will be lawful and not arbitrary, for the reasons that will be outlined below.

Additionally, s 22 of the Charter relevantly provides that all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. Section 22 requires, as a starting point, that persons deprived of liberty not be subjected to any additional hardship or constraint other than that which results from the deprivation of liberty. The *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)* require all searches to be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

*Pat-down and screening searches of child or young person detained in a youth justice custodial centre*

The Bill provides youth justice custodial officers with powers to conduct screening and pat-down searches in relation to a child or young person detained in a youth justice custodial centre. This includes the power to:

- search the child or young person on entering or leaving a youth justice custodial centre (cl 494); and
- search any part of, or child or young person detained within, a youth justice custodial centre if necessary for the safety, security or stability of a youth justice custodial centre or the children and young persons detained within (cl 495).

Searches form a key part of procedural security processes which serve the important purpose of ensuring the safety, security and stability of a youth justice custodial centre, primarily by preventing the introduction and proliferation of contraband into a youth justice custodial centre. Exclusion of contraband assists in maintaining the safety and security of children and young persons, staff and visitors and promotes the rehabilitation of children and young persons in detention.

The preconditions on conducting a search conform with the principles of legality and necessity. While the power to search upon entering or leaving (cl 494) can be exercised at an officer's discretion, this is necessary in order to maintain the security of a custodial facility. A person necessarily assumes a reduced expectation of privacy in relation to entering or leaving such a facility, and the type of search undertaken is similar to that which exists in relation to entering any public building where there are security concerns (being a screening or pat-down search). The clause prohibits unclothed or body cavity searches from being conducted under this power.

In relation to the general search power inside the centre (cl 495), this can only be exercised if considered necessary for the specified purposes outlined above, which are legitimate and pressing purposes necessary to discharge the statutory responsibilities to provide a secure and safe environment and uphold duties of care in relation to persons under legal custody. The clause expressly prohibits unclothed or body cavity searches from being conducted under this general power.

The Bill provides for a number of safeguards to ensure searches are conducted in a proportionate manner. The Bill provides safeguards governing the way a pat-down or screen search is conducted. The provisions expressly require that any search conducted must be the least intrusive kind of search that is necessary and reasonable in the circumstances (cl 499(2)). It stipulates that the officer must conduct the search expeditiously and sensitively, with regard to promoting the child or young person's decency, dignity and privacy and if the person is a child or young person, having regard to their stage of development, individual characteristics and background (including cultural background, mental health, disability and history of trauma) (cl 499(3)). Regard must also be had to the need to minimise causing trauma, distress or other harm to the child or young person being searched.

The Bill also provides that officers conducting the search must be appropriately trained (cl 499(7)) and, in relation to a pat-down search, must be of the same sex as the person, unless exceptional circumstances apply (cl 500). Persons whose gender identity does not correspond to their sex designated at birth must be treated respectfully and be allowed to nominate the sex or gender identity of the officer where possible (cl 500(2)).

The Bill also includes a safeguard to mitigate interference with a detained child or young person's bedroom (and by extension, their right to privacy of home), by requiring such searches to be conducted expeditiously, having regard to decency, dignity and privacy of the person whose rooms and belongings are being searched, and leaving such room and belongings as close as possible to the condition in which the room was found in (cl 496).

The Bill provides various rights of a person searched in a youth custody facility, including to be informed of the officer's authority to conduct the search and the reasons for the search (cl 499(4)). Officers must provide a person with an opportunity to produce any prohibited item before being searched, if safe to do so (cl 499(5)). Detained children and young persons must be informed of their right to complain to the Secretary (cl 499(4)(b)) or an oversight entity (cl 499(4)(c)) about the conduct of the search and informed of the process of making a complaint.

The Commissioner is obliged to keep a searches register which records the details of all searches conducted of a detained child or young person, for inspection by the CCYP (cls 525 and 526).

Accordingly, I am satisfied the above framework is appropriately prescribed and compatible with rights.

*Unclothed searches of a child or young person in a youth justice custodial centre*

The Bill prohibits unclothed searches of a child or young person detained in a youth justice custodial centre, except in certain circumstances (cl 497). Unclothed searches are the most intrusive search that can be carried out in a youth justice custodial centre. Accordingly, conducting an unclothed search of a child raises many

human rights, including the protection against cruel, inhuman or degrading treatment (s 10), the protection of children (s 17), the right not to have privacy unlawfully or arbitrarily interfered with (s 13), the right to humane treatment when deprived of liberty (s 22) and the rights of children in the criminal process (s 23). The Bill provides that reasonable force may also be used to conduct an unclothed search of a child or young person in detention in very limited circumstances (cl 498).

A number of reviews and inquiries across Australia and internationally have found the practice of unclothed searches to have the potential to re-traumatise children and young persons. The consensus is that routine unclothed searches are out of step with human rights and standards, and not the least intrusive types of search that could be conducted in the circumstances. Unclothed searches should only be conducted when reasonable, necessary and proportionate to a legitimate aim.

The *United Nations Minimum Rules for the Treatment of Prisoners (Mandela Rules)* further provide that intrusive searches, including strip and body cavity searches, should only be undertaken if absolutely necessary. The Bill explicitly prohibits searches of a person's body cavities, and further provides that unclothed searches should only be conducted in private and by trained staff of the same gender as the prisoner (cls 499- 501).

In addition to the safeguards discussed above (Div 5), the Bill includes provisions offering specific protections for unclothed searches. Clause 497 sets a precondition that the unclothed search of a child may only be used where the Commissioner believes on reasonable grounds that the child has concealed something on their body and that an unclothed search is necessary for the security of the youth justice custodial centre or the health, safety or wellbeing of the child or others. The Bill ensures that the unclothed search is only used where all other search methods have first been considered and used if safe to do so, having regard to the individual characteristics and background of the child (cls 497(2) and 497(3)). This includes, for example, using technology to conduct the search before resorting to an unclothed search.

In addition to the above requirement, that an officer conducting a search must be of the same sex (or nominated sex or gender identity as necessary) (cl 500), unclothed searches must take place in the presence of another youth justice custodial officer (cl 501(2)). In instances where a search is carried out on a child or young person whose gender identity does not correspond to their sex designated at birth, the additional youth justice officer must be of a sex or gender identity nominated by the child or young person, where possible (cl 500(2)).

Further safeguarding provisions that apply, unless exceptional circumstances arise, include that a child must not be fully unclothed at any time during the search, that it is conducted in a private place with privacy for the child, and that the child or young person is allowed to re-dress in private (cl 501).

The Bill also provides that, as soon as reasonably practicable but not more than 12 hours after the completion of an unclothed search, a child or young person is entitled to request medical attention, medical examination and mental health care(cl 502(1)(a)) with examination records to be kept by the health practitioner (cl 502(2)). Parents are to be notified upon request (cl 502(1)(b)) and an Aboriginal child or young person is entitled to cultural support (cl 502(1)(c)). A child or young person must be offered the opportunity to contact and be seen by a support person, support provider or family member. The Bill also provides that the child must be informed of the above mentioned entitlements (cl 503(c)) and of the right to complain about the conduct of the unclothed search (cls 503(a) and 503(b)).

In my view, these provisions are compatible with international standards for regulating the use of unclothed searches in youth justice.

*Use of reasonable force for unclothed searches*

As discussed above, the use of force in any context raises many human rights including the protection against cruel, inhuman or degrading treatment (s 10), the protection of children (s 17), the right to humane treatment when deprived of liberty (s 22) and the rights of children in the criminal process (s 23).

The Bill recognises the compounding impact and potentially traumatic impact of both an unclothed search and the forcible removing of clothing on a child or young person. In addition to all other safeguards provided for under Division 5, clause 498 requires that the use of force by a custodial officer must first be authorised by the Commissioner. It sets out that the only purpose for which force may be used is where the Commissioner believes that it is necessary to prevent the continuation of a serious and immediate threat to the safety of the child or any other person. The provision ensures that force is only used as a measure of last resort, and when issued, is proportionate and necessary to conduct the unclothed search. As discussed above, the general requirements in Division 5 of Part 10.4 also apply to this type of use of force.

The Bill provides that all use of force for unclothed searches must be reported (cl 521) and recorded with specified details in a Use of Force Register, which is subject to the inspection by the CCYP (cl 526).

These powers serve important objectives, including protecting against a serious and immediate threat to the safety of the child or any other person. Accordingly, I am satisfied that any limits on these rights are reasonably justified.

***Division 6 – Search of any other person in a youth justice custodial centre***

The Bill also provides a search power in relation to non-detained persons entering or leaving a youth justice centre including custodial staff, visitors or any other person (with the exception of a judge or Magistrate) (cl 508). A further pat-down or screening search can be ordered by the Commissioner at any time in relation to a non-detained person in a youth justice custodial centre, if in the interests of the safety, security or stability of a youth justice custodial centre or the children and young persons detained within (cl 509). The clauses expressly prohibit unclothed or body cavity searches from being conducted under these powers.

As above, while the power to search upon entering or leaving can be exercised at an officer's discretion, this is necessary in order to maintain the security of a custodial facility. A person necessarily assumes a reduced expectation of privacy in relation to entering or leaving such a facility, and the type of search undertaken is similar to that which exists in relation to entering any public building where there are security concerns (being a screening or pat-down search). The power to order a search at any time is subject to the precondition of being necessary in the interests of safety, security and stability.

The conduct of such searches is subject to similar safeguards as described above in relation to Division 4, in summary requiring all searches to be conducted in a manner that is the least intrusive in the circumstances, expeditious, pays regard to rights, interests and individual characteristics of the person being searched, minimises trauma and complies with gender identity requirements. Importantly, non-detained persons are provided with an additional protection, being a right to refuse a search and an entitlement to be informed of this right prior to a search occurring. If a person refuses to be searched, they may be ordered to leave the centre immediately (cl 512) and be liable to a penalty if they do not do so. Accordingly, any search carried out under these provisions can only be conducted with the consent of the person being searched (albeit consent must be given if the person wishes to enter or remain in the centre).

***Division 7 – Seizure***

The Bill provides that an officer, in carrying out a search in accordance with the above powers in Division 4, may seize any prohibited item that is found in the person's possession (cl 514). Seizure of prohibited items under this provision is relevant to property rights (s 20), as it necessarily deprives a person of their personal property.

The types of items that can be seized are confined to 'prohibited' items, which are clearly defined in the Bill as things that are likely to jeopardise security of the youth justice custodial centre, such as weapons, money, alcohol and drugs or any other prescribed article or thing (cl 3). Given their inherent risk, providing officers with the power to seize such items is necessary to maintain physical security and safety and prevent the introduction of contraband or other prohibited items into the youth justice custodial centre. In this regard, it promotes the underlying purpose of the Bill, to provide a safe and stable environment that supports rehabilitation and positive development.

In addition, the Bill includes a number of clauses which clearly set out and properly circumscribe the manner in which seized property is to be dealt with, including:

- requiring seized money to be returned to the person from whom it was seized when leaving the youth justice custodial centre (cl 518);
- requiring seized items to be recorded on a register (cl 515);
- ensuring seized things that may be used in a legal proceeding are held securely until the end of the proceeding (cl 517).

The inclusion of the above provisions protects against any arbitrary deprivation of property, as well as creates accountability and transparency in how seizure powers are used. Accordingly, I am satisfied that these powers are appropriately circumscribed and do not limit rights.

*Disposal of a seized article or item*

Clause 520 engages property rights (s 20) by providing a process for disposing of items seized under the Bill. As explained above, items can only be seized if they are prohibited and likely to jeopardise the security of the youth justice custodial centre. Given that prohibited items include dangerous weapons and illegal contraband, the return of these items may not be appropriate in the circumstances and disposal may be necessary to maintain security and safety of the youth justice custodial centre. The Bill ensures that disposal of prohibited items is a proportionate action to take, by specifying that it can only occur in circumstances where it is deemed appropriate, having regard to the nature of the article.

In addition, the Bill includes safeguarding against misuse and ensuring accountability by requiring disposal to be carried out by two youth justice custodial officers, with details of the disposal to be recorded on the seizure register. Therefore, I consider that the above provisions do not limit rights.

***Division 8 – Reporting and record keeping***

Clauses 521 and 522 require a youth justice custodial officer who uses force against a child or young person or who places a child or young person in isolation, to report that action to the Commissioner as soon as possible after that action. These reporting requirements seek to further children's rights to humane treatment when deprived of liberty, by seeking to ensure that children are not subject to arbitrary use of force or isolation, and that there is a level of oversight and accountability over these coercive actions.

The Bill requires the Commissioner to establish and keep a Use of Force Register, an Isolations Register, and a Searches Register (cls 523–525), which must be made available to the CCYP for inspection at specified times (cl 526). The registers must include information about:

- the characteristics of the child or young person in relation to whom the action was taken;
- the circumstances of the use of force, physical restraint, isolation, or search;
- whether the child or young person was examined by a health practitioner and received medical attention and mental health care; and
- any prescribed particulars.

The recording of personal information and the requirement to provide this information to the CCYP will engage the right to privacy under section 13(a) of the Charter. However, any interference will be lawful (being clearly set out in Division 8 of Part 10.4 of the Bill) and not arbitrary, as the information shared is limited to specific purposes and for the overarching purpose of ensuring that children and young persons in a youth justice custodial centre receive humane treatment when deprived of liberty.

***Division 9 – Exemption from liability***

Clause 508 of the Bill provides that a youth justice custodial officer is not personally liable for anything done or omitted to be done (including injury or damage) in good faith and in accordance with the provisions of the Bill that permit, in certain circumstances: the use of reasonable force (cl 475); the use of an instrument of restraint (cl 477); the use of reasonable force to place a child or young person in isolation (cl 485); and the use of authorised reasonable force for unclothed searches (cl 498). Any liability resulting from an act or omission that would attach to a youth justice custodial officer attaches instead to the State (cl 527(3)).

This provision may limit the ability of a person to bring legal proceedings against such officers in certain circumstances, which may constitute a limit on that person's right to a fair hearing under section 24 of the Charter, by impeding their access to the courts of the State.

A legal right may also be considered to be property for the purposes of section 20 of the Charter, which has been interpreted as requiring that a person must not be deprived of property other than in accordance with clear, transparent and precise criteria. In this case the provisions meet this criteria, so any deprivation of property has occurred 'in accordance' with law.

However, to the extent that these immunities limit the right to fair hearing, I consider the limit to be reasonably justified under section 7(2) of the Charter. Cl 527 only removes personal liability of youth justice custodial officers, and any liability resulting from an act or omission of the youth justice custodial officer attaches instead to the State, and as such, in my view this does not result in the imposition of a bar to bringing a proceeding. Further, these immunities are designed to maintain the effectiveness of relevant officers under the Bill carrying out protective functions directed to ensuring a safe and secure environment for children, young persons, staff and visitors. It is essential that a relevant officer be able to use authorised reasonable force in good faith when necessary to exercise their lawful powers without fear of tort liability, which may be especially heightened when managing children and young persons with complex needs. Without at least some degree of protection from litigation, an officer may be reluctant to use reasonable force to conduct duties essential to the security and safety of the youth justice custodial centre, notwithstanding their statutory authorisation to do so. The immunities will ultimately facilitate the proper exercise of powers which are directed at upholding safety and security.

Further, these immunities only extend to cover use of reasonable force in accordance with the provisions specified in cl 527(2), and personal liability will still arise for any unreasonable or unnecessary use of force that has not been exercised in accordance with those provisions. Accordingly, officers will still remain accountable for any improper, unreasonable or unauthorised use of force.

Accordingly, I am satisfied that that the limitations of liability in these contexts are compatible with the Charter.

***Part 10.5 – Offences relating to Youth justice custodial centres and Youth justice community service centres***

***Division 1 – Offences relating to operation or possession of remotely piloted aircraft or helicopter***

The Bill provides for search and seizure powers outside a youth justice custodial centre in relation to the offence of operating of a remotely piloted aircraft or helicopter in a manner that threatens or is likely to threaten the good order or security of the youth justice custodial centre (cls 528 and 531). The Bill also provides for powers of a youth justice custodial officer to order a person to leave the public space adjoining a youth justice custodial centre if believed on reasonable grounds to be committing this offence (cl 529). These provisions engage the rights to privacy (s 13) and freedom of movement (s 12).

The public space adjoining a youth justice custodial centre is a regulated area and a person assumes a reduced expectation of their rights in relation to this area, which include having their freedom of movement limited by being asked to leave when believed to be committing the remote aircraft offence. I consider that the power to search a person reasonably believed of having committed an offence of this nature will not constitute an arbitrary or unlawful interference with privacy. The elements of the offence concern conduct that threatens or is likely to threaten the good order or security of a youth justice custodial centre. The search powers are directed at addressing this serious threat to the safe and secure custody of children and young persons and enforcing this offence provision. The limited circumstances in which a search may be conducted are clearly set out and are appropriately circumscribed. Before a search is conducted, an officer must inform the person of the officer's authority to conduct the search, and inform the person that they may refuse the search. Any items seized must be dealt with in accordance with the seizure provisions described above.

***Division 2 – Escaping from youth justice custodial centre or other custody***

The Bill contains a number of offences in relation to youth justice custodial centres. As these offences prohibit certain forms of conduct, the provisions necessarily engage human rights in the Charter, such as rights to liberty (s 9), freedom of movement (s 12) and privacy (s 13).

The offence provisions relate to prohibiting conduct to ensure the secure and safe custody of children and young persons lawfully deprived of liberty.

*Escaping offences*

The Bill includes the offence of escaping or attempting to escape from a youth justice custodial centre, which is a prohibition on conduct that is already necessarily constrained and intrinsic to the lawful loss of liberty, and accordingly, does not impose any additional limits on rights (cl 533). The same applies to cl 534 which provides the authority to apprehend without warrant a person found escaping from a youth justice custodial centre or other custody.

The Bill also prohibits accessory conduct such as harbouring or concealing an escaped child or young person (cl 537), knowingly preventing a child or young person from returning to a youth justice custodial centre (cl 538) and counselling or inducing a child or young person to escape (cl 540). These offences are consistent with long-established common-law principles relating to accessorial liability.

***Division 3 – Other offences relating to youth justice custodial centres and youth justice community service centres***

*Offences against security, stability and safe operation of a youth justice custodial centre*

The Bill then prohibits a range of conduct that undermines or threatens the security, stability and safe operation of youth justice custodial centres or safe custody of children and young persons. This includes the offences entering a youth justice custodial centre without lawful authority or excuse or refusing or failing to leave when required to do so (cl 541 and cl 548), lurking or loitering about a youth justice custodial centre (cl 547) and related property offences of delivering certain prohibited articles or things to a child or young person in a youth justice custodial centre (cl 544), taking or receiving articles or things from a child or young person (cl 545) and delivering or leaving contraband articles or things for introducing into a youth justice custodial centre (cl 546).

Prohibiting such conduct is necessary to maintain the physical security and safety of a youth justice custodial centre. The provision of effective rehabilitation is contingent on a safe environment for children, young persons and staff. The prohibited conduct relates to actions or behaviour relating to the regulated area of a youth justice custodial centre and persons residing within lawfully deprived of their liberty. In this regard, a person would have a diminished expectation in relation to the scope of their rights when entering or interacting with such a secure facility.

*Communication offences*

The Bill also includes offence provisions relating to communicating with a child or young person in a youth justice custodial centre, attending a youth justice community service centre or who is on temporary leave from a youth justice custodial centre, in contravention of a clear instruction from the Commissioner not to do so

(cls 542 and 543). These offence provisions raise additional rights of freedom of expression (s 15) and freedom of association (s 16), and may interfere with the right to protection of family (s 17).

There are a number of important purposes for which there may be a need to prohibit communication, including to further a child or young person's rehabilitation, prevent contact with anti-social peers or criminal associates, to protect a vulnerable child or young person from inappropriate or concerning correspondence or to prevent undermining of the security or safe environment of a youth justice custodial centre.

