Hansard

LEGISLATIVE COUNCIL

60th Parliament

Thursday 5 October 2023

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	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, Nicholas	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[1]	Western Metropolitan	IndLib	Ratnam, Samantha	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
Heath, Renee	Eastern Victoria	Lib	Tarlamis, Lee	South-Eastern Metropolitan	ALP
Hermans, Ann-Marie	South-Eastern Metropolitan	Lib	Terpstra, Sonja	North-Eastern Metropolitan	ALP
Leane, Shaun	North-Eastern Metropolitan	ALP	Tierney, Gayle	Western Victoria	ALP
Limbrick, David[2]	South-Eastern Metropolitan	LP	Tyrrell, Rikkie-Lee	Northern Victoria	PHON
Lovell, Wendy	Northern Victoria	Lib	Watt, Sheena	Northern Metropolitan	ALP

[1] Lib until 27 March 2023
[2] LDP until 26 July 2023

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

Papers

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Tabled by Clerk:

Independent Broad-based Anti-corruption Commission – Report to the Minister for Police, 1 January 2017 to 31 December 2020, under section 70O of the Sex Offenders Registration Act 2004.

Subordinate Legislation Act 1994 – Documents under section 15 in respect of Statutory Rule Nos. 102 and 105.

Business of the house

Notices

Notices of motion given.

Adjournment

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (09:40): I move:

That the Council, at its rising, adjourn until Tuesday 17 October 2023.

Motion agreed to.

Members statements

Ken Saunders

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (09:40): Today I rise to pay tribute to the life of Ken Saunders, a Gunditjmara man who passed away on country in Heywood in August. Ken Saunders's path in life from being an early school leaver at Lake Condah Mission was extraordinary, with many firsts: the first Indigenous councillor with the Glenelg shire, first Aboriginal community liaison officer with Victoria Police and a member of Victoria's first native title body. His involvement in the Lake Condah sustainable development project laid the foundation for the establishment of Budj Bim and its inclusion on the World Heritage List.

Uncle Kenny spent his later decades working to remove the barriers that he had faced growing up in rural western Victoria. Very much focused on improving opportunities for the generations who followed him, he was always interested in young people, aiming to build their skills and confidence, and used sport as a way of elevating young Aboriginal people. He was highly regarded amongst parliamentarians across the political spectrum, comfortable in lobbying government to expand opportunities for Gunditjmara in particular and Aboriginal people in general. I first met Uncle Kenny in 2010 when he was then Cr Saunders. He spoke at a Glenelg shire function, showing all the skills in public speaking for which he was well known. In that speech he developed a common theme – that is, it is essential for Australians to have a shared vision, to work together to bring people together. His passing is a great loss, noted by many at his funeral, but his life will continue to be an inspiration for his community. Vale, Ken Saunders.

ARC Theatre

Evan MULHOLLAND (Northern Metropolitan) (09:42): Early last month it was great to speak at a packed house at Darebin Arts Centre for the Northern Choir Fest, presented by ARC performing arts company and their a cappella choir. I would like to particularly acknowledge the work of Amelia

van Lint, Anthony Ventura, Andrew Jameson and Sara Lacey in putting together such a great event. The choral fest brought together several choirs from all across the northern suburbs for a great event, which featured many schools as well as children's choirs and adult choirs.

In a past life I was actually the president of ARC Theatre and ARCappella, and it was terrific to be able to go back as a representative of the northern suburbs, back to where I really got my start in community service. I was pleased when I was president of ARC to be able to start an initiative where ARC would donate $1 from each ticket to the Olivia Newton-John Cancer and Wellness Centre. I was really pleased to be able to announce that since I initiated that initiative back in 2011, ARC Theatre has now raised over $10,000 towards the Olivia Newton-John Cancer and Wellness Centre. So it is great to see community organisations continuing to give back to the community in which they belong.

Emergency services

Jeff BOURMAN (Eastern Victoria) (09:44): It has been a tough couple of weeks for East Gippsland, with fires and now, perversely, flooding. I think it is a good time to thank the CFA, the FRV and the SES volunteers and paid people for all the hard work they are doing, because whether they are paid or not, they are all putting their safety at risk in the service of our community, and I really do think as a Parliament we should acknowledge that.

Collingwood Football Club

Tom McINTOSH (Eastern Victoria) (09:45): I rise before the house like I am rising from a dream. On the weekend at Victoria's colosseum, the MCG, in front of a full house, the grand final was played between a valiant Brisbane in defeat and the mighty Collingwood Magpies, who took home the cup. It is a proud club, and I am proud to have my great-grandfather's 1909 membership ticket. Our many supporters were vulnerable migrants who came to the boggy banks of the Yarra, where big families settled into small houses and collectively came out and formed the Collingwood Football Club. Not only is it the biggest club in Australia, but this year it has had the third average biggest club turnout anywhere in the world.

And what a year it has been. Like most organisations we have had our flaws. Sadly, there has been sexism, homophobia and racism. But culture is set by leadership, and under the leadership of Craig McRae and Darcy Moore this club has turned its culture around. It is a culture of acceptance, diversity and inclusiveness, and we have thrived. Whether it is the people working in our club, whether it is our players or whether it is our fans – our mighty fans, our 19th player – that collectively rise up to get the team home, we have thrived on this new culture. The pinnacle of this was on Saturday when our young Indigenous superstar Bobby Hill was best on ground and took home the Norm Smith Medal to deliver Collingwood its 16th premiership cup. Go Pies!

Commonwealth Games

David DAVIS (Southern Metropolitan) (09:46): The chamber will be very aware of the unclear responses that Premier Jacinta Allan has been giving about what she knew and when she knew it. When did she know about the Commonwealth Games cancellation? When did she know that it was in dire and likely terminal trouble? She has not been really frank, in my view, with the community or with the Parliament or indeed with the news media. It is time that she came clean. It is time that she told the truth. It is implausible in the extreme that she went to the Public Accounts and Estimates Committee and gave this glowing endorsement about where it was all heading – it was all hunky-dory, all fabulous – and yet just one day later we know that a legal firm was being hired to look at how they were going to get out of this contract that they went to the election indicating that they would implement. It is a very strange moment when the Premier of this state tries to obfuscate in this way and tries to mislead the Victorian community in a systematic way. I think it is time that she came clean. We want to hear what she knew, when she knew it and who made these critical decisions that have cost the state so much money.

Endeavour Hills Judo Club

Michael GALEA (South-Eastern Metropolitan) (09:48): In September I was thrilled to attend the Endeavour Hills Judo Club's 50-year celebration. Established in 1973, the club has taught the sport of judo locally for decades. It has seen considerable changes in its local community, having started in a farmhouse in Hallam, subsequently calling several other venues in the area home for the dojo and now being based in Hallam Recreation Reserve for the past nine years. I would like to especially thank the founder and head sensei Janet Lambert and everyone at Endeavour Hills Judo Club for welcoming me to their joyous celebration. Janet is a pillar of the community, having trained generations of locals in judo, dedicating her time to teaching students and building up a strong and vibrant community around the club. I also got the chance to take part and learn some take-downs. They may have given me a black belt for the day, but I am certainly not qualified for that just yet.

Community sporting organisations such as this club add vastly to the community and provide opportunities for locals to get active, engage and learn a new sport, make friends and socialise. Eventually of course they also become an integral part of the fabric of the broader local community, and this is undoubtably true for the Endeavour Hills Judo Club. Congratulations on 50 years.

A-Leagues

Michael GALEA (South-Eastern Metropolitan) (09:49): On another matter, I would also like to note the wonderful event we had the other night with all three of Melbourne's A-Leagues clubs: Melbourne Victory, Melbourne City and Western United. It is going to be a fantastic season, and I, along with other members in this chamber, look forward to following along and cheering on. Go Melbourne Victory!

Armenia–Azerbaijan war

Ann-Marie HERMANS (South-Eastern Metropolitan) (09:50): I realise we cannot bring props into the house, but some may have noticed that I have been wearing scarves and shawls this week. We all grieve in different ways, and I believe these scarves from Armenia are a sign of the grief I am feeling for the people of Armenia and in particular the Armenians of Artsakh. I was privileged and honoured to visit the Republic of Armenia last week as part of the 2023 Australian state parliamentary delegation to Armenia, hosted by the Armenian National Committee of Australia and the New South Wales Parliamentary Friends of Armenia.

Apart from being able to witness democracy in action with the gathering of Armenians at night to raise their concerns publicly in what is today considered the old Russian circle because of its circular architecture inspired by the sun in the centre of Yerevan, we travelled to the border town of Goris, where we witnessed firsthand the immediate peril and trauma of Armenians of all ages – newborn babies, children, mothers, fathers, grandparents and teens fleeing for their lives from the persecution and invasion of Artsakh, their homeland of 2000 years. The Armenians of Artsakh have only one road into the rest of Armenia, and soldiers have blocked this road since December last year, not allowing food or supplies to enter Artsakh for more than nine months. Despite attempts from compassionate individuals, many children who escaped last week once the troops finally opened their borders were suffering from starvation, sickness, injury and malnutrition and were being helped by the Red Cross.

Victorian Labor Party

John BERGER (Southern Metropolitan) (09:51): Rank-and-file members are the backbone of the Victorian Labor Party. They staff election booths, knock on doors, help run campaigns and even run for elections. Our former Premier Daniel Andrews started out as a campaign volunteer – grassroots politics at its best. Martyn Abbott, whose name in this chamber is known well, is holding the fort in Sandringham, and Sarina Greco in Malvern as president has engaged in an ambitious training and upskilling exercise of members. And who could forget the president of the Hawthorn branch, Peter Kriesner. I always appreciate his invitations and make it when I can. I look forward to joining him and the Kew branch next week. Of course there is Stevie McGregor, whose young talent will take her far.

And then there is Michael Borowick, a long-time friend of mine from the Caulfield branch. It was great seeing him yesterday, and his advocacy for the Jewish community makes him an asset to our party and the movement. Ken Penaluna from the Prahran branch helped stock my office with newsletters when the foyer was bare and empty when we moved in. And there then there are our friends like Ella Gvildytė from the Kooyong federal electorate assembly, someone who always has a smile, is always ready to help and is a hard worker. It is these people who make our party what it is, and I thank them for their contributions to social justice, democracy and Labor values.

Alfred hospital

Georgie CROZIER (Southern Metropolitan) (09:52): Reports of infestation at the Alfred hospital with rats and mice, of cockroaches crawling in patient beds and of faeces around wards and on beds are a symptom of the state of our health system, and it is not good enough. It is absolutely damning that the neglect by the Allan and former Andrews Labor government shows the true extent of our health system. The Alfred hospital is one of the most eminent hospitals in the country, with a trauma centre that is recognised not only nationally but also internationally, so it is an absolute disgrace that the state of this eminent hospital is such. I call on the government to inject immediate funding into the hospital so that we can provide the proper care that patients deserve and that staff rightly deserve, so that those that work within the hospital do not have to put up with these conditions and, importantly, patients do not have to put up with these conditions. Again, I say it is a damning record by this Labor government. It is tired. It has neglected the Alfred. It was our pledge to fix the Alfred. The Labor government has ignored it, and as a result we have got this hospital infested by mice, rats, rodents, cockroaches and other –

John Berger interjected.

Georgie CROZIER: Well, there was, Mr Berger, and that says the extent of the neglect.

Teej celebrations

Ryan BATCHELOR (Southern Metropolitan) (09:54): A few weeks ago I had the pleasure of representing the then Minister for Multicultural Affairs at a Teej festival celebration at Clayton hall in the Southern Metropolitan Region, which was organised by the Rajasthani Kutumb of Victoria, better known as Rajkov. For Victorians from multicultural backgrounds, organisations such as Rajkov offer important connections to culture and community. Rajkov also provides important support services to new migrants and leadership opportunities for younger members of the community.

I have been fortunate enough to spend some time visiting the great state of Rajasthan and have a deep appreciation for the beauty and unique culture of this part of India. It is a very impressive place. Everyone should go. I would like to thank Rajkov for inviting me along to these festivities and for the work they are doing to foster an environment where community members can come together and celebrate their heritage and culture.

Victoria is what it is because we embrace our differences and share our cultures, and Victoria would not be the vibrant place it is today without the contributions made by multicultural community organisations such as Rajkov.

Australian Electoral Commission

Bev McARTHUR (Western Victoria) (09:55): Voting early and voting often seems to have taken on a whole new dimension in this referendum, because the AEC seems to have declared that:

> If someone votes at two different polling places within their electorate, and places their formal vote in the ballot box at each polling place, their vote is counted.

Members interjecting.

Bev McARTHUR: Absolutely. This is from the AEC. Further, the AEC is quoted as saying:

> We cannot remove the vote from the count because, due to the secrecy of the ballot, we have no way of knowing which ballot paper belongs to which person.

Obviously.

> However –

they say –

> the number of double votes received is incredibly low …

Well, who can tell us it is incredibly low if they cannot detect whose vote it is? And this is incredible:

> … and usually related to mental health or age.

So now they want to blame the disabled or the elderly for thwarting the electoral process. Now, this is an incredible situation, and the only way this is going to be detected is after the vote is counted. So how do we know that the vote is genuine when the AEC are admitting you can vote early and vote often as many times as you like?

Gippsland fires and floods

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (09:57): Gippsland has been devastated by the most extreme weather conditions, for many people, in living memory over the last few months. Coming off the back of one of the driest August periods on record, we have then seen bushfires spread, including across Briagolong and then down to Loch Sport from the weekend through to Monday. This has tested the resolve and the resilience of communities yet again in the face of these extreme climatic conditions and large-scale weather events. Our strike crews, volunteers, frontline responders and communities have been extraordinary in the face of these challenges, but yet again that resolve has been tested this week by inundations, by heavy rainfall events that have swept across Eastern Victoria.

In thinking of this work and the work that is happening across the water catchments that are flooding, across Lake Glenmaggie and then down towards Tinamba, Tinamba West, Newry and then further afield, we know that communities are doing it tough. Establishing relief centres and working towards providing support to people when it is needed are at the heart of good emergency response. From swiftwater rescue crews being on stand-by through to partnerships with the Wellington Shire Council community and assistance organisations, thank you. The work goes on to make and keep people safe. We are looking forward to seeing rainfall easing across the state and making sure that people have what they need in the days and weeks to come.

Business of the house

Victorian Auditor-General's Office

Performance audit

The PRESIDENT (09:59): I have got a message from the Assembly:

> The Legislative Assembly has agreed to the following resolution –
>
> That:
>
> Under section 82 of the *Audit Act 1994*, MartinJenkins be appointed:
>
> (a) to conduct the performance audit of the Auditor-General and the Victorian Auditor-General's Office in 2023–2024;
>
> (b) in accordance with the Terms, Conditions and Specifications as set out in the Request for Tender issued by the Public Accounts and Estimates Committee on 1 August 2023; and
>
> (c) at a fixed fee of $405,933 (excluding GST) –
>
> which is presented for the agreement of the Legislative Council.

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (09:59): I move, by leave:

That the message be taken into consideration forthwith.

Motion agreed to.

Harriet SHING: I move:

That:

(1) the Council agrees with the Assembly and resolves, That under section 82 of the Audit Act 1994, MartinJenkins be appointed:

(a) to conduct the performance audit of the Auditor-General and the Victorian Auditor-General's Office in 2023–2024;

(b) in accordance with the terms, conditions and specifications as set out in the request for tender issued by the Public Accounts and Estimates Committee on 1 August 2023;

(c) at a fixed fee of $405,933 (excluding GST); and

(2) a message be sent to the Assembly informing them that the Council have agreed with the Assembly's resolution.

Motion agreed to.

Notices of motion

Lee TARLAMIS (South-Eastern Metropolitan) (10:01): I move:

That the consideration of notices of motion, government business, 83 to 171, be postponed until later this day.

Motion agreed to.

Bills

Bail Amendment Bill 2023

Second reading

Debate resumed on motion of Harriet Shing:

That the bill be now read a second time.

Evan MULHOLLAND (Northern Metropolitan) (10:01): This is an important bill because it deals with two conflicting values we have in the justice system: the presumption of innocence and the protection of safety in the community. Someone who is charged with a crime has a right to be treated as innocent until proven guilty; remanding someone in custody prior to their day in court is to an extent a denial of that principle of presumption of innocence. We also need to protect the community from people that are in some cases charged with very serious offences and who, in the view of bail decision makers, pose a risk of perpetrating further harm. It is not an easy balance to get right; I will be first to admit that, and I am sure many representatives on all sides of the chamber would admit that.

I would like to thank my friend and colleague the Shadow Attorney-General Michael O'Brien for the hard work and consultation he has done on this bill, particularly the way he has consulted with colleagues, including me, on this bill. Criminal justice reform is something that I have spoken quite passionately about, including in my maiden speech last year. I also put down some thoughts to paper in a book that was released earlier this year called *Markets & Prosperity* published by Connor Court. What I spoke about was the need to take a different approach to our criminal justice system to differentiate the people that we are afraid of from the people that we are just mad at. This bill I think goes some way to achieving those aims.

The opposition will not oppose this bill. At the start of this parliamentary term under John Pesutto's leadership the opposition said that we were committed to criminal justice reform. We even created a shadow portfolio for criminal justice reform, which has been led by Brad Battin. I think in our position

today you see evidence that we are serious about that. We are actually serious about criminal justice reform, about the qualities of redemption and rehabilitation towards a better life, because it is not only a good moral outcome for society but I think as well a good economic outcome for society.

What we see today in this bill is the government seeking to undo some of the changes it made in 2017 and 2018 in response to the Bourke Street tragedy. Looking at the figures, there is an unquestionable need to reform bail law. The number of unsentenced prisoners has gone up significantly over the past decade. There were 956 unsentenced prisoners in 2013. This rose to 2706 in 2018 and reached a peak of 3182 in 2021. Recent figures have it at 2763.

According to a Sentencing Advisory Council report from 2020, 20 per cent of all prison sentences were time-served prison sentences in 2014. This same group made up only one in nine offenders. That means one in five sentences handed down essentially said that those people deserved a sentence but they had already served it in remand. It is unjust if people serve more time in remand than they are sentenced to. It is even more unjust if they are found to be not guilty.

There is also a need to respond to the findings of the Veronica Nelson inquest. The opposition wants to work constructively with the government. We understand that there is no perfect answer. When the government introduced changes to the Bail Act 1977 following the Bourke Street incident, the then Attorney-General Martin Pakula said:

> We're making it harder than ever to get bail in Victoria …

Unfortunately this has had a number of negative consequences. Many people who have been denied bail have deserved it. Many people who do not pose a risk to the community have been denied bail – people accused of shoplifting have been caught up – and that is why the government is making changes. We will not oppose this bill, because we believe it provides a step forward and does contain some sensible changes.

Although we had some concerns with the initial bill proposed by this Labor government, we are glad to see that they have now recognised many of those concerns. We are very glad to see that this government seems to be listening to proposals from the opposition and also listening to deep community concern about this issue.

In terms of its operation, the bill seeks to change the tests that are applied to determine bail. At the moment there are effectively three tests. For the lowest level offences there is a test known as the unacceptable risk test, where the onus is on the prosecution to demonstrate that the person seeking bail would pose an unacceptable risk to the community if they were given bail. The mid-level test is the show compelling reason test, and the onus is on the applicant for bail to show a compelling reason why they should be granted bail. The toughest test is the show exceptional circumstances test, and the onus is on the applicant, who must show exceptional circumstances to warrant them receiving bail.

The bill intends to remove certain offences from schedule 2, and this means the show compelling reason test will no longer apply. It also seeks to provide that bail is not to be refused in respect of certain offences, meaning that bail is essentially automatic in these cases. Whilst the government did originally seek to make the two-step test apply to children in fewer circumstances, this change has now been dropped. Again, we welcome the government finally listening to the community and listening to the opposition. There is quite clearly deep public concern around what is going on in parts of Victoria with crime, particularly with high school-aged children and people being abducted – we saw what happened in Glen Eira – so I am glad the government has listened on this one. The two-step test is either the show exceptional circumstances or the show compelling reason test plus the general unacceptable risk test.

The bill makes changes to what a bail decision maker must take into account when dealing with an Aboriginal person. The government did seek to make changes to what the bail decision maker must

take into account when dealing with a child, but again this is no longer the case. The bill seeks to repeal the offence of contravening certain conduct conditions while on bail.

The bill seeks to repeal the offence of committing an indictable offence while on bail. This bill also makes various changes to update the language used in the act and expands the circumstances in which a court must hear a further application for bail. We are concerned about the removal of the offence of committing an indictable offence while on bail, and that is reflected in our amendment, which I will come to.

Under this bill, many offences in the Summary Offences Act 1966 will automatically lead to bail. This seems quite reasonable if we are talking about low-level offences which do not pose a risk to community safety. This is something I have spoken about in the past, and I know Dr Bach has spoken about it in the past. There is no good reason for people who commit very small offences to end up in prison. Prison is not the place for people who have committed low-level offences and who might have gone down the wrong path at some stage in their life. We should not judge them by their worst moment. In fact our system should encourage and rehabilitate people towards a better life.

There are some exceptions to the summary offences changes, which include sexual exposure, common assault, aggravated assault, distribution of intimate images, assaulting emergency workers, harassing witnesses and the like. Division 3 of the bill makes changes to the operation of an unacceptable risk test and clarifies that this test must be applied if the applicant has satisfied the exceptional circumstances test or the compelling reason test. We understand that when considering the unacceptable risk test, it does not require there to be a risk to a particular individual; it can be a risk to anyone in the community. We believe the notion of unacceptable risk should consider the community itself. If a person is going to continually break the law and put the broader community at risk, then we believe it is important that that be the primary consideration under the unacceptable risk test. As the Attorney-General Ms Symes said in the *Age* of 16 August:

> We don't want a situation where you can just go and hit the same small business 20 times in shoplifting and not be remanded. You are not necessarily posing an unacceptable risk to hurting someone, but you are posing an unacceptable risk to that small business, for instance …

While the government originally sought to make a raft of changes, the effect of which would have been to differentiate between adults and children for the first time, again these changes have been dropped. My colleague the Shadow Attorney-General Michael O'Brien proposed amendments to address the shortfalls of this in the other place, which the entire government voted against, funnily enough. But we are very glad that Labor has recognised that the proposed changes could have had very negative consequences and have decided to drop them for the time being. This is particularly on the mind of a lot of Victorians at the moment given the youth crime problem that we have seen of late. I hope in this period of reflection for the government that they do listen to the community and that they do get out into the community. Maybe the Attorney-General and others can visit a few of those small businesses in Brighton or visit schools in Glen Eira to take a temperature check from parents and from kids who are really worried about their safety due to some of the issues that are going on.

The original proposal would have meant that an aggravated carjacking would not attract the show compelling reason test. We certainly believe that this is a serious offence. We certainly do, and we are quite shocked that the government might not believe that an aggravated carjacking is a serious offence.

Part 3 of the bill goes to what bail decision makers must take into account in relation to an Aboriginal person, and there are a significant list of factors that the bail decision maker must consider. We believe bail justices should consider the merits of the case of the person who is in front of them rather than making historical judgements apply at a group level. We live in a great multicultural state. There are many in our migrant community who suffered significantly before coming to Australia, particularly refugees, and there is no reason for individuals to be treated differently because of their ethnicity or other group-based factors.

One concern we have with the bill is the government is seeking to repeal the offence of committing an indictable offence while on bail. In the case of an adult this has meant that the bail test is automatically increased, usually to the show compelling reason test plus the unacceptable risk test. We believe that if a person commits an indictable offence while on bail, there should be a stronger test to get bail again. It makes sense that if someone commits an indictable offence while on bail that that test be increased. I request that my amendments to the bill now be circulated.

Amendments circulated pursuant to standing orders.

Evan MULHOLLAND: An amendment that I was preparing to move when I was putting together this speech would have required that a statutory review of these changes kick in after two years so we could view the effects of the bill. This was an idea proposed by my colleague and friend Mr O'Brien in the other place, and I am very happy that the government has taken up this suggestion. It is another example of the opposition coming to the table on criminal justice reform and being a propositional opposition. I think it was very mature of Mr O'Brien and also very mature of the government to see that, if we had had a statutory review after the Bourke Street changes, we might have been having this conversation earlier. It is important to have that statutory review in place two years after these changes so that it can be reported to Parliament and we can have a good look at and discussion about how these changes have worked. Hopefully we can all come back here in two years and discuss that this bill has worked and had a good effect and we were right to work together to pursue changes.

It is good that the government has agreed to the statutory review. Unfortunately the government did not get it right in 2017 or 18 – to be honest, like the former Liberal and Nationals government did not get it perfectly right in 2013. We know we possibly will not get it right this time, so let us ensure that there is a review so we can come back and say, 'Maybe this can be tweaked,' because, as I was saying at the start of this speech, these laws are really difficult and complex. Sometimes the best advice from the best experts, all the public service, all the legal advice you can get and the minds of politicians who have had experience are not enough to see where something might be a little bit flawed, so I think this is a very good move, coming back to this in two years, so that we can have a deep dive on what can be improved.

As I said, the opposition will not oppose this bill. We believe that it represents an improvement to the status quo. Again, I would like to thank my colleague the Shadow Attorney-General Michael O'Brien –

A member: And friend.

Evan MULHOLLAND: and friend, good friend. I thank him for the sensible way he has gone about consulting on this. I would even like to thank the Attorney-General Ms Symes for the way in which she has, in good faith, had many mature discussions with the opposition in regard to these changes, because I do think it is important in some respects, despite our amendments, which we will move, that changes to this be a collective responsibility of members so that there is that buy-in from across the Parliament to these changes. I have spoken a lot on criminal justice reform, and hopefully the changes proposed in this bill will have a real, significant, material impact on people, on making sure we have not got so many people tied up with the courts.

When people speak to me about justice reform, often the first thing that gets spoken about by some on the more activist side – I speak to a lot of people in that space out of interest – is campaigns like raise the age. I think the changes in this bill will do much more than what the raise the age proposal ever will. This is where the real meaty changes can be made, because only a very small number of people either under 12 or under 14 are charged with serious offences. Certainly in the northern suburbs we have seen recently with the case of Declan Cutler that there are people under 14 who have committed pretty serious offences. That was a brutal stabbing that really rocked my community in the northern suburbs, so I would caution the government to take a lot of time to consult before proceeding with something like raising the age. We will have a look at it, sure, but again, it is a very small number and

it will not even touch the sides in terms of the criminal justice reform that we really need in order to move our state towards good rehabilitation outcomes and outcomes for people.

You only need to look at the state of Texas and what they have been able to achieve. Over the past decade they have closed about 10 prisons in 10 years. They basically differentiated between violent offenders and non-violent offenders, made sure that people were not going to prison for low-level drug possession, made sure people were not going to prison for non-violent offences, halved the sentences of people convicted of those kinds of offences while they were in prison and invested heavily in training programs for jobs that had skills shortages and things like that. They created intermediate sanction facilities as a form of alternative punishment that was not prison and really invested in the alternative management program. There have been a lot of good things done in Scandinavian countries as well on the justice reform front.

I speak about this because I am passionate about it, not because it is particularly part of the bill. In regard to the government removing children and teens from this bill, the government should take a really sober approach to considering that and also considering any proposals to raise the age of criminal responsibility, which I hope they do, and I also hope they consult with the opposition as constructively on that as they have on this bill.