The power to issue an instruction to prohibit communication must be used for a proper purpose consistent with the Commissioner's statutory responsibilities (including the operational management, security, stability and safety of youth justice custodial centres), and compatibly with the custodial rights of children and young persons in youth justice custodial centres. This includes ensuring that a child or young persons' custodial rights to family, community, cultural and religious connections are fulfilled to the greatest extent possible (cl 446). Any such instruction must be served in writing. In relation to the offence of communicating with a child or young person who is on temporary leave contrary to an instruction, a person cannot not be charged with this offence unless they were first warned that their communication was prohibited, and despite the warning, continue to communicate or attempt to communicate with the child or young person on temporary leave.

Accordingly, I am satisfied that the framework for this offence is appropriately prescribed and compatible with human rights.

*Lawful authority or reasonable excuse*

The offence provisions described above include a defence of lawful authority or reasonable excuse. Section 25(1) of the Charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. This right is relevant where a provision shifts the burden of proof onto an accused in a criminal proceeding, so that the accused is required to prove matters to establish, or raise evidence to suggest, that he or she is not guilty of an offence.

As these offences are summary offences, section 72 of the **Criminal Procedure Act 2009** will apply to require an accused who wishes to rely on the 'lawful authority or excuse' defence to present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the excuse. In other words, the provision imposes an evidential onus on an accused when seeking to rely on the defence. Case law has held that an evidential onus imposed on establishing an excuse or exception does not limit the Charter's right to a presumption of innocence, as such an evidentiary onus falls short of imposing any burden of persuasion on an accused. The onus in these offence provisions requires only that an accused point to evidence of lawful authority or excuse, upon which the burden falls on the prosecution to prove the absence of such authority or excuse beyond a reasonable doubt. Accordingly, the right to presumption of innocence in the Charter is not limited by these offence provisions.

***Part 10.6 – Change of name applications and acknowledgement of sex applications***

The Bill includes restrictions on a child or young person serving a sentence of detention in a youth justice custodial centre from making an application with the Births Deaths and Marriages Register to change their name or acknowledgement of sex (cls 551 and 558). The provisions require a person seeking to make an application to obtain the written approval of the Secretary.

This will necessarily limit the rights to privacy of such a person (by way of interfering with the freedom of their personal and social sphere, their right to individual and sexual identity, and to psychological integrity and mental stability) and in some cases, their rights to equality and non-discrimination on the basis of a protected attribute (gender identity).

I am satisfied that any limits on these rights are reasonably justified. These restrictions serve important objectives, including protecting the interests of victims of crime and ensuring the sentencing purposes are upheld (such as responsibility for action and protection of the community), protecting against the risk that a proposed change of name can be used for unlawful or improper ends (including disguise or evasion) or may disrupt the routine or proper management, stability or security of a youth justice custodial centre.

To mitigate against arbitrary outcomes, the Secretary is provided discretion to approve an application if satisfied it is necessary or reasonable in all the circumstances (cls 553 and 560). This discretion must be exercised consistent with the custodial rights of children and young person to the greatest extent possible, including their rights to positive personal development, and to be supported in an inclusive and safe way that respects their gender identity (cls 447 and 450). The Secretary must not approve an application if satisfied that a change of name would be reasonably likely to threaten the security of a youth justice custodial centre, jeopardise the safe custody or welfare of any person in a youth justice custodial centre, be used to further an unlawful activity or purpose or be regarded as offensive by a victim of crime or an appreciable sector of the community.

Accordingly, I am satisfied this framework adopts an appropriate balance between a child or young person's rights and the important countervailing considerations at play.

***Part 10.7 – Other provisions relating to youth justice custodial centres***

Clause 566 provides for the secrecy of security arrangements and restricts a person holding (or who has held) a specified position from recording, disclosing, communicating or using confidential information except to the extent that is reasonably necessary to perform their duties or functions or exercise a power under the Bill or any other Act. The provision includes various exceptions relating to giving evidence or producing documents in court proceedings, disclosure pursuant to Ministerial authority, disclosures to specified oversight bodies or law enforcement agencies or where specifically authorised by another Act. Confidential information is defined as information given to the Youth Parole Board, court or tribunal that is not disclosed in a decision of that body, information concerning emergency procedures, security measures or management of a youth justice custodial centre, information about an investigation into a detainee or officer for contravention of the law, commercial information that if disclosed may threaten the security, good order or safe operation of a youth justice custodial centre, or information concerning an operational and security debrief regarding a violence or critical incident.

While this provision will limit a person's right to freedom of expression (including to receive or impart information), any limits will fall within the internal limitation in s 15(3) of the Charter, which is as a necessary protection of national security, public order and public health. Additionally, a person holding a position under the Bill will voluntarily assume the duties and obligations that attach to that position, including the requirement to only use and disclose confidential information as provided.

**Chapter 11 – Children and young persons held in police gaols or in police custody under transfer authority**

Chapter 11 provides for police powers in relation to children detained in police gaols or a child or young person in police custody under transfer authority.

***Part 11.1 – Rights of children in police gaols***

The Bill incorporates rights specifically related to children held in a police goal. As discussed above, while the Bill generally requires a child to be placed in a youth justice custodial centre when subject to detention, it is not always possible to do so and there are instances where a child must be detained in police custody pending being brought before the Court or to facilitate transport to and from a youth justice custodial centre.

Accordingly, the Bill provides for rights of children when detained in police gaols, to be given effect by the Chief Commissioner of Police (cl 568). This broadly promotes children's rights and equality by providing for the greatest possible consistency between how children are treated and managed across all places of detention, aligning the thresholds and safeguards that apply across youth justice facilities and police gaols. As above, these rights are additional to those provided by the Charter, and other Acts and the common law (cl 567).

The Bill provides that a child who is remanded, held or detained in a police gaol has a right to be accommodated separately from adults and according to the child's sex (unless the officer in charge of the police goal is satisfied that the child's gender identity differs from the child's sex and that it is appropriate and safe for the child to be kept with children other than children of the same sex) (cl 569). The purpose of these provisions is to provide protections to ensure that the environment is safe, that the child is protected and that the treatment of the child is age-appropriate, furthering the child's criminal process right in the Charter (s 23).

The Bill enshrines a right to communication for children in custody in police gaol (cl 570), furthering children's rights and the criminal process right by requiring that children must:

- have all reasonable efforts made to be communicated with in a language which the child can understand; and
- receive visits from parents, relatives, carers, legal practitioners, and Aboriginal elders in the case of an Aboriginal child.

The Bill provides for an individual needs and environment right in police gaol for reasonable effort to be made to meet the child's specific needs, including cultural, mental health and disability support needs (cl 571). It also requires a safe and secure place where the child is protected from harm, a clean and sanitary environment with access to appropriate clothing and nutritious foods and beverages (appropriate to religious and dietary needs). These measures uphold the dignity of the child, as well as promoting children's and cultural rights.

The Bill includes a right to make a confidential complaint about the standard of care and to receive support to make that complaint (cl 572). The opportunity for a child to provide their views on matters affecting them and to have their complaints adequately addressed is relevant to children's rights, by ensuring children are responded to as vulnerable individuals by way of their age, supported in an inclusive and safe way and given

equitable access to supports. It also gives effect to international minimum standards regarding accountability and oversight.

The Bill includes a right that the child be advised of their entitlements and rights while in custody (cl 573). Establishing procedures that inform children offer further protection in a child's best interests.

***Part 11.2 – Children and young persons detained in police gaols or in custody of transfer officer under transfer authority***

***Division 2 – Prohibited actions***

As with the discussion in relation to Division 1 of Part 10.4, the Bill promotes a number of rights, including the right to equality (s 8), protection of children (s 17), the protection from cruel, inhuman or degrading treatment (s 10(b)), the right to humane treatment when deprived of liberty (s 22) and the rights of children in the criminal process (s 23) by expressly prohibiting the following actions from being performed on children detained in police gaols or children or young persons in the custody of a transfer officer under transfer authority under the Bill, including:

- use of physical force for the purpose of discipline;
- corporal punishment;
- any form of psychological pressure intended to intimidate or humiliate;
- the use of any form of physical or emotional abuse; and
- adoption of any kind of discriminatory treatment (cl 577).

***Divisions 3 and 5 – Use of force and restraint***

The Bill provides for similar powers for use of force in a police gaol or while in the custody of a transfer officer under transfer authority. Following the above discussion regarding use of force relating to Divisions 2 and 5 of Part 10.4, these provisions engage many human rights including the protection against cruel, inhuman or degrading treatment (s 10), the protection of children (s 17), the right to humane treatment when deprived of liberty (s 22) and the rights of children in the criminal process (s 23).

As above, I am satisfied the use of force provisions in these Divisions are compatible with the above rights. Clause 578 set out the primary purposes for which force may be used which is where the police or transfer officer believes on reasonable grounds that force is necessary to prevent, or respond to, an immediate threat of harm, damaging property, escaping or attempting to escape from custody, or engaging in conduct that would seriously threaten the security or good order of the police gaol. The provision expressly requires that all other reasonably practicable de-escalation measures have first been attempted. I note the provision also permits other use of force that is authorised under other law, such as common law self-defence. The prohibited actions clause discussed above applies to the use of force meaning it cannot be used to punish, to discipline or intimidate.

This framework ensures that force is only used as a measure of last resort, and when used, is proportionate and necessary in the circumstances to achieve a safe and secure custodial environment for all children, young persons, and persons present in such environments. It employs preconditions with a high threshold requiring the identification of an 'immediate threat', and the belief on reasonable grounds that force is necessary to prevent or respond to that immediate threat. The Bill also limits the use of instruments of restraint to handcuffs, closeting chains and other instruments either permitted by law or prescribed (cl 580).

In addition, the Bill includes further safeguards governing the use of force, including an absolute prohibition on the use of restraint techniques for the purpose of restricting or inhibiting a child or young person's respiratory or digestive function, compelling compliance through the infliction of pain, hyperextension or pressure applied to joints and any other technique to be prescribed by regulation (cl 579).

Division 5 provides further general requirements applying to the use of force in a police gaol or while in the custody of a transfer officer under a transfer authority, including that:

- the use of force must be proportionate;
- the use of force must immediately cease once it is no longer necessary;
- force must be applied for the shortest possible time;
- a police or transfer officer must, to the extent known and reasonably practicable, have regard to the child or young person's stage of development, physical stature and individual characteristics and background (including factors specified in the Bill such as age, gender, cultural background, physical and mental health, disability and history of trauma);
- an oral warning must be given before force is used, and reasonable time afforded for the child or young person to comply with the warning; and

- in the case of use of an instrument of restraint, the child or young person must be closely supervised while subject to restraint (cl 588).

A police or transfer officer must not use force unless the person is appropriately trained in relation to the use of physical intervention techniques (cl 588(2)).

The Bill provides for actions which must be taken after a child is subject to use of force (cls 589 and 590), including, if reasonably suspected of being injured or otherwise by request, examination by a health practitioner as soon as reasonably practicable, the provision of medical attention, mental health care or psychological support that the child requires, the notification of the child's parents and entitlement of an Aboriginal child to cultural support. The child is also entitled to additional support as soon as practicable after being subjected to any use of force, including to contact and be seen by a support person, support provider or family member. The Bill also provides for a right to complain about the use of force (cl 591).

Similar to cl 74 discussed above in relation to Part 3.2, in limited circumstances, cls 589 and 590 may engage the prohibition against medical or scientific experimentation or treatment of a person without their full, free and informed consent in section 10(c) and the protection of families in section 17 of the Charter. For the reasons outlined in respect of cl 74, my view is that the right in 10(c) is not limited.

Accordingly, I am satisfied the above framework accords with best practice and international standards for regulating the use of force, and thus is compatible with human rights in the Charter.

***Division 4 – Unclothed searches***

Following on from the discussion above about unclothed searches in a youth justice custodial centre, the Bill provides for similar powers in relation to a child detained in a police gaol. As discussed above, unclothed searches engage many human rights, including the protection against cruel, inhuman or degrading treatment (s 10), the protection of children (s 17), the right not to have privacy unlawfully or arbitrarily interfered with (s 13), the right to humane treatment when deprived of liberty (s 22) and the rights of children in the criminal process (s 23).

Clause 581 prohibits unclothed searches from being carried out unless in accordance with the terms of the provision. The clause sets a precondition that the unclothed search of a child may only be used where the officer in charge believes on reasonable grounds that an unclothed search is necessary in the interests of the security of the police gaol or the health or safety or wellbeing of the child or any person in the police gaol. The Bill requires that the unclothed search is only used as a last resort, having regard to the individual characteristics and background of the child, and only once satisfied that less intrusive measures such as a screening search or pat down search have first been considered.

The use of reasonable force in carrying out an unclothed search must be authorised by the officer in charge, and only where the use of force is a last resort and necessary to prevent the continuation of a serious and immediate threat to the safety of the child or any other person in the police gaol. The officer may only use as much force as is reasonably necessary to conduct the unclothed search (cl 582).

The Bill also provides for requirements that must be complied with before conducting unclothed searches, including informing the child of the authority and reasons for conducting the search, their right to complain and the process for doing so, and providing the child an opportunity (if safe to do so) to produce any prohibited item before being searched (cl 583).

The Bill also provides for standards of conduct during the unclothed search, including an obligation to conduct the search expeditiously and sensitively with regard to promoting the child's decency, dignity and privacy and, having regard to their level stage of development, individual characteristics and background (including cultural background, mental health, disability and history of trauma) (cl 584). Regard must also be had to the need to minimise causing trauma, distress or other harm to the child being searched. Officers conducting the search must be appropriately trained to conduct an unclothed search of a child. An officer conducting a search must be of the same sex (or nominated sex or gender identity as necessary), and unclothed searches must take place in the presence of another officer (cls 584 and 585). In instances where a search is carried out on a child whose gender identity does not correspond to their sex designated at birth, the additional officer must be of a sex or gender identity nominated by the child where safe and reasonably practicable (cl 585).

Further safeguarding provisions that apply, unless exceptional circumstances arise, include that a child must not be fully unclothed at any time during the search, that the search is conducted in a private place with privacy for the child, and that the child is allowed to re-dress in private (cl 584).

The Bill also provides that, as soon as reasonably practicable, a police gaol officer must make all reasonable efforts to ensure a child is provided access to medical attention, medical examination and mental health care (cl 586) with examination records to be kept by the health practitioner. Parents are to be notified upon request and an Aboriginal child or is entitled to cultural support. A child or must be offered the opportunity to contact and be seen by a support person, support provider or family member. The Bill also provides that, not more

than 12 hours after the completion of an unclothed search, the child must be informed of the above mentioned entitlements and of the right to complain about the conduct of the unclothed search (cl 587).

In my view, these provisions are compatible with international standards for regulating the use of unclothed searches in youth justice.

**Chapter 12 – Youth parole**

***Part 12.1 – The Youth Parole Board***

*Membership of the Youth Parole Board*

The Bill promotes cultural rights (s 19(2)) and special measures for members of a group with a particular attribute (s 8(4)), being race and sex, through providing for the inclusion of women and Aboriginal persons on the Youth Parole Board and their presence at meetings considering female or Aboriginal children and young persons (cls 592(3), (4),(5), (6) and (7), 596(2) and (3), and 597(3)). Of the Chair positions, one must be a woman and one must be an Aboriginal person, and there are also requirements that community member positions are filled by women and at least one Aboriginal person.

*Immunities and protections*

The Bill contains provisions which affect the circumstances in which a person may bring legal proceedings in relation to particular matters or against certain people.

Clause 617 provides for various protections and immunities for Board members. The protection and immunity granted is akin to that which would be granted to a similar role in a proceeding before the Supreme Court.

Clause 603 provides that a member of the Board or the secretary of the Board is not personally liable for any action or suit in respect of any thing done or omitted to be done in good faith in relation to any function conferred on the Board or on any members or on the secretary of the Youth Parole Board by or under this Bill or any other Act.

Section 24(1) of the Charter provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal. In other jurisdictions, it has been found that a broad statutory immunity from liability which imposes a bar to access to the courts for persons seeking redress against those who enjoy the immunity may breach the fair hearing right.

In relation to cl 603, I note that this provision only removes personal liability of members, and any liability resulting from an act or omission of a member of the Youth Parole Board attaches instead to the Crown, and as such, in my view this does not result in the imposition of a bar to bringing a proceeding.

While clause 617 may impose a bar on bringing legal action against participants at a Board meeting, the implied right of access to the courts is not an absolute right, and can be subject to reasonably justified limits under section 7(2) of the Charter. The relevant immunities and protections are appropriately granted in these circumstances, with regard to the Board's important role in administering the parole and transfer schemes, the need for finality of decisions and the maintenance of the Board's independence. The decisions of members in discharge of the Board's functions will affect the rights of children and young persons, and it is essential that members may make decisions and conduct meetings without fear of legal retribution.

I note that the Board will be subject to judicial review (other than on the grounds of denial of natural justice) and will be required to comply with reporting obligations. Finally, the Youth Parole Board is to act compatibly with the guiding youth justice principles and guiding custodial principles to the fullest extent possible (cl 17 and 437) to the extent each principle is relevant in the circumstances.

Accordingly, I am satisfied that these provisions are compatible with the Charter.

*Power to compel production of documents and attendance of witnesses*

Division 2 of Part 12.1 of the Bill provides the Youth Parole Board with the power to, by written notice:

- compel the production of documents and/or information (cl 607);
- direct a person to attend a meeting of the Youth Parole Board at a specified time or place (cl 607), including immediately (cl 609); and
- require a person to give evidence or answer questions under oath or affirmation (cl 613).

The provisions are enforced by making it an offence to fail to comply with a notice without reasonable excuse, or fail to take oath, make affirmation or answer questions without reasonable excuse (cls 614 and 615).

These provisions are relevant to a number of rights including the rights to freedom of movement (s 12), privacy (s 13), not to be compelled to testify against oneself or to confess guilt (s 25(2)(k), and the presumption of innocence (s 25(1)).

I am satisfied that the right to freedom of movement is not limited, and any interference with privacy will be lawful and not arbitrary, for the following reasons. A person can only be compelled to attend a meeting of the Board or produce documents subject to written notice. The notice must be served in accordance with specified procedural steps and must clearly outline how a person may object to the notice, including giving reasonable excuse for failing to comply. A person required to attend may request to appear by audio visual link (cl 611) instead of attending the place where the meeting is to be heard. A person has the right to claim that a document or other thing specified in the notice is not relevant to the subject matter of the meeting (cl 608). In relation to the Board's discretion to direct a person to attend immediately, this can only be done by consent or in limited and emergency circumstances, where the Board considers on reasonable grounds that delay is likely to result in evidence being lost or destroyed, the commission or continuation of an offence, the person absconding or evading attending, or serious prejudice to the conduct of the meeting.

A person may make a claim to the Board that they have a reasonable excuse for failing to comply with the notice. A 'reasonable excuse' includes the information being subject to various privileges, including self-incrimination, parliamentary privilege, legal professional privilege, public interest immunity, closed court order or statutory prohibition. Accordingly, the protection against self-incrimination is not interfered with by these provisions.

Finally, in relation to any prosecution under these provisions, an accused who wishes to rely on the 'reasonable excuse' defence will, by way of application of section 72 of the **Criminal Procedure Act 2009**, be required to present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the excuse. In other words, the provision imposes an evidential onus on an accused when seeking to rely on the defence. The Court of Appeal has held that an evidential onus imposed on establishing an excuse exception does not limit the Charter's right to a presumption of innocence, as such an evidentiary onus falls short of imposing any burden of persuasion on an accused. The onus in these offence provisions require only that an accused point to evidence of their reasonable excuse (which will be within their knowledge and means to produce), upon which the burden falls on the prosecution to prove the absence of such excuse beyond a reasonable doubt. Accordingly, the right to presumption of innocence in the Charter is not limited by these offence provisions.