Given Labor has recognised many of the concerns and issues that we have raised, we hope the amendment that we are putting forward can be considered in good faith.

Jeff BOURMAN (Eastern Victoria) (10:25): I will be brief. I have got to say I am not as convinced as the opposition about these bail reforms, as someone who was here in 2016 when the bail laws got changed and also as someone who has a fair understanding of the bail system as it was some time ago – the principles of bail. The principle of bail is: someone commits a serious offence, they get bail, they do not do anything wrong and it does not matter. The whole point of bail is if you commit an offence or do something wrong or you are a recidivist offender, bail gets revoked and you go into the system.

I am going to keep it fairly short for the simple reason that I will go through questions in the committee stage. I am glad they removed the children's part for a separate bill; I think that clarifies what is already a murky bill. But I am reserving my opinion on where this goes, because I get the feeling that – this will get through with or without me; I understand that – in X number of years another Parliament will be back after another tragedy doing it again.

John BERGER (Southern Metropolitan) (10:26): I rise today to speak on the Bail Amendment Bill 2023. This is an important piece of legislation. Its purpose is to address and solve the problems with the current bail laws while ensuring there remains a focus on community safety, particularly on those accused of committing various serious offences and those who pose an unacceptable risk to the wider community.

The point of the modern justice system is to ensure that we do not see repeat offenders continue to put other people or themselves at risk. Part of this is addressing the dramatic increase in the use of remand, which has manifested in a disproportionate impact on current bail laws, harming vulnerable and disadvantaged communities. And of course, as we do with all good pieces of legislation from this side of the chamber, we address gaps in the current legislation through procedural and technical amendments.

I commend the work of the Attorney-General, Attorney Symes, and her team at the Department of Justice and Community Safety on this bill. These reforms are designed to make Victoria a safer state, and individuals who have been proven to have no regard for the continued safety of the community will in turn be dealt with appropriately. To that effect, alterations to the laws must be made.

Some history on the bill would be appropriate before getting into the substance of the bill. In 2018 there was the introduction of several bail reforms in response to the trend of perpetrators out on bail

breaching their bail requirements and then committing violent or dangerous crimes, the most infamous of these offences being the Bourke Street massacre. The attack was deliberate and undeniably evil. In the wake of the Bourke Street massacre it was clear that action needed to be taken to prevent something like that from happening again. An inquiry headed by Justice Paul Coghlan was conducted into any improvements to be made to the Victorian bail laws that could prevent reoffences during the bail period. The legislative solution that was found was to introduce a reverse onus bail test on a lot more offences, meaning that the accused must prove that there is a compelling reason for bail to be granted. In addition to this, senior police officers were given powers to remand an individual for up to 48 hours until there is a court available to hear and judge their bail application. This was intended to solely target serious offences, restore the public's confidence in all Victorian bail systems and increase community safety.

Our laws must be designed to ensure that something like this never happens again. That is clear. Victorians need a legal system that is tough on crime. We should all feel safe living in a state with a zero-tolerance policy for reoffending. It should be a comfort to know that your police force is equipped to protect you against the few individuals that seek to undermine the safety of the community, but for different groups in Victoria the harsh nature of these bail laws is not a comfort or a cause to feel protected. Unfortunately, there has been an unforeseen consequence of these harsh bail laws. Without sugar-coating it, some of the most vulnerable groups of Victorians have been disproportionately disadvantaged by these bail laws. The most concerning are the statistics attached to the remand incarceration of Aboriginal women, which has over recent years doubled.

This was highlighted earlier this year by the coroner's report into the tragic death of Veronica Nelson after she was held on remand for shoplifting. The coroner's report into Veronica Nelson's death found that it was an unacceptable outcome and highlighted just how important it is to get these bail reforms right and foolproof. There has been a long process of community and stakeholder consultation to ensure that this bill gets it right. Nelson's death was a harsh reminder that it needs to be done. Something must be done to rectify the impact that bail laws are having on disadvantaged communities and minor offenders and make Victoria a safer and fairer place. We should be a state that has zero tolerance for crime, but we should not be a state that traumatises individuals before they have been proven guilty.

Another way that this bill addresses injustice is in relation to the reverse onus bail test. Under the bill's amendments to the principal act, the onerous process targets only serious and violent offenders to ensure those accused of relatively minor charges do not find themselves unnecessarily being subjected to the high bail standard we have in Victoria. Additionally, the Bail Bill will refine and clarify the definition of 'unacceptable risk'. Under the new definition it will be clear and evident that the potential risk of committing a minor offence does not satisfy as a reason to refuse bail alone. Bail must only be refused if there is a potential risk of causing harm or threat to someone's safety or welfare. This may also, in some very exceptional cases, extend to a property crime, but only in a scenario that affects welfare. These amendments will also repeal sections of the Bail Act 1977 relating to bail-related offences, specifically the breaching of bail conditions and the committing of further offences whilst on bail. That is not to say that breaching bail conditions will no longer lead to adverse consequences for the offender; it simply will no longer exist in Victorian law as a standalone offence. If an accused was to breach their bail conditions, they would see consequences like having their bail revoked. Materially the outcome will be the same.

The next reform is the introduction of the remand-prohibited offences. This means that the specific offences within the Summary Offences Act 1966 that are extremely unlikely to result in a prison sentence will no longer enable or justify an accused to be put on remand. Individuals accused of prohibited offences will still have to apply for bail and be subject to the bail conditions set out by the courts to ensure that community safety is upheld.

The next amendment will reform the Bail Act to allow persons who have had their bail application rejected to make a second application without having to add new factors or circumstances to their case.

This is to prevent and discourage, by way of removing incentive, individuals appearing without legal representation for their first bail application with the purpose of ensuring that they will receive a second bail application. If an individual believes they have wrongly been judged, they should in principle have the right to appeal. Exceptions will be made in the unlikely but all too possible situation that certain crimes of very high severity are committed, such as terrorism or homicide.

As we do with all pieces of legislation that we draft, we have consulted widely. That includes across all of government, members of Parliament, with the courts, the wider justice system, Victoria Legal Aid and the Criminal Bar Association, the Office of Public Prosecutions, the victims of crime commissioner, the Federation of Community Legal Centres and the Victorian Equal Opportunity and Human Rights Commission. We have also consulted with the Aboriginal Justice Caucus, the Law Institute of Victoria and the Police Association Victoria, the Commission for Children and Young People and the Victorian Aboriginal Legal Service.

The Attorney has long flagged the need for reform. In March this year the Attorney announced that our bail laws would be reformed with a particular focus on addressing the changes that were brought in in 2018 and their disproportionate impact on Aboriginal people and other vulnerable people.

It is also important to acknowledge that for a lot of communities crime is a very complex issue that warrants a holistic approach. This means that bail laws are not the be-all and end-all to the issues of crime and high incarceration rates, nor will conditions that lead to high incarceration rates result in a safer Victoria. Instead it is important for our justice system to focus on rehabilitation.

The Allan Labor government has attempted to contribute to and assist in supporting and creating a preventative approach to crime as opposed to the traditional punitive measures we have seen in the past. This is done in several specific ways, but the overarching concept behind the approach to preventing crime in communities that experience higher rates of incarceration is identifying the root cause of criminal activity. It is often a lot more complicated than negligence or malice. Quality of life is a big factor in motivating crime, as are crimes of despair. We know that education is a way out. Programs like free TAFE, which offer young people enrichment, education and employability and bring positive changes to the lives of our First Nations Victorians and those marginalised communities, are vital. Much focus has been placed on our Big Build projects to ensure that employing First Nations labourers and apprentices, giving First Nations Victorians employment opportunities, is a key to addressing economic disparity. It does not begin and end with bail laws.

The data shows that the introduction of the two bail breach offences in 2013 have made a substantive contribution to the significant increase in Victoria's remand population, with a particular impact on women as well as First Nations people and those experiencing disadvantage. In fact in 2019 the Crime Statistics Agency's *Characteristics and Offending of Women in Prison in Victoria* report found that the proportion of remanded women who faced a reverse onus bail test increased from 37 per cent in 2012 to 79 per cent in 2018, and 29 per cent of women remanded in 2018 faced a reverse onus test only because of these two new offences. While this clearly demonstrates that these offences have increased remand, it is far less evident that the offences do anything to discourage bail breaches. Our criminal justice system already provides an appropriate bail response to bail breaches and offending whilst on bail, and these offences are not necessary to achieve that end. This bill is about making sure that the consequences of offending are reasonable and proportional. The holistic approach will yield the best opportunity and the best good for the community. It will keep people out of jail, make them productive members of society and bring an immense degree of improvement to their own lives.

To wrap up, the bill implements recommendations 8 to 13 from the Nelson inquiry relating to the Bail Act 1977. It also introduces several changes to existing features of the original legislation, and it repeals the Bail Amendment Act 2013 offences of breaching bail conditions and committing further offences whilst on bail. Make no mistake, this conduct will still have consequences, but they are no longer standalone offences.

The bill also makes further amendments to clarify and modernise and otherwise improve the act. Under the current law, an accused cannot make a second application for bail without demonstrating that new facts or circumstances have arisen since bail was refused or revoked or they were not legally represented at their first hearing. In practice this has accused people making self-represented applications on the advice of their lawyers out of a concern that that will exclude them from making a better, well-prepared application with more time. This contributes to a high number of short-term remands in the system and is an issue the coroner has pointed to needing to be addressed following the death of Veronica Nelson. The Bail Amendment Bill will also allow an accused person to make a second legally represented bail application before the court without having established new facts or circumstances, with the aim of reducing unnecessary short stays in remand.

Unrepresented people consuming the court's time by making an application without legal representation or making an application because they do not feel they have to do it on their own results in people who may otherwise obtain bail being subject to a short remand. This is highly disruptive to a person's life, their housing, parenting responsibility and employment, and short remands are highly disruptive to our prison system. This reform will encourage an accused person to make a legal representation application at the earliest opportunity, as there is no longer to be a concern about meeting the new facts or circumstances test in order to make a second legally represented application.

Part of the role as a member of Parliament is to reflect on the views of our community. We are democratically elected after all, and the importance of this is to ensure that our laws keep up to date with the changing views of our society. I look forward to the opposition joining us in support of this bill, and I understand they are broadly in support of our work.

Matthew BACH (North-Eastern Metropolitan) (10:39): I am pleased to rise to also make a contribution on this important bill. I am particularly pleased to rise to do so following the very thoughtful contributions of both Mr Mulholland and Mr Berger, and I find myself agreeing with much of what these gentlemen have to say. I welcome bail reform. I think bail reform is necessary. I note the previous comments of the Attorney-General, very honest comments of the Attorney-General, reasonable comments of the Attorney-General, about the process that by its very nature was rushed some years ago following the tragedy down the road and the need to look again at how these systems and structures are operating. As Mr Berger pointed out, we know that our bail laws have not been operating in an optimal way. We have seen too many people, oftentimes vulnerable people, swept up. So I am very pleased that the Attorney-General has been looking at bail reform for some time now, and I echo then the comments of Mr Mulholland.

There is some reporting in the media today that had there not been a change of Premier we may not have seen such a constructive approach. I am not sure about that, and I am not sure of the extent to which this sets a precedent. But I personally welcomed the initial amendments that were put forward by Mr O'Brien in the other place. I thought they were sensible amendments, and as it turns out there has been a process with the Attorney-General – it sounds like a constructive process – and the government has changed its position. Like Mr Mulholland, I will not criticise the government for doing so. I do think, noting the comments of the Attorney-General about previous changes and the need to review the impact of those changes, that it is particularly important that the government has seen the merit in locking in a review process. Mr Berger is also correct when he says that there are a whole series of very significant issues in our justice system today, and bail plays a very important part. But, as he said, we should not presume that bail and bail reform will be some type of panacea. I think there is much agreement around the chamber that our court backlogs are far too long, that we see far too many people on remand in prison today, incarcerated despite the fact that no crime has been proven against them, and far too many vulnerable people, and these are issues that I think members of the government want to see addressed, members of the crossbench want to see addressed and on this side of the chamber we also want to see addressed.

Bail plays an important part in that broader effort, but it is not the only piece of the puzzle. In my mind there are three other things that we can look at as part of this broader effort, and the first is law reform.

Mr Mulholland has spoken in the past about drug law reform, and I agree with many of the things that he said. I have been interested in last few days to note the shambolic political goings-on in America. One of the best things that President Trump did was to enact some significant drug law reform, and my view is if Mr Trump can do it, for goodness sake, why can't we? There are too many people in prison for personal drug offences and too many people on remand for personal drug offences. As a liberal I could not care less what adults choose to do in their free time as long as they are not harming others. I do not personally use drugs. I tried cannabis a couple of times and did not really like it. But if other people after a hard day's work want to sit outside and smoke a joint, on a personal level as a liberal I could not care less, so I do hope that in my absence, members of this chamber will continue to discuss law reform, in particular drug law reform, including considering the decriminalisation of the use of cannabis.

A second really important piece of the puzzle is building the capacity of alternatives to incarceration. You cannot just flip a switch, as much as I would like that. Mr Berger said that the government had consulted with the Commission for Children and Young People, and I am thrilled that that is the case. That is excellent. As you know, Minister Mary Wooldridge set up that commission when I was her adviser for child protection. I am pleased the government consulted with the commission. Undoubtably what the commission would have said is what it has said publicly for a long period of time and what I have said for a long period of time, and that is we must end this dreadful pipeline of vulnerable people from child protection into youth justice and then into the adult system – vulnerable Indigenous people, other vulnerable people.

As a Liberal, I believe deeply that as individuals we have agency and we can turn our lives around, but I also think government has a huge capacity to crush people. If you read any number of the harrowing reports of the children's commission – I would recommend *Our Youth, Our Way* in particular about young Indigenous people – I think you would come to that conclusion too. At the moment, sadly, what is happening is that through decisions of government massive numbers of vulnerable people are being funnelled into government institutions – our very own gulag archipelago, right here in Victoria in 2023 – to then be brutalised by the state. There is a pipeline – this is what the children's commissioner says – from child protection, in particular residential care, which I would shut down yesterday if I could, through into youth justice then into the adult system. If you want to blow up the gulag archipelago, and I do, you must invest heavily in alternative approaches. I would recommend the government go back to a fabulous report from Social Ventures Australia in 2017 into these alternative approaches.

To be fair to the government, there is some small investment in some of these approaches, like functional family therapy – a fabulous form of group therapy that is really hard on participants. It is really hard in particular on deadbeat dads. This is not an easy way out. There is some small investment from the government in that program. I welcome that, but that investment is not currently at scale. The Social Ventures report from 2017 discusses a range of evidence-based early care and prevention programs that I think could allow us in due course to entirely dismantle the gulag archipelago.

Thirdly, we need far faster processing. I believe deeply in the separation of powers, but it is reasonable from time to time to give some advice to our friends in the judiciary. To our friends in the judiciary today I would say, 'Please, put down the cat, get out of the pyjamas, get out of your living room and get back to court.' It honestly is scandalous that today so few members of the judiciary are actually back in court. It is a key reason, not often discussed, for our massive backlogs. It was former Liberal attorneys-general like Jan Wade who first introduced various forms of technology into our courtrooms. She introduced excellent reforms so that women who were alleged victims of sexual violence did not have to front up to court but could use television technologies. Those are excellent reforms. There are still many minor matters that we can be dealing with online, and we talked about this in a different bill earlier this week, but all important matters should be dealt with in person in court. They can actually be dealt with far more expeditiously that way. For that to happen we need to encourage our friends in the judiciary to get back to work.

So I welcome this bill. I am pleased that the government has seen fit to make changes. I would acknowledge both Mr O'Brien and the Attorney-General in that process. As Mr Mulholland said, we will seek to make one further constructive change, and I would recommend that change also to all members of the chamber.

Katherine COPSEY (Southern Metropolitan) (10:49): There are many matters that we are asked to consider and vote on in this place, some of which are more urgent and important than others. Reforming Victoria's broken bail system is both. Our current bail laws are ineffective, they are discriminatory and they are unnecessarily punitive, especially towards First Nations communities and vulnerable groups, such as children and disabled people. Depriving a citizen of their liberty is one of the most serious powers a government holds. Any government that does so, and those of us who hold scrutiny over those governments, must ensure that the highest standards of accountability are brought to bear when exercising that power. We must be rigorous in using human rights frameworks.

We should, firstly, reiterate that bail is a fundamental right under the rule of law, however much in our public debates in recent years it has morphed into being seen as a privilege. Since changes were made to bail laws in 2014 and in 2018 Victoria has experienced and is experiencing an absolute incarceration crisis – an unprecedented growth in prisoner numbers. More than one in three people currently in prison in Victoria have not been sentenced. It is not that we are experiencing more crime – that growth in prisoner numbers comes overwhelmingly from the number of persons who are denied bail and then remanded in custody. Those reforms were called a complete and unmitigated disaster by the coroner investigating the tragic passing of Veronica Nelson, a proud Aboriginal woman who died in police custody in this state.

Today we have seen a last-minute backflip, posing very worrying questions about this government's commitment to evidence-based policy, to First Nations justice and to the upcoming treaty process. We do look forward to seeing the much-wanted youth justice bill when it emerges early next year.

As the Royal Commission into Aboriginal Deaths in Custody report was so clear in stating in 1991 – 32 years ago – reducing First Nations deaths in custody will only be achieved when governments use prison as a last resort. But in the three decades since that report those lessons have not been heeded here in Victoria. All we have witnessed is bowing to law and order debates, not following expert advice on reducing crime rates and spending billions of dollars on prison strategies that do not work, and we have seen that reflex again today with the government backtracking on its own commitment to children. The situation today is proof of what the royal commissioners concluded 32 years ago: that First Nations people will continue to die of preventable deaths disproportionately in custody until governments finally stop locking them up unnecessarily. Our bail and remand system is a clear culprit in this debacle.

It is very clear that today this debate is about bail, but it is absolutely a debate about deaths in custody as well. The downward spiral of bail reforms in the last decade has driven an incarceration crisis within First Nations communities as Aboriginal and Torres Strait Islander peoples are disproportionately represented among those remanded. It is notable, and it is heartbreaking in this fortnight when voting starts on the referendum on the Voice, that Indigenous status interacts with gender, with Indigenous women being particularly over-represented among those held on remand in this state.

The debate is also about facts and about evidence. With regard to children, the data tells us that youth offending is incredibly rare and that early contact with our prison system harms kids. Today's weak backflip will continue to expose kids unnecessarily to contact with the prison system. Troublingly, we must acknowledge the evidence that denying bail and imprisoning people unnecessarily does make it more likely that they will reoffend in future. This includes kids. Many experts, including our own Sentencing Advisory Council, have observed that the remand environment is criminogenic – literally it is producing more criminal behaviour. It is a sad irony that imprisoning people before trial, notionally to improve community safety outcomes, or perception of such, may actually contribute later to

offending that places the community at risk – exactly the opposite of what we are seeking to do with a functional justice system.

Both the coalition's 2013 reforms and the government's reforms in 2018 have resulted in higher subsequent recidivism rates and no overall decrease in serious offending rates. Currently 38 per cent of adult prisoners in Victoria are being held on remand. Moreover, as I have said, that impact is gendered, with more than 40 per cent of women in Victorian prisons now there on remand. Their most common alleged offences are not violent crimes but property and drug offences. The vast majority of those women also have children, and that means that those children are then far more likely to end up in contact with our justice system and imprisoned themselves. That perpetuates the intergenerational cycle. It will impact disproportionately on First Nations people, and it is currently likely to continue well beyond the current generation of adults. Shockingly, across the 12-month period from May 2022 to May 2023 the number of Aboriginal people in Victoria's prisons grew by nearly 20 per cent. If there is one statistic that represents why urgent action on our broken bail laws is needed, it is that one.

I do acknowledge the Attorney's work bringing forward this very long awaited bill and at this time. The Greens recognise that this bill does attempt to rectify some of the issues that exist in our bail system, and it is good to see some positive reforms, including removal of two bail offences and the strengthening of special considerations for Aboriginal people. I would really like today to acknowledge the strong advocacy of First Nations voices and in particular Veronica Nelson's family, who should be credited with the steps forward that will be achieved through this bill.

Attorney, we are listening closely when you state that you have confidence that the reforms in this bill will reduce the numbers of people unnecessarily in prison on remand, and we sincerely hope that this is true. That will be the true test of this bill. We will continue to ask questions about the progress of the reforms and seek data to explore their efficacy. Particularly we hope that the changes proposed will reduce the number of First Nations prisoners proportionally in Victoria, and we condemn the delay in enacting measures to protect young people from the discriminatory impact of the reverse onus tests and reduce their contact with the prison system.

Legal experts, First Nations advocates, the Yoorrook Justice Commission, human rights organisations and the Victorian Law Reform Commission, together with the Royal Commission into Aboriginal Deaths in Custody – all of these experts – along with communities and families affected have been crystal clear in telling the government the elements that are required for bail reform for years and for decades, and it was brought into very sharp focus in January with the release of the findings of the inquest into the death of Veronica Nelson. The coroner found that the current bail laws are discriminatory towards First Nations people and that they are incompatible with Victoria's charter of human rights. Among other recommendations, a key finding from the coroner was that the reverse onus regime should be repealed and a presumption in favour of bail restored.

Even though the Greens will support this bill, we do so clear in the understanding that what the government has presented today is only a partial solution after such a long wait, and more work does remain to be done to achieve proper bail reform. We believe that the risk of a tragedy like Veronica's passing being repeated should be significantly reduced – eliminated – not just partially reduced. To make the bill better, the Greens have a number of amendments to improve it, and I ask that those amendments under my name be circulated now.

Amendments circulated pursuant to standing orders.

Katherine COPSEY: I will speak in detail about our amendments during the committee stage, but broadly the Greens amendments are: firstly, a requirement to report to Parliament on the impacts of the bail reforms after 12 months and at four-yearly intervals after that – and I do acknowledge and welcome the government's acknowledgement that a two-year review is necessary in relation to these reforms; secondly, a requirement for an annual report from the department, from Court Services Victoria and from the chief commissioners containing information on bail decisions; thirdly, a change

to the guiding principles of the act, emphasising a more sophisticated understanding of the relationship between remand and reoffending rates and the fundamental need for bail decisions not to discriminate against the disadvantaged and most vulnerable; and finally, repeal of the two reverse onus tests, exceptional circumstances and compelling reasons, and the replacement of those with a simplified unacceptable risk test that focuses the attention of bail decision makers on the core question.

To conclude, we all know that there are a lot of voices with strongly held opinions about bail and how best to reform it. The voices that resonate most strongly, even though they are softly spoken, are those of Veronica Nelson's family. When this bill was being debated in the other place a month ago, Uncle Percy and Aunty Donna came to the steps of Parliament. They called on the government and they called on us in this Parliament to go further and to do better than what the current bill offers. Veronica's mother, Aunty Donna, said:

> I am relieved that our lawmakers are finally changing bail laws. This is a positive step forward, but it doesn't go far enough.

Uncle Percy Lovett, Veronica's partner, said:

> The system needs to change so that other people don't go through the same thing –
>
> … ask the politicians to make the government's proposal better. These changes are about saving lives and I reckon politicians should remember that.

The Greens are absolutely listening to the voices of legal, human rights and First Nations experts and also to the families affected by Victoria's discriminatory bail laws. We will continue to push for the reform we need to fix these laws and for the further steps we need on important issues like raising the age, improved decision-making regarding bail for children, independent police oversight and First Nations justice reform generally.

Jacinta ERMACORA (Western Victoria) (11:01): I am pleased to speak on the amendments being made to the Bail Act 1977 through the Bail Amendment Bill 2023. Bail is a complex component of the legal system because bail decision makers are obliged to strike a balance between the presumption of innocence and greater community protection. Listening to Ms Copsey I was reminded of the glib statement made by Gracie Hart, the character played by Sandra Bullock, in *Miss Congeniality* where when asked 'What do you want most in the world?' she said, 'World peace,' and then glibly sort of quipped, 'If I can't have that, harsher penalties for bail violators.' If only it was as simple as that. I think we have taken the journey along the way with different bail laws over the years only to discover that this is complex and highly sensitive, and yes, it is all about saving lives and keeping our communities safe.

I would like to acknowledge that my speech here this morning includes reference to an Aboriginal person who is no longer alive. We have seen in Victoria's history the challenge that many bail decision makers have faced when trying to achieve that balance. We have seen cases where a person on bail has killed and, at the other end of the scale, we have seen cases where someone on remand in jail has died, so two ends of the spectrum. Again, an example of how this is not a straightforward, emotional, harsher punishment solution. We have had an outbreak of collaboration across the chamber on a number of points related to this bill as a result, and I think Minister Symes ought to be congratulated, as Mr Mulholland said, for that.

In the past there have been cases that have led to tragedy. The benefit of hindsight is it allows us to see that some accused persons should not have been bailed for varied reasons, such as already being on bail for moderately serious offending. An example of this is the tragedy that struck Bourke Street in January 2017 when six people lost their lives. The perpetrator was on bail, granted by a bail justice despite opposition from Victoria Police. At that time the Andrews Labor government recognised our bail system needed to be seriously overhauled.

Within days the government initiated a review, led by Justice Coghlan, and subsequently established a night court at the Melbourne Magistrates' Court to continue to hear bail and remand cases, shifting

the responsibility of important bail decisions back to magistrates. The amendments to the Bail Act enacted in 2018 introduced more stringent circumstances for accused persons to be granted bail for more serious offences. The purpose was to restore public confidence in Victoria's bail system while implementing other recommendations of the Coghlan review. These are the toughest bail laws in Australia. Mainly in circumstances where an accused person was already on bail or undergoing a community correction order, the test to be granted bail would be uplifted to a higher threshold and therefore a higher standard that a decision-maker must be satisfied of in order to grant bail.

I want to acknowledge with great respect the views of people who have been so catastrophically affected by horrific crimes. This bill takes the opportunity to address the nuance and complexity of the bail system and how it works and that most certainly not all crimes are equal. What the government could not foresee in 2018 was that more vulnerable Victorians would unintentionally fall into this higher threshold. These people include women, children with disabilities and Aboriginal people, and as a result numerous reports, inquiries and legal stakeholders have advocated for a re-evaluation of these laws.

The coroner has most recently joined the call for reform following the death of Veronica Nelson, who was on remand at the time of passing away in custody. Veronica Nelson was a strong Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman. She was connected to her culture and close to her family and community. Veronica's nickname was Poccum, based on the way she pronounced 'possum' as a child. As reported in the *Guardian* on 28 January 2023, at the time of her death on 2 January 2020 Nelson, 37, had spent three days in Melbourne's Dame Phyllis Frost Centre, Victoria's maximum security women's prison, after being arrested on suspicion of shoplifting. She was in jail after appearing in court without a lawyer and being refused bail. It was unlikely she would have been sentenced to prison if she had been convicted of the offences for which she was arrested. It is saddening that such a tragic event had to occur to institute change, but the coronial inquest into her death in custody led to reconsideration of the bail laws after finding that First Nations people represented a grossly disproportionate number of people on remand. This disproportionate number of Indigenous people in prison or on remand must change.

I know there are real, practical measures that need to be addressed in outer regional and rural areas. I recently met with the Warrnambool branch of the Victorian Aboriginal Legal Service and had a most informative roundtable discussion. Xavier Farrelly, regional practice lead for Barwon South West region criminal law with VALS, told me of the reality of the situation on the ground. He said that there are not many lawyers in Warrnambool that are available to do bail applications, which can see the level of cultural understanding vary, and that the VALS office in Warrnambool only recently opened. Before that, there were no culturally safe legal services for them to use.