*Exclusion of natural justice*

I note that the Youth Parole Board, as a prescribed entity under the *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2013*, is not a public authority for the purposes of the Charter and thus not bound to act compatibly with human rights or give consideration to human rights when making a decision.

The Bill further provides that the Youth Parole Board is not bound by the rules of natural justice (cl 606). Notwithstanding that the Board is not subject to the public authority obligation in the Charter, this provision is still relevant to the fair hearing right in the Charter (s 24) as it abrogates the common law duty to afford a person procedural fairness when a decision is made that affects the person's rights or interests.

As discussed above, section 24 of the Charter provides that a party to a civil proceeding has the right to have that proceeding determined by a competent, independent and impartial court or tribunal after a fair and public hearing. While the authorities have interpreted 'civil proceeding' in section 24(1) broadly, in my view it does not extend to the kind of administrative decision-making undertaken by the Board. Accordingly, I do not consider that the fair hearing right will be limited by the exclusion of natural justice in this context. However, the exclusion of natural justice may have implications for other rights protected by the Charter. A number of Charter rights include a protection against arbitrary treatment, and according natural justice is an effective way of avoiding arbitrariness.

However, any limitations that may result are in my view reasonably justified. The exclusion of natural justice serves the important aim of facilitating the Board to respond quickly and effectively when performing its functions, which relate to the management of children and young persons serving a sentence, many of whom may have dynamic and complex needs and pose associated risks. This includes facilitating the expeditious management of the Board's case load to ensure that grants of parole are considered without delay and at the earliest opportunity. This also includes flexibility to make prompt decisions in response to a child or young person's sudden change in circumstances or elevated level of risk (particularly in relation to cancellation of parole, variation of conditions or transfer decisions), without being required to provide an opportunity to be heard or consider submissions.

It is critical that the Board is able to make prompt decisions that have an immediate effect, as delay in determining certain matters may expose a person to a risk of harm (such as the cancellation of parole due to new terrorism risk information, or the transfer of a child to prison who cannot be safely accommodated in a youth justice custodial centre). It is also important that the Board is able to discharge its functions without being impaired or frustrated by challenges to its procedures.

The Board is still obliged to act compatibly with the guiding youth justice principles and guiding custodial principles to the fullest extent possible, which include principles intended to promote the engagement and participation of the child and young person in their rehabilitation, which would include, where appropriate and possible, permitting a child or young person to attend a Board meeting and providing them with an opportunity to comment on information to be considered by the Board. Additionally, as part of the Secretary's obligation to notify the Board about specified threatening conduct or incidents in custody concerning a detained child or young person, the Board is obliged to give the child or young person an opportunity to comment on their involvement in an incident or conduct (cl 619). Accordingly, I am satisfied that any limit on fair hearings rights is reasonably justified in the circumstances.

***Part 12.2 – Release on parole from youth justice custodial centre and cancelling parole***

The Bill establishes a framework for release on parole from a youth justice custodial centre.

The Bill largely provides for a flexible discretionary parole system (cl 627). In addition to a general discretion to grant parole, the Bill outlines the following limited circumstances where the Youth Parole Board may not release a young person on parole:

- where a young person has been sentenced to a term of imprisonment of over 12 months or with a non-parole period by a higher court and has subsequently been transferred to a youth justice custodial centre (cl 677) and that non-parole period has not expired; or
- where a young person is subject to a mandatory minimum youth justice custodial order imposed by a higher court for an assault against an emergency or custodial worker (cl 628) and that minimum term has not expired.

In addition, special provisions apply in relation to a child or young person with a terrorism record, who has been charged with a terrorism or foreign incursion offence or the Youth Parole Board has determined that there is a risk that they will commit a terrorism or foreign incursion offence (cl 629). This raises additional and distinct human rights issues and will be discussed below in relation to 'Part 15.2 – Sharing of terrorism risk information'.

The Youth Parole Board may cancel the parole of a child or young person at any time before the end of the parole period (cl 636(1)). If parole is cancelled, a warrant may be issued for the apprehension of the child or young person (cl 640).

The Bill also provides obligations for the Board to consider cancelling parole in relation to a child or young person in respect of charges for specified terrorism offences while on parole, gaining a terrorism record while on parole or if new terrorism risk information is provided, which, as above, raises distinct issues to be discussed below in Part 15.2 (cl 637, 638 and 639).

In relation to the substantive human rights implications of the above framework for granting and cancelling parole, I note that a person serving a sentence of detention has been lawfully deprived of liberty under the Charter for the duration of their head sentence. The Charter does not provide any right or entitlement to be released on parole, and the High Court has held that the power to order a detainee's release on parole may be constrained by statute (or even abolished entirely). These provisions only affect the circumstances in which the Board may order release on parole during the currency of a person's sentence, and does not alter the position that the child or young person has been deprived of liberty and lawfully detained for the duration of the head sentence. As such, any statutory constraints on the granting or cancelling of parole do not limit rights under the Charter, as any existing limits on rights, which are maintained by a person not being granted parole and remaining in detention, result from the imposition of the sentence.

That said, parole will be relevant to the procedural rights of children in the criminal process to a procedure that takes account of their age and the desirability of promoting their rehabilitation. The 'appropriate treatment' component of the children's criminal process right (s 23) includes preserving opportunities where appropriate to facilitate a child's rehabilitation, avoiding unnecessary stigma, strengthening their relationship with their family, and minimising disruptions to their education, training or employment – all of which may be furthered by granting a child parole. With regards to any limits on this right effected by the framework for denying or cancelling parole, I am satisfied that any limits are reasonably justified, for the following reasons.

While the Bill does not provide for express decision-making factors in the granting of parole (which could be said to give rise to a concern of arbitrariness or lack of certainty), this structure is designed to facilitate flexibility of parole decisions, and follows the A&Os of the Sentencing Advisory Council's *Review of the Adult Parole System* (2012). Maintaining flexibility and enabling individualised responses are particularly important when dealing with children and young persons, especially in relation to those with mental illness or disability, and will enable the Youth Parole Board to adopt a broad, inquisitorial and multi-disciplinary approach. The Youth Parole Board must still have regard to the youth justice guiding custodial principles when exercising its powers under the Bill (Part 12.1), and will be required to publish in its annual report a

statement of the purposes of parole and the general principles and factors the Board takes into account when making decisions in relation to youth parole (cl 604). The Bill also requires the Youth Parole Board to explain, in a way that accounts for the level of development of the child or young person, the purpose and effect of a youth parole order, the potential consequences of contravention and the criteria applied by the Board when determining whether to make an order (cl 621). Further, a decision to cancel parole does not preclude a child or young person from being granted parole again during the same term of detention (cl 643). Accordingly, I am satisfied that the framework for granting and cancelling parole is compatible with human rights in the Charter.

*Parole conditions*

A parole order may be subject to the standard parole conditions, any additional conditions and any special conditions (cl 631). Standard parole conditions include reporting to the Secretary, advising the Secretary of a change of address within two days after the change and not leaving Victoria without written permission of the Youth Parole Board (cl 632).

The Bill provides for additional parole conditions to be imposed in relation to a child or young person detained in respect of specified serious offences, including any condition considered necessary to protect a victim of a certain offence, restricting access to certain places or areas, restricting contact with specified persons or classes of persons, requiring the child or young person to undergo rehabilitation and treatment and/or requiring attendance at a day program (cl 633). The Bill requires the Board to impose any of these conditions considered appropriate, with regard to the circumstances of the offending. The Bill permits the Youth Parole Board to not impose standard or additional conditions if it considers that the child or young person had demonstrated a history of good behaviour and positive engagement with rehabilitation programs throughout the period of detention.

The Bill provides a further discretion to the Board to impose any special parole conditions it considers reasonable and appropriate in the circumstances. The Board must have regard to the youth justice principles and the statement of purpose of youth parole published in the annual report when exercising this discretion (cl 634).

These conditions engage a number of rights, including the rights to privacy, freedom of movement and freedom of expression. Being subject to a grant of parole, depending on the conditions, generally grants a detained person greater liberty and reduces the extent of limits on their human rights resulting from their sentence. In this regard, parole conditions generally would not result in any additional limits being imposed on rights. To the extent that it does, I am satisfied that any limits are reasonably justified in the context of a supervised release scheme such as parole where the person is still under sentence, and that they serve important objectives of protecting the community and promoting the rehabilitation of the child or young person through supported reintegration into the community. The standard conditions are those considered necessary to ensure that compliance with parole orders is able to be monitored and enforced. The imposition of additional and special conditions requires satisfaction of tests of reasonableness and appropriateness which ensure any resulting limits on rights are the least restrictive necessary in the circumstances. Finally, additional and special conditions may be amended and varied (cl 633(4) and 634(2)) to ensure they remain appropriate to the circumstances.

***Part 12.3 – Parole stage group conference***

The Bill provides for the availability of group conferences at the parole stage, to provide additional opportunities for restorative justice approaches to reduce reoffending and support reintegration.

The child or young person may be assessed to determine whether it is appropriate that they participate in a parole stage group conference and, if the conference proceeds, the convenor must prepare a report for the Youth Parole Board (cl 652). The conference may only proceed if the child or young person consents to participation (cl 647). If the assessment is that the conference is not appropriate or consent is not provided, this will not be relevant for determining eligibility for parole (cl 646). Attendees of the conference may include family members of the child or young person and a victim of the offence for which the sentence is being served (cl 649), all of whom will be subject to confidentiality obligations (cl 653).

The objects of a parole stage group conference support children's and family rights (ss 17, 23(3), 25(3)) by seeking to support reintegration into the community and/or reduce further contact with the criminal justice system, provide a safe, supported and solution-focussed process to repair harm, self-reflect and restore and strengthen relationships between the child or young person and their family and/or community members (cl 650).

Rights to privacy (s 13) and freedom of expression (s 15) are engaged by this Part, insofar as participation in the conference and preparation of the report are likely to involve the collection and disclosure of personal information to the Youth Parole Board and related parties and those parties will also be restricted in their use

of information gained through involvement in the conference. In relation to the right to privacy, any interference will be lawful and not arbitrary for the following reasons. The collection and use of personal information serve an important beneficial purpose of facilitating the transition of the child or young person from custody and their reintegration into the community, which ultimately promotes their rehabilitation. A parole stage group conference cannot proceed in respect of a child or young person without their consent (cl 647) and a refusal to participate is deemed not relevant to the purposes of making a determination about eligibility for parole. Information from a group conference is subject to a confidentiality offence provision and may only be disclosed for specific purposes, which includes the consent of the parties, for the purposes of preparing a report to the Board, or to the child or young person's legal representatives (cl 653).

Any restriction on the freedom of expression through the confidentiality provision and limits on disclosure will be necessary to respect the rights and reputation of participating persons, including victims and their representatives, and provides for disclosure with consent of the parties to the group conference. These provisions promote the protection of privacy and in many cases, the child's best interests (s 17).

Accordingly, I am satisfied that these provisions relating to parole group conferences, which are largely beneficial in nature, are compatible with the Charter.

***Part 12.4 – Youth Justice Victims Register***

The Youth Justice Victims Register will record the details of those entitled to:

- give the Youth Parole Board information that may be considered when the Board determines a child's or young person's conditions of parole (cls 654 and 664); and
- receive certain information, such as that the child or young person is to be considered for parole. They may also be informed of the date on which the child or young person is likely to be released from custody and certain conditions of their parole, if the Secretary considers the disclosure appropriate in all the circumstances (cl 654, 659).

A person may be included on the Youth Justice Victims Register in certain circumstances, such as if they are the victim of a criminal act of violence, a family member of a victim in certain circumstances or a person who can demonstrate a documented history of family violence being committed against them by the child or young person (cls 656 and 657). The applicant may also appoint a nominee to whom information is disclosed instead of the information being disclosed directly to the applicant (cl 658). The Secretary may refuse to include details of a nominee on the register in certain circumstances, including where it may endanger the safety or welfare of a person (cl 658).

Rights to privacy (s 13) and freedom of expression (s 15) are engaged by this Part, given that inclusion on the Youth Justice Victims Register involves disclosure of personal information of the child or young person to be considered for parole to persons included on the Register, coupled with the confidentiality provisions that protect the privacy of the child or young person about whom the information relates (cls 658(2)(d), 660 and 622).

In relation to the right to privacy, any interference will be lawful and not arbitrary for the following reasons. The disclosure of information to victims or their nominees promotes participation in the criminal justice system by victims, with safeguards that promote the protection of the child's best interests (s 17) by seeking to minimise stigma against children involved in criminal proceedings. The scheme expressly limits the personal information that can be provided, being the date and circumstances in which a child or young person is likely to be released from custody and the details of any parole conditions relevant to the safety of the person on the Register and the offence committed by the child or young person. The Secretary must not disclose any information unless satisfied that disclosure is appropriate in all the circumstances, following consideration of any risk of harm that may result (cl 659). The Secretary may also refuse to register a nominee if in doing so it may endanger the security of a youth justice custodial centre or the safety of any person. Any information disclosed under this scheme is subject to confidentiality and a non-publication offence provision (cls 660 and 661).

Any restriction on the freedom of expression through the confidentiality and non-publication provisions will be necessary to respect the rights and reputation of other parties, including privacy and protection of children.

**Chapter 13 – Transfers**

The Bill provides for the transfers of children (aged 16 years and over) and young persons from youth justice custodial centres to prison. This necessarily interferes with, and limits, core components of children's rights, including to be provided with a physical environment that is separate from adult facilities. I note that the rights of children in the criminal process in the Charter to segregation from detained adults expressly do not apply to children serving custodial sentences.

These provisions are consistent with the recommendation from the 2017 Youth Justice Review for the need for clear provisions to provide for the transfer of a young person to a prison, if the young person engages in behaviour that poses an unacceptable risk of serious harm to others or is repeatedly disruptive to the security or stability of the youth justice custodial centre. The underlying purpose of the transfer regime is to provide a safer, more stable custodial environment for children and young persons and staff, and recognises that children and young persons can mature and develop at different rates and pose different management needs. While a child generally attracts special protection at law and enjoys a lesser standard of culpability for criminal behaviour, depending upon their development, they may still be capable of exhibiting behaviours of, and posing similar custody management requirements of an adult prisoner, including the potential to commit violent acts that can cause serious harm to other children, young persons and staff in a youth justice custodial centre. This also recognises that, in order to provide a safe and stable place of accommodation that supports the rehabilitation and positive development of children and young persons, there are some behaviours that cannot be safely and appropriately accommodated or supported in a youth justice custodial centre without compromising the centre's capability to deliver that positive rehabilitative environment.

Clauses 667 and 668 provide that the Secretary may apply to the Youth Parole Board for a direction that a child 16 years of age or over or young person who is serving a sentence of detention in a youth justice custodial centre be transferred to a prison to serve the unexpired portion of their sentence as imprisonment. In respect of a child under the age of 18 years, an application must be accompanied by a report setting out the steps that have been taken to avoid the need to transfer the child to prison. Further, the Secretary must provide the child or young person with an opportunity to obtain legal advice in respect of an application (cl 666).

The Youth Parole Board is empowered to make the direction provided the following preconditions are established:

- it has had regard to the antecedents and behaviour of the child or young person; and
- it has had regard to the age, maturity, and stage of development of the child or young person; and
- it is satisfied that the child or young person has engaged in conduct that either a) threatened the security or stability of the youth justice custodial centre, or b) caused serious harm to, or posed a risk of serious harm to, the health, wellbeing or safety of any other person in a youth justice custodial centre or when otherwise in the custody of the Secretary; and
- the child or young person cannot reasonably be safely and appropriately accommodated and supported in a youth justice custodial centre.

In the case of a child 18 years of age or over, or a young person, at the time of engaging in the conduct referred to above, the Youth Parole Board must consider and give primary weight to alleviating future risks of serious harm to, and risks to the health and safety of, all persons in a youth justice custodial centre, and promoting the security and stability of the youth justice custodial centre (cl 667).

The Bill also includes provision to transfer a child aged 16 years or over, or a young person, upon their own application, if the Youth Parole Board considers it appropriate (cl 669). In the case of a child aged 16 years or over, or a young person, who requests to be transferred to prison, the Youth Parole Board must, amongst other factors, consider the child or young person's reasons for the request and the child or young person's capacity to make the request and understand its implications prior to a transfer decision being made (cl 669(4)). This allows the Youth Parole Board to consider a comprehensive range of factors and make a decision in the child or young person's best interest.

The Bill provides for other transfers, including requiring a child over the age of 16 years, or a young person, who is serving a sentence of detention in a youth justice custodial centre, and is subsequently sentenced to a term of imprisonment for any offence, to be transferred to prison unless the Board considers there are exceptional circumstances or the Secretary advises the Board that the Secretary does not oppose the child or young person serving the unexpired portion of the period of detention in youth justice custodial centre (cl 679). Clause 680 concerns the scenario where a child or young person is serving a sentence of imprisonment in prison and is sentenced to a period of detention in a youth justice custodial centre, and empowers the Youth Parole Board, upon application of the Secretary, to give a direction that the person serves the subsequent sentence of detention as imprisonment if appropriate to do so and having regard to the antecedents and behaviour of the child or young person.

Finally, the Bill provides for transfers from prison to a youth justice custodial centre for a child or young person who is under 21 years of age and serving a sentence of imprisonment in a prison. To give such a direction, the Adult Parole Board must be satisfied that such a transfer is appropriate in the interests of the child or young person, that the child or young person is suitable for detention in a youth justice custodial centre, that there is a place available and that the child and young person can reasonably be safely and

appropriately accommodated in a youth justice custodial centre. The Board must consider a report from the Secretary regarding these matters before making such a direction (cl 674).

I am satisfied the above provisions strike an appropriate balance between protecting the best interests of children and young persons to be accommodated in a youth justice custodial centre to the greatest extent possible, while ensuring that those that engage in serious harmful behaviour, which creates an unstable or unsafe environment for other young persons and staff, are able to be transferred to a more appropriate custodial environment better equipped to managing their complex behaviour. The framework employs prescribed criteria which must be satisfied for a transfer to occur, which involves regard to the personal circumstances of an affected person. Accordingly, I am satisfied this Chapter is compatible with the Charter.

**Chapter 14: Multi-agency panels and high risk panel**

Chapter 14 provides for the establishment of multi-agency panels and a high risk panel to oversee and coordinate service delivery and targeted case management interventions for children and young persons at high risk of engaging in serious offending or causing serious harm. The purpose of such panels is to support the rehabilitation and positive development of the child or young person to reduce their risk of reoffending and to promote community safety.

The focus of such panels on identifying individual service needs, addressing gaps in service delivery and coordinating treatment promotes the right of children to such protection as is in their best interests and is needed by them by reason of being a child. Coordinated service plans will be tailored to the individual child or young person and may include access to education, training or work, as well as access to health, mental health, disability and housing services. Ensuring appropriate delivery of treatment and disengagement interventions delivered to children or young persons at very high risk of serious offending promotes children's rights by attempting to reduce the likelihood of the child or young person returning to the youth justice system.

Panel meetings are confidential, however, members may discuss a meeting or information obtained during a meeting with any other panel member or person from that member's organisation for the purposes of performing a function or exercising a power of the panel or, in the case of multi-agency panels, delivering services to a child or young person under a coordinated service plan (cls 692 and 699). The sharing of personal information between panel members will engage the right to privacy and reputation under the Charter. However, any interference will be lawful and not arbitrary, as information may only be shared between panel members for limited, specific purposes provided for by law. Accordingly, the right to privacy and reputation will not be limited by these provisions.