Mark Messer, Warrnambool client support officer and Wurundjeri man at VALS, further pointed out that the shortage of solicitors in Warrnambool does make it very difficult for people to gain access to receive help and assistance for their bail applications. He went on to say that, being a smaller community, sometimes there could be a conflict of interest for the VALS Warrnambool solicitors, which makes it difficult for Aboriginal people too. Finding a firm which it not conflicted can take several hours. Also, with this shortage of solicitors in remote and rural areas, this issue is common between all firms in that jurisdiction. He went on to say that this can be stressful for Aboriginal and Torres Strait Islander people while in cells at the police station waiting for assistance. It can cause anxiety and depression, and the client is left feeling lost and without hope while they wait for assistance. The process can be particularly difficult for clients with low reading and writing skills.

I do give those voices because I think those voices are important. We can only imagine the difficulties this places on already vulnerable people who may not have the ability to and/or the resources to re-enter the community as easily as others, and this is after being held even on remand. Coupled with unintended consequences of a more stringent bail system, there is little hope for these people to access rehabilitation support.

Nerita Waight, CEO of VALS, a Yorta Yorta and Narrandjeri woman, explained that the current bail system is overly complex and is trapping people living with disadvantage in the legal system for low-level alleged offending, like minor shoplifting. Putting people in prison because of alleged offending related to poverty, disability or mental health issues is not making communities safer. It is putting people on a path to being in a cycle of incarceration for their whole life so that we continue to spend more money on prisons and less on essential services to lift communities up. That is what the Bail Amendment Bill 2023 will help to resolve.

This is achieved through several key components. Revising the uplifting reverse onus test: the bill introduces a revised approach to uplifting the applicable test for bail from the less onerous test to the onerous test for persons accused of repeated low-level offences. Instead the Bail Act will have a balanced and fairer categorisation of offences to specifically target those accused of serious offending. Primarily this is achieved by removing the offences of non-scheduled offences and Bail Act offences from the schedules in the Bail Act. In doing so, the accused persons who may commit an offence such as shop theft whilst on bail may not see themselves facing an exceptional circumstances test to be granted bail due to the consequential offence of committing an indictable offence whilst on bail. In other words, this is a risk approach that weighs up the level of risk and harm to the community. This aims to avoid remanding those accused of relatively minor offences who would not pose an unacceptable risk to the community.

This will not remove the ability of the court to revoke a person's bail if they have committed further offending whilst on bail or failed to comply with their conditions of bail. The bail decision maker must also be satisfied that the accused person does not pose an unacceptable risk of reoffending or endangering the community. However, the bill seeks to amend the unacceptable risk test to prevent a person being remanded due to the decision-maker perceiving that the accused person may commit minor offending if granted bail. This is achieved by refining the test so that the risk of minor non-violent offending cannot be the sole reason for remanding an accused.

The bill also makes a number of changes to Victorian offences. The first is significant to the bail decision making process. The bill repeals the offences of breaching bail conditions and committing further offences whilst on bail. These offences have often catapulted an accused person into a higher reverse onus bail threshold and consequently led to remand for relatively minor and non-violent offending. In addition to this, the bill introduces remand-prohibited offences, which are specified offences in the Summary Offences Act 1966 which are unlikely to result in a term of imprisonment. Of course nothing prevents the imposition of bail conditions to ensure community safety is upheld.

The bill also allows a person whose bail application has been rejected to make a second application for bail without having to show new facts and circumstances. This seeks to remove the incentive for applicants to try and secure a second application by appearing without a legal representative at their first application.

The bill requires a bail decision maker who has decided to reject an Aboriginal person's bail application to record how they have considered specific self-determined Aboriginal considerations such as a person's culture, kinship and family situation. As the VALS website points out, they see these reforms as the first steps. They acknowledge that it is good to see some significant wins off the back of the advocacy by Veronica Nelson's family, including the removal of two bail offences. The VALS website also acknowledges the work done by our Attorney-General Jaclyn Symes and the consultation that they were included in.

Georgie CROZIER (Southern Metropolitan) (11:16): I rise to speak to the Bail Amendment Bill 2023. I want to make some comments in relation to this bill and acknowledge the work of the Shadow Attorney-General Michael O'Brien in relation to improving what has been put before the Parliament and the discussions he has had with the Attorney-General, and I am pleased that the government has seen sense and is adopting sensible amendments proposed by Mr O'Brien.

What this bill does is make some sensible changes and seek to ensure a balance between the fundamental principle of presumption of innocence and the competing interest of protecting the community from the risk of significant harm posed by people charged with serious crimes. As we know, when we were in government we significantly tightened the bail laws back in 2013. These reforms included introducing specific offences of contravening certain bail conditions and committing an indictable offence whilst on bail. That is an issue that we still are very concerned about, and I will come to that point in a moment.

We have had some tragedy in this state. In direct response to the appalling incidents in Bourke Street in 2017 involving James Gargasoulas and the tragedy that unfolded that he was responsible for whilst out on bail, the Labor government commissioned former Director of Public Prosecutions and Supreme Court judge the Honourable Paul Coghlan QC at the time to review Victoria's bail laws. That being done, the government has now come up with this bill, as has been highlighted by my colleague Mr Mulholland in relation to what those changes actually mean.

I want to quickly address some of the concerns around what the government has raised. I was just listening to one of the government speakers Ms Ermacora talking about some of the issues that have been raised specifically around the Victorian Aboriginal Legal Service and the tragedy that she referred to. Whilst we have obviously sympathy for that particular case, I think it needs to be understood that when justice is being provided, it should be based on the merit of the case rather than making judgements on historical wrongs and then applying that in a group context, because you cannot judge individual issues based on what has happened in the past. We have many migrants and refugees that have come to this state who have experienced significant trauma in their lives, and what does it mean for them if you are applying the test that you have just spoken about? I do think there has to be some common sense in this and looking at the individual cases based on merit rather than looking at historical wrongs and applying that across the board.

In any case, I want to just go to what the government has agreed to after discussions with the Shadow Attorney-General Michael O'Brien. They have listened to the concerns that have been raised by the coalition, and the government's decision to walk away from their proposed changes to bail laws for minors is only a small first step in putting community safety first.

We on this side of the house are very concerned about the rising crime rate, particularly amongst young offenders, which we have seen in our community in the last period of time. I have just come from a meeting talking to people who were talking about the horrific crimes that are occurring across the state in relation to arson attacks. Twenty chop-chop shops, or whatever they are called, have been torched, and somebody in my electorate of Southern Metro was assassinated just a few weeks ago in relation to those crimes. This is what is happening. It is not isolated to Victoria, this particular issue – it is across the eastern seaboard of Australia – but Victoria has the worst statistics in relation to these arson attacks and what is going on. There is just an enormous amount of crime going on in the state, and we have got a real concern around community safety. That is why we make it and will continue to make it a priority. This bill would have seen young offenders facing the state's weakest tests for bail, even for some of the most serious of offences, and that is why we proposed wholesale amendments in response to these dangerous proposals.

I just want to state that by retaining the status quo for the youth bail laws the Labor government appears to have finally responded to community concern about crime. They are actually listening – unlike the former Premier Daniel Andrews, who just would refuse to consult and listen to anyone, as we know and as members of his own government know. Finally this government, under the premiership of Ms Allan, hopefully will do a bit more consulting and listening to the community because of those concerns that I have spoken about.

I am very pleased that the government has agreed to accept the opposition's proposal for a statutory review of bail changes after two years of operation, another commonsense measure that should have been put into the original legislation – it was not. As I said, these measures that have been proposed

by the coalition that the government is now accepting are a good move, but we do think there needs to be the retention of a standalone offence of committing an indictable offence whilst on bail. That is a serious concern for us, and Mr Mulholland spoke about that particular amendment in his speech. We will be moving that amendment, and I hope that members of the house will support that sensible move too. As we know, we have seen some shocking youth crime incidents in recent weeks, and weakening youth bail laws was always a dangerous move by the Labor government. They have not been listening to community concerns, but at least they have accepted and adopted those amendments – a couple of them – put forward by Mr O'Brien. We hope that more can be done in this important space.

Ryan BATCHELOR (Southern Metropolitan) (11:24): I am very pleased to rise and speak on this bail reform legislation. As many speakers in their contributions to this debate have indicated, it is a very important piece of legislation. There has been considerable attention given to what is happening in our justice system by many fora in recent years. There have been a series of changes made over the course of the last few years. What this legislation does is in part reflect on the effects of some of those changes; listen to what the government is being told by experts, including by the coroner; and seek to amend the arrangements to bring some more balance to them and to ensure that some of the negative consequences that clearly were being experienced by many in the community, particularly those who are vulnerable and particularly First Nations people, are addressed.

One of the clear instigating incidents for the review of these bail laws was undoubtedly the very tragic death of Veronica Nelson, who in January 2020 died alone in her cell in a maximum security women's prison here in Victoria after she was taken into police custody after being arrested for shoplifting and was refused bail. Ms Nelson, as others have said, was a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, who cried for help over and over again in her cell over a long and extended period of time. Anyone who has taken the time to read the coroner's report cannot but be affected by what is on those pages and what it must have been like to get to the point that she got to there because she had been refused bail on a shoplifting offence. I do not think anyone who read that judgement and understands not only that particular incident but also what Ms Nelson's experience represents more broadly can in any way suggest that action does not need to be taken. That is what the coroner found. Coroner Simon McGregor found that Ms Nelson's death in custody was preventable and called for an urgent review of the Bail Act 1977.

The Labor government has listened to these calls for change. This legislation will make our bail laws fairer for vulnerable and disadvantaged people while continuing to take an appropriately tough approach to those who pose a serious risk to Victorians. We obviously acknowledge that the 2018 changes that were made largely in response to a series of incidents by people who had previously been on bail were made with the intention of restoring some confidence in the bail system, but the introduction of what amounted to the toughest laws in country has caused a significant increase in the numbers of Victorians who are on remand.

Being on remand means that, whilst accused of an offence, you are yet to be convicted of an offence, so we have rapidly increasing numbers of incarcerated Victorians who have not been convicted of any offence. The number of unsentenced people in Victoria recently was as high as 42 per cent of the total prison population, compared to less than 20 per cent a decade ago, and these proportions are higher amongst Aboriginal and Torres Strait Islander people and amongst women. Just a couple of months ago the latest prison statistics showed that the number of Aboriginal women entering prison each year has grown by just under 250 per cent over the last decade, and these laws will address those issues. The negative consequences of this incarceration on remand are significant and can include family separation, trauma and perpetuating cycles of homelessness, unemployment and reincarceration. Remand should be used in appropriate circumstances but not to further punish the most vulnerable members of the community.

These laws will enable Victorians accused but not convicted of low-level crimes to secure bail more easily and significantly reduce the number of people in prison who are unlikely to receive a prison sentence for a crime. I think that is a particularly important note because there are many who are on

remand, denied bail under the existing arrangements, who are there accused of offences where they are unlikely to receive a sentence of incarceration should they be found guilty. That set of circumstances is obviously one that should trouble many and one which these laws seek to address, because we know that in many circumstances repeated low-level offending does not pose the sort of safety risk that the concept of remand is designed to ensure for the broader community. What it will do is significantly reduce the number of people – particularly women, particularly Aboriginal people – who are entering remand and being incarcerated and who do not pose a community safety risk.

As I said, incarceration on remand for some offences does more harm than good. One of the effects, particularly for women and their families, is that incarceration on remand for lower level offences and offences that do not pose a serious threat to community safety can separate women from their families and their children, can further exacerbate cycles of homelessness and can increase the likelihood of their children entering the child protection and out-of-home care systems. That is something that we need to address, and these laws we hope will do that. According to the Federation of Community Legal Centres in Victoria, between 70 and 90 per cent of women on remand have experienced violence or abuse and needed support, and keeping them on remand can exacerbate and increase unnecessary suffering, often reinforcing those offending behaviours without the sorts of support and rehabilitation that are afforded to many who are actually incarcerated under sentence. Many of the forms of support that are available to those people who have actually been convicted of crimes often are not to those who are held in unsentenced terms. Worryingly, in June 2021 over half of those in Victoria's women's prisons were unsentenced. That is a significant number compared to around 20 per cent in 2011.

The other important reason that we need to address these, and it is something that was brought up in the debate yesterday on the motion on public drunkenness, is that having appropriate bail laws is one of the other key recommendations of the Royal Commission into Aboriginal Deaths in Custody which, as we know, started its work in 1987, handed down its report in 1991 and yet still has relevance, searing relevance, to our justice policymaking here in 2023. That royal commission report recommended that imprisonment only be used as a last resort and that governments 'revise any criteria which inappropriately restrict the granting of bail to Aboriginal people'.

That royal commission and its evidence demonstrated that there was a problem with bail then. What we have seen in Victoria, in recent years but also prior to that, is that that problem endures. These steps in the legislation that is before us today are another example of this government listening, going back, reading and hearing what was said by those in the past, and we know more broadly that listening to the voices of Aboriginal people is an exceptionally important part of making laws, and better laws, in areas that affect them. So what we hope is that these bail laws, the bail changes that we are making today, will work to increase confidence that the justice system is not unfairly discriminating against Aboriginal people, ensure that incarceration is used as a last resort and provide some degree of hope that what happened to Veronica Nelson and what happened to many Aboriginal people before her does not get repeated.

The government hopes the amendments to the Bail Act will effectively achieve a proportionate balance between the protection of the community and the protection of the human rights of those accused of crimes. We do need, as always in addressing legislation in the criminal justice field, to try to get the balance right between those important concepts and to provide the opportunity for lower level offenders to break free of the cycle of crime that can be perpetuated, particularly when people do spend extended periods incarcerated. There is great opportunity for us to get our policy settings better attuned to ensure that those who are accused of lower level crimes and who do not pose a risk to community safety, instead of being imprisoned on remand awaiting their day in court, can be out in the community receiving access to better support services through housing, mental health or alcohol and other drug supports and that we are not taking the wrong approach and thinking that the best thing we could possibly do is incarcerate people in these sorts of circumstances before they are convicted of any crimes.

The bill goes further. It will do a range of things, including redefining the definition of 'unacceptable risk' to make it clear that the potential risk of minor offending is not enough to refuse bail unless someone else's safety or welfare is threatened. It will repeal the Bail Act offences of breaching bail conditions and committing further offences while on bail, which means that while that conduct will still have consequences, such as existing bail being revoked, there will no longer be separate and standalone offences that in effect just add to a person's rap sheet. The bill will introduce remand-prohibited offences for particular offences set out in the Summary Offences Act 1966 so that those which are unlikely to result in a prison sentence once the court process has concluded will no longer enable a person to be remanded in first place. That will help address that concern we have that some people are ending up being incarcerated when they are accused of crimes that would not result in a term of incarceration were they convicted, which to many is just an absurd set of circumstances that this legislation is seeking to redress. It will also do things such as allow a person whose bail application has been rejected to make a second bail application without having to show new facts and circumstances, removing the incentive for applicants to try and secure a second application by appearing without legal representation at the first application.

It will also strengthen and update specific conditions that apply to bail decisions for Aboriginal people and their children. One of the other important things that I will just mention before I finish up is that it will require a bail decision maker who has decided to reject an Aboriginal person's bail application to record how they have considered specific self-determined Aboriginal considerations such as culture, kinship and family. We think, broadly, that introducing these changes to the Bail Act will ensure that our bail laws protect the community where there is risk but ensure that those charged with low-level, non-violent offences are not subject to incarceration, which can lead to serious problems. We think that the balance struck by these laws is the right one.

Rachel PAYNE (South-Eastern Metropolitan) (11:39): I rise to speak to the Bail Amendment Bill 2023. Ten years ago only 17.9 per cent of all people in Victorian prisons were unsentenced or, in other words, had not been granted bail by the court while awaiting their hearing. By June last year that number had more than doubled to a startling 42.2 per cent. This was the cumulative effect of amendments to the Bail Act 1977 in 2013, 2016, 2017 and 2018. As the government has acknowledged, the amendments that flowed from the Coghlan review in particular were the cause of those drastic rises in the remand population, with unequal impacts on Aboriginal and Torres Strait Islander peoples, women and children, particularly those charged with low-level and non-violent offences. It is an issue that I have highlighted in this chamber and that many others have highlighted publicly. These laws are in need of urgent reform. These are laws too that have a severely disproportionate effect on those charged with the possession of small quantities of cannabis.

Let me highlight a real-life case study for you provided by Victoria Legal Aid:

> ***Chris*** is in his thirties, he suffers from depression and anxiety following separation from his wife and the accompanying loss of contact with his children. He was seeing a psychologist once a week … and taking prescribed sleeping medication …

But he also turned to cannabis for the relief from his symptoms it provided him.

> Police officers visited Chris' home in relation to a possible breach of COVID-19 Directions and were invited into his house. Police found a small quantity of cannabis in the living room.
>
> Chris has no prior convictions, but he was already on bail for driving offences and … possession. Chris was arrested and charged with cannabis possession and with committing an offence while on bail …

Chris was refused bail by the court because of the effect of the uplift provisions in the Bail Act, and he was remanded in custody as a result of that cannabis charge. This was Chris's first time in custody. He was never a prospect for receiving a custodial sentence for these offences. Chris pleaded guilty to the charge of possessing cannabis and received only a fine without a conviction.

Chris's story was a travesty, and it is far, far too commonly repeated under our bail framework. That is why today I am so pleased that this bill, whether further amended or not, will reduce the

circumstances in which reverse onus bail tests apply to only serious offending; better limit the application of the unacceptable risk test to reoffending that endangers the safety or welfare of another person; expand the factors that must be considered when an applicant for bail is an Aboriginal person; prohibit remand for offences against the Summary Offences Act 1966; require bail decision makers to consider, when applying the reverse onus test or the unacceptable risk test, whether the accused is likely to receive a custodial sentence and, if so, whether they are likely to spend more time on remand than the likely length of that custodial sentence; amend the new facts and circumstances test to encourage represented bail applications at the earliest opportunity; and repeal the offences of contravening certain conduct conditions and committing an indictable offence whilst on bail. These are significant changes, and there is no doubt that, with these changes, someone in Chris's shoes will not be remanded in custody again.

This is a good bill. It is an improvement not only upon our current bail laws but on the place our bail laws were at back in 2013, when our remand levels sat at only 17.9 per cent, meaning that these reforms will significantly reduce the population of those unfairly remanded in our justice system. But it does not mean that our bail laws could not be further improved. To this end, I would like to acknowledge the advocacy of the Victorian Aboriginal Legal Service, Liberty Victoria, the Criminal Bar Association, the Human Rights Law Centre and many, many others who would like to see these reforms go further and have offered their unqualified support for Poccum's Law. We too will support amendments that seek to implement this change.

I express my sincere condolences to the family of Veronica Nelson. The circumstances of her death should never be repeated, and it should never have happened, and I acknowledge the bravery of their advocacy. The bill before us today does implement the lion's share of the reform that they seek and does address factors that overwhelmingly caused the spike in remand numbers in which Veronica was caught up.

This bill does not introduce a single bail test for bail, but in fairness to the government nor does any other jurisdiction in Australia. The changes proposed, noting in particular the limitations on uplift, the reshaping of the unacceptable risk test and, most significantly, the introduction of new section 3AAA(1), will make a marked difference in the courtroom. But I am hugely disappointed at the government's last-minute backflip in relation to children, and I am hugely disappointed that we were not formally advised of this change before debate on this bill commenced today. We should absolutely be treating vulnerable children differently to adults, and we should be protecting them from the trauma and harm associated with a child's engagement with the justice system.

Bail deals with two conflicting principles in our justice system: the presumption of innocence and the need to ensure community safety and the protection of Victorians. This bill finds a much-improved balance between the two for adults. Given the previously fraught attempts and unintended consequences flowing from past bail reform, I am very supportive of the insertion of a two-year review clause.

I would like to thank the Attorney-General and her staff for considering matters raised by my office in the lead-up to this debate. They go to the application of the unacceptable risk test, and I look forward to ventilating those matters with the Attorney-General in the committee of the whole. With those comments made, I confirm that Legalise Cannabis Victoria will be supporting the reform of our bail laws and the positive step forward that this bill takes.

David LIMBRICK (South-Eastern Metropolitan) (11:47): I also rise to speak on the Bail Amendment Bill 2023. It has been over four years since the government's 2018 reforms of the Bail Act 1977 commenced in response to the Bourke Street massacre, a tragic event that took the lives of six Victorians and severely injured many others. Those reforms sought to strike a balance between the presumption of innocence and the protection of the community. By June 2022, though, 42.2 per cent of all people held in prison in Victoria were unsentenced. This figure included individuals such as Veronica Nelson, who sadly passed away on 2 January 2020 whilst being held on remand in the Dame

Phyllis Frost Centre. The circumstances of her passing, combined with the over-representation of low-level offenders held on remand, demonstrate the impacts of knee-jerk legislation too far in the opposite direction. The impacts of those reforms can also be observed on the other side of bail decisions. On 4 September this year a group abducted and seriously injured a 14-year-old boy in Glen Huntly while on bail. A similar incident occurred in Northcote around the same time. Both incidents involved individuals on bail. These reforms have failed in every direction they possibly could. This bill seeks to remedy those situations and makes a good effort to achieve this. But in my opinion and the opinion of most legal experts I have spoken to on this bill, it does not go far enough in its solutions and retains problematic bail provisions which contribute to the previously mentioned events.

I would like to say something positive about the bill. The use of flowcharts within the bill and the act as is assist greatly with understanding the process of consideration a bail decision maker should undertake when making bail decisions. While this is of assistance to the reader in providing clarity, it must be mentioned that if the government's proposed bail consideration process is so complex that a flowchart is necessary to explain it, then perhaps the process has become more complicated than is necessary.

The bill adds the requirement of a bail decision maker to consider if an accused would be sentenced to a prison term and determine if the remand period would exceed any such prison term. The problem with this prescribed method of foresight is the state of legal affairs when it is made. An accused may have multiple charges against them which, over the course of due process, may be altered or dropped or they may be found not guilty of some or all charges. These factors and many more can and often do impact sentencing outcomes. Requiring bail decision makers to completely skip the process of fair trial when determining a term of remand would be in breach of the person's right to a fair hearing and rights in criminal proceedings.

The proposed changes to section 4AA(2)(c), a legal mechanism more commonly known as double uplift, seek to create special exclusions to vulnerable classes of people. But in practice this section creates vulnerable classes of people through its very nature. The coroner's recommendation concerning section 4AA(2)(c) was very clear: double uplift provisions do not belong in the bail process. Navigating the two-step bail process proposed by this bill is about as complicated as learning *The Nutcracker* with two left feet. The level of complexity within this process places an accused at a significant disadvantage as they or their legal representation attempt to form a defence in compliance with these steps. The show compelling reasons test and exceptional circumstances test place unreasonable burdens on an accused, well beyond what is considered a fair judicial process. The unacceptable risk test places the onus on the prosecutor, where it belongs.

The Bail Act cannot be left in its current form. This bill takes some steps in the right direction, and for that reason I will not oppose it.

Michael GALEA (South-Eastern Metropolitan) (11:50): I also rise to speak on the Bail Amendment Bill 2023. Bail is the intersection of two really critical different elements of our justice system, the first being that most fundamental democratic right, the presumption of innocence, and the second being the community's right to be safe. Bail allows those accused of crimes not to be deprived of their liberty as an extension of the fact they are presumed innocent. In assessing bail, decision-makers must balance the severe decision to remand someone pending the outcome of their trial with the critical need to ensure that the community is safe from any threat that that person may pose. It has become clear that the current laws do not strike the right balance. They are not achieving the results that we should expect as lawmakers and as Victorians, and it is clear that reform is needed to meet community expectations as well as the goals of our justice system.

This bill addresses several changes introduced by the 2013 and the 2018 reforms to bail laws. Those changes established Victoria's bail system as the toughest in the country. I was not on Bourke Street on the day that led to some of these reforms coming in, but I know a colleague who was, and the general sense of absolute fear in the city that day is something that I hope will never, ever come back

to our streets. It was a horrific crime that left many people with scars that they carry today, both physical and mental and for those that we lost. But it is evident that over the five years since these bail laws came in aspects of these changes have resulted in our bail system no longer functioning as intended.

The Bail Amendment Bill 2023 will implement critical changes to these bail laws. Prominent amongst these reforms are those that address the reverse onus and uplift provisions established in the 2013 and 2018 reforms to the Bail Act 1977. Changes to the Bail Act have been called for by several reports and inquiries and through the advocacy of and in consultation with legal stakeholders. The most notable of these of course is the coronial inquest into the death of Veronica Nelson – the Nelson inquest – and the parliamentary inquiry into Victoria's criminal justice system, both of which called for reforms to make bail more accessible.

Before I comment on the aspects of the bail laws that are being changed in this bill, it is essential to reiterate the context of our bail system, how we got here and the facts that make it clear why it is imperative that we implement the much-needed measures in this bill. There is considerable data to support that the introduction of the bail breach offences in 2013 has contributed to a significant increase in Victoria's remand population. The two offences added were committing an indictable offence on bail and contravening conduct conditions of bail. These offences have especially impacted women, Indigenous people and Victorians experiencing disadvantage more generally. They also added an extra layer, so you would be charged not only with the offence itself but with the secondary offence, effectively exponentially growing the rap sheet of those in those situations. The 2018 reforms added to the reforms made in 2013 and sought to impose stricter bail tests for those alleged to have committed offences whilst on bail. These measures removed the presumption in favour of bail for specified schedule 1 and schedule 2 offences under the Bail Act, replacing that presumption with a reverse onus, being the requirement that an applicant would have the burden to disprove.

They further enabled what is known as an uplift in bail tests. This reform meant that people charged with having reoffended on bail would face bail tests established for more serious offences even if they were themselves only accused of committing repeated low-level offences. For instance, if their offence would be assessed under the lesser unacceptable risk test, it would be automatically uplifted to the stricter show compelling reason test.

I also note that the 2019 Crime Statistics Agency *Characteristics and Offending of Women in Prison in Victoria, 2012–2018* report found that women who face the reverse onus bail test increased from 37 per cent to 79 per cent of cases in those years. The report found that 29 per cent of those women remanded in 2018 only faced a reverse onus test due to implementing the two offences established in that 2013 reform. The same report found that the number of women entering remand with a Bail Act charge increased from 20.7 per cent to 66.2 per cent over the period from 2012 to 2018. It is important to understand the implications and the impact of the reverse onus and uplifting provisions, which are robustly and thoroughly addressed by this bill.

We all know the context of the 2018 reforms: the instances of notable violence and shocking crimes, as I have already discussed in the opening words of my contribution today. Those evil acts were committed by an individual who was on bail. The purpose of those reforms was to restore public faith in the bail system and to implement the changes recommended by former Justice Coghlan to enhance community safety. There was a need to take firm action to address bail in response to the prominent instances of terrible crimes committed by persons out on bail. Five years later we can see where our bail laws have failed Victorians. As has been said, the combined impact of those two reforms has resulted in a notable rise in the detention of repeat non-violent offenders on remand, and this has disproportionately affected disadvantaged individuals generally speaking as well as in particular women, children and members of our Indigenous communities.