**Chapter 15 – Sharing of confidential information**

***Part 15.1 – Sharing of confidential information***

Chapter 15 provides a framework that enables the collection, use and disclosure of information that is necessary for the performance of youth justice related functions. It provides for the disclosure of confidential information (defined as any health information, personal information or sensitive information within the meanings of the **Health Records Act 2001** and the **Privacy and Data Protection Act 2014** respectively), between various bodies, including official persons as defined in the Bill, information holders as defined in the Bill, interstate and Commonwealth youth justice agencies and multi-agency panels. The information sharing authorised under this Chapter does not require the consent of the person to whom confidential information relates (cl 711) and provides protection against liability for disclosure made in good faith in accordance with the Bill (cl 710).

Sharing personal, health and sensitive information about a person without consent interferes with their right to privacy (s 15), however any interference will be lawful and not arbitrary for the following reasons. Effective information sharing is critical to supporting children and young persons to rehabilitate, develop positively and not re-offend, through assessing a young person's level of risks and needs, planning and providing treatment, services and support, informing case management, supporting referral processes, and preventing harm to the young person and others. Information sharing is particularly important in the youth justice system, in which children and young persons often have multiple and complex needs and many are involved with child protection, other government service systems and non-government agencies. It also gives effect to the recommendations of the 2017 Youth Justice Review on the importance of information sharing and multi-agency service delivery, including providing for multi-agency care planning models to focus on the broader health and wellbeing needs of children and young persons, information-sharing between child protection and Youth Justice, and identifying and meeting the needs of young offenders relating to mental health and disability.

The framework provides clear and appropriately circumscribed criteria requiring that the use and disclosure of confidential information be reasonably necessary for the performance of various specified functions and duties (cls 704–709). This aims to ensure that any information shared under the Bill is necessary and

appropriate, and proportionate to the objective of delivering effective services to children and young persons involved in the youth justice system. This includes official duties under the Bill, but also extends to third party service providers. The framework allows information sharing to occur both voluntarily and in response to a request (cls 704 and 705). This permits proactive sharing of information, provided it meets the threshold of being reasonably necessary for the performance of statutory functions, which is particularly important to supporting the proactive and ongoing case management of a child or young person between various service and care providers.

While the information authorised to be shared is broad, and potentially highly sensitive and private (being personal, health or sensitive information), these categories of information are critical to enable effective service provision in a youth justice context, including to promote rehabilitation and positive development, and community safety.

The Bill provides a number of safeguards to mitigate against arbitrary interferences with privacy, including providing offences for unauthorised use or disclosure of confidential information (cl 713 and 714). Further, individuals and entities sharing information under the Bill will be required to do so in a manner that is consistent with the youth justice principles, which include that entities should act in a way that minimises stigma to the child or young person, and that the youth justice system should provide children and young persons with opportunities to participate in decision-making processes that affect them, which would include seeking children and young persons' views where it is appropriate and safe to discuss information sharing with them.

Accordingly, I am satisfied these provisions are compatible with the Charter.

***Part 15.2 – Sharing of terrorism risk information***

The Bill provides for a framework concerning the use and disclosure of terrorism risk information.

Terrorism risk information means:

- an assessment made by a specified entity, such as Victoria Police or the Australian Crime Commission, that there is a risk that the person will commit a terrorism or foreign incursion offence; and
- the information relied on in making that assessment (cl 716).

Terrorism risk information may be disclosed for the purpose of informing a decision relating to:

- parole of the child or young person;
- bail of the child or young person; or
- the care, control or management of the child or young person while they are remanded in custody or subject to a sentence (cl 715).

The Secretary or an employee of the Department may disclose terrorism risk information to a risk assessment entity or the Youth Parole Board (cls 716 and 626) and members of the Youth Parole Board or the Board's secretariat may disclose terrorism risk information to the Secretary (cl 717).

The Bill provides for the sharing of 'terrorism risk information'. It recognises that a person may pose a terrorism risk regardless of whether they have been convicted of terrorism offences. The risk information may include information regarding a person having expressed support for a terrorist organisation, for doing a terrorist act or for providing resources to a terrorist organisation. It may also include information regarding the person having, or having had, an association with a terrorist organisation or another person or group that has engaged in the above, or directly or indirectly engaged in the preparation, planning, assisting or fostering of a terrorist act.

The Bill gives the Secretary discretion to provide the Board with terrorism risk information in respect of a person (cls 716 and 629), which will preclude the Board from determining to release that person on parole until the Board has determined whether or not there is a risk the person will commit a terrorism or foreign incursion offence. Where a person has a terrorism record or the Board has determined that there is a risk the person will commit a terrorism or foreign incursion offence, the presumption against parole in cl 630 will apply. The Bill requires that the Board must not release such a person on parole unless the granting of parole is justified by exceptional circumstances (in the case of a person convicted of a terrorism or foreign incursion offence) or compelling reasons (in any other case). The Bill also provides similar obligations for the Board in relation to cancelling parole (cls 637, 638 and 639) and making transfer decisions (cl 665).

In addition to the discussion above about granting and cancelling parole and the interaction with the right to liberty, these provisions also engage the rights to privacy (s 13) expression (s 15) and freedom of association (s 16). The Bill employs a broad concept of 'terrorism risk' to include associating with terrorists or expressing support for terrorist offenders, organisations or, potentially, terrorist ideas. This means that a person's

associations and expressions of support may potentially form the grounds of an assessment that they pose a terrorism risk, and as a consequence, are presumed to be denied parole without 'compelling reasons' or 'exceptional circumstances' to justify parole, whichever is applicable. This may have a chilling effect on a person's rights to freedom of expression and association, making a person less likely to associate with certain others or express certain ideas for fear that it will impact on their grant of parole or lead to a cancellation of an existing grant of parole.

In my view, any such limitations will be reasonably justified. The criteria of 'terrorism risk' is appropriately confined to expressions of support for terrorist acts or organisations (rather than support for mere persons, ideas or beliefs) or associations with persons who have expressed such support, engaged directly or indirectly in a terrorist act, or associated with a terrorist organisation (rather than a mere person of concern). Further, the Bill includes a safeguard to prevent inadvertent associations from being a relevant consideration, by requiring the Board to be satisfied that the child or young person in question knew that they were associating with a person or organisation who posed a 'terrorism risk'. If the Board is not satisfied that the person had the requisite knowledge, the Board is precluded from having regard to that information about such associations when assessing risk or determining whether to grant or cancel parole. Finally, even if a person is found to have such associations and requisite knowledge, the Board must still determine that the person is at risk of committing a terrorism or foreign incursion offence for the presumption to apply. This ensures that persons who may have incidental associations with terrorist offenders or groups (such as a family member of a terrorist offender with no involvement in their offending) will not be captured by the presumption. Accordingly, I am satisfied that any limits on these rights are reasonably justified in this context.

In relation to the specific application of this scheme to children and the effect on children's rights (s 17 and 23), I note these provisions implement a number of the recommendations of the Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers, which observed that children are a particular target for radicalisation. While a child may have a lesser status or culpability at law, they may still pose the same level of risk to the community as an adult offender and the same potential to commit terrorist acts that cause serious and catastrophic harm. In order to ensure the community is adequately protected from the threat of terrorism, it is necessary and appropriate that a presumption against parole for those that pose a terrorist risk apply to children without modification, and that children be deterred and prevented from becoming a terrorist risk to the greatest extent possible.

Accordingly, I am satisfied that these provisions are compatible with human rights in the Charter.

**Chapter 16 – System planning, performance, collaboration and accountability**

The Bill creates an obligation on the Secretary to prepare a strategic plan for the youth justice system, which must include a performance management framework that sets out the outcomes against which the performance of the youth justice system in meeting its objectives and fulfilling its key actions can be measured (cl 718). The Secretary is required to publish on the Department's website details about how it has achieved the outcomes specified in the performance management framework set out in the strategic plan (cl 719), and particularise the steps taken to improve outcomes for Aboriginal children and young persons, and whether those outcomes are being achieved (cl 721).

It also places obligations on services in the youth justice system to deliver services to the child that will support the child or young person to rehabilitate, develop positively, not commit further offending, and transition effectively from custody into the community, and work to identify and resolve any issues that impact the delivery of services to the child or young person (cl 720).

These requirements ensure that there is a level of accountability for the Secretary in managing Victoria's youth justice system, and will promote the rights of children and young persons. Accordingly, I am satisfied the above framework is compatible with human rights in the Charter.

**Chapter 17 – Children and Young Persons Infringement Notice System (CAYPINS)**

The Bill provides for a process for resolving infringement notices issued in relation to children and young persons. This process takes into account the considerations around children being financially unable to personally pay an infringement penalty, and seeks to balance the need to enforce such penalties against the rights of the child to protection by way of their vulnerability as children. CAYPINS enforcement promotes the rehabilitation and diversionary elements of the criminal process rights of children by seeking to avoid a child or young person being drawn further into the justice system for relatively lower level infractions.

The Bill provides a presumption that all infringements will proceed via CAYPINS unless the enforcement agency considers that in the interests of the administration of justice or the interests of the child, it is more appropriate to have the matter heard by the Children's Court. The Children's Court is also provided with the power to refer summary proceedings for infringement offences to CAYPINS, unless it is in the interests of

justice or the child for the matter to be heard by the Children's Court or the child objects (cls 722 and 724). This is intended to limit the number of child infringements taken to court to only those that are appropriate.

The Bill also requires that, when an infringement penalty is lodged with the registrar, the registrar must confirm whether there are other infringement penalties registered in CAYPINS in respect of that child, and have those CAYPINS matters heard together to the extent reasonably practicable (cls 726 and 727), ensuring that multiple infringement penalties do not exceed the maximum fine that may be imposed by the Children's Court. This facilitates efficient resolution of CAYPINS matters, minimises circumstances where a child is facing concurrent infringement processes in court and in CAYPINS and minimises the number of times a child is required to attend a hearing. This is consistent with the Bill's overall focus on diverting children from court attendances where possible and appropriate.

The Bill provides that the registrar must notify the child of a date by which the child must request a hearing (cl 730) and set out their options regarding responding to the infringement. In the absence of a request for a hearing, the registrar will make their decision on the papers (including any written materials provided by the child, which includes a right to provide information relating to a child's employment, school attendance, personal and financial circumstances and special circumstances). This is intended to minimise the attendance of children at court, limit their exposure to the criminal justice system and reduce the impact on court resources where a CAYPINS hearing is scheduled but the child does not attend.

In a similar way to the operation of the sentencing hierarchy, and consistent with the sentencing principle of minimum intervention, CAYPINS orders must be imposed at the lowest appropriate amount (cl 733). This is intended to ensure consistency of approach between the court and CAYPINS in considering the suitability of imposing a fine.

As referred to above, the Bill allows for a child to provide information prior to the registrar making their decision (whether in writing or at the hearing, in the event that the child requests a hearing) concerning the existence of any special circumstances as defined in the **Infringements Act 2006**. The registrar will be required to have regard to any information provided. This is intended to ensure that a child with special circumstances is not disadvantaged by having the matter proceed via CAYPINS rather than through Fines Victoria.

Finally, the youth justice principles also apply to CAYPINS, and registrars will be required to have regard to the youth justice principles in making any decisions under CAYPINS.

Accordingly, I am satisfied the above framework is compatible with human rights in the Charter.

**Chapter 18 – Additional safeguards**

***Part 18.1 – Additional safeguards***

The Bill provides that statements made by a child or young person participating in treatment, rehabilitation or restorative justice programs are not admissible in criminal proceedings unless the child or young person consents to its use or disclosure (cls 745 and 747). Similarly, any risk rating derived from an assessment of a child's risk of re-offending is not admissible prior to the child being found guilty of the offence (cl 746).

These safeguards promote rights such as the presumption of innocence (s 25) or privilege against self-incrimination (s 25(2)(k)). The provisions also indirectly promote the rehabilitative elements of the children's rights by allowing a child to participate in treatment, rehabilitation or restorative justice programs during the criminal process without fear of adverse consequences for any pending charges. They also facilitate more frank and candid disclosures during participation in risk assessments, which determine suitability for intervention and diversion programs, without such information prejudicing any findings of guilt. The safeguards implement the recommendations of both the 2017 Youth Justice Review and the Harper Lay Review to strengthen the efficacy of pre-trial interventions that will promote rehabilitation, reduce offending and promote community safety.

***Part 18.2 – Powers in relation to medical services***

*Powers to order medical examination*

The Bill provides the Secretary powers to order a child or young person in legal custody to be examined to determine their medical, physical, intellectual or mental condition and obliges the Secretary to order an examination to determine if the child or young person has an impairment where it appears to the Secretary that they have one and such an examination would assist in supporting their positive development and rehabilitation. The Bill also empowers the Minister to make arrangements for the provision of necessary treatment (including the admission to hospital) of any child or young person in the Secretary's legal custody (cl 748).

These powers are relevant to the right to privacy (s 13) through the collection of health information, and the protection against medical treatment without consent (s 10(c)). While it remains an open question as to

whether 'treatment' extends to a mere medical examination, I acknowledge that the meaning of the word 'treatment' is to be interpreted broadly. Nevertheless, I consider any interferences with privacy to be lawful and not arbitrary, and any interference with the protection against medical treatment without consent to be reasonably justified. These provisions are necessary for the Secretary to be able to effectively discharge their duty of care over a child or young person in legal custody. In order to provide for the safe accommodation of a child or young person, it is necessary to understand the special needs and vulnerabilities of that person. Additionally, the collection of such information facilitates giving effect to the guiding custodial principles and rights by assisting the youth justice system to support that child or young person, regulate their behaviours in custody and facilitate them to better engage with their rehabilitation and schooling. These provisions only authorise the examination and provision of treatment, and do not oblige the child or young person to participate or consent to any treatment. Accordingly, I am satisfied that these powers are compatible with the Charter.

*Substituted consent to treatment*

The Bill empowers specified persons to consent to the provision of medical treatment or hospital admission in relation to a child in the legal custody of the Secretary (even if the child's parent refuses to give consent) if a registered medical practitioner advises that such conduct is necessary (cl 748(4)).

This provision is relevant to the protection of families (s 17), in that it empowers a specified person to overrule a child's parent who has refused to give consent to medical treatment. However, I am satisfied that this provision is compatible on the grounds that it concerns a child who is in the legal custody of the Secretary and can only be enlivened in circumstances where a registered medical practitioner advises that such treatment is necessary, which is a high threshold.

Importantly, the provision does not allow consent to be substituted if the child is 18 years of age or over, or in the case of a young person.

***Part 18.3 – Cultural support plans for Aboriginal children and young persons***

The Bill introduces a requirement that the Secretary must offer each Aboriginal child or young person who is subject to a custodial sentence or supervised community-based sentence an individualised cultural support plan (cl 750), and, if requested, provide assistance to develop one. This promotes cultural rights of Aboriginal people by facilitating connections with family, kin, community, culture, Country and Elders and providing that Aboriginal children and young persons who commit offences should be dealt with in a way that upholds their cultural rights and sustains such ties.

The Bill also provides privacy safeguards by requiring the consent of the child or young person in order to use or share a cultural support plan, and specifies the limited purposes to which such a plan may be used (cl 753).

Accordingly, I am satisfied these provisions are compatible with the Charter.

**Chapter 19 – Transitional provisions and consequential amendments relating to minimum age of criminal responsibility**

***Part 19.1 – Transitional provisions***

To give effect to the new minimum age of criminal responsibility of 12 years of age, the Bill sets out how a child will be treated in circumstances where the child has engaged in conduct that may constitute a criminal offence prior to the commencement of this Chapter. The Bill provides that irrespective of whether the conduct is alleged to have occurred, or the offence is alleged to have been committed, before, on or after the commencement day:

- a child cannot be held criminally responsible for conduct alleged to have occurred when the child was 10 or 11 years of age (cl 769(2));
- a police officer must not charge a child for an offence allegedly committed when a child was 10 or 11 years of age (cl 769(3)); and
- a criminal proceeding must not be commenced for an offence allegedly committed when a child was 10 or 11 years of age (cl 769(4)).

The Bill also sets out what will happen to existing court orders and ongoing criminal proceedings on commencement of this Chapter, including that:

- where a criminal proceeding is on foot for an offence allegedly committed by a child at 10 or 11 years of age immediately before the commencement day, the child is taken to be not guilty of the alleged offence (cl 771(1)(a)); and
- where a sentencing order is in force immediately before the commencement day, any conviction or finding of guilt imposed on a child for an offence committed at 10 or 11 years of age is taken to be set aside, with the effect that a child is released from any obligations under a sentence (cl 773).

To give effect to these settings for children who may be in custody on the commencement of this Chapter, the Bill provides for the immediate release of any children in police custody, on remand or in custody (cls 770, 771(1)(b) and 773(1)(c)).

Similar to cl 769, cl 774 provides that, irrespective of whether the conduct is alleged to have occurred, or the offence is alleged to have been committed, before, on or after the commencement day:

- the presumption of *doli incapax* applies to a child in relation to any conduct alleged to have occurred when the child was 12 or 13 years of age (cl 774(1));
- a police officer must have regard to whether it appears there is admissible evidence to prove the child's knowledge beyond reasonable doubt before commencing proceedings for an offence allegedly committed when a child was 12 or 13 years of age when commencing proceedings on or after the commencement day (cl 774(2)); and
- police prosecutors must review charges for any indictable offence tried summarily in the Children's Court against children who were 12 or 13 years of age at the time of the alleged commission of the offence, when commencing proceedings on or after the commencement day (cl 774(3)).

These provisions seek to minimise any potential interference with the sentencing jurisdiction of a court and to avoid the exercise of a judicial power by the legislature, whilst ensuring the new minimum age applies beneficially to as many children as possible. If any difficulty arises because of the operation of these provisions, the Bill enables a court to make any appropriate order to resolve the difficulty and to give effect to the transitional arrangements (cl 775).

These transitional provisions support children aged 10 or 11 years who may already be in the criminal justice system on commencement of this Chapter to benefit from the raise in minimum age, recognising that children aged 10 and 11 lack the capacity to be held criminally responsible for their actions. These provisions promote the right of children to such protection as is in their best interests (s 17(2)) and the right of children charged with a criminal offence to a procedure that takes account of their age (s 25(3)), in a manner consistent with the purposes of the Bill.

Further, the Bill provides that the fact that a proceeding has been discontinued under clause 1702 does not of itself entitle the child to be awarded costs (cl 777). The Bill also provides that a person released from custody, taken to be not guilty, or whose conviction or finding of guilt has been set aside is not entitled to compensation as a result of any past lawful criminal justice or law enforcement process (cl 778), as well as providing an immunity for any person who exercised a power or performed a duty in good faith (cl 778(2)). The provisions will otherwise preserve a child's capacity to make a claim in respect of any improper or unlawful conduct that the child may have experienced while being subject to any past legal processes (cl 778(3)).

Clauses 777 and 778 engage property rights in section 20 of the Charter and the fair hearing right in section 24. As noted above, a legal right (including a legal action for compensation) may be considered property for the purposes of section 20. Section 20 does not itself provide a right to compensation. As clauses 777 and 778 are clear and certain, will be publicly accessible and are unlikely to operate arbitrarily, any deprivation of property effected by them will likely be done in accordance with law, as required by section 20. Accordingly, I do not consider that section 20 of the Charter will be limited.

Clause 778 may abolish or limit a person's right to bring legal proceedings which may constitute a limit on that person's right to a fair hearing under section 24 of the Charter. The right includes the common law right to unimpeded access to the courts. In my view, any resulting limits would be reasonably justified in this context as the application of these amendments is limited to conduct or processes that occurred under lawful authority pursuant to the superseded legislation, or in relation to persons who were exercising powers or performing duties that at that time were pursuant to lawful authority. The amendments are appropriately tailored in that they do not extend to bar proceedings in relation to unlawful or improper acts, or conduct done without good faith. Raising the age of criminal responsibility reflects developments in medical and scientific evidence, as well as international norms, since the longstanding historical minimum of 10 years was established. Accordingly, I consider it is an appropriate balance that prior actions or legal outcomes which occurred lawfully do not attract liability, noting that the transitional provisions of the Bill ensure that the any child aged 10 or 11 years who may already be in the criminal justice system on commencement of these provisions, will receive the benefit of these amendments.