Earlier in my contribution I referred to the Nelson inquest, and as I move to discuss specific reforms made by the Bail Amendment Bill 2023 I would like to acknowledge and recognise the advocacy of

the family and the community of Ms Veronica Nelson, a strong Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman who tragically passed away while she was on remand. The advocacy of her family and loved ones for reforms to Victoria's bail system following her tragic passing has had a profound impact. Their tremendous efforts have done so much to highlight where our system needs improvements and to show where we must do better.

This bill puts into action eight of the 13 recommendations from the Nelson inquest that relate specifically to the Bail Act 1977. One of the fundamental changes proposed in this bill is to the concept of uplift, where a person on bail is then alleged to have committed another offence and thereby faces a much more onerous bail test than the normally applicable one for that offence alone. To address this, this bill proposes that the test for uplift should no longer apply for non-schedule offences so that bail can be considered more appropriately for lower level allegations. This will mean that accusations of low-level offences that would be assessed under the unacceptable risk test will not result in a person's bail test being uplifted to the show compelling reasons test or the exceptional circumstances test.

This bill seeks to make further sensible refinements to the unacceptable risk test as well. This change will ensure that the risk of low-level offenders committing an offence whilst on bail would not be a reason alone for remand to be refused unless there is also a risk to the safety or welfare of another person. This will help to reduce the remand levels amongst people who are determined to be at risk of committing low-level offences such as graffiti or shoplifting whilst on bail. The Bail Amendment Bill 2023 will also repeal two of the three Bail Act offences. The first is the offence of contravening a conduct condition of bail, and the second is committing an indictable offence whilst on bail.

Business interrupted pursuant to standing orders.

Questions without notice and ministers statements

Malmsbury Youth Justice Centre

David DAVIS (Southern Metropolitan) (12:00): (289) My question is for the Minister for Youth Justice. Minister, on Tuesday evening, before the riot had concluded at Malmsbury, your department clearly stated to inquiries made by the media that the incident was over and that there were no injuries. In fact, given that there were multiple clients and staff injured, including trauma as a result of being held hostage, why did you and your department hide the facts surrounding the extreme level of violence that occurred?

Enver ERDOGAN (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (12:01): I thank Mr Davis for his question and his interest in this matter. As I stated yesterday, our department was very forthright and we reported these incidents as we do in the usual way, through public reporting, before there were any inquiries. The department was being very up-front. Again, our system is designed to protect the community, and that is our paramount duty, but also the staff and those young people in our custodial settings. I stated on the record yesterday and I will state again: it is my understanding that no staff were physically injured, but staff are being provided, on an ongoing basis, with mental health clinicians. There will be debriefs throughout the days, and that support will be provided to staff. But there were no staff members that required medical attention on the day.

David DAVIS (Southern Metropolitan) (12:01): My understanding is somewhat different. I therefore ask the minister: can he update the Parliament on the condition of those who were injured, and is it a fact that one young person's injuries are so extreme he was deemed unrecognisable and may endure lifelong suffering from the vicious assault?

Enver ERDOGAN (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (12:02): I thank Mr Davis for his supplementary question and his interest in this matter. Again, our department – I have read the reports – is pretty up-front about the fact that, although no staff were physically injured, there were some young people that were treated in hospital.

Again I have got to be very careful about what I say, because there are confidentiality provisions and there are privacy laws about people's health, but what I can confirm is that one of the young people returned to Malmsbury. There are still two young people receiving treatment.

Child protection

Rachel PAYNE (South-Eastern Metropolitan) (12:02): (290) My question is for the newly appointed Minister for Children Minister Blandthorn. However, I have realised that she is not here, so I will direct my question to the Attorney-General. The *Framework to Reduce Criminalisation of Young People in Residential Care* was launched in February 2022, co-signed by the departments of health and human services and of justice and community safety and Victoria Police, to name a few. Its aim was to find an approach for dealing with non-crisis events in residential care with proportionality and flexibility when dealing with a young person's behaviour. Many young people in residential care have experienced trauma through abuse and neglect. They can exhibit complex, challenging or offending behaviours, which often result in contact with the police and over-representation in the criminal justice system. The Yoorrook Justice Commission heard evidence that First Peoples children are being criminalised in residential care and the framework is not being implemented and recommended that the framework be applied in all cases, so my question is: what is the progress on the implementation of the *Framework to Reduce Criminalisation of Young People in Residential Care*?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:04): I thank Ms Payne for her really good question and her interest in this matter. I am sure that Minister Blandthorn will be very happy to provide you with a comprehensive response, if not a briefing. It is something that is a high priority to her, and she has conversations with justice ministers regularly in relation to these issues. It remains a high priority that we are all very focused on.

Rachel PAYNE (South-Eastern Metropolitan) (12:04): I thank the Attorney for passing on my question. By way of supplementary, can the minister commit to a time line in which we will see no more children in care being criminalised for behaviour that would not see them criminalised in an ordinary home environment?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:04): A worthy aspiration indeed, and I am sure Minister Blandthorn will be happy to respond to your supplementary. I should have said at the outset that Minister Blandthorn is at her MinCo at the moment in Hobart, so she is having conversations such as this with her state and federal counterparts.

Ministers statements: floods

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:05): I rise today to speak in my capacity as Minister for Water on the current floods that are occurring in a number of parts of the state. In my own region of Gippsland we have seen bushfires and floods in the same week off the back of one of the driest winters on record. Yesterday and early into this morning doorknocking occurred in parts of Tinamba, Tinamba West and Newry, with the community being asked to evacuate overnight. I also know that significant rainfall over the last few days has been really triggering for many community members in the north of the state.

Community safety is a priority for all Victorians, and we want to make sure that water authorities are reflecting that priority. Both Goulburn–Murray Water and Southern Rural Water undertook pre-emptive releases prior to the rainfall events that occurred on and from Tuesday. I can inform the chamber that Lake Glenmaggie is currently, as at the time that I am making this statement right now, passing floodwaters of 56,000 megalitres per day, having peaked at 58,000 megalitres per day overnight. Lake Glenmaggie is, at the time that I am speaking right now, currently 99 per cent full, and the calculated inflow is 53,760 megalitres per day. Southern Rural Water are anticipating they can start reducing releases from Glenmaggie today.

There is a 'Not safe to return' warning in place for Tinamba, Tinamba West and Newry, and we estimate that around 130 properties are at risk of over-floor flooding. This situation is incredibly dynamic. The alert system in place, the advice and the information that is provided will change and often change very quickly. I would urge people to install and stay across updates on the VicEmergency app and to monitor conditions as they change. Please stay safe. Please stay away from floodwaters. And thank you to all crews and frontline responders who are assisting at this time.

Malmsbury Youth Justice Centre

David DAVIS (Southern Metropolitan) (12:07): (291) My question is again for the Minister for Youth Justice. Minister, can you rule out that there was a sexual assault on any person during the riots that occurred on Tuesday at the Malmsbury youth detention centre?

Enver ERDOGAN (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (12:07): I thank Mr Davis for his question and interest in this matter. Let me state again: the safety and wellbeing of staff and the children in our custody is the number one priority. We are continuing to support our staff and the young people in our care. As I have stated previously, yesterday on record and publicly, there is a thorough investigation taking place internally by the department but also by Victoria Police. It is inappropriate to comment on an ongoing investigation by Victoria Police. In the meantime I do not think it is appropriate that I respond to your speculation.

David DAVIS (Southern Metropolitan) (12:08): The upshot of that is he cannot rule it out. Minister, these violent assaults, including what multiple sources inside the centre confirm was an assault of a sexual nature, have occurred on your watch, and I ask: what guarantee is there that assaults such as these will not occur again?

The PRESIDENT: I am a bit concerned that the question is hypothetical. The standing orders say that questions should not be hypothetical. Minister, I am happy for you to answer as you see fit.

Enver ERDOGAN (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (12:09): I thank Mr Davis for his supplementary question on this matter. What I will say is that there is an ongoing investigation from the department but also Victoria Police. These are very sensitive matters, and I do not want to pre-empt that investigation. I will be responding once I have all the facts at the end of that investigation but not to your speculation and rumours.

Age of criminal responsibility

Katherine COPSEY (Southern Metropolitan) (12:09): (292) My question today is to the Attorney-General. Attorney, since we last met in this place the *Yoorrook for Justice* report has been delivered. A strong call in the report is to raise the age of criminal responsibility to 14. The report states:

> The Victorian Government has committed to raise the age to 12 within the next year and to 14 by 2027. Yoorrook heard that this is too slow.

Specifically the commissioners called out the claim that more time is needed to develop alternative models for 12- to 13-year-olds, writing that as of May 2023:

> … there were no 12-year-olds and only one 13-year-old in the entire youth justice system (custodial and community supervision). Even allowing for some fluctuations, the investment and time needed to develop an alternative service model for 12 and 13 years olds should not take four years …

Attorney, truth-telling is one of the three pillars of the Uluru statement, and Yoorrook fulfils a part of that function. Why is the government not listening to these clear calls to raise the age to 14 sooner than 2027?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:10): I thank Ms Copsey for her question. Ms Copsey, my answer to this question has not changed since the time that I announced that we would be raising the age from 10 to 12. Indeed I was a witness at

Yoorrook and was very honest and clear in responding to the questions from the commission in relation to the government's position on raising the age. We have a commitment to raise the age from 10 to 12 – that will be in legislation that will come to the Parliament early next year – and we have a commitment to raise the age further to 14, subject to a consideration of relevant offences as well as the alternative services model.

What we do not want to see is a situation where you change a number and you have children falling through the gaps. We know that there is a very complex cohort of youth offenders aged 13 and 14 – and 12 – and we really want to make sure that we have the right services responding to them. In a lot of instances that is what is happening, as evidenced by the small number of children in that age group that are in custody. The children that are committing offences are having wraparound services, interventions from NGOs and other government services already. That is having a great impact on reducing the amount of young people in our custodial settings. I would actually like to see a situation where when we raise the age to 14 it is irrelevant because we have all of the services in place that are already preventing those children from needing to be put in custody in the first place.

Katherine COPSEY (Southern Metropolitan) (12:12): Thank you, Attorney, for your answer. You have partially answered my supplementary, I believe. Can I confirm that when you introduce that legislation – the youth justice bill that will be presented early next year – that bill will only include legislating the raise to the age of 12 and that the raise to the age of 14 will require a separate process, and can you give me an indication of the time frame that that process of legislating the raise to the age of 14 will require?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:12): Ms Copsey, yes, I confirmed this information when I announced our policy in relation to legislation to raise the age to 12. I made it very clear that the legislation would not provide measures to raise the age to 14 and that that would be a separate process subject to further consideration of what those laws would look like and indeed the development of the alternative services model. The commitment is to aim to have that done by 2027.

Ministers statements: Dardi Munwurro

Enver ERDOGAN (Northern Metropolitan – Minister for Corrections, Minister for Youth Justice, Minister for Victim Support) (12:13): I rise today to share details of another excellent corrections initiative that is focused on addressing Aboriginal over-representation in our criminal justice system. I recently had the pleasure of visiting Dardi Munwurro along with the member for Preston in the other place. I would like to take this opportunity to thank the organisation's director Alan Thorpe as well as Uncle Col Clark and Uncle Bootsie Thorpe for introducing me to the staff and showing me around their facilities. It was wonderful to see not only their offices but also Aunty Alma Thorpe's Gathering Place next door and the new youth hub just down High Street, Preston.

Dardi Munwurro's behavioural change programs for men in custody, with the corrections and youth justice systems, play an important role in keeping the community safe and reducing the risk of reoffending. Alan talked about the importance of having tailor-made spaces that young men could not only visit but more importantly enjoy. It was great to see firsthand the mural funded by Creative Victoria and hear about the partnerships that Dardi Munwurro have formed with local businesses to support their clients to learn new skills. Dardi is supporting hundreds of First Nations Victorian men wanting to make a positive change in their lives for themselves, for their families and for their community.

Our government's investment in important organisations like Dardi and the programs and projects they run is making a real difference to people's lives. This is just another example of our government leading the way when it comes to partnering with Aboriginal organisations to drive real change.

Housing

Evan MULHOLLAND (Northern Metropolitan) (12:15): (293) My question is to the Minister for Housing. Six years ago the former Premier announced that surplus government sites in Parkville, Broadmeadows, Reservoir, Noble Park, Boronia and Wodonga would be part of its inclusionary housing pilot project and sold to developers at discounted rates if they incorporated social homes. Not a single home has been built on any of these sites despite the government claiming that bypassing local councils and communities would speed up the process. When does the minister expect homes to be completed at these sites?

Harriet Shing: On a point of order, President, I would seek your guidance on this matter, which is actually for the Minister for Planning in the other place. I am very happy to refer it to her in accordance with the standing orders, alternatively for the Treasurer. I seek a ruling from you.

Evan MULHOLLAND: On the point of the order, President, the minister is the Minister for Housing, responsible, as I believe, for social housing, which is a government initiative in the housing space. I would like to know when it will be completed. That is perfectly within her portfolio.

The PRESIDENT: I am happy to rule on the point of order and further to the point of order. I cannot be in a position where I understand the executive orders completely. If a question is asked of a minister and the minister says it is the responsibility of another minister, I have to take that as the response. The minister says this question is not her responsibility but she is happy to pass it on to the Minister for Planning, and that is the response that I have to accept.

Wendy Lovell: On a point of order, President, the minister has told us that the housing statement is across five ministers, so perhaps it would be helpful to the house if the minister could table a document that outlines which portions of the housing statement are allocated to each of the ministers.

Harriet Shing: That is literally the general order.

Wendy Lovell: Some things are not in the general order, because they are not part of the legislation. Things like the housing waiting list are not in the general order. They are not part of legislation. It would be helpful to know who is responsible for what area.

The PRESIDENT: Given the points of order and my ruling, I am happy to let Mr Mulholland rephrase the question if he would like to.

Evan MULHOLLAND: Minister, six years ago the former Premier announced that surplus government sites in Parkville, Broadmeadows, Reservoir, Noble Park, Boronia and Wodonga would be part of its inclusionary housing pilot project and sold to developers at discounted rates if they incorporated social homes. Again, not a single home has been built on any of these sites despite the government claiming that bypassing local councils and communities would speed up the process. Given the government has not even rezoned many of these sites to be able to accommodate housing, what discussions has the Minister for Housing had with the Minister for Planning about this project?

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:19): Mr Mulholland, that seems much better in terms of giving me an opportunity to talk about this pilot and the examples that you have talked to. If sites are vacant – just to be really clear – that is a matter for the planning minister as to how that zoning occurs. That is not a matter relating to housing and indeed in my portfolio to social housing and homelessness surveys, for example. This is a planning mechanism, and on that basis it forms part of the overarching discussions that have been had across portfolios relating to the housing statement.

Georgie Crozier interjected.

Harriet SHING: Ms Crozier, I am going to take you up on that interjection. You just said it was six years ago. I have had this portfolio for about 72 hours now, so I am very happy again to fill you in on the way in which those five portfolios come together and to that end refer to the general order,

which might assist Ms Lovell in understanding how these various portfolios come together. The housing statement addresses the entire spectrum of need across Victoria now and into the future. When we say that we are bringing 800,000 homes on line in the next 10 years, that is a factor that informs private development, precincts development, public and social housing and community housing and the way in which that works alongside regional development and the additional $1 billion as part of that housing boost. There is also work for suburban and outer metropolitan development.

Again, if you think that resolving housing challenges as populations grow across the state is a matter for one portfolio, then you miss the point on the complexities of these challenges and the importance of allocating resources from across the whole of government. We need to work and we are working alongside the private sector, alongside community housing providers and alongside Homes Victoria as part of delivering a record investment in social housing. We are also working, as you quite correctly identified, Mr Mulholland, to make changes to the planning system to alleviate those blockages, those obstacles, which have led to challenges around resourcing, around planners –

Bev McArthur: On a point of order, President, I am just wondering if the minister could tell us whether there is a minister for tents, since we do not seem to have a Minister for Housing responsible for anything.

The PRESIDENT: That is not a point of order, but it gives me an opportunity to say that previously the house worked together, the chamber worked together, to find a way for this minister to be able to answer a question on the topic of concern. Then the people asking the question just kept yelling at her, and I could hardly hear her. So I will call the minister and maybe the whole house can cooperate in the nice way they did before and let her talk.

Harriet SHING: Thank you, President. In the three days since I was sworn into this portfolio I have been talking with and meeting with parts of the sector and my colleagues around the integrating of parts of the entire system to deliver on the whole-of-government work for housing system reform. That work does go on, Mr Mulholland. That includes the additional investments in development of sites and partnerships across the state, including right here in metropolitan Melbourne, and it also builds on the work that we have been doing for many years now. The housing statement is the culmination of many conversations. That work and that consultation will continue, of course, with my colleagues.

Evan MULHOLLAND (Northern Metropolitan) (12:23): Minister, you have mentioned yourself the government's ambitious housing targets. The government needs to build, as I understand it, 220 homes every day, including weekends, for 10 years to meet its promise in its housing statement. Why should Victorians expect this government to deliver on this promise when it has not even met promises from six years ago?

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:23): Thanks, Mr Mulholland, for that supplementary question. Again, this is the biggest reform in the housing system ever undertaken. This is about long-term reform, long-term investments, long-term partnerships and long-term certainty for residents, for tenants, for people who wish to secure their own homes, for people living in the middle of Melbourne right through to the edges of the state. This is about worker accommodation. This is about the housing continuum. This is about alleviating pressures in the planning system and the planning framework, and this is also about supporting decision-making across all levels of government. When we look to the Commonwealth social housing accelerator program right through to the work we are doing in homelessness surveys, this is enormous work which is far beyond any appetite you might otherwise have for improvement.

McCoys Bridge

Rikkie-Lee TYRRELL (Northern Victoria) (12:24): (294) President, my question is directed to Minister Shing, and I am happy to be guided by you. My question could potentially be for the Minister for Roads and Road Safety or the Minister for Transport Infrastructure, so here we go. Every day

hundreds of heavy vehicles use the Murray Valley Highway to move produce from farm to store or factory. Since the October 2022 floods these transport companies find themselves needing to find alternate routes around McCoys Bridge, costing them thousands of dollars extra in time and, increasingly, fuel. Can the minister please inform the house when this bridge will be reopened to all traffic?

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:25): Thanks, Mrs Tyrrell, for that question. That is to my mind a matter that sits very squarely within roads and that portfolio. I do represent in this place that minister, so I am really happy to take that question and to seek an answer in accordance with the standing orders if that is of assistance to you.

Rikkie-Lee TYRRELL (Northern Victoria) (12:26): Will the minister please commit to the necessary works to reopen McCoys Bridge to heavy vehicles of over 42 tonnes in a timely manner?

Harriet SHING (Eastern Victoria – Minister for Housing, Minister for Water, Minister for Equality) (12:26): Again, Mrs Tyrrell, I am very happy to seek an answer for you, in accordance with the standing orders, from my counterpart.

Ministers statements: mental health

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (12:26): I am very proud to make my first statement in the house as the Minister for Mental Health in the Allan Labor government. We know that one in five Victorians experience mental health challenges every year. This is a very important issue, and that is why our government undertook an Australian-first royal commission into our mental health system. I am honoured to continue the significant program of work that is underway to transform Victoria's mental health and wellbeing system, and I want to acknowledge the work of Minister Williams, the previous Minister for Mental Health. The Allan Labor government is committed to ensuring that all Victorians receive the mental health support they need when they need it. I will waste no time in getting on with the work to deliver on every single one of the 74 recommendations of the royal commission, backed by over $6 billion of investment, the largest investment in mental health in Australia's history.

Already this year we have seen the delivery of new mental health beds, mental health and wellbeing locals and a dedicated mental health hub, the completion of Victoria's first statewide child and family centre in Macleod, the establishment of the new Mental Health and Wellbeing Commission and the commencement of the groundbreaking new Mental Health and Wellbeing Act 2022. We know that in order to deliver our once-in-a-generation reforms we need to grow and support our mental health system workforce. None of these reforms would be possible without our incredible mental health workforce, and that is why this government will continue to support our highly skilled and dedicated frontline workers in the system by delivering programs, scholarships and grants to build, support and retain that important workforce. Finally I would like to acknowledge the tireless contribution of people with lived experience to these reforms.

Country Fire Authority

Renee HEATH (Eastern Victoria) (12:28): (295) My question is for the Minister for Emergency Services. In answer to a question on notice from the member for Gippsland East earlier this year the government conceded that the CFA is down 6500 operational volunteers since it came to government. The CFA is full of local champions who do their best, but they require help when necessary. Many have stated that they left due to the restructuring of the CFA and the sacking of the board. Minister, what will you do to restore morale and allow our CFA volunteer ranks to continue to rebuild?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:29): I thank Dr Heath for her question and her support of our fantastic CFA volunteers, which is evident in her question. In terms of some of the figures – and I have taken the chamber through them before, but

just to repeat – in the last 12 months CFA received almost 6000 applications for new memberships, and I know that they constantly maintain a dedicated pool of over 50,000 committed volunteers. It is a fantastic organisation to be part of.

I have got to say as not only the minister but a member who represents half of the state nearly – don't we, my Northern Victoria colleagues? – morale is pretty good. When I go and visit stations they are up and about. They are excited to be part of an organisation that is committed and passionate and motivated by community safety and looking after the people that live in their communities. The really hardworking team at CFA is led by Jason Heffernan. He is constantly out and about talking to volunteers. He gets around the state every week, and he is making sure that he is listening and responding to any concerns that CFA members have. I just want to put on record my admiration and thanks for the efforts of volunteers, and I think everyone in this chamber shares that. The communities really value these volunteers, and morale is good from what I see in and around them.

We will always continue to have programs and conversations about encouraging people to join the CFA or indeed, in my remit, the SES, which is also a great organisation to consider volunteering in. It is so rewarding, volunteer work in the emergency services space. The best thing about this job is meeting people in this space, because they are fantastic people. I know that a lot of you get around and visit your CFA stations and talk to people regularly as well. More and more of them would be welcome.

Renee HEATH (Eastern Victoria) (12:31): I thank the minister for her response. Surge capacity of the CFA has always been its great strength, having the ability to muster strike teams from different regions to support those areas under bushfire attack. Minister, have you been briefed on what effect the massive reduction in membership will have on the state's capacity to produce surge resources during major fire incidents?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:32): I thank Dr Heath for her question. In relation to the available volunteers across the board and in relation to surge capacity from our other agencies, we have never had to call on the full contingent, ever, which means that there is a surplus in relation to that. Again, you would always want to encourage more and more people to be involved in this organisation. There will also be briefings for government and non-government members in the coming months ahead of the high-risk fire season. The fire season has started, but I think in a couple of weeks it will come to me and then everybody gets briefed. It is called an attestation briefing, which will give everybody an update on where every agency is up to, which gives you a good opportunity to question the leaders in relation to that surge and how it all works. Every department of government and every emergency services agency feed in all of their preparedness information – how many people they have got and where they can move resources – so that we are prepared to respond to what we need to this coming fire season. I will be sure to make sure that you are aware of that invite when it is available.

Country Fire Authority Heyfield brigade

Jeff BOURMAN (Eastern Victoria) (12:33): (296) I promise there is no collusion here, but my question is for the Minister for Emergency Services. Minister, in Heyfield in my electorate local CFA volunteers, many of them timber workers, spent the weekend protecting homes and lives in their neighbouring communities fighting bushfires. Last night and this morning they were out sandbagging against floods. Can the minister advise what support the government is giving to the CFA in Heyfield to continue this critical community service?

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (12:33): I thank Mr Bourman for his question, and in terms of the general support across the board for CFA brigades, I think I answered that in the previous question. But if I go to your specific example of Heyfield at the moment in relation to the support on the ground, there were 500 CFA volunteers and other firefighters on the ground over the weekend. That extended to 650 on Monday and Tuesday in relation to suppressing those fires and supporting those stations. They move resources from areas of

the state that are not under threat to support those workers, because we are very, very conscious of fatigue and the safety of volunteers, to ensure that they have got backup so that they can go home and get sleep et cetera. All of that is operationally managed, and I am very confident that that occurred down there by virtue of knowing that there were 650 available. There are additional resources going into your neck of the woods in relation to CFA brigades in your region. We have a new station at Yarram, and we are also about to open a new station in Moe. We know that the interoperability and cooperation between local brigades always goes to supporting those that are right in the middle of a threat at any particular time.

Ministers statements: regional development

Gayle TIERNEY (Western Victoria – Minister for Skills and TAFE, Minister for Regional Development) (12:35): It is an enormous honour to continue the work of strengthening skills and Victoria's TAFE system in regional Victoria and right across the state and to have been appointed on Monday as Minister for Regional Development. I care deeply about Victoria's regional and rural communities, and I am absolutely committed to working with them across the state to thrive and prosper.

For this reason, I am pleased to speak today about the government's recent $1 million investment in an Australian-first consortium led by the Commonwealth Scientific and Industrial Research Organisation, CSIRO, to accelerate food and fibre sector opportunities and innovation right across regional Victoria. I am very familiar with the significance and great potential of this diverse sector. In 2021–22 Victoria became Australia's largest food and fibre exporter, contributing over $17 billion and accounting for 26 per cent of national exports. This new partnership will see Regional Development Victoria working with universities, Victoria's regional partnerships, Regional Development Australia committees and Food and Fibre Gippsland to foster collaboration and drive advancements right across the food and fibre sector. Through this partnership we will make it easier for projects in the food and fibre sector to secure investment and commence their vital work in rural and regional Victoria.

This initiative reflects our government's record investment of over $41 billion in rural and regional Victoria since 2015. The Allan Labor government is committed to ensuring that the food and fibre sector continues to thrive, creating jobs and prosperity for all Victorians. Together we will build a stronger and more resilient future for our regional communities right here in Victoria.

Written responses

The PRESIDENT (12:37): Can I thank Minister Shing, who will get Mrs Tyrrell answers to both her substantive and supplementary questions from the Minister for Roads and Road Safety, and Minister Symes, who will get responses from the Minister for Children for both Ms Payne's supplementary and substantive questions.

Constituency questions

South-Eastern Metropolitan Region

Michael GALEA (South-Eastern Metropolitan) (12:38): (437) My question is for the Minister for Transport Infrastructure in the other place, Minister Pearson – and I would also like to take this opportunity to congratulate him on his new role. The 2023–24 state budget includes funding as part of the $674 million roads blitz to get families home sooner and safer, including the upgrade of the intersection at Thompsons Road and Berwick-Cranbourne Road, better known as Clyde Road, in Clyde North in my electorate of South-Eastern Metropolitan Region. I recently had the opportunity of visiting the site along with my colleague Mr Tarlamis, the member for Cranbourne Pauline Richards and the member for Narre Warren South Gary Maas. It was easy to see firsthand how, at any time of the day, this is a very congested spot in the south-east. It is fantastic to see this $70 million project, which is going to make a real difference to my growing community in the South-Eastern Metropolitan Region. My question is: how many vehicles and commuters use the intersection of Thompsons Road and Clyde Road currently, and how will they benefit from this project?

Western Victoria Region

Bev McARTHUR (Western Victoria) (12:39): (438) My constituency question is for the Minister for Transport Infrastructure and concerns the heritage-listed Moorabool rail viaduct, a historic steel and bluestone structure constructed in 1860. It is currently leased by the Australian Rail Track Corporation from VicTrack. Minister, the bridge has been repeatedly graffitied, causing substantial damage. This antisocial behaviour does not just cause one-off damage or visually degrade our area – if not dealt with, it will encourage further vandalism. Worse, illegal public access is on the increase. Walkways on the 30-metre-high bridge are dangerous. Police may deal with individual incidents, but without control of access to the site an accident seems inevitable. My constituents have put in great effort with VicTrack and ARTC to seek removal of the graffiti and the security of the site, without result. Minister, what will you do to ensure preservation of its heritage and the safety of the public?

South-Eastern Metropolitan Region

Rachel PAYNE (South-Eastern Metropolitan) (12:40): (439) My constituency question is for the Minister for Housing, Minister Shing. My constituent is a young full-time worker currently residing in the Dandenong LGA. My constituent lives away from their family in a share house to be near their workplace. They have recently been forced to look for alternative accommodation. Unfortunately my constituent has run into the same issue many young people living in my region face: that the rental market is in crisis. Despite their full-time income, they are finding it almost impossible to find a place to call home. My constituent asks: what is the minister doing to give young people specifically a chance to find stable and affordable accommodation in South-Eastern Metro?

Southern Metropolitan Region

John BERGER (Southern Metropolitan) (12:41): (440) My question is for the Minister for Racing in the other place, Minister Carbines. Melbourne is the racing capital of Australia. Racing has a long and proud history in Victoria, and it is a significant contributor to our economy and to the cultural fabric of our state in the spring months. Over the next few weeks we will be witness to a massive show that we put on best, and in two weeks time it comes to Caulfield. We have got a world-class racing and training industry that employs thousands of people right across our state. Racing generates $4.7 billion for the Victorian economy and is directly responsible for sustaining 34,900 full-time equivalent jobs, many of which are in my community of Southern Metro. That is why my question to the minister is: what flow-on economic benefits do the Caulfield Cup Carnival and the Melbourne Racing Club bring to the many local businesses and the community and culture of Southern Metro?

Northern Victoria Region

Gaelle BROAD (Northern Victoria) (12:42): (441) My question is to the Minister for Environment. What is the government doing to ensure people can continue to collect firewood this spring? I have been contacted by a constituent who was very frustrated to find that the Wellsford Alexander Road coupe near Bendigo was closed to collection due to a single noise complaint. He contacted the Department of Energy, Environment and Climate Action several times and was told that firewood could not be collected – he would have to buy it from a merchant or go to a forest with a designated collection area. Other areas have quickly been cleared out, and the amount of available firewood will be drastically reduced after the government's decision to close the native timber industry. VicForests supplies a large amount of commercial firewood available for purchase, but now these supplies are at risk. Free firewood zones for domestic collection are already under significant pressure. Can you please explain what action the government is taking to address this issue? Regional Victorians will be the most hurt by this debacle, as many rely on firewood for heating and are battling ever-increasing energy costs under this government.

Southern Metropolitan Region

Katherine COPSEY (Southern Metropolitan) (12:43): (442) My constituency question is for the Treasurer in the other place. My office receives many requests for financial assistance from my

constituents. The most frequent request, regardless of the initial query, is help with the increased cost of living. We have heard from students who have had to drop their university load to work more, choosing to extend their education by years simply to make enough money to afford groceries, and from parents having to choose less nutritious food options as that is all they can afford. Too many members of my community are relying on food assistance programs simply to feed their families. There is blatant price gouging going on from the supermarket duopoly, and the government should investigate price caps on grocery essentials and declare groceries a regulated industry so that the Essential Services Commission can monitor for unfair price hikes in this cost-of-living crisis. My constituency question for the Treasurer is: what action is the government taking to stop supermarkets in my electorate of Southern Metro price gouging?

Eastern Victoria Region

Renee HEATH (Eastern Victoria) (12:44): (443) My question is for the Premier. Last week she dropped into Pakenham for a photo opportunity and to spruik Labor's Level Crossing Removal Project but failed to give Pakenham locals the facts. She failed to tell them that the budget papers confirm that Labor's level crossings are at least $334 million over budget or that Labor is acquiring crucial land from businesses like Goldstream RV, which soon may have no choice but to close down and leave over 70 people unemployed, a business that this year is celebrating 30 years of operation. Premier, on 16 May this year I asked you to join me in Pakenham to speak to these businesses, but so far that has been ignored, so again I ask: will you please join me to meet the businesses that could be destroyed due to this land acquisition to figure out a solution to protect jobs and locals?

Northern Victoria Region

Georgie PURCELL (Northern Victoria) (12:45): (444) My question is for the Minister for Agriculture. In June Wangaratta council cut ties with RSPCA, awarding its contract for animal pound services to the Albury pound across the border. Displaced cats and dogs who could also be distressed or unwell are now having to travel for over an hour from the region for a second chance at life. Earlier this month I visited Wodonga Dog Rescue to learn about the ways this switch has impacted community shelters. The dedicated volunteers were already struggling to keep up with the demand following COVID lockdowns. Now, as one of the last remaining rescues in the region, they have become inundated and are facing their own heartbreaking closure. For almost 20 years Wangaratta provided shelter, food and vet care for up to 1000 animals per year. My constituents want to know if the government will fund a new purpose-built shelter to appropriately meet the welfare needs of this region.

Eastern Victoria Region

Tom McINTOSH (Eastern Victoria) (12:46): (445) My question is to the Minister for Mental Health, who is now in this place. Congratulations, Minister. For many years there has been a negative stigma around mental health, with shame being placed on those who ask for help. Thankfully over recent years recognition of mental health has become more significant, but we still have a long way to go. Minister, we know that easy access to help is a lifesaver for those experiencing mental illness. What is the Victorian government doing to make sure that help is easy to access for those who need it most in my electorate of Eastern Victoria? Last month I attended the Walk for Suicide Prevention in Mornington. This event was held on Sunday 10 September, which coincided with World Suicide Prevention Day. Now in its sixth year, the event brings together people from the Mornington Peninsula who have been affected by suicide. Names were read out to remember those who were nominated by loved ones in attendance, and we had the opportunity to tie a ribbon on the fence for those we have lost. It was an emotional day, but standing together at events like this reminds us that access to help and support is crucial. No matter what, no-one is truly alone. I want to thank the Mornington Peninsula Shire Council and local community groups for supporting this event.

Northern Metropolitan Region

Evan MULHOLLAND (Northern Metropolitan) (12:47): (446) I thought I would give my constituency question to the Minister for Planning, since the Minister for Housing stated it is not in her portfolio. Six years ago the former Premier announced that surplus government sites in Parkville, Broadmeadows, Reservoir, Noble Park, Boronia and Wodonga would be part of its inclusionary housing pilot project and sold to developers if they incorporated social homes. Not a single home has been built on any of these sites, despite the government claiming that bypassing local councils and communities would speed up the process. I would like to know when the minister expects homes to be delivered at these sites, given that the government needs to build 220 homes every single day, including weekends, for 10 years to meet its promise in the housing statement. Why should Victorians expect the government to deliver on this promise when it has not even met its promises from six years ago?

North-Eastern Metropolitan Region

Matthew BACH (North-Eastern Metropolitan) (12:48): (447) My constituency question today is for the new Minister for Transport and Infrastructure. I think it was last Monday that Mr McGowan and I visited Manningham City Council and we met with both the CEO and the mayor. We wanted to talk with them – or rather, they wanted to talk with us – about the North East Link. I personally think the North East Link is a very good project. I would have had the route go slightly differently, but nonetheless it is a really good project that will ultimately deliver benefit for my constituents. Nonetheless, in the process of constructing the North East Link – which is of course billions and billions of dollars over budget – we need to listen to and deal with the concerns of local people. What we heard from the CEO and also the mayor the other day was that at the moment many locals are concerned that they are bringing forward reasonable issues but they are not getting a hearing, either from the government or from the North East Link Program. They had written to the previous minister, hence I will put it to the new minister that they would like some form of independent mechanism in order to be able to deal with their concerns and issues regarding the project. The action that I seek is for the minister to come back on that matter that has been previously put to the former minister.

Northern Victoria Region

Wendy LOVELL (Northern Victoria) (12:49): (448) My constituency question is for the Minister for Roads and Road Safety, and it concerns the current condition of the road surface of the M39, the Goulburn Valley Freeway, between Wahring and the end of the duplicated road at Arcadia. I have been informed by a constituent that yesterday she hit a deep pothole that was one of many on the southbound lane south of the Murchison turn-off. This tore a 10-centimetre by 5-centimetre piece of rubber from her tyre. At the time, another car that had damage from potholes had also pulled off the road and was waiting for a tow truck. The tow truck driver told my constituent she was the fifth car he knew of that day, and it was only 10:30 am. The same constituent reported large potholes on the northbound lane in Arcadia. Another constituent reported, returning from Melbourne, that the entire section of the Wahring to Arcadia part of the road is littered with potholes to the extent that it is dangerous. Will the minister order the immediate repair of the road surfaces on the Goulburn Valley Freeway between Wahring and Arcadia?

South-Eastern Metropolitan Region

Ann-Marie HERMANS (South-Eastern Metropolitan) (12:50): (449) My constituency question is to the Minister for Planning regarding her response about the demolition of 154 Drysdale Avenue, Narre Warren North, when the planning application to build a childcare centre on that site has not been approved. Yesterday, 4 October 2023, residents received a response from the Ombudsman about the lack of communication and transparency in this process. The Ombudsman said:

> … Council advised that a decision is yet to be made on the application.

This raises concerns about the coordination and communication between the council and property owners or developers. The Ombudsman also said that Casey council has:

> … confirmed a Development Plan Overlay does apply –

and that –

> the application is therefore exempt from notice and review rights.

Minister, with Casey council under this government's administration, residents want to know why the demolition was allowed to commence before the planning application was approved or denied and why council chose to use the development plan overlay, denying residents a chance to seek review.

Southern Metropolitan Region

Georgie CROZIER (Southern Metropolitan) (12:52): (450) My constituency question is for the attention of the Minister for Local Government, and it is in relation to support to local councils regarding early childhood centres. I received a letter from the Glen Eira council this morning, and I heard on the news that they are considering closing three small early learning childcare centres located in Caulfield, Carnegie and Murrumbeena. In their letter they talk about the need for an increase in childcare places. There are older buildings that lack basic amenities and need upgrades, and they talk about the increasing costs and economic uncertainty around councils being able to run services. They also state that the centres are expected to operate at a loss of at least $570,000 each year, so they are under enormous financial pressures. So the question I ask is: what is the local government minister doing to support councils like this to enable these centres to remain open for families?

North-Eastern Metropolitan Region

Nicholas McGOWAN (North-Eastern Metropolitan) (12:53): (451) Mr Fred Harrington OAM has asked that I ask the Treasurer a number of questions, so I do so with pleasure. Mr Harrington was honoured in 2011 with a Medal of the Order of Australia for his contribution to the people of Eltham. The Harringtons – Irene is his wife; she also has an OAM – purchased a holiday home in Tootgarook some 14 years ago, their pride and joy. However, it has only ever been used by family and friends – never used, I point out, for commercial purposes. In response to the imposition yet again of another tax by this government, brought on by Labor, the Harringtons ask: (1) what is the exact time period the property must be occupied for personal uses each year; (2) does that time need to be in one block or can it be made up of several blocks of time adding up to the required time; (3) what processes and paperwork will be required to be submitted to meet reporting requirements; (4) what will be the cost of setting up the department bureaucracy for collecting this proposed tax; and (5) what processes will be put in place to enforce the payment of this proposed additional tax? Like so many, I despair of this government's determination to socially re-engineer our state and rid itself of landlords or landowners of any kind, including the elderly, and attack the family home, which will surely follow.

Sitting suspended 12:54 pm until 2:05 pm.

Bills

Bail Amendment Bill 2023

Second reading

Debate resumed.

Michael GALEA (South-Eastern Metropolitan) (14:05): I rise to continue and to conclude my remarks on the Bail Amendment Bill 2023. Prior to question time I was outlining some of the key changes being made as part of this legislation, and I will return to bail offences, which is where I left off. This bill will repeal two of the three specific Bail Act 1977 offences, the first of those being the contravention of conduct as a condition of bail and the second being to commit an indictable offence whilst on bail. Bail breaches of this kind will still have consequences, but they will no longer be

criminal offences in and of themselves. Whilst it is clear that these offences have increased numbers on remand, it is far less clear that the offences do anything to discourage those bail breaches as they are supposed to.

Our criminal justice system already appropriately responds to bail breaches and offences committed whilst on bail. Retaining these offences is not necessary to ensure that there are consequences for that conduct. Breach of bail conditions can still result in bail being revoked, and instances where someone commits an indictable offence on bail will still see that person face the appropriate charges. What this change does is remove the additional 30-penalty unit summary offence that is currently added to such instances. As I said earlier, the compounding nature of these laws as they currently stand has adversely affected our community's most vulnerable people.

With the changes to uplifting and the unacceptable risk test, this reform will help to ensure that our justice system is assessing bail applications on their own merits. The offences being repealed have had no clear effect in discouraging bail breaches. This change is about ensuring that someone does not have their bail for alleged petty theft, for example, assessed on the same test as someone charged with a terrorism-related offence. We do not want to see people who commit a few small thefts facing the same test as someone charged with murder or terrorism. This is not how we want our system to work.

Additionally, a new category of offence will be established. This will see the majority of summary offences classified as remand-prohibited offences, where bail cannot be refused unless an exception applies. Appropriate conditions may apply with the possibility of remand for non-compliance. Remand prohibition will not apply to certain serious summary offences, as outlined in the newly established schedule 3 offence category.

Another area of reform I would just briefly like to mention is that this bill will update the Aboriginal-specific considerations. The Bail Act currently sets out these considerations for bail decision makers in cases where the applicant self-identifies as Aboriginal. This provision is in acknowledgement and consideration of the fact that Aboriginal Victorians still face unique disadvantages within our criminal justice system. It has become clear that there are issues relating to a lack of clarity on how to apply the considerations to aid bail decision makers to consider the specific issues that Aboriginal people face. To address this the bill will update the Aboriginal-specific factors set out in section 3A to include the following considerations: first, systemic factors that result in the over-representation of Aboriginal peoples in the criminal justice system and the increased risk Aboriginal peoples face in custody; second, the personal circumstances and the lived experiences of Aboriginal peoples that may make a person particularly vulnerable in custody, be a causal factor for offending behaviour or may be disrupted by being remanded; third, the importance of maintaining protective factors linked to rehabilitation, such as connection to culture, kinship, family, elders, country and community; and fourth, any other cultural obligations, such as sorry business. These reforms and the many others included in the Bail Amendment Act 2023 recognise that the existing laws have failed to protect parts of our community, and they must be fixed.

The Allan Labor government holds that remand and custody should be used to keep Victorians safe, not to needlessly heap additional punishment and entrenched harm on the most vulnerable members of our community. A great deal of consultation has occurred to bring about this bill. Stakeholders from all aspects of the bail system contributed towards determining the reforms needed to address the current shortcomings and failures.

The Bail Amendment Bill 2023 will implement reforms to significantly improve our bail system, ensuring appropriate and proportional decision-making that does not needlessly harm vulnerable people or compromise community safety. This bill will make Victoria fairer and safer, and for that reason I commend it to the house.

Trung LUU (Western Metropolitan) (14:11): I rise today to speak on the Bail Amendment Bill 2023. I understand the reason for this bail law reform. I support the purpose of the bill and

generally support some of the changes that the bill seeks to make, but the bail laws over the years have been changed so many times and the government has not quite got it right and balanced when it comes to responding to the changes in custody patterns as well as community sentiments. Too often changes to bail laws have been made when big events happen which people have strong emotional reactions to, and the government responds to the community's feeling to make changes to the bail laws. I will give you an example. In 2017, as we all know, there was a tragedy in Bourke Street when a man who was out on bail drove a car on Bourke Street, hitting pedestrians and killing six people. Public outrage about this tragedy caused this government to tighten up the bail laws. Then in 2020 there was the tragic death of Veronica Nelson in the Dame Phyllis Frost Centre. She was in custody after being refused bail under the new tightened bail laws and died after vomiting all night. This second tragedy and the subsequent coroner's report prompted the government to review the bail laws again. This time they wound back some of the tightening of the law that occurred after the Bourke Street attack.

The idea of bail deals with two conflicting principles: the presumption of innocence and the interests of community safety. However, when these are tilted in any particular way depending on community sentiment it can cause traumatic outcomes if they are not balanced properly. Presumption of innocence means a person who is accused of a crime is entitled to be treated as innocent until they are proven guilty in a court. To hold someone on remand after they have been charged but before they have been found guilty in some senses denies that presumption of innocence. On the other hand, there are competing interests of community safety. Unacceptable risks and the probability of the risks that are posed to the community are why people are not granted bail or are released on bail and are required to meet certain conditions – that is, restricting their movement. These requirements upon an accused mean that a person promises upon release to behave while on bail. One of these conditions is that while out on bail they should not commit any other offences. The bail justice or magistrate tries to strike a balance between these principles, and it is hard to strike the right balance when making a decision. But if government legislators take away their abilities to freely implement these principles by adding barriers or from time to time making rushed amendments and laws due to any one community sentiment without keeping a good balance on the principle, it can cause the results that we have experienced over the years.

I am pleased that the government has listened to the people and the voice of the entire community and made some changes to the bail laws and retained the status quo of the youth bail laws. I thank the Shadow Attorney-General Michael O'Brien in the other place for the great work that he has done in voicing the community's concern that the bail bill would have seen young offenders facing the state's weakest test of bail even in some of the most serious offences. I say this because there has been a recent increase in high-profile violent youth offences and steadily increasing youth violence in our community. In particular I have seen a few in my electorate in the west, as I have previously spoken about in this chamber in seeking the government's assistance to address youth violence.

I welcome the government's decision to backtrack on some of the bail law reforms, allowing it to review them further down the track, thus ensuring that we keep monitoring the effects of these law reforms and have the capability to prevent any possibility of more tragic deaths like those we have mentioned in the Dame Phyllis Frost Centre. Currently not only are too many people on remand but they have to wait so long for their trial, at times without a sentence. They spend more time on remand than the length of a legal sentence and then are simply released when their time is served.

We have also seen that certain cohorts, like women and Indigenous Australians, were affected by the tightening of the bail laws. This is something we need to look very closely at. But a bail policy is about balance. It is about getting the balance right between risk to the community and the right to little restriction for those who welcome reform. Our justice system is based on the principle that all are equal in the eyes of the law, and justice should not be based on ethnicity, race or colour of the skin. It should be judged on a case-by-case basis and the individual circumstances of a person's capability and vulnerability, because not all incidents are the same.

Even though I support the bill in general, I do have some concerns. We are moving amendments to the bill, and one which concerns me is in relation to retaining the offence of committing an indictable offence while on bail. I say this in relation to committing an indictable offence while on bail because I have seen too many comments in relation to the first amendment being retained. The police do not feel they have sufficient support and feel helpless when they arrest the same people over and over again because some people who are accused are released on bail after constant reoffending. Another thing is many of my constituents can see those who are released on bail committing offences over and over again and do not feel safe. The other thing is criminals who are on bail can break into someone's house and not feel remorse, and when they are caught they are immediately released on bail to commit the same offence again. How can people in my community feel safe if they see this occurring over and over again? There must be some consequences when people repeat offences over and over again while on bail. Without a proper response, antisocial behaviour and criminal behaviour will continue and even be encouraged. Those people released on bail have no fear of any offence. When an alleged offender is released on bail they make an undertaking that they will not commit any further offence while on bail. Should he or she not honour the undertaking, there should be an appropriate punishment. Otherwise what is the point of having bail? So I urge the government and those in this house to support looking into this amendment to committing an offence while on bail when it is a serious or indictable offence. Those who are on bail should be treated just as fairly as those who have not been on bail.

In closing, I acknowledge and am glad that the government has listened to the people, listened to the community, in relation to backtracking on some of the amendments to the reform of the bail laws. But I do urge that this house and the government look into the offence of committing an indictable offence while on bail and ensure that those who have committed an offence will not repeat that offence while on bail.

Tom McINTOSH (Eastern Victoria) (14:20): I rise to speak to this bill, and I want to acknowledge the work of Minister Symes. Whether it be as Leader of the Government in this place or in emergency services or as Attorney-General, she is consultative and puts a lot of effort into all her work, so I want to acknowledge that. She is an outstanding member of the government, so I thank her.

Victoria's current bail laws do not properly distinguish between low-level and non-violent offending and serious offending that poses a risk to community safety. This has led to an increase in remand, particularly for repeat offenders who may not pose a risk to community safety. When a person is arrested, they can apply to be released from custody on bail, which is an agreement between the court and the person that they will return to court at a later stage to respond to their charge. Bail is often granted with conduct conditions – that is, curfew or travel restrictions, as determined by the bail decision maker. Where a person is not granted bail or does not apply for bail, they are remanded in custody until their matter can be heard. A person on bail is presumed innocent until proven guilty, meaning there should be a presumption in favour of being given bail unless they are considered to pose a risk to the welfare and safety of the community, or they are at risk of absconding.

Whether or not a person is granted bail depends on whether the applicable test for granting bail has been satisfied. The applicable test will be one of three tests and will depend on what the charged offence is. The unacceptable risk test requires bail to be refused if the prosecution proves that there is an unacceptable risk that the person would endanger the safety or welfare of any person, commit an offence while on bail, interfere with a witness or obstruct justice, or fail to surrender in accordance with conditions. This test applies to non-scheduled offences – that is, offences not listed in either schedule 1 or schedule 2 of the Bail Act 1977, such as shoplifting or graffiti. For this test, there is a presumption in favour of bail, meaning the burden is on the prosecution to prove.

The show compelling reason test requires a person charged with an offence set out in schedule 2 of the act – that is, rape or aggravated assault – to show compelling reasons as to why their detention in custody is not justified: for example, lack of prior criminal history, vulnerabilities, sentence unlikely to be imposed et cetera.

The exceptional circumstances test requires that bail be refused unless a person charged with a schedule 1 offence – that is, murder or terrorism – can establish that there are exceptional circumstances that exist to justify their being given bail: for example, extreme hardship.

I think we acknowledge that Victoria currently has some of the strictest bail laws in the country, and this is the result of two previous reforms. The 2013 reforms introduced new bail offences, with summary offences each attracting a penalty of three months imprisonment or 30 penalty units, being one of two: to commit an indictable offence on bail or to contravene conduct on bail. The 2018 reforms, which sought to impose tougher bail tests for those alleged to have committed offences while on bail, were specifically the following two charges: to remove the presumption in favour of bail from specific offences listed in schedule 1 and 2 of the Bail Act and introduce a presumption against bail for offences that an applicant would have the burden of disproving.

It also enabled an uplift in the bail test for persons who were charged with reoffending while on bail. This meant people could face more onerous bail tests intended for more serious offences when committing repeated low-level offences. For example, if a person committed an offence while on bail, their test will be uplifted from unacceptable risk to the show compelling reason test. If the same person was then granted bail again and committed a further offence, they would be double-uplifted to the more onerous bail test, requiring them to show exceptional circumstances. The 2018 reforms were introduced in response to a series of violent crimes that had been committed while the perpetrator was on bail, and most notably that was the Bourke Street murders. This was intended to restore public confidence in the bail system and implemented a series of reforms recommended by former Justice Coghlan to increase community safety.

We know that these two previous sets of reforms have resulted in a significant increase in remand of repeat non-violent offenders. This has disproportionately impacted people experiencing disadvantage, particularly women, children and Aboriginal people. This bill will address the most urgent identified issues with our current bail laws so that low-level, non-violent offenders are no longer being remanded where they do not pose an unacceptable risk to community safety.

The bill implements eight of the 13 recommendations of the Nelson inquest relating to the Bail Act, and the bill introduces a number of changes to existing features of the Bail Act 1977. The bill proposes to repeal those aspects of the 2018 reforms for those accused of repeat lower level offending by providing that reverse onus tests will apply only to the serious offences specified in the schedules in the Bail Act. This will be done by removing uplift consequences for non-scheduled offences such as shoplifting, graffiti and Bail Act offences.

The bill refines the definition of 'unacceptable risk' to make it clearer that a potential risk of minor offending is not enough reason to refuse bail unless someone else's safety or welfare is threatened. This can capture property-based offending that impacts welfare, such as repeated theft from the same small shop.

The bill repeals the 2013 Bail Act offences of breaching bail conditions and committing further offences while on bail. This conduct will still have consequences – for example, bail being revoked or changes to bail conditions – but they will no longer be standalone offences. The bill does not remove the remaining bail offence of failure to appear – failing to attend your court hearing without a valid reason – meaning a person can still be charged with this as a standalone offence. However, the reverse onus test will no longer apply to this offence.

The bill introduces remand-prohibited offences so that particular offences that are set out in the Summary Offences Act 1966 that are unlikely to result in a prison sentence will no longer enable a person to be remanded. Those on bail for such offences will still be subject to bail conditions, ensuring community safety is upheld. The bill will require bail decision makers to specifically consider whether the accused is likely to be sentenced to a term of imprisonment if found guilty and, if so, whether they are likely to spend more time on remand than the likely length of the custodial sentence.

The bill will allow an accused person to make a second legally represented bail application before a court without having to establish new facts or circumstances, as is currently required. This seeks to remove the incentive for applicants to try and secure a second application by appearing without a legal representative at their first application.

The bill will update and strengthen existing provisions of the Bail Act that require a bail decision maker to consider additional factors if the applicant for bail is a child or an Aboriginal person. The updated Aboriginal considerations in the bill have been developed in partnership with the Aboriginal Justice Caucus, and the child-specific considerations reflect extensive consultation with legal and Aboriginal stakeholders and bodies representing children and young people. The bill introduces a requirement on bail decision makers to identify and record the Aboriginal-specific considerations they had regard to when refusing bail to an Aboriginal person. This means that bail decision makers will be required to identify what relevant matters they have had regard to, but they will not be required to articulate exactly how these matters have been taken into account. The bill will further make amendments to clarify, modernise and otherwise improve the act, including adopting gender-neutral terms, updating the definition of 'Aboriginal person' and making it clear that the rules of evidence do not apply in a bail application.

Bail is one of the most critical components of our justice system, and decisions to refuse bail to a person accused of committing an offence – a person presumed innocent – should not ever be taken lightly. Our bail decision makers make thousands of decisions each year, assessing complex sets of circumstances and risks to make appropriate decisions that respect the rights of the accused as well as the interests of the community. We know these decision-makers take this job seriously, and the government understands how seriously we must take our role in bringing in laws that directly impact the freedom of Victorians.

Our bail system is currently not working as well as it should. Our system must do better, and today we begin the process of making it better. The Bail Amendment Bill 2023 gives us a chance to get the balance right, to make sure our legal system is able to carefully consider the risk posed to the community by those who commit serious offences without unnecessarily remanding those who do not.

We know that for many in our community our bail laws touch on traumatic experiences, and we recognise the importance of getting the balance in these laws right. We know that our responsibility is to the community to ensure we take all efforts to protect community safety, and our reforms do not undermine our commitment to this. We have also heard the concerns raised by many that our laws must be fairer and more considerate of the reasons people engage in a cycle of repeat offending. The Bail Amendment Bill 2023 will bring much of this into our bail system. It will create a bail system that is fairer and more flexible for our decision-makers to consider the circumstances of offending.