***Part 19.3 – Amendment of Children, Youth and Families Act 2005***

This Part makes consequential amendments to the **Children, Youth and Families Act 2005** to account for the changes to the minimum age of criminal responsibility. Changes include repealing the previous minimum age of criminal responsibility section in the Act (cl 782) and amending provisions to reflect the new minimum age, such as ensuring that the court can only make youth residential centre orders for children 12 years of age

or over (cl 786). In doing so, this Part broadly promotes children's rights under the Charter in line with the policy intent of the minimum age reforms.

***Part 19.5 – Amendment of Crimes (Mental Impairment and Unfitness to be Tried) Act 1997***

Part 19.5 sets out transitional provisions for children who are subject to supervision orders under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** in respect of conduct that occurred when they were 10 or 11 years of age. Upon commencement of Part 1.2 of this Bill, a declaration that a child is liable to supervision has no effect and is taken to be set aside (cl 795). Consistent with the approach to sentences imposed following a finding of guilt in Part 19.1, the practical effect of these measures is that a child is to be released from any obligation to comply with the conditions of an order, and if the child is in custody, the child must be released. As with Parts 19.1 and 19.3, this Part also broadly promotes children's rights under the Charter by enacting consequential amendments giving effect to the new minimum age of criminal responsibility.

***Part 19.6 – Amendment of Crimes Act 1958***

The Bill makes amendments to ensure that existing conspiracy, incitement, recruitment and complicity offences will apply to those who seek to exploit children who do not have criminal capacity, either because they are under the new raised minimum age of criminal responsibility or are subject to the presumption of *doli incapax* (cls 797–799, 803). This includes lowering the age threshold of the recruitment offence in section 321LB of the **Crimes Act 1958** from 21 to 18 years old to avoid any unintended gaps (cls 799–800). The purpose of these provisions is to ensure that adults do not take advantage of children who are incapable of forming criminal intent in order to commit crimes and those adults are able to be held accountable for their actions if they do so.

The Bill promotes the right to privacy (s 13(a)) and right to protection in a child's best interests (s 17(2)) by prohibiting police officers from obtaining fingerprints from and conducting forensic procedures on children who are under the minimum age of criminal responsibility (cls 805 and 807). The Bill also orders the destruction of fingerprints and of samples and other identifying information for children under 12 years of age previously obtained in relation to an offence allegedly committed when a child was under the new minimum age and makes it an offence for a person to use or caused to be used, or fail to destroy, fingerprints or forensic samples that are required to be destroyed (cl 810). These provisions align with the reform to raise the minimum age as they limit a child's exposure to further criminal investigation and recognise neurobiological evidence that children under the age of 12 should be regarded as incapable of forming the intent necessary to commit a crime.

***Part 19.7 – Amendment of Criminal Procedure Act 2009***

The Bill introduces provisions to allow the issue of whether the presumption of *doli incapax* is rebutted to be determined pre-trial by a judge alone in the County Court or Supreme Court (cl 823). As with the reforms in Part 1.2 of the Bill, the purpose of these provisions is to expedite consideration of whether a child aged 12 or 13 has the capacity to be held criminally responsible to reduce any unnecessary ongoing and harmful exposure to the criminal justice system.

As provided for in the new Division 5 of Part 5.5 of the **Criminal Procedure Act 2009** (as inserted by cl 823), at a pre-trial hearing, there are two possible outcomes. First, the judge may determine the presumption is not rebutted and direct that a not guilty finding be recorded (new s 206E(1)(a)), which has the effect that the child cannot be held criminally responsible. Or, second, the court may determine that the presumption has been rebutted beyond reasonable doubt and order that the matter proceed to trial or to the determination of other pre-trial issues (as the case requires), which has the effect that the child has the requisite capacity to be held criminally responsible at trial (new s 206E(1)(b)). This will be an interlocutory decision (see the definition in cl 811(2)). This decision can be appealed (see cl 825). Subject to an appeal, the matter will proceed to trial by a jury on the elements of the offence, with *doli incapax* treated as finally determined.

A pre-trial determination made by a judge alone serves legitimate objectives of avoiding the costs associated with having a jury present to understand complex medico-legal evidence, and reducing hearing time and resources required for court proceedings. Ultimately, a pre-trial determination can only proceed if the court is satisfied that it is in the interests of justice to make such an order (new s 206A(1)(d)). Safeguards are in place, including that a child must apply to have the issue of their criminal responsibility determined by a judge alone (new s 206A(2)) and the court must be satisfied the child has obtained legal advice on the effect of the issue being determined by a judge alone, without a jury, before the trial (new s 206A(1)(c)). This recognises that an accused child has a fundamental criminal procedural right to have their criminal proceeding determined by a jury, and therefore only the accused child should be able to waive that right. Further, any reasons for judgment or decision by a judge alone must provide the principles of law applied by the court and the facts on which the court relied (new s 206G), promoting transparency in the criminal process. I am satisfied that

these safeguards are sufficient to ensure there are no resulting limits on the fair hearing right in section 24 of the Charter or the rights in criminal proceedings in section 25.

The pre-trial framework also considers the needs of children by permitting a child to be absent from the pre-trial hearing if the court considers it is in the interests of justice, which recognises that the evidence led to rebut the presumption often concerns a child's intellectual and moral capacity which may be harmful for a child to witness (new s 206C(2)). Although a child may apply to not attend the hearing, because cl 823 does not amend a child's entitlement under section 25(2)(d) to be tried in person, I do not consider that right to be limited.

The Bill also allows a court to make a suppression order to prevent certain material used in a pre-trial determination from being published if the court is satisfied it is in the public interest to do so (new s 206H). This is intended to prevent the release of information that could prejudice any subsequent trial of an accused child or impact a child's rehabilitation. Although there is capacity for a suppression order to be granted, as noted above, any reasons for judgment or decision by a judge alone must nevertheless provide the principles of law applied by the court and the facts on which the court relied upon (new s 206G), promoting fairness and transparency in the criminal process.

Though the making of a suppression order, depending on its terms and scope, may limit an accused's right to a public hearing (s 24) and/or the rights of others to seek and receive information (s 15(2)), the court is required to be satisfied that it is in the public interest to do so. Further, such an order protects a child's right to privacy (s 13(a)), given that information that might enable an accused to be identified may be prevented from being published.

Having regard to these factors, in my view, these limitations are reasonably justified given the safeguards and benefits.

***Part 19.8 – Amendment of Family Violence Protection Act 2008***

The Bill ensures that the existing approach to age-settings and family violence intervention orders will continue once the minimum age is raised to 12. This means that children under the minimum age may still be subject to family violence intervention orders, however, they will not be subject to any criminal consequences for breaching such an order. This recognises that intervention orders can be a useful tool in appropriate cases to manage family violence risk, and maintains existing practice in that historically, there has been no minimum age for respondents in family violence proceedings that restricts the application of family violence intervention orders to children.

The Bill also makes minor amendments to clarify in sections relating to contraventions of orders that a child under the age of 12 cannot commit an offence (cls 827–829), and to implement gender-neutral language in the amended provisions (cl 828).

These provisions broadly promote children's rights (ss 17(2) and 25(3)) under the Charter in a manner that is consistent with the policy intent of the overall Bill and raising the minimum age of criminal responsibility.

***Part 19.14 – Amendment of Personal Safety Intervention Orders Act 2010***

In contrast to family violence intervention orders in Part 19.8, the Bill makes amendments to raise the minimum age for respondents to personal safety intervention orders from 10 years to 12 years, in line with the raised minimum age of criminal responsibility (cl 837). The differentiated approach is appropriate as the age settings for personal safety intervention orders are currently tied to the minimum age of criminal responsibility, unlike family violence intervention orders which currently have no minimum age requirements.

Upon commencement of Part 1.2 of the Bill:

- an application for a personal safety intervention order cannot be made against a child under the age of 12 (cl 837);
- a personal safety intervention order that is in force against a respondent who at the time of application was 10 or 11 years of age is taken to be set aside (cl 839; new s 200(1));
- where an application is set aside, the respondent is released from any obligation to comply with the order (cl 839; new s 200(2));
- an application to make, vary, revoke or extend a personal safety intervention order against a child who was 10 or 11 years at the time of application must be dismissed by the court (cl 839; new s 201); and
- if any difficulty arises because of the operation of these provisions in relation to the dismissal of an application or the setting aside of a personal safety intervention order, the court may make any order it considers appropriate to resolve the difficulty (cl 839; new s 202).

As with family violence intervention orders, these settings broadly promote children's rights (ss 17(2) and 25(3)) under the Charter.

***Part 19.16 – Amendment of Spent Convictions Act 2021***

To support raising the minimum age of criminal responsibility from 10 to 12 years, the Bill introduces an information management scheme for convictions imposed when a child was under 12 years of age. The minimum age of criminal responsibility reforms recognise that a child under 12 years of age should never have been convicted of a criminal offence because they were incapable of forming criminal intent. Therefore, people who received criminal convictions when they were aged 10 or 11 should not be subject to longer-term adverse consequences.

Currently, the *Spent Convictions Act 2021* has the effect that a conviction that was received at age 10 or 11 is immediately spent after the sentence is completed.

Once a conviction is spent, it no longer forms part of a person's criminal record, and a person is not required to, and cannot be, requested to disclose the existence of the spent conviction or related information. However, the Spent Convictions Act 2021 contains an information management framework that authorises a range of entities to collect, access, disclose, and use spent conviction information.

The proposed amendments to the *Spent Convictions Act 2021* will:

- introduce safeguard provisions that prevent spent conviction information relating to criminal convictions received by a person when aged 10 or 11 ('spent childhood conviction') from being used for a law enforcement function, by a court or tribunal to make adverse character assessments in legal proceedings, or to refuse, revoke or terminate the registration, accreditation, licence or employment, or appointment, status or privilege of a person (cl 844; new ss 24B, 24C and 24D);
- require persons or bodies that disclose spent convictions to take reasonable steps to determine whether a conviction is a spent childhood conviction and to notify the recipient that a conviction being disclosed is a spent childhood conviction, with limitations on its use (cl 844; new ss 24A); and
- introduce a new offence for a person to use a spent childhood conviction contrary to the safeguards prohibiting their use for a law enforcement function, or to refuse, revoke or terminate the registration, accreditation, licence or employment, or appointment, status or privilege of a person, to encourage compliance (cl 844; new s 24E).

The amendments to the information management framework contained in the *Spent Convictions Act 2021* will not affect the existing purposes for which spent convictions may be collected, accessed or disclosed under Division 2 of Part 3 of the *Spent Convictions Act 2021*. The intent of the amendments is to limit the lawful use of a spent childhood conviction through the introduced measures.

The safeguards will not apply to the use of a spent childhood conviction for the purpose of child protection matters, the Family Violence Information Sharing Scheme (FVISS) or Child Information Sharing Scheme (CISS), the Therapeutic Treatment Order (TTO) scheme, court administration or research purposes and data analysis (see, e.g., sections 22A–22E *Spent Convictions Act 2021*, cl 844; new ss 24B(2), 24C(2) and 24D(2)).

The use of spent childhood conviction information for child protection matters and the FVISS, CISS and TTO schemes serve legitimate purposes that are not intended to have an adverse criminal consequence for the child. For example, use of this information may provide relevant context for case management purposes (e.g. in a child protection matter) or provide critical information that serves a rehabilitation purpose and supports the child's participation in a therapeutic program (e.g. for the purposes of a TTO). Enabling relevant information to be shared through the FVISS and CISS, with a targeted focus on the use of the information for safety, health and wellbeing purposes, is critical for the effective operation of these schemes.

Permitting the use of a spent childhood conviction for the purposes of court administration will ensure that the courts and court administrators are not inhibited from using this information as required to perform the administrative functions required by the courts, which will not have a detrimental impact on the person about whom the information relates. Similarly, allowing the use of a spent childhood conviction for research and data analysis purposes ensures that such information can continue to be used to inform important research and policy development. Consistent with the right to privacy (s 13(a)), existing data handling practices and procedures for these purposes, such as the de-identification of statistics, mitigate the risk of disclosures that could have a detrimental consequence for a person about whom the information relates.

Restricting the use of information related to spent childhood convictions recognises the desirability of promoting the rehabilitation of a child who was previously convicted of an offence at an age when it is now recognised the child did not have the capacity to form criminal intent. In doing so, the provisions promote the

protection of children generally (s 17(2)) and the rights of children in the criminal process to be treated in a way that is appropriate for their age (s 25(3)) by accounting for the special vulnerability of children.

By restricting the sharing and use of spent conviction information relating to convictions received by a person aged 10 or 11, the Bill also engages the right to equality and non-discrimination in section 8(3) of the Charter because, as noted above, age is a protected attribute. For the reasons outlined above, I am satisfied that any limits on the right to equality and non-discrimination are reasonably justified. To the extent that these provisions engage the right to privacy (s 13(a)) under the Charter by continuing to provide for the disclosure and use of spent childhood convictions, I am satisfied that any interference with a child's privacy is neither unlawful nor arbitrary. The *Spent Convictions Act 2021* clearly sets out the circumstances in which a spent childhood conviction may be disclosed and the use of that information is targeted towards appropriate aims, as outlined above.

***Part 19.17 – Amendment of Victims' Charter Act 2006***

The Bill makes amendments to the definitions of 'person adversely affected by crime' and 'victim' to ensure that victims' rights under the **Victims' Charter Act 2006** extend to cases where a victim is affected by the conduct of a child who is under the minimum age of criminal responsibility or a child to whom the *doli incapax* presumption applies (cls 846–848).

Despite these reforms, once the minimum age of criminal responsibility is raised, children under 12 will no longer be charged and prosecuted for alleged offences, meaning any victims' rights that relate to criminal processes will no longer apply, which is consistent with a child under the minimum age of criminal responsibility's right to privacy and reputation (s 13).

This approach is intended to safeguard victims' rights and entitlements as far as possible, whilst balancing the need to protect and promote children's rights (s 17(2)) under the Charter in accordance with neurobiological evidence that children under the age of 12 should be regarded as incapable of forming the intent necessary to commit a crime.

**Chapter 20 – Additional amendments to the Children, Youth and Families Act 2005**

Chapter 20 makes amendments to the **Children, Youth and Families Act 2005** in advance of the commencement of those parts of the Youth Justice Bill not covered by clause 2(2). Equivalent clauses are contained in Part 10.7 and Part 18.1 of the Bill and covered in the analysis in respect of those parts.

**Chapter 21 – Transitional Provisions**

Part 21.6 provides that an order made under the ***Children, Youth and Families Act 2005*** (**CYF Act**) will continue to operate on foot in accordance with the provisions of the CYF Act, and any orders made after the operative commencement of this Bill will be made under this Bill.

However, to promote the rehabilitation and positive development of children and young persons, the Bill provides for various sentencing elements implemented by this Bill, which are beneficial to children and young persons, to be able to be applied to those on existing orders under the CYF Act. This is the same approach that is applied to existing parole orders. This includes requiring that, in summary, upon the operative commencement of the Bill:

- in relation to imposing a fine for breach of an undertaking, the Court must be satisfied that a child has the means and capacity to pay a fine, and cannot impose a fine for breach of an accountable undertaking by a child aged 10 to 14 years of age (cl 875);
- where a person breaches a good behaviour bond, if the Court proceeds with further hearing and determination of the charge the Court must impose an order from the sentencing hierarchy under this Bill (cl 876);
- that a person is taken not to have breached a probation order or youth supervision order by committing an offence unless the offence is one punishable by imprisonment (cls 877 and 880);
- in relation to revoking a probation order for a breach, the court cannot impose a more severe sentence in the sentencing hierarchy unless the person commits an offence punishable on first conviction with imprisonment of five years or more; or the conditions of the contravened order, or the support or assistance offered to the person during the remaining of the order, cannot be varied in a way that would make the order suitable for that person (cl 878);
- when varying, adding or substituting specified special conditions of probation orders, youth supervision orders, youth attendance orders and youth control orders, the Court must instead impose analogous specified conditions provided by this Bill, must not impose certain specified restrictive conditions under the CYF Act, must consider imposing additional special conditions that will support the rehabilitation and positive development of the person, and must take into account factors provided by the Bill in relation to specified determinations (cls 879, 881, 883 and 884);

- when hearing an application to vary a youth supervision order on contravention, the Court be empowered to impose judicial monitoring (cl 882); and
- where a person breaches a youth control order, the Court may vary or revoke the youth control order in accordance with the framework for variation or revocation of a community-based order for contravention under this Bill, and the presumptions of revocation under s 409Q and of detention on revocation under s 409R of the CYF Act do not apply (cl 885).

These provisions promote the children's right (s 17) by supporting their rehabilitation and positive development and ensuring that a broader cohort of children currently subject to youth justice orders are able to benefit from the reforms provided by this Bill.

**Chapter 22 – Trial of electronic monitoring of children on bail in certain circumstances**

The Bill amends the ***Bail Act 1977*** (**Bail Act**) to provide for a two-year trial of electronically monitored bail for children. Under the trial, specified venues of the Children's Court and the Supreme Court will be empowered to order that a child's compliance with a curfew or geographic exclusion zone condition be electronically monitored. These amendments are intended to promote a child's compliance with their bail conditions and provide an additional tool for bail decision makers to mitigate the risks that a child may pose if released on bail.

Electronic monitoring will require a GPS-enabled device to be fitted to an accused child's body (usually the ankle) that will enable Youth Justice to monitor remotely the child's location. An accused child will not be actively monitored in real-time, but the electronic monitoring system will generate an alert if the wearer is not complying with a curfew or geographic exclusion zone conduct condition. Electronic monitoring alerts will show whether the accused is not at their residence when their bail conditions require it, or whether they are at a prohibited location such as the alleged victim's suburb.

The provisions include safeguards to ensure that electronic monitoring is only imposed where it is appropriate to monitor compliance with a curfew or geographic exclusion zone, and where electronic monitoring is appropriate and no more onerous than required to address a specified risk.

Provisions underpinning the trial of electronic monitoring promote children's rights by increasing opportunities for some young people to be released on bail. The provisions balance the community's right to security with the promotion of familial relationships, education and employment, and connection to ongoing social supports for children by allowing children to be released on bail in a more rigorous supervised and monitored fashion than present mechanisms allow.

**Part 22.1 – Amendment of Bail Act 1977**

Clause 903 of the Bill inserts a new Part 2A into the Bail Act, which sets out the trial of electronic monitoring of children on bail. Clauses 899 to 902 make necessary amendments to the Bail Act to support the trial of electronic monitoring provided for in Part 2A.

*When electronic monitoring conditions can be imposed*

The Bill empowers the Supreme Court and prescribed Children's Court venues to impose electronic monitoring conditions when granting or varying bail for an accused child and provides specific criteria to limit the circumstances in which such conditions can be imposed. The electronic monitoring conditions are listed at new section 17E. They require the accused to wear an electronic monitoring device for 24 hours each day, to not tamper with or remove that device, and to comply with any necessary direction of the Secretary of the Department of Justice and Community Safety (the Secretary) to ensure that the accused is electronically monitored.

The Bill limits the circumstances in which electronic monitoring conditions can be imposed on an accused child. New sections 17D and 17G provide that electronic monitoring can only be imposed if:

- the accused is 14 to 18 years of age, but was under 18 years of age at the time of alleged offending;
- the bail decision maker is either a prescribed venue of the Children's Court or the Supreme Court;
- the child is to be bailed to reside at an address in a prescribed region of the State;
- the Court is considering imposing a curfew and/or a geographic exclusion zone as conduct conditions, and believes it is appropriate to impose the electronic monitoring conditions to monitor compliance with these conduct conditions;
- the Court has received a suitability report prepared by Youth Justice and is of the opinion that the child is suitable to be electronically monitored and that there are adequate resources and equipment available.