It is important we acknowledge the many who have advocated for change in this space and the importance of their role in developing our reforms over many years. Many of us have spoken with and received correspondence from community members with strong views on reform of these laws, and we have taken this input seriously. We also acknowledge many within the legal and community sector who have advocated for reform, particularly those who have been engaged in consultation on this bill. We further wish to acknowledge and recognise the advocacy of the family and community of Ms Veronica Nelson, who tragically passed away while on remand. Her tragic death and story highlight many of the ways our system needs improvement, and we acknowledge the tremendous advocacy of Veronica's loved ones, in the wake of her passing, for reforms to our bail system.

We know for many it has been a long journey to get to the point we are at today where we are able to bring these reforms through the Parliament. We know how critical it is that these laws are brought in without delay, and we want them brought in as soon as possible. At the same time we know these changes will require substantive change in practice for our justice system, particularly for our bail decision makers – our courts, police and bail justices. The effect of these laws is tied to how well they

can be implemented, and as such we need to make sure that our justice system can implement them effectively. This is why we have the bill scheduled to commence on 25 March 2024, so our system will have six months to incorporate the practices proposed.

The Bail Amendment Bill 2023 will adjust two of the key aspects of the 2018 bail reforms – the uplift and the reverse onus test – so there is greater flexibility and consideration of the circumstances of offending when a person applies for bail. So we can understand how these reforms will work, it is perhaps worth setting out how the system currently works. Starting from the beginning, when a person is charged with a crime they can apply to be released from custody on bail, which is their agreement that they will return to court at a later stage for their court hearing to respond to their charge. Whether or not a person is granted bail depends on whether the relevant bail decision maker, who might be a police officer, a bail justice or a magistrate, is satisfied that the applicable test for granting bail has been satisfied. There are three different tests for bail, and which test applies depends on what the person is charged with. This all depends on whether the offence a person is charged with is one of the offences listed in schedule 1 or schedule 2, which I outlined earlier.

Those offences which are not listed in a Bail Act schedule are generally low-level, non-violent offences such as graffiti or shoplifting. The unacceptable risk test is the lowest level test and the only test where the burden is on the prosecution to establish why the person should not be granted bail. This test requires bail to be refused if the prosecution proves there is an unacceptable risk that the person would endanger the safety or welfare of any person, commit an offence while on bail, interfere with a witness or obstruct justice, or fail to surrender in accordance with conditions. This is the test that applies to non-scheduled offences, being those generally low-level, non-violent offences. For those charged with offences listed in schedule 2 of the Bail Act – more serious offences – there is the reverse onus test, meaning the burden is on the person applying for bail to satisfy the bail decision maker as to why they should be given bail.

As I said at the start, I am absolutely supportive of this work, and I look forward to the bill passing and being enacted early next year.

Samantha RATNAM (Northern Metropolitan) (14:35): I rise to speak on the Bail Amendment Bill 2023, a bill that has been a long, long time coming in attempting to fix the 'unmitigated disaster' of the 2018 government changes. I say that as someone who had the honour of being in the chamber in 2018 and has spent much of their time since then – alongside my colleagues – asking the Attorney-General when the government would recognise the discrimination and the record levels of First Peoples, women, children and people with a disability in prison, untried and unsentenced, for no other reason than the fact they happen to be disadvantaged and vulnerable and often unrepresented in court. The more disadvantaged you are, the more imprisoned you are under these laws. Even beyond the heartbreaking tragedy of Veronica Nelson, the case law in our courts is replete with the most horrific cases of injustice, cases which are scarcely believable – a person with an intellectual disability repeatedly charged with public drunkenness ending up imprisoned for over a month until it took the Supreme Court to finally decide that applying a bail test designed for terrorists and murderers to this person was absurd. There were thousands of injustices like these.

Then we come to the data, the statistics. As a result of this disastrous policy we are talking about a gap in incarceration rates between Indigenous Victorians and non-Indigenous Victorians that is higher than that between whites and people of colour in apartheid South Africa and far in excess of the gap between African Americans and white Americans even at the height of the Jim Crow laws in the 20th century. We are talking about First Peoples imprisonment increasing by 70 per cent in only the first five years of this Labor government, nearly all on remand – and it is even higher for First Nations women. Yet despite this, apart from when my Greens colleagues and I were on our feet, the word 'bail' has barely been mentioned in this Parliament over the last five years, let alone even the slightest recognition of this unprecedented injustice towards First Nations persons in our time.

In response to our questions, all we heard was deflection and excuses, some of which I note have persisted in the talking points for the Labor side in this debate, even today. 'We can't change bail laws because they're far too complicated', they say, by which they mean not so complicated that they cannot be changed within six months in the lead-up to a law and order election but far too complicated to be amended to reduce some of the highest rates of imprisonment of people of colour unsentenced for minor offences, not only anywhere in the world but at any time in history – far too complicated so as to do nothing for five years despite deaths in custody but apparently not so complicated that we can change them within hours of debate to please the *Herald Sun* and the Liberal Party.

They also say that the Greens criticising bail laws was just us being emotive, being glib and not being hard-headed and facing reality – talk about galling! The Greens directly quoting recommendations from the Victorian Law Reform Commission is apparently being emotive. Using the evidence and recommendations from the Law Institute of Victoria, the bar association, the commissioner for children, the Ombudsman, the Sentencing Advisory Council, universities, royal commissions, the Crime Statistics Agency, community legal centres on the front line and our own parliamentary inquiries – I mean, how glib of us! Let us be clear: the only emotive arguments on bail have come from the government, whose glib declarations that they are 'keeping Victorians safe' come despite the only observable evidence after changing the bail laws being a statistically significant increase in the rate of recidivism.

The Greens have been the only party that have based their position on the evidence of these agencies and their recommendations – the experts on justice reform and reducing criminal offending cycles. What we have really learned over the last decade is that it is not evidence or expert advice that seems to guide justice policy in this place but politics, the tabloid media and electoral cycles. That is what explains the great silence and the lack of action on First Nations persons imprisonment over the last five years by this government and this Parliament – an awkward political détente between the Liberal Party still licking its wounds from a disastrous 2018 law and order election campaign and a Labor Party that feels its only electoral vulnerability, despite the 2018 result, is perceptions that it is weak on crime.

But in this term of government there was some hope. With the election out of the way, the government introduced this bill, and that does go a way to reversing the disastrous changes to bail laws in 2013 and 2018. We have also had members of the government, including the Attorney-General, finally speaking some truth on government failures in criminal justice reform at Yoorrook. And as I said yesterday, this took great political courage, and it is to their credit. But that is why we found the last 24 hours so disturbing, with the government doing a deal with the opposition to water down an already compromised bill to secure its support and continue the détente on justice policy between the two major parties. Let us be absolutely clear here: the government does not need the opposition's support to pass these laws. We have here intelligent and progressive members of the crossbench who would be delighted to pass meaningful criminal justice reform to reduce the discrimination and injustice to First Peoples, but instead Labor has chosen to lie with the Liberals rather than partner with the progressives. While the Attorney calls this a pause not a backflip, I fear it is a sign of a government that still intends to run its justice policy from the Premier's office based on politics not justice evidence.

I spoke yesterday about it being finally time for positive and progressive politics based on truth and not fear and it finally being time for implementing policies and laws that actually work for Victoria's First Peoples. I was of course speaking then to opposition members, but now I say to the government and the new Premier: do not let the opposition continue to run your justice agenda and do not fear the *Herald Sun*. Instead work with this progressive crossbench, First Nations and criminal justice experts towards finally delivering justice policies that work, especially for First Nations Victorians. Taking this opportunity to finally reduce First Nations incarceration and deaths in custody would, I believe, be the greatest achievement for any Victorian government. I ask the Premier to join with us, not waste this opportunity, and finally make this happen.

Sheena WATT (Northern Metropolitan) (14:42): I rise to speak on the Bail Amendment Bill 2023. I start, as is right and proper with this bill before us today, by paying tribute to the late Veronica Nelson, a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman and beloved daughter and partner, who tragically passed away on remand. I also take a moment to acknowledge the tireless and brave efforts of her mother Aunty Donna; her partner Uncle Percy, who is known to many of us; and her loved ones in keeping her legacy alive and in calling for reform to Victoria's bail laws, which have played a role in informing this bill.

Today I speak as a proud member of a Labor government that is taking real steps toward addressing the over-representation of Aboriginal people in our justice system, a government that is truly and deeply committed to reconciliation and justice for our mob. I know firsthand the disproportional impact that Victoria's current bail laws are having, which I know are tough, and particularly the extraordinary and significant disadvantage that these have placed on Victoria's Aboriginal community. I come to this place having been a member of the Aboriginal Justice Forum, representing the views of the Aboriginal health community and working closely with the Aboriginal justice sector for a number of years, including in the Royal Commission into Family Violence.

Only yesterday I was up here talking about public drunkenness, and I have since Tuesday heard some outrageous mistruths about the Voice to Parliament. So I have got to say it has been a bit of a week, and we have got eight days to go. But do you know what, I am going to take a moment to celebrate the fact that we are actually discussing the plight and the futures of Aboriginal people, because for too long this place sat silent on the lives and futures of Aboriginal people. The fact is that this bill before us is informed by a large number of stakeholders, and I will of course call out the Aboriginal Justice Forum, a partnership that is now in its fourth or fifth iteration – I cannot recall. But it goes from strength to strength, led so ably by members of the Aboriginal community, the Aboriginal Justice community and of course the now Allan Labor government.

We have come here today with previous reforms from 2013 and 2018, community safety and public confidence in mind. It has become clear that Victoria's bail laws have left some members of our community exposed to increased criminalisation and incarceration. This was highlighted not only in the coronial inquest into Veronica's death but also the parliamentary inquiry into Victoria's criminal justice system, which I participated in last term, both of which called for reforms to make our bail laws fairer and more flexible. Can I take a moment to acknowledge fellow members of the committee that participated in what was a very, very significant parliamentary inquiry. It is the job of good governments to acknowledge when the balance just has not been achieved. With this bill we are recognising that there is a problem, but most importantly we are acting on it. That is why we are introducing these reforms to begin on the path to righting our wrongs. Bail laws should be used to keep Victorians safe, not to further disadvantage the most underprivileged members of our community.

The Bail Amendment Bill 2023 introduces a number of key changes that will not only address the most pressing issues with our bail laws but also realise the implementation of eight out of the 13 recommendations of the coronial inquest into Veronica's death. I might have to check that number, but that is what I thought it to be upon my inspection. Most importantly, it introduces these changes in a balanced and nuanced way where we can distinguish between low-level non-violent offending and those more serious offences that pose a risk to community safety. It more appropriately targets reverse onus tests to those accused of serious offending, enabling a more balanced and flexible approach to bail decisions for adults accused of minor offences who would not pose a flight risk or community safety concerns if they were released on bail. It makes some commonsense refinements to the current unacceptable risk test, the lowest level bail test, so that the risk of committing an offence while on bail would not be enough reason to remand those accused of low-level offences unless they pose a safety risk. It repeals committing an indictable offence while on bail and contravention of a conduct condition of bail as offences under the Bail Act 1977, responding to recommendations made by the coronial inquest into the death of the late Veronica Nelson, whilst also ensuring mechanisms

remain to remand serious offenders who breach bail and threaten the safety and welfare of our communities.

The truth is I could go on and on about how this bill could and will reform our bail laws for the better, but with the time I have left today I would like to focus on some specific proposed reforms that will make a real difference to Aboriginal people in contact with our justice system. As it currently stands, the Bail Act includes a number of considerations in section 3A which must be accounted for when bail decisions are made in relation to an Aboriginal person. While the intention was to address specific issues of Aboriginal over-representation in our justice system, it has become apparent that these provisions are being misunderstood and inconsistently applied. Simply put, they are not working as they were envisioned. After extensive conversation and consultation with Aboriginal stakeholders and community leaders, and I will take a moment to acknowledge the work of the Koori Court and the esteemed elders that participate in that, we are taking action to ensure that these provisions work as intended. While giving a shout-out to the Koori Court I pay my respects to those in the Broadmeadows Koori Court, one I sat on on a great number of occasions before coming to this place, as would be appropriate, and where I heard about what really are the lives and circumstances of Aboriginal people that bring themselves before the Koori Court.

With this bill before us we are moving to amend section 3A to clear up confusion for bail decision makers and make sure that they are supported to uphold their common-law responsibilities, to ensure incarceration rates for First Peoples only increase when there is a good reason.

The changes proposed under this bill would require bail decision makers to consider the systemic factors that have led and continue to lead to the over-representation of Aboriginal people in the justice system and on remand as well as specific risks to First Peoples in custody, and depending on the circumstances of a case and the availability of personal information, bail decision makers will be required to take into account the personal circumstances and lived experience of Aboriginal peoples that may have impacted their offending – which make them especially vulnerable in custody or to being disrupted by being in custody. There are of course a number of factors that can contribute to that: I am thinking of disability, past and ongoing traumas, housing insecurity and kinship or caring responsibilities – and I certainly heard much about that in the Koori Courts. It would also require these decision-makers to recognise and consider the cultural obligations of Aboriginal peoples, the need for accessible Indigenous bail support and services and the importance of connection to country, culture and community, because these factors play a vital role in successful rehabilitation.

As part of this we are making sure that families, communities and Aboriginal support services have the opportunity to provide bail decision makers with such information, recognising the importance of Aboriginal people being involved in decision-making about other Aboriginal people. I acknowledge the Victorian Aboriginal Legal Service (VALS) for the role that they play and the workers that take calls day and night all over the state. You know who you are. I have had the good fortune of hearing your calls once or twice, and I tell you what, you are extraordinary, extraordinary people.

I would like to note that these requirements under section 3A are not intended to make bail decisions harder or to mandate particular outcomes – I just make that very clear – but instead are designed to ensure that our bail system is culturally safe so that decisions reached are well informed and appropriate, because that is what a government committed to equality should do. These reforms are sensible, they are proportionate and they are necessary. They address the most urgent changes needed to our bail system so that those involved in minor offending do not end up facing a life-changing setback – and that is what it is.

Our legal system is built upon the essential principle that those accused of crimes are presumed innocent until proven guilty, and as such the choice to remand someone in custody should only be made when it is clearly needed: when it is evident that the accused poses a risk to community safety or to the just and proper administration of justice in our state. To be on remand is to lose your connection with the people and supports that keep you grounded. It is to lose your job, to be removed

from your family, your friends and your community and to risk your ability to return to stable housing. For some of us – Indigenous brothers and sisters, people that look like me – to be on remand is to risk not coming home at all. As such, it has become clear to me that the compassionate and appropriate approach should not be to lock up those most vulnerable amongst us – those who pose no danger to community safety; it should be to afford our bail decision makers the flexibility they need to make considered and informed decisions on each bail applicant that comes before them.

I want to take the opportunity to thank the many stakeholders, and I have mentioned some in my remarks earlier, and community leaders with whom the Attorney-General and the Department of Justice and Community Safety have worked to draft this bill. In doing this I want to acknowledge the hard work of Nerita Waight and VALS, up the road there in the Northern Metropolitan Region, as well as the Aboriginal Justice Caucus, who have gone from strength to strength since I departed their fair ranks. The Aboriginal community controlled legal services are incredibly vital for First Peoples' equality, both here in Victoria and across the country, and it is the tireless advocacy of such organisations that is helping us build a legal and justice system that works for us all.

Beyond that, this is a culmination today of many years of work by the Aboriginal legal and grassroots community, who have campaigned and called for truth and justice for years. Thank you for your fight. Thanks for sticking at it, your dedication and sharing your insights and your stories. It is not always easy to get up and tell the story of family hardship, as you have done so bravely throughout many, many, many years, so thank you to you. We know that more needs to be done in relation to criminal justice reform for our Aboriginal communities, for people with a disability, for people of colour, for women and children and all those in the state who are vulnerable, disadvantaged or somehow just end up doing the wrong thing once or twice.

We know that existing bail laws are failing the most vulnerable amongst us when they should be keeping us safe, and we remain committed to striving for a better, fairer Victoria for us all, to listening and to engaging so that we can work together to address any disproportionate impacts of Victorian laws on disadvantaged communities. We know that our work towards the goal of a more just system continues and our commitment to the safety with our community and to equality is central to the work that we do. This bill before us demonstrates very clearly that we are getting on with the job. To the members of this chamber and to the Victorian people, I say that I commend this bill to the chamber.

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (14:56): It has been a long time coming to get here today. This has certainly been a priority of mine, and it is somewhat surreal to know that we are so close to making some significant reforms. Bail reform is probably the most critical but also the most complex area of law reform that I have taken on since becoming Attorney-General. There has been a very broad spectrum of views as to what must be done to fix our bail laws, but this comes with great responsibility. The fact that any changes can have a broad and potentially life-altering impact on people based on where these laws fall means that there is a range of opinions in relation to exactly where you should land. I take this responsibility incredibly seriously, and it is why the government have put forward reforms that, we are of the view, strike the right balance between ensuring people are not unnecessarily remanded and seeing that we have sufficient safeguards to maintain community safety.

These reforms, as I said, have been many years in the making, and I know there are strong but also vexed views on the questions of how our bail laws should operate. I have sat in front of the commissioners of the Yoorrook Justice Commission, in front of victims and their families, and I have met with stakeholders and other members of the community who are incredibly passionate about these laws. I know that for many there is a high degree of trauma attached to the reforms. We are all aware of the circumstances surrounding the previous amendments to the Bail Act 1977, and I want to be clear to everyone, but especially the victims and their families and loved ones of the 2018 Bourke Street tragedy, that these amendments in no way seek to weaken the government's commitment to ensuring that the community is safe. Maintaining community safety is the number one consideration for our bail decision makers, and that is not being affected by the bill that we are discussing today.

Many of us are, sadly, deeply familiar with the tragic circumstances of the death of Veronica Nelson, a proud Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman whose death occurred while she was on remand. I know that words will never be enough to make up for the pain and trauma of her family, her loved ones and her community who have suffered her loss. I know reform to bail laws is something that they have advocated for passionately, and I certainly want them to know that I have faith that the steps we are taking today will work towards a safer, fairer and more balanced bail system. There is a lot in this bill to unpack, and I want to thank the members of both this chamber and indeed the Assembly who have gone through the scope of these reforms in detail, especially those who have shared their own or their community's experiences with these laws. It has been an invaluable debate.

I want to bring the house's attention to two substantive house amendments that the government is proposing. It might be a good opportunity to circulate that now.

Amendments circulated pursuant to standing orders.

Jaclyn SYMES: We do have two house amendments. The first removes the provisions that propose to repeal the reverse onus test for young offenders for all but two of the most serious offences. I want to be really, really clear about this. I did an extensive doorstop this morning to take the media through this. We are still committed to developing reforms to keep children out of custody and to providing an approach to bail that recognises the unique vulnerabilities and complex disadvantages that children, particularly young offenders, can face. The amendments pause these reforms to be considered at a later date. It is my view that a discussion about child bail would be better done as part of the youth justice package, and that is a package of reforms that is being developed between me and the Minister for Youth Justice. It includes changes related to the criminal age of responsibility and is on track to be introduced into the Parliament early next year.

I want to also make it very clear that the advice from the experts and the evidence from those who interact with the youth justice system and the Children's Court show they are comfortable with this pause. The reason they are comfortable with this pause is that the practical effect is minimal, because the current test, which is what we will be seeking to maintain – so the status quo – which has a range of thresholds as applied to adults, which involve exceptional circumstances and compelling reasons before you get down to unacceptable risk, is a test that every child meets. Of course a child can demonstrate compelling reasons why they should not be in a custodial setting, so what happens in practice is that there is minimal discussion about the application of those thresholds and it drops back to the unacceptable risk test, which is what our amendments will be codifying in due course. But it will be prudent to have a broad conversation about youth offending, youth crime and the measures that the government are taking to respond to those challenges at a later time and it is also complementary to a discussion about raising the age. So that is the rationale, and it also means that we can focus on the most urgent elements of bail reform – that is, ensuring that low-level offenders who do not pose a community safety risk are not unnecessarily remanded. Indeed that is the underlying purpose of the reforms today.

The second house amendment legislates a statutory review of the reforms to be conducted two years from the commencement of the act. It goes without saying that we want to make sure that these laws are achieving their intended purposes. We will be monitoring the whole time. I am on the record that we are fixing a system that has had unintended consequences that we want to address, so we want to make sure that these laws indeed do that. I have no intention of waiting for a two-year statutory review to inform my thinking or the government's thinking about how they are operating. We will continue to do that. But having a formal two-year review is certainly fine. I will continue to closely monitor these regardless.

I have closely and carefully considered the counterproposals put forward in these reforms by way of amendments from non-government members, from stakeholders and indeed others who have an interest in this bill. I do understand the intent behind them, and for the most part we seem to be in a

similar headspace about where we are headed here. I am feeling optimistic that we are going to get a really good bill at the end of those discussions today.

I do want to ensure that bail is not used to unnecessarily lock up people who do not pose a risk to community safety. We want to make sure that people are not facing arbitrary punishments for offending and instead get to have their matter resolved through the courts with the appropriate consequences. Above all, we want a system of bail that is fair and safe and considerate of the people who apply for it, and our bill is a significant step in taking us there.

One of the critical components of reducing the rates of unnecessary remand on low-level offenders comes from our proposal to remove the two Bail Act 1977 offences introduced in 2013, which are breach of a bail condition and committing an indictable offence whilst on bail. I want to make it clear that these are standalone offences on top of the offences that a person would already face for committing the breaches themselves. These offences do not make our community any safer. We know that they do not act to deter people from reoffending. But what they are doing is most often they are uplifting a person's bail test to make it more likely for them to be remanded because of the quantity or the cumulative effect of their offending rather than for the risk of the offending itself. The opposition's amendment to keep the offence of committing an indictable offence while on bail will mean that people will continue to be double uplifted to the exceptional circumstances category for committing an indictable offence while on bail, even if it is a non-violent low-level offence. This would frustrate the entire purpose of this bill. Making sure bail is assessed on the basis of the relevant risk posed by the applicant based on their offending and circumstances is what is paramount.

If we think about how it would work in practice – say I am charged with theft after stealing a loaf of bread from the supermarket, which is a non-scheduled offence – I am entitled to bail unless I am considered to pose an unacceptable risk to the community. If I am granted bail but then I am charged with a second theft for stealing a litre of milk from the supermarket, I will be facing not only another count of theft but also a whole other count of committing an indictable offence whilst on bail. Theft is an indictable offence, which could mean up to three months in jail on that charge alone. I will also now not have a presumption of bail, and I will be facing a reverse onus test of showing a compelling reason to be released on bail, which is in effect bringing the two offences of stealing a loaf of bread and stealing a litre of milk to the same test as someone who is accused of rape. This is the exact issue that is leading to unnecessary remand of non-violent offenders, and it is why the government certainly cannot support the Liberals' amendment.

I want to touch on the Greens' amendments. In terms of the Greens' proposed amendments, there are quite a few that cut across a range of areas of the bill. I want to address them in detail. I expect that we will get a chance to do this in committee, but as they are going in one job lot, I am not sure how we will tease them all out, which is why I would like to take you through my rationale in the summing up. I want to be clear that our bail system must cater for the entire spectrum of alleged offending and the complex web of circumstances that often surrounds them. Having a structured system that distinguishes between low-risk and high-risk offences and correlating tests for bail is not only appropriate but also consistent. As I think Ms Payne identified, it would be consistent with the approach of every jurisdiction in the country. It is why the government cannot agree to there being only one single test applied to any offence, which is part of the Greens' amendments. We accept that for the justice system to apply there must be nuance and there should be greater consideration for the individual circumstances relevant to an applicant's offending. One test is not the way to go about achieving that.

The Greens have further proposed changes to the scope of the unacceptable risk test in a way which I am advised is actually just really clunky and quite unworkable. It would see bail decision makers apply one test to all offences other than terrorism, so offences from graffiti to multiple homicides would be in the same category. The effect of this would be to make a series of changes to risk thresholds that are already well understood by bail decision makers. Even if we were to agree to it, it would be dangerous to try and implement that in only six months because of the massive change that it would

create. In contrast, this bill that the government has put forward refines the unacceptable risk test so that a risk of minor non-violent offending cannot by itself result in an accused person being remanded. We are retaining the other three limbs of the test relating to safety or welfare of another person, interfering with a witness or failing to answer bail. They are fundamental to the purpose of bail, which is about ensuring that a person charged with a crime fulfils their commitment to face their charges both without undue restrictions on their liberty and without unacceptable risk to the community.

There is another amendment put forward by the Greens around bail data reporting. I think it is important to take you through my rationale for not being in a position to accept that amendment. I certainly do understand the intent behind the proposal, and I am not at all opposed to there being consistent, clear bail data collated and released – in fact it is very important as we begin to monitor the changes in these bail reforms that we have access to data. Where this amendment falls short, however, is in the way it goes about proposing how the data be provided. It oversimplifies how our bail decision makers are able to collate and provide data. The scope of the information the amendment seeks is not something that is readily available, and it is overly cumbersome to need to have it ready for a report each year. This amendment could not be realised if it were to pass, because it just does not fit with the current system. Instead, what we have done, through consultation on these reforms, is work with the courts to discuss what our expectations are on bail data and work with them on how this can be better collated. As I have said, of course data is important, and we will be working with our bail decision makers to ensure that they are able to collate and present it in the most useful format.

Other amendments that have been put forward by the Greens include changes to guiding principles and a proposal to include a no-real-prospects test within the unacceptable risk test. The substance of these amendments has already been captured by the bill. Basically, what they are proposing is pretty similar to where I started, but I ended up ruling it out through consultation and teasing out how that would work. I understand where they are coming from, because I came from the same starting point, but I have been convinced that that is not how this should operate in this bill.

I might seek leave for 2 minutes extra time just to finish up, if that is okay.

Leave granted.

Jaclyn SYMES: This is a bill that makes sense. It is proportionate, and it has been developed over a long time and subjected to a lot of consultation and a lot of really deep thinking and sleepless nights, I can tell you. I acknowledge that it does not address every aspect of our bail system that people would like changed or optimised, nor does it create a system that prevents all forms of crime occurring. I wish I could do that, but I cannot. What these reforms have done is allow us to reopen the discussion about how to do better, and this is a discussion that I know will not end with the passage of this bill. I am confident that we have landed in the best position possible at this time, and I have faith that these laws will make a key difference to the lives of Victorians charged with crimes, who have the right to be presumed innocent and who fundamentally have the right to a safe, fair and balanced system when applying for bail.

As I have indicated, this bill has had quite a journey, and I do want to take the opportunity just to acknowledge the people that have worked very hard on this. The stakeholders that I would particularly like to call out are the Aboriginal Justice Caucus, in particular the co-chairs Chris Harrison and Marion Hansen; the Victorian Aboriginal Legal Service – Nerita Waight has been an invaluable source of information and testing in relation to this legislation and how it can do better for Aboriginal people; and the Yoorrook justice commissioners, who certainly put me through my paces in relation to bail, and indeed their questioning and thoughtfulness certainly was a part of my thinking in relation to landing this legislation. There has also been a parliamentary inquiry that looked at issues such as this and made recommendations, many of which have been picked up by this bill. I know a lot of people gave evidence to that committee, and I do thank them, because lived-experience voices are always invaluable in the justice space. I want to call out the Magistrates' Court and the Children's Court –

they have both been really engaged in this process – as well as Victoria Police and the Police Association Victoria.

I certainly am just indebted to the hardworking public servants from the Department of Justice and Community Safety and everyone who has worked on these reforms over many years. In particular I would like to note Kate Houghton, the secretary; Marian Chapman, Katie Bosco, David Atkinson, Angela Langan, Simon Disney and Jessica Symonds; and also Sam Towler, who is a senior adviser in my office. This is her first bill and something she can be immensely proud of because she has really driven this for me. I thank her for her efforts and look forward to the committee stage to tease out some of these vitally important issues for a better Victoria.

Motion agreed to.

Read second time.

Committed.

Committee

The DEPUTY PRESIDENT: Just before we start, Ms Copsey's group 1 amendments on sheet KC13C propose to abolish the two-step tests and alter the unacceptable risk test. If these amendments are successful, Ms Symes's and Mr Mulholland's group 1 amendments will no longer be capable of being moved. I will call Ms Copsey to move and test her group 1 proposal first. If Ms Copsey's amendments are defeated, then Ms Symes's and Mr Mulholland's group 1 amendments may be considered. We will do questions on clause 1 before we deal with amendments.

Clause 1 (15:18)

Evan MULHOLLAND: Repealing the offence of committing an indictable offence while on bail will mean that people given the privilege of bail who then abuse it by committing an indictable offence will not necessarily face an uplift in the test for them to get bail again. This offence was introduced to encourage compliance with bail. Why does the government believe that the community will be safer if it is removed?

Jaclyn SYMES: Mr Mulholland, first of all, what a bill to start on as shadow minister. This is a very complex bill, so I am more than happy to take as much time as we need to get through this. On your question, I am happy to answer in clause 1, but there are further clauses down the track that it specifically relates to. But I am happy to do that here if you are comfortable with that.

Evan MULHOLLAND: Yes.

Jaclyn SYMES: Okay. I went through some of this in my summing-up. When you commit an indictable offence while on bail there are a number of consequences for that subsequent offending – you can have your bail revoked, you can have your bail conditions altered. What is playing out in the experience is that by adding an additional offence basically you get two offences for the one offence. You are on bail, you commit an indictable offence while on bail and you get charged for that, and then you get an additional charge because you committed that offence while you were on bail. That attracts a maximum three-month sentence. It is not an offence that has any assessment of community safety; it is just an add-on offence. But what it is doing is it is uplifting the onus on the offender or on the person who is on bail, and it makes it harder for them to get subsequent bail, particularly if they are up into the exceptional circumstances test – that is extremely difficult to prove, and it is one of the main drivers as to why we are having low-level offenders remanded in the first place.

One of the main reasons for this legislation is to avoid having vulnerable cohorts on remand who are not posing a risk to community safety, and a lot of those people are identified by virtue of the fact that they are on remand for shop theft, and they are on remand for multiple shoplift because once they commit the second or the third offence the test gets higher based on the fact of committing an indictable offence whilst on bail. In addition to that, it adds to their rap sheet. It is just another charge to answer

that has no community safety element, so it is arguably taking up the time of the courts as well because the matter has to be discussed. Really it is just an extra offence that is having consequences that we do not think are appropriate, and we do not think that there is any argument for community safety in relation to removing that offence as we are proposing to do.

Evan MULHOLLAND: I will go to what you were just talking about. I noticed your example in your summing-up where you said in opposition to our proposed amendment to come that someone could be charged for stealing a loaf of bread and receive bail and then the same person could be charged for stealing a litre of milk and receive the same test as someone charged with rape. I just want to point out clause 36. I am of the belief that that basically provides for amendments where the bail decision maker must take into account whether the offence is likely to lead to jail, and if not, there should be no remand. Doesn't the bail decision maker have a different obligation to consider compared to a rape charge?

Jaclyn SYMES: We think that that is unnecessarily complicated for a bail decision maker and that the proposals will simplify that.

Evan MULHOLLAND: I will leave it there because I have got a few to get through and I know Ms Copsey wants to get in some questions as well. But that was part of our understanding of what at least clause 36 does, and one would have thought with some educational training for the bail decision maker there might be appropriateness placed on their decision. I will move on, though.

Does the Attorney-General accept that by removing this offence many people who commit indictable offences while on bail will face a softer test to receive bail again?

Jaclyn SYMES: I am reluctant to talk about the tests in terms of 'softer' and 'tougher'. What we are proposing to do is to respond appropriately to the offences on their merits, and fundamentally community safety is the number one priority when bail decision makers are considering whether to grant bail or not. As I have explained, if you are a repeat offender, if you commit a crime whilst on bail, there are a number of options available to a bail decision maker. They can revoke bail. The court can impose harsher requirements or conditions for bail, and we do not want to see low-level offenders who do not pose a risk to community safety on remand. It is not an appropriate response. It is disproportionately impacting vulnerable cohorts, and we think that there are better ways to deal with that. However, the proposals do allow for the consideration of risk in looking at the welfare of persons or the community. So if you are a serious repeat offender of low-level crime, you can still be remanded. But I think the other point I would like to make that gets a little bit lost in the debate here is that it is not remand in, bail out. If you are bailed, there are a range of measures. Whether you are subjected to supervision and oversight, you have reporting requirements or you have exclusion zones, there are a range of conditions that are placed on you whilst you are on bail, and if you breach bail or commit another offence then they are all relevant to the consequences that the justice system might consider appropriate for subsequent offences.

Evan MULHOLLAND: I just want to bring you to some comments that you made in media reports. I just want to ask what you meant by 'perception of a youth crime crisis that does not exist'?

Jaclyn SYMES: For context, I was asked today about the house amendments that the government is proposing that put a pause on our changes to youth bail. In explaining the rationale for the government's position, we have a youth justice bill that is well progressed. It contains, for example, raising the age from 10 to 12 in it and a range of other measures that are in the remit of the Minister for Youth Justice. The current practical application of bail to children is that even though they are subjected to the same tests as adults right now, in practice children can quite easily demonstrate – or those that represent them can – compelling reasons and exceptional circumstances as to why they should be bailed. It then jumps back quickly, regularly, almost all the time to the unacceptable risk test, so in that sense what I am wanting to do with the child bail laws is to codify what is currently custom and practice. In that sense there is no urgency for those, because I do not have case examples

of young people who are currently on remand unnecessarily, as opposed to the adult system, where I am talking about low-level offenders – shoplifting and the like – that are. So we are catching up but not fixing an additional problem. I was asked about the benefits of moving that legislation to the youth justice bill, and I remarked that we have had some recent really concerning behaviour from young people that has got people concerned. I acknowledge that.

I have said that it is not only my role to create laws that respond to crime but my responsibility to ensure that the perceptions of crime are something that we are managing as well. It is my view that by having child bail considered in a youth justice bill which looks at a range of matters and a range of programs – the way the courts can deal with considerations of a child's family circumstances, diversion in the context of raising the age, the alternative services model – it is going to be a clearer conversation about how the government and its partners deal with young offenders in a holistic way over there, rather than in this bill, when it is not urgent. I have amendments that are being put by the opposition which are saying, falsely, that if we do not adopt their amendments, then there are going to be young people on the streets committing crime who should not be there. That is a false narrative. So I think that to combat that false narrative the Liberal opposition have been purporting as to the benefit of their amendments, let us go status quo and have that conversation at a later time, at the start of next year, in the youth justice legislation.

Evan MULHOLLAND: I am just getting confused a bit because you did say that there is an element in the community and events we have seen in the community recently that are of some concern, but you still also at the same time suggest that it is not a problem that exists. How do you know that it is not a problem that exists, given that offences by 10- to 14-year-olds have gone up by 36.6 per cent over the past two years?

Jaclyn SYMES: Can you clarify your question, Mr Mulholland? Are we talking about perceptions of crime, or are we talking about crime stats? You started your question with perceptions of crime.

Evan MULHOLLAND: I am asking how you believe it is a perception when the statistics show that there is actually a youth crime crisis.

Jaclyn SYMES: No, mate. There is not a youth crime crisis. And that is not just me saying that; that is Victoria Police saying that as well. This is the exact type of narrative that I think we should be avoiding, because what the crime stats show is definitely, yes, we have seen some trends post COVID in terms of youth –

Georgie Crozier interjected.

Jaclyn SYMES: The levels are still lower than pre COVID, Ms Crozier. Sure, I am not going to shy away from the fact that trends going up is something that we should be conscious of and respond to, but I will not under any circumstances agree with you that there is a youth crime crisis. And none of the experts will agree with you either.

Evan MULHOLLAND: That is interesting because you, in your summing-up speech, Attorney, thanked for their consultation work the Police Association Victoria, who does oppose this change in a letter from the secretary.

Jaclyn SYMES: Which change?

Evan MULHOLLAND: To remove the indictable offence. The changes dealt with in our amendment to change back.

Jaclyn SYMES: But that has got nothing to do with youth.

Evan MULHOLLAND: Well, we tend to think that it is all linked, but I will go through to my comments quoting Wayne Gatt. He said that, in their view, such amendments go too far in trying to remedy a perceived driver of low-risk offenders finding themselves on remand. He said that narrowing the application of the uplift provisions as proposed comes at a significant risk to public safety and that,

in the absence of anything else, they oppose it. Why have the government rejected the warning of the police association that removing this offence comes at significant risk to public safety?

Jaclyn SYMES: So we have now moved off youth onto your concerns about us opposing your amendment. Even if you read the coroner's decision in relation to the Veronica Nelson matter, it runs very comprehensively through the consequences of uplift as a result of committing an indictable offence whilst on bail. There are many people that have been talking to us for some time about their concerns about unnecessarily remanding non-violent offenders who do not pose a risk to community safety. That is what is driving the reforms that are in our bill.

Evan MULHOLLAND: I have just one last one on this one. Is the government prepared to accept political responsibility for consequences to public safety as warned by the Police Association Victoria by pushing ahead with the abolition of this offence despite warnings from the police?

Jaclyn SYMES: Mr Mulholland, it is not that offenders who commit crime now no longer face a test. If you commit an indictable offence whilst on bail and it is a low-level offence as per the schedules, you just are not uplifted to having to have the reverse onus of demonstrating that you have compelling reasons not to be remanded. It falls back to the onus on the prosecution to demonstrate that you are not an unacceptable risk to community. We have refined the considerations that the bail decision maker has to consider in relation to community safety and community risk. So we are avoiding the consequences of unacceptable risk as best as possible, bearing in mind that with all respect to bail decision makers, none of them have a crystal ball and assessing what someone is going to do once they have been bailed is an extremely difficult task. But if someone is not deemed an unacceptable risk to the community just because they have committed a low-level offence, then we think that bail is an appropriate course of action for that bail decision maker to make.

Katherine COPSEY: I have nine questions at clause 1, and then I have just a couple of questions on one of the government's house amendments, which I will put when we move those amendments. My first question: Attorney, what modelling have you done to forecast what reduction of prisoners on remand will flow from the reforms in this bill?

Jaclyn SYMES: Thank you, Ms Copsey, for your question in relation to modelling and impacts. A lot of it will be informed by the stakeholders and the experience as the laws come into effect, but we are expecting to reduce remand for minor repeat offending where the accused person is a low risk if released on bail. We know that remand rates increased after the 2018 bail reforms, consistent with the government's intention to ensure tough bail consequences for serious alleged offending. However, we also know that the net was cast too wide, and we know the remand rates as a consequence increased for those accused of the minor offences that we have been discussing. For those offences we expect remand rates to start returning to pre-2018 levels, as the accused will still need to pass the unacceptable risk test, but we know that the risk posed by those accused of more minor offences is typically lower. It is not possible, with any certainty, to provide a reduction by a specific number, but that is why it will be important to monitor the reforms. We did see an uptick after 2018. The coroner and others have indicated in their experience why that is so, and I have just had the conversation with Mr Mulholland about a lot of that being driven by offences such as committing an indictable offence whilst on bail. Once that is removed, we anticipate a reduction in remand numbers. It is something that we will keep a close eye on. Hopefully we will be in a position to provide an ongoing update on a regular basis.

Katherine COPSEY: I think you have partially answered this next question, but I will just check. There is nothing that you are aware of, Attorney, that would show, disaggregated across population groups, any type of modelling or prediction? Can we get an indication of the kind of reduction we will see in the numbers of First Nations people in prisons on remand?

Jaclyn SYMES: We certainly know that Aboriginal people are over-represented in the criminal justice system, and it includes having higher remand rates for these low-level repeat offending type incidents. It is not unexpected given the crossover of disadvantage that many Aboriginal people may

experience. There is very often a correlation between property crime and disadvantage, so it is those cohorts that we are hoping have the greatest benefit. That is the driver for the reform, because we have heard over some time the disproportionate harsh effect that the laws have been having, particularly in the repeat offender uplift type situation. We are certainly hoping to see a reduction that lessens that disproportionate impact on those vulnerable cohorts.

Katherine COPSEY: Attorney, the coroner investigating Veronica Nelson's death in custody recommended in section 4.13 of that report that all bail decision makers, courts, police and bail justices be required to collect and regularly publish data on bail applications, outcomes and offences. You have decided not to implement that recommendation in this set of reforms. Can you explain why, please?

Jaclyn SYMES: I did touch on some of the concerns around or the practical realities I suppose of data collection and what we as a government have asked our partners to do. We are and will continue to be accountable for transforming the system structures and service delivery to better reflect and enable the aspiration of Aboriginal communities, and we are certainly carefully considering the recommendations arising from the truth-telling process as a whole and will respond in due course in relation to that. A lot of those issues are similar to what the coroner indicated in his findings and recommendations as well.

The Department of Justice and Community Safety use a range of information sources to monitor and advise on the impact of reforms, including operational data from justice agencies, information received from justice partners and stakeholders and, as you would expect, the public discourse. There are limitations in the quality, access and coherence of the datasets. Bail decisions are made by a range of decision-makers, with data recorded for operational, not monitoring purposes, so this makes monitoring at the point of bail decisions challenging at this time. As I have indicated, the data clearly has demonstrated the impacts of the 2018 reforms on over-represented and disadvantaged cohorts, and we have acted upon that data. But we will continue to work with the department to ensure that we have the necessary tools to monitor the impact of the reforms.

Regardless of any legislative requirement, we do intend to monitor the reforms on an ongoing basis to understand whether provisions are operating as intended, including continuous discussions with stakeholders. I certainly find that talking to people with lived experience is just as valuable as the dataset quite regularly, but we will continue to ensure that the courts and the department are having ongoing conversations about the collation of data and how it can be better collected and reflected, to benefit, on not only how this reform is going but whether indeed there are any other issues that data demonstrates we should act on.

Katherine COPSEY: Thank you, Attorney. I appreciate that commitment for ongoing monitoring and to ensure that our future policy and legislation is informed by the best data available. Given, as you said, there are limitations to the datasets and no disaggregated data currently on bail applications, bail outcomes and bail offences available, are you able to be more specific around the kinds of investments and supports that the government is considering to assist the courts, police and bail justices to record and report on bail decisions?

Jaclyn SYMES: Ms Copsey, we have made several investments across the courts over the last few years for system upgrades which we know are already up and running across civil divisions. In terms of the Magistrates' Court, for example, and their upgrades and systems, they know that whilst they are rolling out their work and their upgrades that there is a requirement from us for them to ensure that in the development of their systems they are better placed to capture and indeed produce the data that we require. Those investments have been made particularly in the courts in relation to police data and having a conversation about how they can complement each other.

Jeff BOURMAN: Attorney-General, you mentioned during the course of this about someone with a loaf of bread getting sent to jail, and then a jug of milk and so on – minor-level offending. So if they steal a loaf of bread one day and then a truckload of bread on another day, where does that fit? I am

seeing a bit of a dissociation between theft and theft. What is minor theft? Shop theft is one thing, but when does a theft becomes serious enough for more serious bail conditions? By virtue of that, we also have other offences, such as driving and drug offences, that are not a direct threat to public safety, but where is the line expected to be for the bail decision makers before they can just say, well, it is a petty theft or it is a course of conduct or it is a big theft – a theft of a motor car, for instance. What is the expectation that people will have to work with as to when they need to take an indictable offence, which theft is even if it is a shop theft, more seriously?

Jaclyn SYMES: All theft is an indictable offence regardless of the quantity. Serious offences and indictable offences are not one and the same, and your question comes down to, I think, whether things can be heard summarily or whether they are an indictable issue, and most of that is set out in the schedules, which we are not seeking to change.

Jeff BOURMAN: I understand the difference between indictable offences tried summarily and so on, but we seem to be setting an expectation in here today about bail. Bail in my understanding is an undertaking given by the person to not misbehave after they have been charged with an offence, until the court date. Now, do I agree with people being remanded for just a few shop thefts? Hell no. But we seem to be getting into this grey area where driving offences, which are generally summary offences in their own right, could be included in this even though they are not in the Summary Offences Act 1966. We had an instance in 2016 when someone was on bail for driving offences, drug offences and a violent offence. I cannot say 'guarantee', because there are no guarantees, but what level of comfort can we give the people that we are not going to have another Gargasoulas running around because the offences that were originally committed were relatively minor, but they personally were uplifting them? At what stage are we going to draw the line and allow the bail decision makers to take a harder stance on what look to be lower level offences but are clearly opening the door for something else?

Jaclyn SYMES: It is incredibly difficult to make laws that apply to human behaviour – it is tough – but what we have tried to do here in the unacceptable risk test is really capture an understanding of the person's offending and its impact on the community or an individual and therefore allow the bail decision maker to take into consideration how risky that person being on bail would be to further causing harm. In and of itself a concern that someone will reoffend is not going to be enough, but if it is somebody who has done it several times and they are hitting the same business, or multiple businesses, for example, then the cumulative effect of that risk starts to change because there is an unacceptable risk that they will continue to cause harm to a person or the community by virtue of their repeat offending.

We know that there are underlying causes for a lot of crime. Often when people enter the justice system it might be one of the first times, or indeed a subsequent opportunity, to intervene in that person's life in a positive way. Granting bail with conditions to perhaps deal with underlying causes, such as ensuring that they are connected to housing support, drug and alcohol counselling, employment programs and the like, is a better outcome than remanding someone. But if you continue to see the same person time and time again, they are going to struggle to demonstrate to the bail decision maker that they are not an unacceptable risk – or the prosecution would find it easy to demonstrate that they are an unacceptable risk. Is that getting there a little bit?

Jeff BOURMAN: Attorney-General, you used the word 'several', which I am not going to ask you to quantify. I like that you used driving offences as an example, because driving unlicensed is an administrative offence, doing a bit over the speed limit can be a safety offence, but I have seen over the years a number of people, particularly in motor cars, graduate from doing silly things to one day being in a pursuit and killing someone. There is an opportunity to intervene – and I am not suggesting we should be running around remanding people for driving without a licence – that I think is being lost by the way this is being done. I guess that is more a statement than anything else. I might just move on. Do you want to make a comment on that?

Jaclyn SYMES: I think I would just point out that we do have bail decision makers that are well placed to use their discretion in these matters. It is not an easy task at all. That is why we also fleshed out in the unacceptable risk test the limbs of welfare. This bill does nothing to change the meaning of the terms 'safety' and 'welfare' as they appear in the risk test because they are quite well understood by bail decision makers. What we see time and time again is bail decision makers make hard calls, and we hope that they get them right, and usually they do. I expect that under the new system they will continue to do that.

Jeff BOURMAN: I will say most of them get it right, but unfortunately not always, and I guess it is up to us to give them the tools to do it with. Again, I guess that is a statement. Bail, as I said before, is an undertaking basically by the person not to misbehave. I understand the uplift part of the test, but by removing the offences of contravening bail conditions and committing an indictable offence on bail, what incentive is there for anyone to bother? They will get bail, they will come back in, they will get bailed again as long as they are not literally in on an hourly basis. What incentive is there for them to not misbehave?

Jaclyn SYMES: I was just going to take you to the fact that the coroner recommended that we remove three bail offences. We landed on only repealing two, not the failure to appear for bail. We decided that it is a fundamental underpinning of bail that you should respond to that, so I guess that would be my high-level answer to that. Also we are removing the offences, but we are not removing consequences, as per the conversation that I had with Mr Mulholland. If you commit a crime while you are on bail, you are charged for that crime and you can have your existing bail revoked or you can have those conditions changed. So we would say that you can get the same outcome from the changes that we have made without the negative impacts that we know exist under the current laws.

Jeff BOURMAN: I understand what you are saying. I guess I disagree to a point, because if you had made it just committing a summary offence on bail, that would be one thing, but committing an indictable offence is another serious offence in the context that it is more serious than a summary offence.

Jaclyn SYMES: But you will then be judged for the offence that you committed. The problem that we are having is that if you commit an indictable offence such as shoplift or shop theft, it is being treated the same as another indictable offence that on its own consideration would warrant perhaps revocation of bail or indeed really harsh conditions. It is the lower level indictable offences that are automatically not being distinguished and pushing people up that we are trying to address here.

Jeff BOURMAN: Yes, I understand that, but rather than – I know you will disagree with my characterisation – weakening the bail laws, I would see an opportunity to perhaps, as we have listed for the schedule 3 for this bill, list some of the offences that would be subject to a lesser bail. The difference between stealing a loaf of bread from a shop and stealing, I do not know, $40 million in cash, is a completely different thing, I get that. But it seems to me that we are leaving the potential – I am not saying it is going to happen, but we are leaving the door open – for people that should not be bailed to get bailed, and that is why I get a bit funny about this. I am not interested in shop theft, and if I remember correctly – and it was some time ago – there are diversion programs, or you could more or less give them what is effectively a warning for those sorts of things. The way I see this playing out – and I am not talking about blood on the streets and this and that – is potentially people are just going to game the system and just keep on going in, going out, going in, going out, and there is no hard line or even soft line as to when enough is enough. To leave it up to the bail decision maker with no guidelines – and I guess this is why we have committee of the whole – I think is a bit tough for them. They will never know when is enough and whether they should be slotting someone or whether they should be putting them out on bail again.

Jaclyn SYMES: There are guidelines that are clear, and we have got six months implementation once this bill is passed to refine any of those things. I think the in, out, in, out that you refer to is envisaged to be caught by this legislation that facilitates an unacceptable risk test that can consider a

cumulative effect. It is not as though we have decided that anybody that engages in shop theft can never be remanded. If it is again and again and again, then they are going to tip over and they will fail to pass. They will be an unacceptable risk. But also – and you I know will understand this better than some – some of the issues you are raising can be resolved not through bail reform but through summary offences reform.

Jeff BOURMAN: That is the point of what I'm saying.

Jaclyn SYMES: Yes. One project at a time.

David LIMBRICK: I have a couple of questions that I will just acquit in clause 1 if that suits the Attorney, and I shall make sure that the Attorney gets sufficient time to find the appropriate clause. My first question is on clause 33 and new section 3A(4)(a) and (b) and concerns taking into account someone's connection to Aboriginality. New paragraphs (a) and (b) require the decision-makers to take into account someone's Aboriginality and culture, and the idea of self-determination means that an individual can choose what importance that may have to them and to their identity. But one thing that is a bit concerning here is the requirement to take this into account. Doesn't this undermine self-determination, especially in the case where someone may choose to not place importance on that cultural connection yet are being forced to have that taken into account regardless of whether they place importance on that or not.

Jaclyn SYMES: Mr Limbrick, we certainly consulted heavily with Aboriginal stakeholders in relation to this. One of the core principles of self-determination is of course that Aboriginal communities are involved in the development of legislation that impacts them. In support of that we engaged with Aboriginal organisations, community representatives, the Aboriginal justice agreement policy and legislative change collaborative working group, the Aboriginal Justice Caucus and other Aboriginal partners to come up with this, and they think that we have landed in the right place for those who want to identify. This does not force people to identify as Aboriginal. It is not about discounting their connection. The person can choose the evidence that they provide themselves.

David LIMBRICK: Another question I have is on new subsection (5) in the same clause, about how if bail is refused, then they have to either write down the reasons or record them through audio or video. My question is this: why isn't that same information recorded if bail is granted?

Jaclyn SYMES: It is an accountability measure to ensure that the measures have been taken into account, and we would assume that if someone is granted bail, then it is likely that they have been.

David LIMBRICK: Shouldn't granting of bail face accountability as well, though? If it turns out that that was a bad decision further down the track, it would be good to have the reasons that that bail was granted in the first place, surely.

Jaclyn SYMES: Yes, but what we are addressing here is a known disproportionate impact or disproportionality of Aboriginal people caught up in the justice system. That is what we are addressing here. We would like to see less Aboriginal people in the justice system. That is the purpose of ensuring that we have oversight and accountability measures to ensure that people take this into account. So although there could be benefits if the information that you are articulating could be captured, there is a different motivation for why we are doing this.

David LIMBRICK: I thank the Attorney for her answer, although I do think it would be good to have that information if something went wrong. However, I will move on.

The next one is on clause 36, and this concerns the requirement for bail decision makers to consider an accused person's likely prison sentence if they were found guilty. I have got a couple of questions on this. Firstly, what sort of safeguards are in place to prevent bail decision makers from setting remand terms for charges that would likely be dropped?

Jaclyn SYMES: Go again?

David LIMBRICK: It is saying that the decision-maker needs to make a determination on what they think the likely sentence would be, but in many cases some of these charges might be dropped. What sort of safeguards are there to prevent them from setting these remand terms based on that information even though it is likely that the charges would be dropped?

Jaclyn SYMES: How would a bail decision maker know that the charges are likely to be dropped? They are not involved in the investigation of a crime. To come back to the addition of a guiding principle for bail decision makers to consider whether there would be a custodial sentence, I think one of the Greens amendments goes to this. We started where the Greens amendment is. We considered whether a bail decision maker should have to consider what a subsequent sentence would be for that crime and, if it is low or not a custodial sentence, should that then rule out their ability to remand someone? Through consultation that got quite complicated and really was putting too much pressure on a bail decision maker to step forward into the shoes of presumably a magistrate more often than not to make a determination of a sentence without having any evidence in relation to an investigation. The reason we are not doing that is probably similar to the argument that you are putting – that I cannot really see a situation where a bail decision maker would have knowledge of the charges that are going to be dropped and, if that was their view, then I am sure it would form part of their consideration of whether or not to grant bail.

David LIMBRICK: This brings me to my next question. If the decision-maker made a decision assuming that those charges would stick and they estimated some sentence and then the charges were later dropped and it turned out the person was held on remand for a far longer period than they would have actually been sentenced to if they were found guilty, what sorts of remedies might that person have after the fact, because essentially they have served a longer sentence than what they would have got simply because of these assumptions during the bail process?

Jaclyn SYMES: It is rather hypothetical, where we are going, I think, because we are skipping over a few things. There are obligations on police to ensure the validity of the charges that they bring, and the bail decision maker can only make a decision based on the information that is before them. There have been calls before about whether bail decision makers should be held liable for the actions of someone who has been given bail post their being given bail.

It comes back to that point that assessing risk is incredibly difficult. For somebody who is bailed for a low-level offence who goes on to commit a heinous crime, without a crystal ball no-one is going to know that. To say that we should have a punishment or a comeback for a bail decision maker who could not tell the future is something that we need to avoid doing. They are trained, they are supported and in many instances it is a magistrate themselves who has a lot of experience. Did someone get it wrong? Did someone not predict the future? Just because someone goes on to do something does not necessarily equate to them getting the decision wrong, because you cannot keep someone who commits a minor offence locked up just in case they go and do something really bad. I wish we could. I wish we had the science to predict those things, but we do not. It is an incredibly difficult balance to assess risk, and I think going down the track of recourse or harsh consequences for somebody who did not see something that was not available on the facts that they had before them is dangerous.