The electronic monitoring trial will operate within the existing legal framework for making bail determinations. For example, in all bail determinations, section 4E of the Bail Act requires an accused to be refused bail where the bail decision maker determines that the accused on bail would endanger the safety and welfare of the community (including through further offending), interfere with a witness or obstruct the course of justice, or fail to surrender into custody. The availability of electronic monitoring conditions provide an additional tool for bail decision makers that can, along with a suite of other conduct conditions, be used to mitigate these risks to an acceptable level, enabling an accused child to be released into the community on bail.

Clause 902 of the Bill provides that section 5AAA(2) of the Bail Act applies in relation to electronic monitoring conditions in the same way that it applies to other bail conditions. This ensures that electronic monitoring conditions, both as individual conditions and in combination with the child's other conduct conditions, are no more onerous than required to reduce an identified risk; and are reasonable, having regard to the nature of the allegations and the child's circumstances.

The limitations ensure that if a child's risk in the community can be effectively addressed through less onerous means, such as engaging with bail support services or other less-restrictive bail conditions, electronic monitoring conditions should not be imposed. The Bill therefore confines the electronic monitoring trial's scope so that it is aimed at those accused of serious or prolific youth offending who may have demonstrated previous non-compliance with their bail conditions.

*Right to privacy*

Electronic monitoring conditions require that an accused child continuously wear an electronic monitoring device, which will allow for remote surveillance of that child's location (new section 17E). The electronic monitoring conditions also require a child to comply with any direction given by the Secretary to ensure that the accused is electronically monitored, which may involve Youth Justice visiting the child's residence to install or maintain electronic monitoring equipment (such as chargers). As such, the electronic monitoring trial engages section 13(a) of the Charter, the right not to have a person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Sections 17D and 17G of the Bill introduce strict criteria to ensure that the interference with a child's privacy and home is neither unlawful nor arbitrary. Electronic monitoring conditions can only be imposed by the Children's Court and the Supreme Court in limited circumstances, which means that bail decision makers such as police officers and bail justices cannot order that a child be electronically monitored. Limiting the power to impose electronic monitoring to the courts will ensure that these decisions are transparent, and that alternatives such as bail support programs or less restrictive bail conditions are thoroughly explored. Further, electronic monitoring conditions can only be imposed by a court after it has considered the information received in a suitability report prepared by Youth Justice, which will include information about the child's personal circumstances and home environment.

The Bill also inserts new section 17N into the Bail Act, making it an offence to use or disclose personal or confidential information derived from electronic monitoring for any unauthorised purposes. By legislating limits on the use of information gathered through electronic monitoring to bail applications, law enforcement and legal proceedings, the Bill ensures that a child's privacy is not interfered in a way that is unlawful or arbitrary. That is, any use of the information acquired through electronic monitoring is proportionate to a legitimate aim of the Bill (being increased opportunities for some young people to be released on bail and community safety). For these reasons, it is my opinion the Bill does not unreasonably limit the right to privacy.

*Freedom of movement*

As electronic monitoring devices allow for remote monitoring of a child's location and are used to monitor a child's compliance with a curfew or exclusion zone condition, the Bill potentially engages section 12 of the Charter, a person's right to move freely within Victoria. If the Bill's interferes with this right, such interference is minimal. That is, while electronic monitoring allows a child's compliance with these conditions to be more easily monitored, it does not restrict the child's movement – that is provided by the bail conditions that are imposed under existing legislation. The curfew or geographic exclusion zone will continue to be the condition that restricts the accused's freedom of movement, while electronic monitoring will provide a mechanism to detect non-compliance. In my opinion, any limitation of the right to freedom of movement is justified considering the purpose of the limitation is to promote a child's compliance with their bail conditions while in the community and the benefits to community safety that this facilitates. It also promotes rights by allowing more children to be considered appropriate for release on bail.

*Suitability reports*

Section 17G of the Bill requires the bail decision maker to receive and consider a suitability report before imposing the electronic monitoring conditions. Sections 17F and 17H(2) require the Secretary to cause the

preparation and distribution of the suitability report, and in practice, this will be done by Youth Justice staff. Having had regard to the suitability report, the bail decision maker must be of the opinion that the child is suitable to be electronically monitored and that adequate resources and equipment are available to enable the child to be electronically monitored on bail.

New section 17F(1) provides that a suitability report must include the report author's opinion on:

- whether the child is suitable to be electronically monitored on bail, and
- whether there are adequate resources and equipment to electronically monitor the child.

The suitability report must also explain the basis for the report author's opinions, including by identifying and describing the information that informed those opinions.

*Right to have a charge or proceeding decided by an independent and impartial court*

Since a suitability report is a mandatory step before electronic monitoring can be imposed, the Bill involves the executive branch of government in a bail determination. This may engage section 24(1) of the Charter, specifically the right to have a charge or proceeding decided by an independent and impartial court. However, while a suitability report enables the court to obtain detailed and logistical information that will assist its determination, the discretion to impose electronic monitoring ultimately rests with the judiciary alone, regardless of Youth Justice's opinion.

The suitability report may include a detailed assessment of a child's attitudes towards electronic monitoring, their family or guardians' willingness to assist, as well as resourcing and implementation considerations. This is also important logistically, as there are limited electronic monitoring resources that are available for the trial, and therefore a limited number of children can be monitored at one time.

The information contained in a suitability report will ultimately assist the Court in ensuring a child is able and willing to comply before electronic monitoring conditions are imposed, and that there are sufficient resources available to enable this. Youth Justice is an appropriate body for providing this advice as it will be responsible for overseeing the electronic monitoring (if it is ordered). Youth Justice is also already responsible for the statutory supervision of young people in the Victorian criminal justice system and plays a complementary role in bail proceedings by providing impartial advice to the courts regarding a child's suitability for supervised bail services. As the provision of a suitability report does not fetter the court's ultimate discretion in whether or not to grant bail, it is my opinion that the Bill does not limit the right in section 24 of the Charter.

*Right to liberty and to not be arbitrarily arrested or detained*

Due to the detail required in the suitability report, it is not expected that a suitability report will be completed the same day it is ordered by a court. Therefore, the Bill makes provision for the court to adjourn the bail hearing to a later date and allows remand of the child in custody until that time (new section 17H(2)).

This provision may engage section 21 of the Charter, particularly a person's right to liberty and not to be subject to arbitrary arrest or detention. While the Bill does allow the Court to remand a child while awaiting a suitability report, this is not an unreasonable or arbitrary decision. In ordering a suitability report, the court would have necessarily received evidence and heard submissions demonstrating the risk the child presents on bail. Before ordering a suitability report, and adjourning the bail hearing, the court must first be of the opinion that it is appropriate to impose electronic monitoring conditions in order to monitor bail compliance (new section 17H(1)(c)). This will ensure that courts properly consider whether the electronic monitoring conditions are appropriate at an early stage in the bail hearing and will limit the circumstances in which bail hearings are adjourned for the preparation of suitability reports.

A suitability report ensures that tailored consideration is given to such high-risk children and promotes children's rights by potentially enabling them to be released into the community sooner, with electronic monitoring conditions in place to promote bail compliance. By requiring the provision of details about the accused child be included in suitability reports (new section 17F), the Bill balances both the rights of the community and the rights of the child by ensuring that electronic monitoring is not imposed where unlikely to be effective, or in situations where electronic monitoring conditions are impractical or unnecessary given the child's circumstances.

*Removal of electronic monitoring devices and equipment*

In situations where electronic monitoring ceases (for example, where the child's charges have been finally determined or the electronic monitoring conditions are revoked) section 17L(5) of the Bill allows authorised officers to enter the child's residence and use reasonable force to remove the electronic monitoring device or equipment if the child does not consent to removal. Similarly, section 17M of the Bill allows a police officer or police custody officer to use reasonable force to remove a child's electronic monitoring device where the child is arrested and does not consent to its removal. These provisions engage section 13 of the Charter, the

right not to have a person's home unlawfully or arbitrarily interfered with; section 21(1), a person's right to liberty and security; and section 17(2), a child's right to such protection as is in their best interests.

The powers allowing entry and use of reasonable force are required to ensure that electronic monitoring devices and equipment can be retrieved. Removal of the device and equipment will remove a burden on the child, rather than impose an additional one. New sections 17L(4) and 17M(2) of the Bill require that, if practicable, the authorised officer must first inform the accused that the removal is to occur, that the accused may consent to the removal, and if consent is not given, then reasonable force may be used. Therefore, the power would only be exercised where reasonably required. Therefore, in my view, any limitation is reasonably justified.

*Electronic monitoring is only available to certain children*

The trial of electronic monitoring is limited to accused persons aged 14 to 18 who were under 18 at the time of the alleged offending. There is no equivalent scheme in the Bail Act for the electronic monitoring of adults. As such, the Bill engages section 8 of the Charter, the right to equality before the law.

The Bill provides an additional tool for bail decision makers to promote a child's bail compliance and mitigate the risk they may pose to an acceptable level. During the trial of electronic monitoring, this additional tool will not be available to adults who apply for bail, even if electronic monitoring may be a useful risk-mitigation tool. In my view, providing this additional tool that may assist a child to access bail is appropriate as it recognises the vulnerability of children and the detrimental impact of remand for children.

By imposing strict limitations on when electronic monitoring conditions can be imposed and requiring suitability reports to be prepared, the Bill also ensures that special consideration is given to a child's circumstances. In this way, the Bill recognises the unique vulnerabilities of children in custody, balancing the right of equality before the law with the rights of children. Section 25(3) of the Charter relevantly provides for the right to procedures accounting for a child's age, the desirability of promoting their rehabilitation, and the right to protection as is in their best interests by reason of being a child.

The Bill also sets an age minimum for electronic monitoring of 14 years (new section 17D(3)(a)). This broadly accounts for children's rights by recognising a child's age is relevant to an electronic monitoring decision. Given other considerations in this Bill and the Bail Act that recognise that children under 14 have reduced criminal capacity, this provision reinforces that it is appropriate to treat children under 14 years old differently. Bail determinations for this group may be more appropriately subject to less restrictive bail conditions or services. Any limitation of the right to equality is reasonably justified in all the circumstances.

The Bill only empowers the Supreme Court and Children's Court venues prescribed in regulations to impose electronic monitoring conditions (new section 17D(2)), and requires that the child must be bailed to reside at an address in a prescribed region (new section 17G(c)). This means that some children may not have access to the electronic monitoring because of where they reside or where their alleged offending occurred. This also engages the right to equality before the law.

It is expected that the venues prescribed in regulations will largely be metropolitan Children's Court venues, which means that some accused children applying for bail at regional courts may not be considered for electronic monitoring conditions. The Bill introduces electronically monitored bail as a trial, with limited electronic monitoring resources available for Youth Justice. There are also practical limits on the number of Youth Justice employees who will be available to monitor and support those on bail and practically implement the scheme.

In order to ensure that implementation is manageable, the Bill confines electronic monitoring to the Supreme Court and specified Children's Court venues where resources and support services are more readily available and where bail decision makers hear a higher number of bail applications for children. The effectiveness of the trial will be used as an evidence base when determining whether to continue electronically monitored bail and adapt it to other cohorts such as children applying for bail at any Victorian court. For this reason, it is my opinion that the Bill does not unreasonably limit the right to equality before the law.

**Chapter 23 – Amendment of other Acts**

Chapter 23 of the Bill makes amendments to various pieces of legislation consequential on the enactment of the Youth Justice Bill. While the majority of the clauses in Chapter 23 make technical amendments to ensure consistency of terminology across the Victorian statute book, the provisions identified below are of a substantive policy nature.

The Bill amends the ***Bail Act 1977***, ***Criminal Procedure Act 2009*** and ***Sentencing Act 1991*** in relation to persons who are 18 years of age or over, to require a bail decision maker or court to consider their behaviour, the offence they have been charged with and their operational suitability for youth justice custody (cls 911, 912, 1048 and 1128). This seeks to ensure that the youth justice system is able to prioritise the safety and

rehabilitation of children and operate as a genuinely low-security environment. On this basis I consider that these provisions promote the rights of children in the criminal process (s 23).

Clauses 1025, 1026, 1028, 1030, 1033 and 1034 amend the ***Crimes Act 1958*** to provide protections for children who participate in the new diversionary responses introduced by the Youth Justice Bill, being youth warnings, youth cautions and early diversion group conferences. These clauses require the Chief Commissioner of Police to destroy any fingerprints, records, DNA samples and identifying information within a specified timeframe, if these are taken from children in connection with an offence for which a child is given a youth warning, youth caution or if the child successfully participates in an early diversion group conference (i.e. the child has an early diversion outcome plan finalised, or the child is discharged following participation in an early diversion group conference), or they have not been charged with a relevant offence within a certain time period or, if they have been charged, they have not been found guilty. These provisions provide legal protections for a child who receives the above-mentioned diversionary responses, by ensuring that identifying material is destroyed and cannot be used against the child for any subsequent investigations. For this reason, I consider that these provisions promote the child's right to privacy (s 13(a)).

**Hon Enver Erdogan MP**
**Minister for Corrections**
**Minister for Youth Justice**
**Minister for Victim Support**

*Second reading*

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:28): I move:

That the bill be now read a second time.

**Ordered that second-reading speech, except for the statement under section 85(5) of the Constitution Act 1975, be incorporated into *Hansard*:**

**Continuing the transformation of Youth Justice in Victoria**

Victoria needs clear and strong governing legislation to increase the effectiveness of its Youth Justice system to keep the community safe. The current youth justice legislative framework has not been systematically reviewed since 1989, nor has it moved with the times.

The Bill creates a new standalone Youth Justice Act, a modern framework which responds to the evolving landscape of youth offending in Victoria. It enhances the best aspects of the current system while providing a broader and more effective range of responses to both ends of the offending spectrum.

Victoria gets a lot of things right when it comes to addressing youth offending.

We have undertaken significant reform since 2017, guided by the landmark *Youth Justice Review and Strategy*, conducted by Penny Armytage Professor James Ogloff AM, the *Youth Justice Youth Justice Strategic Plan 2020–2030*, the *Youth Diversion Statement* and *Wirkara Kulpa*, Victoria's first Aboriginal Youth Justice Strategy.

As reported by the Australian Institute of Health and Welfare, in 2022–23:

- Victoria had the lowest rate of young people aged 10 to 17 under youth justice supervision on an average day (4.7 per 10,000) – almost three times lower than the national rate (13.3 per 10,000)
- Victoria also had the lowest rate of young people aged 10 to 17 under community supervision (3.7 per 10,000) and in custody (1.1 per 10,000)
- Victoria had the lowest rate of Aboriginal young people aged 10 to 17 under supervision on an average day (41.5 per 10,000) – more than three times lower than the national rate (131.9 per 10,000).

The evidence shows that the vast majority of Victorian children and young people do not offend, and the rate of offending has trended downwards over the last 15 years, despite some recent increases. Efforts to reduce the over-representation of Aboriginal young people under youth justice supervision has seen that cohort more than halved since 2016–17, exceeding a key milestone in the Aboriginal Justice Agreement 4. Youth justice custodial facilities have stabilised too – for example, over the past four financial years, from 2018–19 to 2022–23, category one assault incidents have declined 54 per cent.

Most children and young people who offend respond well to diversion and rehabilitation services, grow out of their offending, and turn their lives around. However, recent trends have shown there remains a small but high-impact cohort of children and young people who offend more seriously, and re-offend more often. For

example, in 2023, only a small proportion of children and young people (5.6 per cent) were high volume recidivist offenders recorded with 10 or more alleged incidents.

This Bill is built on a sound evidence base to respond to youth offending across the continuum and the evidence is clear. We know that disproportionate criminal justice interventions actually increase rather than decrease the risk of offending for children and young people. Community safety is best served through prioritising diversion wherever possible and appropriate, and targeting intensive interventions to children and young people who are most likely to offend seriously and repeatedly. Lasting results are only achieved by addressing the underlying causes of offending and tailoring interventions based on risks and needs.

Of course, the Youth Justice system must also support all children and young people to take responsibility for their behaviour and the harm they have caused to victims. But this must be done in an age-appropriate way to be truly effective. Children and young people are at a unique point in their maturation and development. They have a greater capacity for rehabilitation and change, as long as they receive the proper support.

The Bill provides a robust framework for all this to occur – because at its heart, this Bill is about making the community safer.

**The Bill will raise the minimum age of criminal responsibility from 10 to 12 years old**

With this Bill, Victoria will become the first Australian state to raise the minimum age of criminal responsibility to 12 without exceptions.

The current minimum age of criminal responsibility in Victoria is too low. It has been forty years since the minimum age was set at 10 in Victoria, and we have learned so much about child and adolescent brain development and what works to stop youth offending since then. It is clear that 10- and 11-year-olds belong in school, not in prison. It is time for the law to change.

For any individual to be found guilty of a crime, they must be able to form criminal intent. This is a foundational pillar of our justice system. Accepted medical evidence clearly shows that very young children lack the cognitive maturity to form criminal intent. The data tells the same story – in recent years, only around 2 per cent of children aged 10 or 11 charged with an offence have had their criminal intent proven in court. In 2022–23, there were no 10- and 11-year-olds under youth justice supervision (either community or custody) and none remanded into custody.

By raising the minimum age of criminal responsibility, we are making sure that these children receive the supports they need to turn their lives around without relying on formal contact with the criminal justice system, which fails to deliver meaningful outcomes for this cohort.

*A new transport-based police power will be introduced for 10- and 11-year-old children*

Rest assured, however, that raising the minimum age of criminal responsibility does not mean we leave the community unprotected from harmful behaviours.

Children in this age group only make up a very small proportion of alleged offenders and are rarely engaged in serious offending. But when needed, police will continue to be able to rely on a range of existing legal and operational tools to help them respond to dynamic situations involving harmful or unsafe behaviour by children.

This includes common law powers and statutory powers under mental health or child protection frameworks. Police will also be able to take proactive, practical steps to engage with children aged 10 or 11 on an informal basis, including discussing the consequences of their actions, and take practical steps such as directing a child to return home where it is safe to do so.

The Bill also introduces new powers for police to safely transport a 10- or 11-year-old child to a suitable person or appropriate health or welfare agency. This power will be available where police have concerns that a child's behaviour poses a risk of serious harm to themselves or another person.

Protective safeguards are in place to ensure that these new transport powers are only used as a measure of last resort. These include stringent preconditions to exercising the transport power, as well as restrictions on the circumstances and ways in which force may be used and searches conducted.

*Measures will be taken to prevent criminals from exploiting 10- and 11-year-old children*

We know that there are criminals who use children to do their dirty work. Amendments will be made to the Crimes Act to close off loopholes that might otherwise allow such people to exploit children precisely because they lack the capacity for criminal intent. These people will continue to be prosecuted for offences like recruitment, incitement, conspiracy and offending that involves complicity.

*Victims of harmful conduct by children who cannot be held criminally responsible will still be able to exercise rights under the Victims' Charter Act*

Raising the minimum age is in no way intended to downplay the real and harmful impacts the antisocial behaviour of children can have on victims. A child may not understand the consequences of their actions, but the victim lives with those consequences either way.

This is why the Bill expands the scope of the Victims' Charter Act to ensure it applies to victims impacted by harmful behaviour by children who cannot be held criminally responsible. This means that victims will continue to have access to relevant information, supports and financial assistance like any other victim of crime.

*Use of past convictions when a person was 10 or 11 years old will be limited*

At the same time as we revisit our laws around criminal responsibility to bring them into the twenty-first century, it is appropriate that we revisit past convictions. People previously convicted of crimes committed when they were 10 or 11 years old prior to these reforms should not be left with the enduring stigma and consequences.

For this reason, the Bill introduces new safeguards to prevent the use of spent childhood convictions for law enforcement, character assessments in civil or criminal proceedings or registrations, accreditations and other credentials or opportunities.

*The operation of the* doli incapax *presumption will be strengthened for 12- and 13-year-olds*

Children above the new minimum age of criminal responsibility are not automatically capable of forming criminal intent. As any parent will know, a child does not start high school and suddenly become a fully-formed person with the maturity to understand the consequences of all their actions.

This is why we have the *doli incapax* presumption – a longstanding and vital safeguard in our criminal justice system – which operates at common law but is not currently codified in legislation. The presumption ensures that a child under 14 cannot be criminally responsible unless the prosecution proves beyond reasonable doubt that the child has the requisite mental capacity.

The Bill does not fundamentally alter the presumption or give children a free pass to commit offences. The legislation provides a clear statement of the presumption so that all justice system actors understand it and apply it more consistently at different points including when police decide to charge or prosecute a 12 or 13 year old child.

Making the presumption front of mind should also reduce the number of lengthy prosecutions that come to nothing because the child lacks the necessary understanding of their actions. Such prosecutions waste court and police time, and subject victims to frustration when the charges are dropped or the prosecution is discontinued. The focus should instead be on how to support the child to understand the consequences of their actions, and avoid them becoming entrenched in the criminal justice system.

**The Bill will amend the *Bail Act 1977* (Vic) to support young people to comply with their bail conditions and improve community safety**

While overall rates of offending are low, there is a small cohort of young people responsible for repeat offending, including while on bail. Trends over the past decade show that this subset of young people has become increasingly persistent in their offending behaviour, with higher rates of disengagement from education and community-based support services.

This is why we are introducing a trial of electronically monitored bail for children aged 14 and over, where a prescribed court considers it appropriate. Electronic monitoring is an additional option to help young people comply with their bail conditions. It is not intended to be used as another form of punishment or to further disadvantage already vulnerable children. However, compliance with bail conditions is not optional and should be taken extremely seriously.

The Bill allows Youth Justice to electronically monitor a child's compliance with specific conduct conditions – thereby mitigating risk and promoting compliance with those conditions. When a young person does not comply with their electronic monitoring condition, it will be detected more quickly, and Youth Justice can respond appropriately. This can include referring the breach to police, who may seek to have bail revoked or varied.

The trial of electronic monitoring of bail will be implemented alongside more intensive bail supervision by Youth Justice to help keep young people engaged in education, employment programs and other initiatives that address the underlying causes of alleged offending. By providing this intensive supervision to the small cohort of young people on bail for alleged persistent and serious offending, we can ensure they are receiving the tailored support they need while improving community safety.

Electronic monitoring will only be available to children aged 14 years or older at the time of the bail application, and it can only be imposed by prescribed venues of the Children's Court and the Supreme Court. Other bail decision makers such as Victoria Police and Bail Justices will not be able to order electronic monitoring as part of a bail undertaking.

A court can only impose an electronic monitoring condition where it is appropriate having regard to all the conditions that could be imposed and the need for conditions to be no more onerous than necessary. This targets the reform at children who are charged with serious offending, and who require additional support and supervision to comply with their bail conditions. Before imposing an electronic monitoring condition, a court must consider a suitability report prepared by Youth Justice.

The trial will run in locations in metropolitan Melbourne for two years and will be evaluated. The findings will inform decisions about the scheme and whether it should be expanded or refined. Government has allocated funding to support the trial and is establishing an Enhanced Youth Justice Bail Supervision Service to further support young people on bail.

**A modern, fit-for-purpose legislative framework for Victoria's youth justice system**

The existing legislative framework for youth justice is set out in the *Children, Youth and Families Act 2005* (CYFA), and does not sufficiently prioritise the need to reduce youth offending. The 2017 Armytage & Ogloff Review found that the CYFA does not adequately deal with the 'justice' part of Youth Justice.

The Bill before Parliament addresses the shortcomings of the existing legislation. It enshrines a genuinely distinct child and adolescent focused youth justice framework squarely targeted at making the community safer. The Bill achieves this by holding all children and young people accountable for their actions in ways that are evidence-based, developmentally appropriate and proportionate to their level of risks and needs. Fundamentally, the Bill prioritises community safety by preventing crime and diverting children from the justice system. For those children who do have contact with the justice system, the Bill targets the drivers of their offending behaviours and responds to their individual risks and needs.

*A more balanced range of responses across the spectrum*

The Bill recognises and responds to the evidence of what works to address youth offending. We know that community safety is best served by focusing on diversion and prevention, and by genuinely addressing the reasons why children and young people offend through a clear focus on providing quality treatment and rehabilitation.

Most children only engage in low-level antisocial behaviour that they naturally grow out of as they mature, making diversion the most effective pathway for these kids. This is why the Bill increases the range of genuine 'pre charge' diversionary options. Most notably, it establishes a tiered diversionary framework of youth warnings, youth cautions and Early Diversion Group Conferences (EDGCs). Even at this lower end of the spectrum, the Bill maximises opportunities to build on a child's empathy for victims and accountability. For example, youth cautions may include an apology to the victim, while all young people who participate in an EDGC will have an outcome plan developed.

At the same time, the Bill provides a better graduated and purposeful sentencing hierarchy, and more robust responses to the small minority of young people who cause the most harm in our community. Existing mechanisms to deal with high harm offending will continue to operate including retention of the serious offence categorisation scheme that will attract tougher sentencing consequences. Emergency worker protections such as the presumption of longer sentences for those who assault Youth Justice staff will also be preserved. In addition, Youth Control Orders will continue to be available as the most intensive supervised community-based order but adjusted to improve its operation, including a new requirement for victim safety to be considered when the court is attaching conditions.

A range of new accountability mechanisms will also be introduced to enhance the effectiveness of criminogenic interventions. Critical changes in the Bill mean that young people on supervised bail and remand will be permitted to participate in offence-specific rehabilitation programs to ensure no opportunities to rehabilitation are wasted. Other accountability measures embedded throughout the Bill include making judicial monitoring of a young person available earlier in the sentencing hierarchy, enabling group conferencing to take place at the parole stage as part of a young person's transition back to community and embedding Multi-Agency Panels and the High Risk Panel in the legislation. These Panels provide a robust and enduring legal model to deliver intensive oversight of high risk offenders, foster agency collaboration and ensure services are joined up to target the underlying causes of offending behaviour.

*A more robust custodial framework to keep our Youth Justice workforce safe and support* stable *custodial environments*

Safe and stable custodial environments with a safe and stable workforce are pre-requisites for children and young people to rehabilitate and turn their lives around.

To this end, the Bill makes several improvements to the gateway into and out of Youth Justice custody, particularly for young people aged 18 or over who engage in seriously disruptive behaviour. For young adults being considered for a youth detention sentence via Victoria's 'dual track' system, the Bill will introduce additional operational suitability criteria that the court must consider, which will ensure only appropriate young adults can serve their custodial sentence in youth justice.

The Bill will also strengthen the YPB's power to make transfer determinations where a young person's harmful or disruptive behaviour has adversely affected the safety and stability of a Youth Justice custodial facility or caused serious harm to the health, wellbeing and safety of any other person including staff. Further, the Bill introduces new mechanisms that limit the ability of young people aged 18 or over who have engaged in serious violence in youth detention to 'bounce back' (for example, once a transfer to adult prison determination has been made).

Together, these changes establish a new custodial framework that promotes a more stable and effective Youth Justice custodial environment that supports rehabilitation and will better enable our Youth Justice staff to do their jobs safely.

*Better recognition of impacts of youth offending on victims*

The Bill recognises the importance of building a child or young person's empathy for victims when supporting them to take responsibility for harm they cause. Existing youth justice legislation contains very few measures that recognise the impact of youth offending on victims. For example, there are no victim-specific principles and only limited legislated opportunities for victim participation in the justice process.

The Bill adopts a more victim-inclusive approach by establishing victim-focussed guiding principles and specific mechanisms for victim participation across all stages of the youth justice continuum. Victims will have opportunities to participate in pre-charge diversion mechanisms, as well as during the sentencing process and at the parole stage through restorative justice conferences. The Bill also diversifies YPB membership to allow for the appointment of community representatives who have relevant experience, knowledge or skills, such as a victim of youth offending, and establishes a Victims Register so victims can provide information to the Board to inform decisions around parole conditions.

*Addressing over-representation and progressing towards a self-determined, Aboriginal-controlled youth justice system*

The Aboriginal Justice Caucus has worked closely with the Victorian Government on the Bill and has been instrumental in shaping key aspects designed to improve outcomes for Aboriginal children and young people. The Bill has a dedicated focus on supporting Aboriginal self-determination and reducing Aboriginal over-representation in youth justice.

This commitment is not merely aspirational. The Bill takes concrete practical steps towards self-determination. For example, the Bill not only enshrines Aboriginal-specific guiding youth justice principles, the Bill also introduces a positive obligation on the Secretary of the Department of Justice and Community Safety to develop strategic partnerships with Aboriginal communities. Importantly, the Bill provides the building blocks for establishing an Aboriginal-controlled youth justice system in the future by allowing for the progressive transfer of the Secretary's youth justice functions and responsibilities. To ensure that these measures do not pre-empt the work of Treaty, the Bill takes an enabling and flexible approach that does not close off future possibilities. We will continue to work with the Aboriginal Justice Caucus as the reforms are implemented.

## Section 85(5) of the Constitution Act 1975

**Harriet SHING**: I wish to make a statement under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by the Youth Justice Bill 2024. Clause 765 of the bill provides that it is the intention of clauses 374, 375(2), 381(2) and 387(2) of the bill to alter or vary section 85 of the Constitution Act.

Clause 374 provides that if a person appeals to the Supreme Court on a question of law, the person abandons any right under the act or any other act to appeal to the Supreme Court. This clause largely reenacts section 430Q of the Children, Youth and Families Act 2005. The reason for limiting the jurisdiction of the Supreme Court under clause 374 is to prevent a proliferation of lengthy proceedings in relation to decisions of the Children's Court under the act. The act provides for a clear process for appeals, and it is clearly to the benefit of a child to have matters relating to them dealt with expeditiously.

Clause 375(2) of the bill provides that a person sentenced to a term of detention by an appellate court under clauses 333, 336 or 339 will not be able to appeal under clause 374 if in the proceeding that is the subject of the appeal the Children's Court was constituted by the Chief Magistrate, who holds a Supreme Court dual commission.

Clause 381(2) of the bill provides that questions of law arising on the hearing of an appeal from a decision of the Chief Magistrate, who is a dual commission holder, are not able to be reserved for determination by the court of appeal.

Clause 387(2) of the bill provides that the DPP cannot refer a point of law that has arisen on appeal from a decision of the Chief Magistrate, who is a Supreme Court dual commission holder, to the Court of Appeal. These clauses mirror sections 430R(3), 430VA(2) and 430W(1A) of the Children, Youth and Families Act 2005, which are provisions that were inserted by the Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022 for which a statement pursuant to section 85 of the Constitution Act was also given.

The reason for limiting the jurisdiction of the Supreme Court under clauses 375(2), 381(2) and 387(2) is to prevent a scenario arising where the Court of Appeal has to review its own decisions, or consider a question of law in a proceeding it is already hearing on appeal, which would be an unusual appellate process.

I commend the bill to the house.

**Georgie CROZIER** (Southern Metropolitan) (18:31): I move:

That debate on this bill be adjourned for one week.

**Motion agreed to and debate adjourned for one week.**

## *Adjournment*

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (18:31): I move:

That the house do now adjourn.

### Waste and recycling management

**Ann-Marie HERMANS** (South-Eastern Metropolitan) (18:31): (1021) My adjournment is for the Minister for Environment, and the action I seek is for the minister to listen to and to act upon the continued demands by Greater Dandenong councillors, residents and businesses to have the Veolia-operated toxic waste landfill site closed down. The Veolia Recycling & Recovery site at Taylors Road, Dandenong South, has had three improvement notices issued by the EPA in the last month. The EPA directed that the waste must be managed in a way that minimises the risk of harm to human health. Veolia was told to mitigate and prevent dust being discharged beyond the site. Questions arise under this failing Labor government when this landfill site is the only facility in Victoria that is licensed to receive a broad range of solid hazardous waste classified as category B and in such close proximity to a busy and thriving residential and business community. Community leaders are calling for the site to be closed immediately due to these issues, which are ongoing, because the management of wastewater, dust and landfill is at the site.

In September 2023 the EPA fined Veolia Recycling & Recovery Pty Ltd $9246 for failure to provide a report on groundwater quality at Taylors Road by the specified time. The testing and report were required to, and I quote:

> … confirm groundwater has not been adversely affected by the company's activities and was due on 23 June, 2023, but still has not arrived.

As noted in the *Star Journal* recently in Dandenong, the EPA south metropolitan Melbourne regional manager said:

> Not meeting a deadline means there is uncertainty about any possible environmental impact on the groundwater and that is something the community will not accept.

I reiterate: this tip is the only facility in Victoria licensed to receive category B solid prescribed industrial waste or hazardous waste. Greater Dandenong council acquired the site after council amalgamations in the mid-1990s from the Shire of Cranbourne. A Dandenong councillor has publicly said that there are deep concerns about the health and wellbeing of the community in surrounding areas, where there are schools, residential properties and food processing plants. Council has opposed contaminated waste at the landfill for more than 25 years. The state government pledged that dumping of prescribed industrial waste would continue only until 2020, and I have been advised that the council has recently written to the Minister for Planning outlining concerns about additional users potentially extending the operating life of the facility. Councillors have advocated for no new permits in Dandenong South's heavy industrial zone, which borders homes and schools, and on behalf of the residents, businesses, schools and people of Greater Dandenong, will the minister advise what action is being taken in relation to the councillors' safety concerns?

## Homelessness

**Samantha RATNAM** (Northern Metropolitan) (18:34): (1022) My adjournment matter tonight is for the Minister for Housing. So here we are: 30,000 people are homeless in Victoria, yet recent reports tell us there are 100,000 vacant properties in Melbourne. This is what happens when greed, wealth and apathy drive housing policy. Yesterday we stood on the steps of Parliament with 6000 origami houses to mark Homelessness Week, which commences next week. To mark this week the Greens are calling on the government to support our bill to make housing a human right and to build 100,000 public homes, because this is how we end homelessness in Victoria. Public housing ends homelessness, yet this Labor government is planning to demolish public housing and hand this public land over to private developers so that property investors and the mega wealthy can continue to get richer. In the meantime rates of homelessness continue to rise, meaning more and more Victorians sleep on the streets, in their cars and tents or have to couch-surf.

Make no mistake, this is a failure of the people in charge. Homelessness can be ended if only there is the political will to do what is right. All of you here talk about how terrible homelessness is, but why has there been no tangible change? Where are the 100,000 public homes we need, the fully funded homelessness services? What about making housing a human right? The lack of action makes it clear where you really stand. Governments in Australia used to see the provision of housing as a core part of their duty, but this Labor government is systematically dismantling public housing. You sell off and demolish people's homes and let property investors rule over the housing market. They have your full support to buy their third or even their 10th home whilst everyone else languishes. Those least fortunate become homeless. Thirty thousand people are homeless on any given night in Victoria, and there are about 100,000 people on the public housing waiting list, waiting and hoping that the next call they get will be one telling them that they have secured a place in public housing.

The right to having a house is more than just a roof over your head; it is about having a secure place to call home. But now, as your government plans to demolish 44 public-housing towers, thousands of residents are being forced into insecure housing, not knowing where they are going to end up, and even homelessness. It is time we stop pretending ending homelessness is an impossible problem. It is within our reach, not at some distant point in the future but within the decade. So I ask the minister to work with us to pass this bill and make housing a human right and build the 100,000 homes that are needed to end housing insecurity. To every representative in this place who is planning to go to a Homelessness Week event for a photo op next week, remember that it is your responsibility to do the right thing.

## Assyrian Church of the East

**Evan MULHOLLAND** (Northern Metropolitan) (18:37): (1023) My adjournment matter is for the Minister for Planning, and I seek the action of the minister to address an issue of urgency concerning the Assyrian Church of the East in my electorate and their efforts to establish a new school in the northern suburbs, which is a fantastic initiative. The issue has been a significant source of concern and frustration for the community, and it requires immediate action from the Minister for Planning.

Recently I met with His Grace Bishop Benyamin Elya of the Assyrian Church of the East. In fact he was here last night to watch our debate, and together with his community they have been diligently working towards the creation of a brand new school in the northern suburbs, which would serve their growing community. However, it has encountered substantial obstacles in the planning process that threaten to derail this important project. Bishop Elya informs me that the church has participated in one compulsory conference and has another pending with the department. The primary issue pertains to car parking and traffic management for the proposed site, which is located on Mickleham Road.

Despite the fact that the proposed traffic solutions were thoroughly vetted and supported by traffic engineers, there have been significant hurdles that seem to shift the goalposts in a manner that appears both unfair and counterproductive. Initially the traffic plan proposed to utilise an intersection extension on the site's eastern boundary, which had been deemed viable with no adverse impact on Mickleham Road. However, the solution has been met with resistance from the Department of Transport and Planning, who argued that the proposed additional leg of an intersection would slow down traffic – a concern that has been addressed through alternate plans, including a suggested slip lane. Despite these efforts recent interactions with the department have been disheartening.

A recent meeting revealed a lack of viable solutions, with indications that any unresolved matters will be referred to VCAT, a costly and protracted process for this church. This has led to a significant reduction in the scale of the proposed school – which is very disappointing – from an initial capacity of 825 students to just 600 students, now only accommodating prep to year 9. This reduction diminishes the school's potential and impacts the community's ability to benefit fully from a much-needed educational facility. The community feels disheartened and is hoping for a positive outcome.

I seek the action of the minister to re-evaluate the traffic management proposals and consider solutions provided by the church's traffic consultants – who are experienced in traffic planning, actually, of Mickleham Road – and facilitate a resolution that allows the project to proceed without further unnecessary delays and reductions in scale.

## Peaceful protest

**Katherine COPSEY** (Southern Metropolitan) (18:41): (1024) The action I seek this evening is for the Minister for Police to ensure our state's police assist Victorians to enjoy their charter rights to peaceful assembly. For nearly 10 months community members have gathered in their thousands to call for peace and a free Palestine, and on most weekends these overwhelmingly peaceful protests are the single largest public event in the Melbourne CBD. Until recently a mid-size truck has been used by rally organisers as a sound stage and a platform for speakers and PA equipment and, importantly, to provide a raised stage for Auslan interpreters. The use of the truck had been permitted by police for approximately 36 successive weeks but then suddenly became an issue on Sunday 9 June 2024. Police had not indicated any concerns regarding the use or the position of the truck before this date.

There are concerns from legal and rights experts and the community that a police decision, implemented without discussion with the event organisers, to not allow the truck anymore imposes unfair, arbitrary and potentially harmful restrictions upon the right to peaceful assembly, guaranteed under the Victorian Charter of Human Rights and Responsibilities. This appears to be just one small example of a disturbing recent trend of crackdowns on democratic and peaceful protest. While police may assert they are trying to enforce an orderly society or disrupting peaceful rallies in order to

'preserve the peace', these aims should not allow our state's police to ride roughshod over Victorians' rights, and in fact neither of these aims are a permissible ground for breaching protest rights.

A stationary truck on a sidewalk poses no significant safety risk, and in fact it may make the event safer having the truck positioned there. The presence of the truck also assisted in ensuring all Victorians had the ability to enjoy the right to peaceful assembly as, as I mentioned, it had been used as an elevated position for Auslan interpreters to address those gathered for the rally, allowing Deaf community members to fully participate and to access their section 16 charter rights.

Minister, examples like this – the arbitrary crackdown on the pro-Palestine rally truck – are worrying and alarming, and they are representative of the worrying erosion of protest rights outlined in the Human Rights Law Centre's recent report *Protest in Peril*. I ask you that you ensure our state's police assist Victorians to enjoy their rights to peaceful assembly rather than undertake actions that hinder those rights.

## Omeo Highway

**Wendy LOVELL** (Northern Victoria) (18:43): (1025) My adjournment matter is for the Minister for Roads and Road Safety. The action that I seek is for the minister to investigate and provide me with a report on why it took VicRoads three days to act when the Omeo Highway became impassable on the weekend of 20 and 21 July. On Friday 19 July Victoria experienced a cold snap and 25 centimetres of snow was dumped over an extended stretch of road on the Omeo Highway near Christmas Creek. This area is in my electorate and also in the electorate of my friend and colleague the member for Benambra, Bill Tilley, who asked that I raise this matter.

Both Omeo police and bed-and-breakfast operator Gordon Pirie reported to VicRoads on Saturday that the road was blocked by snow, and the reference number is ETS 503 207 820. Thankfully, Mr Pirie was able to escort guests out through the snow on Sunday. He then phoned VicRoads again on Monday, and sometime later that day 'Road closed' signs appeared on the highway on the southern side of Mitta Mitta. But this was shutting the gate after the horse had bolted. By the time the signs went up the snow had actually melted. A car abandoned in the snow on Saturday was the only evidence left of the weekend's blockage. Mr Pirie has been in contact with my colleague the member for Benambra, and Mr Tilley is adamant that the government cannot brush of Mr Pirie with platitudes about C-class roads and problems with the reporting process. This was a dangerous situation and an unacceptable dereliction of duty by the agency tasked with the management of these roads, and my constituents want the truth about what went wrong.

## Drug harm reduction

**David ETTERSHANK** (Western Metropolitan) (18:45): (1026) My adjournment is directed to the Minister for Mental Health, the Honourable Ingrid Stitt. The impact of synthetic opioids, including fentanyl and nitazenes, has been devastating communities around the world. Fentanyl is 50 times more potent than heroin, and nitazenes are up to 500 times more potent. In the United States synthetic opioids are the leading cause of death of individuals aged between 18 and 49 and were responsible for 70 per cent of the 112,000 drug-related deaths in 2023. While Victoria is yet to experience the devastation these drugs have inflicted on other communities, the increasing number of large seizures in recent years suggests that it is only a matter of time.

Our health system is woefully underprepared to deal with the anticipated surge in synthetic opioid overdoses. Victoria needs to develop a plan in response to these risks as part of a statewide alcohol and other drugs strategy. Happily, the outstanding team at the Victorian Alcohol and Drug Association have teamed up with the equally brilliant Harm Reduction Victoria crew and done that very thing. Their joint endeavour entitled *Keeping Victorians Safe: We Need a Potent Synthetic Opioids Plan* provides an excellent starting point for the development of an optimal response to prevent an overdose crisis overwhelming our already stretched healthcare systems.

A potent synthetic opioids plan with detailed policies and measures for the implementation of a rapid community and healthcare response would ensure Victoria is prepared for the spread of these drugs. One thing the plan acknowledges – and Legalise Cannabis Victoria is in furious agreement over this – is that the long-term prohibition of various substances has been a significant driver in the growth of a durable and highly profitable illicit drug market. Prohibition does not restrict supply or demand and does little to reduce harm. A regulated drug market is the most effective way of dismantling the illicit drug market, thus diminishing the threat of potent synthetic opioids and other dangerous drugs. So the action I seek is that the minister develop a potent synthetic opioids plan as part of Victoria's alcohol and other drugs strategy to ensure the harms from the inevitable surge of potent synthetic opioids in Victoria are mitigated.

## Housing affordability

**Renee HEATH** (Eastern Victoria) (18:48): (1027) Since Labor came to government there have been 55 new or increased taxes, and around 30 of those have been on homes and properties. Victorians are struggling to deal with the heavy weight of Labor's financial mismanagement. Rental providers seem to be fleeing the state, rental costs are surging and we are experiencing record low vacancy rates. It is a housing crisis of Labor's making.

A recent report on affordability listed Pakenham as one of the least affordable suburbs in Victoria, with the average tenant spending more than a third of their total income on rent. In the past two years median rental costs in the area have increased by nearly 50 per cent. For those on pensions or on a minimum wage it is almost impossible to get into a property, because it is just becoming more and more unaffordable for them. So my adjournment is for the Minister for Housing, and the action that I seek is for the minister to outline her plan for ensuring that residents of Pakenham have access to secure and affordable housing.

## Solar Homes program

**Melina BATH** (Eastern Victoria) (18:49): (1028) My matter this evening is for the Minister for Energy and Resources, and it relates to the accessibility and implementation of the government's solar hot-water rebate scheme. I refer to one of my lovely constituents, a pensioner; her hot water service expired, gave up the ghost, recently. She took up the opportunity to engage with this process and this scheme. However, it has been a horror for her. First of all, she contacted and was informed by the Australian Green Solution – a metropolitan-based recommended retailer – that applications for a quote could only be submitted online. A digital approach effectively excluded her from the process. She did not have a computer. She had to seek external help after a time, and it was actually through my office. My constituent felt that this was a deliberate process, making it difficult for pensioners to claim the rebate.

Even more concerning was the Australian Green Solution – again, a government-recommended retailer – requesting an up-front payment to be paid to them prior to putting through the scheme and putting in the hot-water service. Asking a pensioner for an up-front cash payment rang alarm bells for my constituent and also for me and my office. Battling these obstacles, the retailer also became so difficult to communicate with. She was for two weeks without hot water, in the cold, in the wintertime, and in the end she actually just paid the money and got a local supplier to put in not a solar hot-water service but just a regular hot-water service. Not only have the government not stood by this lovely lady but they have caused, in a cost-of-living crisis, a great deal of stress, both financial and emotional, to this person.

The action I seek from the minister is to review and improve the solar hot-water rebate scheme; to establish a robust monitoring and regulation practice to see that those authorised retailers are doing the right thing by people, to understand if there is anything misleading with those particular recommended retailers and to see if there are any breaches – and if there are, to establish clear penalties for those people doing it; and also to develop interim measures for working with people who do not have access

to the digital technology in order to do these. It is time for a review and an improvement of this system so as not to leave pensioners literally out in the cold.

## Hospital funding

**Georgie CROZIER** (Southern Metropolitan) (18:52): (1029) My adjournment matter is for the attention of the Premier. Public hospitals across the state are facing severe financial constraints due to savage funding cuts by the Allan Labor government. Health services are under extreme financial pressure due to the dire situation of Victoria's budget, as Labor's debt is set to grow to a record $188 billion in just a couple of years time. Health funding has been cut by $21 for every single Victorian compared with the same time last year. In response to the government's directives to cut costs, major hospitals have already implemented recruitment freezes, reduced elective surgery and delayed new capital works. Leaked tapes from senior health executives have told us what the cuts will mean to their services and the impact on the delivery of those services, such as the ability to have dialysis beds and special-care nursery cots and the shutting of theatres and closing of wards. They are going to have a direct impact on the ability to provide health care to many Victorians across the state.

The Minister for Health has demanded that hospitals tighten their spending and, in a letter sent to health services in May, advised that no further funding or bailouts would be provided, yet the Premier on ABC radio backflipped on that decision and said that she would provide some bailouts to hospitals. She said, 'If we do need to provide more funding for hospitals … we will do so.'

The action I seek from the Premier is for her to come clean and provide the details of this top-up funding, in particular how much funding will be available, which health services will receive funding and when they can expect to receive this additional funding. They cannot plan at the moment. They are in limbo. They have provided budget submissions to the department; I know some of those have been rejected. This is a very significant issue, and it needs to be addressed. When the Premier says something, these hospital services want to know if they are hollow words or if she is going to provide the additional funding that will keep them going so that Victorians can get the care that they deserve and need.

## Renewable energy infrastructure

**Bev McARTHUR** (Western Victoria) (18:54): (1030) My adjournment matter is for the Minister for Planning and concerns Victoria's regional airports and the threat they face from inappropriately sited renewables infrastructure, both generation and transmission. The 2022 Department of Environment, Land, Water and Planning report *Safeguarding Victoria's Airports* begins with the claim that:

> The Victorian government recognises the significance of the state's airports large and small to Victoria's economy.

But the reality is devastatingly different. I recently questioned the Minister for Regional Development on the threat to Lethbridge, Geelong's regional airport, posed by the planned Tall Tree Wind Farm project. The plan for that development includes the construction of 60 wind turbines up to 271 metres high. Quite apart from the damage to the communities of Meredith, Inverleigh, Teesdale, Lethbridge and Bannockburn, there will be a significant impact on emergency services and airport businesses. The flight school and agricultural aviation services face closure, as do the hangarage company, maintenance facilities, avionics specialists and aircraft dealers. There is no realistic local alternative, so locals have rightly said you cannot relocate the airport to suit the wind farm development so why not go the other way and relocate the proposed turbines? Neither the company nor the renewables-obsessed Victorian Labor government has answered this question.

I want to raise a similar issue regarding Melton airfield, which faces a threat from AusNet's Western Renewables Link project. I can personally attest that AusNet claim to have consulted and negotiated at length on this location, but they still seem to have got it wrong. AusNet now consider that Melton airfield will be unaffected by their routing, so it will no longer consider the impact on operators on that

site. Yet activity on the ground suggests their reassurances are incorrect. The local flying school has observed AusNet's work on a new tower position on the northern boundary of MacPherson Park is directly in line with the extended centreline of the main runway. If this location is correct, the flight path would clear the top of the towers by 100 feet, and the future of Melton airport would be significantly, perhaps fatally, compromised.

While I understand that AusNet ought to be the first port of call in this inquiry, I am told they have stopped engaging with the parties affected, so the action I seek is for the minister, as a matter of urgency, to intercede on my constituents' behalf and to ensure the full publication of all Melton airport aviation safety assessments carried out by AusNet or other public authorities.

## Strathfieldsaye bus services

**Gaelle BROAD** (Northern Victoria) (18:57): (1031) My adjournment matter is for the attention of the Minister for Public and Active Transport and is regarding the need for bus services on Sundays in the growing area of Strathfieldsaye, near Bendigo. I raise this issue on behalf of Emily, a constituent who contacted me to highlight the lack of bus services in Strathfieldsaye on Sundays. A large retirement village is currently being developed in Strathfieldsaye and the population has grown rapidly, with extensive residential housing development in the area. Public transport services in the area need to be improved as many people do not drive and find it expensive to get a taxi. Emily has already contacted Public Transport Victoria and the Ombudsman, and they directed her to raise this matter with a member of Parliament.

I must admit I was shocked to learn that no public transport is available on Sundays. Over 7000 people live in Strathfieldsaye, and it is only 10 kilometres from Bendigo. I raise this matter on behalf of Emily and the residents of Strathfieldsaye, and I would appreciate the minister's attention to this issue to improve public transport services and introduce a regular bus service between Strathfieldsaye and Bendigo on Sundays.

## Suburban Rail Loop

**Richard WELCH** (North-Eastern Metropolitan) (18:58): (1032) My adjournment matter is for the Minister for the Suburban Rail Loop. The state government's $30 billion SRL funding model is equally split between the Victorian government, the Commonwealth government and the so-called 'value capture' schemes. Despite construction being underway and contracts having been signed, the SRL already has a staggering $20 billion funding shortfall. This is because, first, the federal government has made it clear it will not be providing its $10 billion share. That money is not coming. Secondly, there are basic market realities that make the value capture proposition equally dubious. The obvious point of speculating on property values is to capture value before development and tax the hell out of any increase in value of the newly developable sites released to market. However, seven skyscrapers proposed by Vicinity Centres have already been approved for construction on Whitehorse Road in my electorate. These towers represent the most intensive density developments out of all SRL projects in the state.

Basic economics would predict that they must form the lion's share of government's anticipated $10 billion in value capture – or will they? Because if this development has already been approved, if the works and finances are already locked in and the government does not yet have a formula for value capture, where does the government property speculation tax kick in? Does it kick in now, does it kick in in 10 years or does it never kick in? To put it another way, if the single biggest development in the SRL precinct will not form a meaningful part of the $10 billion property speculation component, then how can the smaller remainder possibly hope to raise the massive sums required? And of the remaining undeveloped properties within the precincts, won't they, by dint of basic market forces, already have their potential rezoning value already priced in, meaning any further capital value capture will by definition be marginal?

The action I seek from the minister is to outline what value capture revenue has been forecast against the Vicinity development and on what basis, confirm what portion of the Suburban Rail Loop's value capture funding will come from the rest of the SRL precinct property speculation in Box Hill, confirm in what financial year or years these value capture elements will be received and available to fund the SRL and confirm by what means the SRL project will be funded up until either the federal funding or the value capture revenue is received. I look forward to the minister's response.

## Community safety

**David DAVIS** (Southern Metropolitan) (19:01): (1033) My matter for the adjournment tonight is for the attention of the Minister for Multicultural Affairs and perhaps the Attorney-General –

**Harriet Shing** interjected.

**David DAVIS**: It is probably better directed to the Attorney-General. It relates to the extraordinary incident that occurred at Officeworks in recent times and has come to public prominence of a Jewish customer being refused service on the basis of their Jewishness. This is clearly extraordinary and antisemitic –

**A member** interjected.

**David DAVIS**: Elsternwick – a dreadful, dreadful thing. I am not going to dignify it with some of the words that were said, but clearly a store manager, a relatively senior person, decided they would not serve a Jewish person at Elsternwick.

**Harriet Shing** interjected.

**David DAVIS**: Yes, Elsternwick. This customer went into the store to have some laminating done. This is a very mild request; you would think this would be easily undertaken. It turns out that the manager in question has taken a set or a turn against the Jewish community and decided that they would not process this laminating for a Jewish person in the Elsternwick Officeworks store.

I think we are reaching a new and extraordinary level here where nasty antisemitic activities are occurring. We have seen shocking things occur with a wall at Mount Scopus and the occasions where there have been attacks on the electorate offices – indeed of some Labor MPs. There have been a range of other demonstrations on campuses and out the front here. It is my view that the government has been too weak on a lot of these points. I do not believe the government has actually stood up in the way it should, and I think that this is now getting way, way, way out of hand. We need very, very clear statements. I mean, we heard what Minister Tierney said in the chamber with respect to questions on if she would intervene with respect to the antisemitic approach to Jewish students on campuses, and she would not lift a finger. That is just one subset of this. Clearly there is an international situation occurring, but we are now seeing real disturbance to the social harmony in Victoria.

Maybe this is a matter for the Premier too, but the Attorney-General has responsibility for some of the acts that are appropriate here, and in this circumstance I would encourage the Attorney-General to make very clear statements immediately and to look at what legal aspects can be implemented. Anti-discrimination law may provide some significant assistance here, but she should act and make sure it is promulgated.

## Norwood Secondary College bus services

**Nick McGOWAN** (North-Eastern Metropolitan) (19:04): (1034) It is very important I think that we represent as best we can the schools in our districts, so when there was the recent announcement of $243 million across 65 Catholic schools I was very keen to see that some of my schools in the electorate of Ringwood were among them. Sadly, they were not, so what I seek from the minister is that next time the schools in my electorate of Ringwood do not miss out, and in particular St Johns Primary School in Mitcham, Aquinas College in Ringwood, Our Lady's in Ringwood and St Philip's School in Blackburn North.

What do these names all have in common – Verona, Nick, Jackie, Andrew, Tim, Karen, Marika, Marie, Carly, Kim, Kerryn, Anita, Erin, Joanne, David, Harry, Rosina, Jennifer, Michelle, Rukshana, Bradley and Meggan? Well, President – I know you are going to ask this – they are all principals, and tomorrow is Principals Day. Each and every one of them is a principal in my electorate of Ringwood, and I would like to congratulate them and wish them a happy Principals Day. I would like the Minister for Education to join with me and send them an email – maybe even a gift, a small gift, a token gift – in respect of their good work and the appreciation this state feels for their hard work to show them it does not go unappreciated and it does not go without remark.

What I also seek – it is a bumper evening; it does not stop; I have got more – from the Minister for Education is an assurance that he will urgently investigate a situation that has been occurring over some time now I understand at Norwood Secondary College, and I know it is a college close to your heart also, President. I had a discussion today with the principal at that school in fact, and what has become clear is that of the two buses the students are currently serviced by, at least one – it is the bus that services route 2641 – is of insufficient size. In other words, there are too many students on the bus. The bus is only licensed to carry in the order of 78 students, but on any given day there are actually 90-plus students on that bus.

It is an urgent matter. The school is attending to it, but nonetheless it is one of those difficult matters because while it might start with the Minister for Education, it could well end up with the minister for transport at some point, depending on who is responsible for it. But either way I would welcome the minister's urgent intervention to ensure that the bus Norwood Secondary College receives is one of the larger Ventura buses – they are the suppliers in this case – because those buses have a capacity of around 90 students, and that would enable those students to safely get between school and home. Like all of those present today, I feel there is nothing more important than ensuring we can do that for our students day in and day out, and I thank the minister for his urgent attention to this matter.

**The PRESIDENT**: Mr McGowan, congratulations for getting all of that on the public record, but you can only ask for one action, so can I ask you to pick which one you would like to ask for.

**Nick McGOWAN**: As long as they were recorded, President.

**The PRESIDENT**: I know. Well done. The standing orders say you actually get some action, but can I ask you to pick.

**Nick McGOWAN**: It is like asking me to choose between my children. The bus has to be the answer.

**The PRESIDENT**: Minister Shing, before you respond, I have put some thought into Dr Ratnam's action where she asked the minister to support a piece of legislation, a private members bill. Under the standing orders it is pretty clear that you cannot call for legislation, and I think calling to support legislation is very similar in that we have provisions with the second-reading debate relating to trying to encourage someone to vote for a piece of legislation, so I will ask you not to consider that particular action.

## Responses

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (19:09): President, on the basis of what you have just given by way of a ruling, we have 13 matters that have come up at adjournment this evening. There was one that was raised by Dr Heath. It was directed to me in the portfolio of housing with a little bit of information, but I think it is probably most relevantly directed to the Minister for Consumer Affairs because it relates to private rental accommodation. You did refer, however, to housing pressure and stress associated with a lack of availability and affordability in Pakenham and in the south-east as that community and population grow and the considerable challenges that people are having in finding and keeping rental accommodation.

There will be matters that Minister Williams will respond to as it relates to those matters, but I just also want to indicate while I have the opportunity that Pakenham has been one of the key areas of focus for the Big Housing Build, which is now on to about 9600 homes either completed or underway. This is on top of around 3300 homes as part of other projects. We are determined to continue this investment. It is $5.3 billion, and it will continue to make a difference to freeing up some of the challenges that have presented as real contributing factors to affordability in particular. I will leave it, though, for Minister Williams to go directly to the matter of private rental accommodation and perhaps some of the other reforms and initiatives on the housing statement as they relate to that particular part of your adjournment.

There was no other matter that related to my portfolios that requires acquittal this evening, on the basis of your ruling, President, but I did just want to take this opportunity to wish Minister Blandthorn and Mr Galea a very happy birthday. It is a somewhat inhospitable place to spend such an august occasion, and to that end I am glad that they are not here in the chamber frittering away the last hours of what should be a day of celebration with family and friends. I place heartfelt congratulations to them on obtaining 21 and 23 years of age respectively. President, that concludes it from me.

**David LIMBRICK** (South-Eastern Metropolitan) (19:11): I would like to request an explanation for some overdue adjournment items related to adjournment matter 777 to the Minister for Mental Health related to vaccine mandates asked on 7 March this year, adjournment item 971 to the Minister for Mental Health also related to vaccine mandates asked on 19 June this year and adjournment item 884 to the Attorney-General asked on 14 May this year.

**Harriet SHING** (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (19:12): Mr Limbrick, I am very happy to follow those matters up with you for response.

**The PRESIDENT**: Before we adjourn, on Mr Davis's point of order, I committed to get back to him around the minister at the table answering his supplementary question around the checks and balances around unions not exploiting their position. The minister referred to the federal law and registered organisation regulations, so I have decided that the minister acquitted that question. Now the house will adjourn.

**House adjourned 7:12 pm.**