David LIMBRICK: I think we agree somewhat about the crystal ball thing, but that is sort of what I am getting at here in that a bail decision maker is required to determine, if someone was found guilty and sentenced, what sort of term of imprisonment they would receive. Could the Attorney describe how a decision-maker can come up with those scenarios? They need a crystal ball for this side of it as well if they are going to assume if someone might get a term of imprisonment how long that would be. What sort of guidance are they going to get to make those decisions?

Jaclyn SYMES: That is exactly why we have made it a guiding principle and not something standalone in its own right. We did not want to put that requirement on bail decision makers to be able to fast-forward and put themselves in the shoes of a sentencing judge. We thought about it. I am sure we can all agree that you should not be on remand for longer than the sentence for the crime that you

have committed. That is what we are trying to avoid through the guiding principle. The Greens have picked this up, but to go to the level of having the bail decision maker have a fully fleshed-out understanding of what they think will happen is something that we clawed back from because of the practical complications of that. That is why it is now a guiding principle.

Jeff BOURMAN: Attorney-General, to go back to the Aboriginality thing, in clause 33 new section 3A(4) states:

> The requirement to take an issue set out in subsection (1) into account applies regardless of –
>
> …
>
> (c) when the person first discloses that they are an Aboriginal person.

Does that mean they can disclose they are an Aboriginal person during the bail hearing?

Jaclyn SYMES: Yes, Mr Bourman.

Jeff BOURMAN: Are they required to have anything to back up that declaration at the time? I am going somewhere with this, trust me.

Jaclyn SYMES: All right. No.

Jeff BOURMAN: Attorney-General, what is required for a Koori person to enter the Koori Court system in terms of whether they are known to the Koori community? I believe there is some sort of paperwork that they have. There is a standard – I do not want to use the word 'identification' – acknowledgement of cultural background to enter the Koori Court system, correct?

Jaclyn SYMES: I have not got the Koori Court act on me, but 'Aboriginal person' is defined under the act, and in relation to self-identification, we do not have a massive problem of people self-identifying that later then say they are not.

Jeff BOURMAN: That is the crux of my problem. What is to stop everyone from identifying as Aboriginal during the bail hearing when they are not and they are just trying to take advantage of the system? The Koori Court system will either not accept them, or they will change their mind. What is to stop people from taking advantage of that ability to identify during a bail hearing and then the ability to de-identify later?

Jaclyn SYMES: If I can answer your question with another question, what benefit does somebody falsely claiming to identify as Aboriginal gain in having the considerations of being Aboriginal in terms of their particular circumstances taken into consideration for the purposes of deciding whether they get bail or not?

Jeff BOURMAN: I love getting to answer questions. The point is – and I am not saying this in a derogatory way – there are things that someone must take into account if someone is Aboriginal when making their bail. I am not disputing that. It takes into account obviously the historical and ongoing discrimination, and we go through a whole lot of other things. That would possibly change a bail decision maker's decision if someone claimed they were Aboriginal. It might tip them over or it might not. What I am trying to say is: what are we doing to stop people from just taking advantage of that when there is a cohort of people that that is clearly designed to help?

Jaclyn SYMES: Because for the cohort that it is designed to help it is to bring about a system that is fairer and more equal. So generally, if you are not Aboriginal, particularly if you are Anglo-Saxon, you are already at the point where we are trying to get the Aboriginal community up to. I am not sure how you can get a double benefit by having considerations that are designed to be culturally safe and take into specific consideration somebody's background and the way that they connect with community and family – how that then provides a double positive for somebody who is not Aboriginal.

Jeff BOURMAN: This is getting a little bit off track, but if that was the case, why do we have all this stuff in here, all these things about what we must do for the Aboriginal people? I know blond and

blue-eyed people that I know to have Aboriginal heritage, so does that make them Anglo-Saxon or does that make them Aboriginal? Whilst they could clearly claim Aboriginal heritage, we cannot just look at someone and say that they are or are not Aboriginal. What is to stop someone like me – not that I ever hope to be in a position of needing bail – claiming that to try and get some sort of advantage and just basically demean a cohort of people that that section is designed to help?

Jaclyn SYMES: Mr Bourman, if someone identifies as Aboriginal but cannot point to anything relevant to the Aboriginal considerations, then how is it going to give them an additional advantage or benefit? This is not about Aboriginal people getting a free pass out of jail, this is about ensuring that the justice system is conscious of historical issues and specific cultural issues. But if somebody does not suffer from that disadvantage, regardless of whether they identify or not, then they are not going to benefit from the considerations applying to them.

Jeff BOURMAN: I am a little confused. There is a whole lot of stuff here that the bail decision must take into account when making a decision about someone's Aboriginality, which is obviously designed to minimise the impact on the person and keep them out of the system if possible.

Jaclyn SYMES: And to be safe.

Jeff BOURMAN: And to be safe. Yes, absolutely. I guess what I am saying is, and I think I have said it before: what is to stop someone who has no connection to Aboriginality, no connection to a community, no connection to it in any way claiming it, just seeing it as an advantage? Whether it is or not, what is to stop someone from just giving it a good old-fashioned try? And then that will mean the bail decision maker has to go through all the considerations that may or may not affect the outcome of the bail hearing, but they most certainly could. What protections are there? I guess that would be a better way of putting it.

Jaclyn SYMES: Mr Bourman, I have answered these questions.

Evan MULHOLLAND: Attorney, I have just got a couple more questions and then I will allow others to ask questions before moving my amendment. I will preface this by saying the opposition does not oppose this section of the bill. I will ask some questions in broad, but we do not oppose this specific part of the bill. We just have questions about it. It is similar to the questions of Mr Limbrick and Mr Bourman around Indigenous Victorians. Would I be right – I think I am – clause 33, new section 3A(1)(d)(i) –

Jaclyn SYMES: Go again.

Evan MULHOLLAND: Clause 33, new section 3A(1)(d)(i), requires that those making a decision on bail will have to take into account historical intergenerational trauma. I am just wondering in your humble opinion how that process will work.

Jaclyn SYMES: I was a bit more interested in what you thought you were right about. You started your question with 'I think I am right' about something, but then you –

Evan MULHOLLAND: No, I framed the question in a way around the process, the numbers and whatnot.

Jaclyn SYMES: Okay. There will be training for bail decision makers about how this is approached, and obviously it has been informed by close consultation with our Aboriginal partners in the justice system, and much of what you are referring to will be a matter for the submissions.

Evan MULHOLLAND: So the submissions to –

Jaclyn SYMES: Whether you get bail or not.

Evan MULHOLLAND: Yes, okay. But will the bail decision maker, and that could be a court, a bail justice, a police officer or a sheriff, be given any education or training on this kind of implementation – of them having to factor in intergenerational trauma?

Jaclyn SYMES: Yes. The department of justice will be supporting the Office of Public Prosecutions (OPP) and Victoria Legal Aid (VLA) to develop and deliver training to the legal profession, with materials to be provided to Victoria Police and the Judicial College of Victoria as well. The training will cover all of the reforms, but understanding of the Aboriginal-specific considerations will be a primary focus to ensure the considerations are properly applied. The training will both support the lawyers to understand what issues to raise and support bail decision makers to better understand how they should be applied in decision-making.

As raised during the Yoorrook Justice Commission's hearings, it is also important for bail decision makers to regularly undertake Aboriginal cultural awareness training to ensure the significance of section 3A is fully understood and can be applied effectively when making a bail determination for an Aboriginal person. I understand bail justices and Victoria Police are already required to undertake mandatory Aboriginal cultural awareness training, and I can advise that a comprehensive cultural awareness program is being implemented across the whole of Court Services Victoria to include cultural awareness training for all staff, managers and training, HR training and judiciary-based programs. It probably would not be a bad idea if the Parliament thought about cultural training as well.

Evan MULHOLLAND: Just one last question, and it is based on our discussion before: how is it too difficult for a bail decision maker to determine whether an offence would likely end up with a prison term but it is supposedly okay for a bail decision maker to consider intergenerational trauma?

Jaclyn SYMES: I have gone through both questions. You are asking me for an opinion here. I accept that it is a hard job being a bail decision maker. There is a lot of pressure on you, and therefore we are hoping to have as much support as possible available for bail decision makers in these changes.

Katherine COPSEY: Attorney, I am sorry to take you back to the data that we were discussing earlier. I have one final question in relation to some of the datasets that you mentioned, which were through improved support for record keeping through the courts – for example, stakeholder feedback. You also mentioned conversations you are having with the police. My question is: will these datasets be publicly available?

Jaclyn SYMES: It is difficult for me to answer conclusively because I do not necessarily know what the data is going to look like yet either. I really want these laws to work. I really want the purpose of what we are trying to achieve to be able to be understood by the public, so I want to be able to demonstrate that. Yes, there is lived experience, and the stakeholders will hopefully be in a position to say 'Yeah, those laws are really working' or 'They need some tweaks here or tweaks there.' Much of that will benefit from data, so it would be my intention to be as transparent as possible in relation to these laws. I think coming back to the statutory review, if we find something that is not working before a statutory review, then I would like to be able to address that before such time. But obviously data is going to be one of the key sources of the ability to demonstrate how these are working and how they are not, so it would be my intention to make as much public as possible. But also, a lot of that data will not be mine. There is separation of powers with the courts and police hold their own data, so I cannot give firm commitments around what is available, but I agree with you – as much as possible would be desired.

Katherine COPSEY: To a different matter: across a number of royal commissions, inquests and so on we have had a lot of calls for simplification of the bail system. The Bail Act 1977 is a pretty unwieldy beast. I have not enjoyed tackling it in trying to come to grips with the Bail Amendment Bill 2023. But a complicated and confusing system does increase the risk of errors being made, and with the addition of a further schedule as part of this bill and the persistence of a number of tests that are complex in their application we are seeing additional complexity added to the Bail Act rather than simplification. The inquest into the Bourke Street attack heard that a police officer made six errors on the form handed to a volunteer bail justice who granted Gargasoulas bail less than a week before he murdered six people. The officer in question gave evidence that he ticked no when he should have ticked yes on six questions on the remand application. Given that bail decision makers have found

previous less confusing versions of the Bail Act are complex to the degree that it makes their job difficult, are you confident that this more complicated legislation will be followed correctly by bail decision makers?

Jaclyn SYMES: I think just at the outset I would say that the level of complexity in the Bail Act is similar to legislation in other states. Simplification, reduction and less pages do not always equate to good laws. There are a range of important considerations and factors that go into balancing the presumption of innocence against the need to keep our community safe, but I think that for the crux of what you are trying to get to, a lot of that can be addressed through training and through continual monitoring and improvement.

Katherine COPSEY: Attorney, it is like you have anticipated my next question: what specific measures, guidance or practices for bail decision makers will the government be putting in place to ensure that additional complexity here does not result in additional human error?

Jaclyn SYMES: I went through a little bit of it with Mr Mulholland in relation to the work that the department of justice will be undertaking with the OPP and VLA to develop training for the legal profession. Also obviously Victoria Police and the judicial college will be involved. This will cover a range of matters that we are introducing in the bill. I have taken you through some of the cultural training that they do, but we also have a six-month commencement date. I know some people would have liked that to be quicker, and some wanted it longer, but six months is where we think we can ensure that we have got adequate time for implementation issues, including the adequate training. Obviously the statutory review will also ensure that the implementation is closely monitored and any issues that arise are addressed as quickly as possible, which goes to my commitment to not starting a review in two years time but having an ongoing monitoring of the changes that will feed into the statutory review. But indeed if we pick up any issues along the way then we will address them in real time.

Katherine COPSEY: When we have discussed this reform across the chamber in questions this year, you have said that when it comes to justice reform, including bail, this is not necessarily a 'complete something and stop' process and that you, as you have just acknowledged, will consider further refinements to bail as we go along, so when do you plan to bring forward the next set of comprehensive bail reforms through legislation?

Jaclyn SYMES: Ms Copsey, you will not even let me finish what I have started before we are on to the next one. I am on the record regularly as saying that justice reform never ends, and that is appropriate. I am comfortable that with these reforms, where we are starting here, we will address the most urgent changes needed to the bail system to have a more balanced approach, and, as I have articulated on several occasions, it is really about ensuring that those accused of minor non-violent offences are not unnecessarily remanded. One component that I have already identified as being on our reform agenda is youth bail, which we will be progressing as part of a broader youth justice package to be introduced into the Parliament next year. Beyond this we certainly need time to give the system the opportunity to incorporate our initial changes and review them to see what further work needs to be done before we start looking at new legislation, but I am not stubborn in regard to law reform. If we do something and it does not work or someone can demonstrate that we did not get the balance right, I will take steps to rectify that.

David LIMBRICK: I have got one final question on clause 36. This entire clause assumes that there is some process whereby the decision-maker can estimate probable time on remand. How do they actually estimate that probable time on remand? One of the things that we are trying to do with this bill is actually reduce time on remand because it is too much at the moment, so how would they estimate that?

Jaclyn SYMES: Can I just get you to repeat the crux of your question then?

David LIMBRICK: It is quite simple: what tools will the decision-maker have to be able to estimate the probable time on remand?

Jaclyn SYMES: It is predominantly around experience, precedent and training. For a lot of offences people can generally guess a range just based on custom and practice. The bill will add additional factors to the inclusive list of surrounding circumstances that the bail decision makers must consider when applying the tests and any applicable reverse onus things, for example. There would be submissions from the parties as well, so it is not that you are presented with a set of facts and you just have to make a decision based on that. You will have submissions from both sides, which will help you to balance it and work it out. And I think they could make submissions on 'We propose that should this proceed to a conviction, it would amount to blah' or –

David LIMBRICK: I think the Attorney may have misunderstood my question. I am not talking about the estimated potential sentence, I am talking about the estimated time on remand, because the decision-maker has to take into consideration the estimated sentence and the estimated time on remand. The heading in this clause says:

> … **where probable time on remand exceeds likely sentence of imprisonment**

That implies that the decision-maker somehow must have some insight into the potential amount of time that they would remain on remand, but I do not understand how that decision-maker would know that information or what tools they would have to estimate that.

Jaclyn SYMES: We will pick up a bit of that in the training, but experience and submissions would go a long way to forming a clear picture of what that would look like.

Katherine COPSEY: Attorney, in relation to future bail reform, can you please outline specifically some of the additional changes that you will prioritise in relation to reforming bail? For example, inquiries and commissions have called for the wholesale review of the Bail Act – a rewrite. Will you pursue this?

Jaclyn SYMES: I am certainly not in a position to be ruling anything out. Within these reforms we have considered the recommendations made by the coroner and by the parliamentary inquiry into the justice system, and obviously I meet regularly with a range of stakeholders who are strong advocates in relation to changes or suggestions in this space. But other than youth bail, which I have already addressed, I am not in a position to make any further announcements today. My door is generally pretty open to people that want me to look at different things, and I am always open to those suggestions to make the justice system better.

Katherine COPSEY: Attorney, can you confirm that you will give further consideration to the outstanding recommendations from the inquest into the death of Veronica Nelson?

Jaclyn SYMES: Yes, Ms Copsey. I think many of the recommendations have been acquitted or acquitted in some way or in a different way to how coroner McGregor set them out. I commenced the work on the bail reform before the coroner's findings – before that case. So we were able to indeed ensure that we could give due consideration to the recommendations or the findings of the coroner in the development of our legislation, but it was certainly not my intention to hold up where we had got to with a view to making a call on all of the recommendations. So yes, they are still alive.

Katherine COPSEY: This is my last question before a query on the house amendments. In the Veronica Nelson inquest, coroner Simon McGregor concluded that the Bail Act:

> … has a discriminatory impact on First Nations people resulting in grossly disproportionate rates of remand in custody …

and also that sections 4AA(2)(c), 4A and 4C of the Bail Act – and a number of others that I have not quoted – are incompatible with the Charter of Human Rights and Responsibilities Act 2006. Given this, Attorney, why are you allowing the reverse onus tests to persist?

Jaclyn SYMES: I do not think your question necessarily flows automatically, because the coroner did not say that any reverse onus was incompatible with the charter. What he said was that those provisions are on the whole incompatible, and then he recommended the removal of only certain elements of uplift provisions of the act. He did not recommend removing all reverse onuses. The bill will remove most elements of the uplift provisions identified by the coroner.

I certainly acknowledge that in addition to repealing the uplift of unscheduled offences to a reverse onus bail test, the coroner recommended repealing provisions that uplift a schedule 2 offence, such as aggravated burglary, to the exceptional circumstances test due to, for example, being committed while on bail for another schedule 2 offence. This is recommendation 4.1, where the coroner refers to this as the 'double uplift'. We did consider this, but the bill will not be acquitting this recommendation, the reason being that the offences in schedule 2 remain serious offences in their own right. So a person on bail for a schedule 2 offence such as armed robbery who is charged with a second armed robbery will continue to be required to establish exceptional circumstances to justify their release on bail. Importantly, the reform will mean that double uplift can no longer occur, which is consistent with Coroner McGregor's recommendations.

The statement of compatibility for this bill outlines the government's position on the compliance of the bill with the charter, including any concerns about reverse onuses and how they can align with the charter. Importantly, the statement of compatibility notes that the balance of these amendments means reverse onus tests are only applied to the most serious offending identified in the schedules and to those who pose a terrorism risk or have had a terrorism record. This does in our view reflect a much more balanced and targeted approach by responding to the challenges arising from the inflexibility of the current bail laws and their potential for arbitrary outcomes but also, importantly for the community, maintaining an appropriately robust approach to serious offenders.

The DEPUTY PRESIDENT: If that concludes questions, I will now ask Ms Copsey to move her amendments. I remind everyone that if these amendments are successful Ms Symes's and Mr Mulholland's group 1 amendments will no longer be capable of being moved. Ms Copsey's do test her group 1 proposal, so, Ms Copsey, if you move your amendments 1 and 2 on KC13C, please, they test all the remaining amendments on that sheet.

Katherine COPSEY: I move:

1. Clause 1, lines 8 to 10, omit all words and expressions on these lines and insert –

   "(i) abolishing the 2 step tests; and".

2. Clause 1, page 2, lines 1 and 2, omit all words and expressions on these lines and insert –

   "(iii) changing the unacceptable risk test; and".

Our bail laws are broken, as I outlined earlier this morning. Every day in Victoria people are being arrested and routinely denied bail, waiting in prison until their court date even though they pose no risk to the community. And if they are found guilty, it will often be for offences that either do not attract a prison sentence or for which the custodial sentence is shorter than the time they have already served, as we have canvassed in debate.

Please just take a moment to imagine that, colleagues, or imagine you have been found innocent in court but you have spent months in jail because you were denied bail. You will have almost certainly lost your job. Maintaining a mortgage or rent will have been next to impossible, and you may have lost custody of or contact with your kids. You have had a reduced ability to prepare for court while remanded. And of course, you were more unsafe in prison than you would have been on the outside, for many, many people.

We recognise that this bill will go some way towards redressing the current appalling situation in Victoria, and we thank the Attorney for the work that has gone into addressing this situation. However, we do know the reforms put forward in the government's bill fall short of what is actually required. The presumption of innocence – a cornerstone of our justice system – includes a presumption to bail.

The reverse onus provisions which reverse this presumption of bail are deeply troubling, and this is why the Greens are putting this amendment. Put simply, our prisons are being used to detain persons who are legally presumed to be innocent and who will experience multiple disadvantages through their presentence incarceration. The provisions in the government's bill will help solve some of these injustices but not all and not enough.

It is instructive here to know our history. For the first 20 years of the operation of the Bail Act 1977 after it was introduced, relatively few people actually were refused bail. Studies routinely found that between 90 to 97 per cent of people at that time were granted bail, and within Victoria Police at that time there was a cultural expectation that a person would be granted bail. Consequently the proportion of the prison population being held on remand at that time was relatively constrained. In 1998 it amounted to about 15 per cent of prisoners. Of course now, after the 2013 through 2018 bail law changes, the number of people on remand has nearly tripled, despite crime rates remaining relatively stable, and shifting the presumption of bail to a presumption against bail has driven a lot of that.

The presumption of innocence is a bedrock principle, and it differentiates countries and states that govern themselves by the rule of law from those that do not. Presumption of innocence does require a presumption towards bail, but in Victoria our Bail Act currently provides that there is a presumption against bail for people charged with schedule 1 or 2 offences. These people must prove why they should get bail. The failure of the government's amendment bill to address the reverse onus provisions, which coroner Simon McGregor found are incompatible with the Charter of Human Rights and Responsibilities, is really a huge, missed opportunity in these reforms today. It is a disappointment to stakeholders that have been consistent and clear in their calls for these discriminatory tests – discriminatory in their effect – to be scrubbed from our bail laws. Ironically, there is a direct negative impact that the overuse of remand in Victoria is having on people's lives and on community safety. The upheaval in the lives of those remanded means that housing, medical treatment, custody arrangements – all sorts of important supports – can be disrupted and upended, sometimes irrevocably.

In recent years the Court of Appeal of Victoria, the Victorian Law Reform Commission, the Law Institute of Victoria and the coroner in the inquest into the death of Veronica Nelson, as well as a range of other human rights experts and First Nations stakeholders, have specifically recommended that the reverse onus tests in the Bail Act should be abandoned. Bail decision making should be based on a single, simple test – unacceptable risk – and in doing so will not cause additional risk to the community. Having a single test will mean that a bail decision maker, assisted by appropriate risk-assessment information, will make that core decision as to whether releasing a person on bail constitutes an unacceptable risk to the community. Importantly, there is good evidence that bail decision makers can be confused by the complexity of the current system, and this can often lead to making the wrong decision.

Sadly, the government's bill has ignored these key calls to address the structural issues throughout the Bail Act, and it remains complicated and confusing and creates a risk of errors being made. These Greens amendments 1 and 2, following legal stakeholder expert recommendations, come back to the first principle of one test that decision-makers need to apply to a person applying for bail: is there an unacceptable risk if that person is in the community while waiting for their court date? If yes, that person is denied bail. If not, that person is granted bail. I commend the amendment to achieve that.

The DEPUTY PRESIDENT: Before we go on, I would like to acknowledge federal member of Parliament from the Parliament of India the Honourable Chirag Paswan, who has been with us in the gallery.

David LIMBRICK: Whilst I have some sympathy for some areas of Ms Copsey's amendments, I do have concerns about the incompatibility between these amendments and the government's house amendments, and for those rather technical reasons I will be opposing this.

Evan MULHOLLAND: We will not be supporting the Greens amendments, for similar reasons to Mr Limbrick's.

Jaclyn SYMES: Ms Copsey, it is clunky for you because all your amendments were in one go. I have tried to address a bit of it in the summing-up, but I think we teased out a bit of it through the committee.

I do take issue with your characterisation that we have ignored expert advice. I can tell you all too well in the position of Attorney-General that I can find a legal opinion that is competing on every single issue that I tried to progress. I understand that the experts you have spoken to all support a particular way, but it is incumbent upon me to have broader consultation and speak to people that have varying views on these laws. Therefore it is my responsibility to strike the right balance, and that is what we have sought to do here.

I did want to touch on your proposal to remove all reverse onus tests. We believe that there is a place for reverse onus tests when it comes to bail, but we do acknowledge that we have not got the balance right, which is why we are making changes. Your proposal would see this distinction removed in its entirety – one bail test across the board. I understand the intent and I understand the desire for simplicity, but we do not think that is an appropriate way to deal with bail. It is a simple approach, but unfortunately the circumstances of offending are not quite that simple.

That is why we have structured a system distinguishing low-risk and high-risk offences and correlating tests that match those. We think that is appropriate, but it is also consistent with every jurisdiction in the country. The only jurisdiction to ever have had one test was New South Wales, and they ended up having to reintroduce reverse onus tests within a matter of weeks because they found out that one test across the board simply does not work.

I think I have touched on your amendments in relation to reporting and data quite expansively. I think we have done quite a bit on the unacceptable risk test.

Katherine COPSEY: I want to clarify that I have moved amendments 1 and 2 and I was planning to move the remaining amendments at the clauses as we move through.

Jaclyn SYMES: Ms Copsey, I have been caught out on this before. If there is anything you want to say on any of your amendments, you need to do it now, because once this goes to a vote your others fall away.

Katherine COPSEY: I would appreciate that indulgence then, if that is all right. My apologies; I misunderstood your direction, Deputy President.

The DEPUTY PRESIDENT: They test your group 1 amendments on sheet KC13C. All the amendments on that sheet are tested by this question. You have more than one set of amendments. The amendments on KC13C are tested by these two amendments, which are the ones that abolish the two-step tests and change the unacceptable risk test.

Katherine COPSEY: Then I have remaining amendments on a separate sheet.

The DEPUTY PRESIDENT: But you will move those separately.

Katherine COPSEY: Yes, correct. Those relate to the reporting, the guiding principles and the review clause.

The DEPUTY PRESIDENT: Ms Copsey's second set kick in between clauses 107 and 108.

Katherine COPSEY: That would be at clause 115. However, I may not proceed with that, depending.

Jaclyn SYMES: I think we have agreed that we have covered off the topics that are in Ms Copsey's amendments 1 and 2 quite substantially. If it was not clear, we are not supporting those amendments.

Council divided on amendments:

Ayes (6): Katherine Copsey, Sarah Mansfield, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam

Noes (30): Matthew Bach, Ryan Batchelor, John Berger, Jeff Bourman, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nicholas McGowan, Tom McIntosh, Evan Mulholland, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

Amendments negatived.

The DEPUTY PRESIDENT: I invite the Attorney-General to move her amendment 1, which tests her amendments 4 to 45 and 47, on sheet JS28C.

Jaclyn SYMES: I would like to formally move my amendments, which I have spoken to on a number of occasions in relation to the government's rationale for keeping the status quo for children, taking out the changes for child bail in relation to the Bail Act and moving them to the youth justice bill which will come back to the Parliament shortly. I think we might have some questions on it. I move:

1. Clause 1, page 2, lines 1 and 2, omit all words and expressions on these lines.

Evan MULHOLLAND: We certainly will support this group of amendments. The opposition appreciate the constructive way in which the government has worked on this bill and has recognised concerns raised by the opposition and the community. While we still have remaining concerns, weakening bail laws for youth offenders was always a dangerous move by Labor given the shocking youth crime incidents we have seen in recent times, so we are pleased the government has now reconsidered these proposals. That is a welcome backflip and an opportunity to finally start listening to the community on this.

I will note that the Leader of the Greens said that it was a deal between the opposition and the government. I do not think I am giving away much by saying that we have never said that we were going to oppose this bill, regardless of some elements that we did not like. We simply put forward some very sensible suggestions that the government has happened to take up. I would like to congratulate the Attorney for listening but also congratulate my friend and colleague Michael O'Brien for consulting with stakeholders and putting forward some sensible suggestions.

Katherine COPSEY: If I may ask a question in relation to this amendment, please: Attorney, given based on these house amendments there is a backtrack – or, in your words, just hitting a pause – on your commitment to a presumption of bail for children and you have given an assurance that these provisions will be introduced in the youth justice bill, can you give any more precise timing on that bill? I have heard variously 'the start of next year' or 'early next year'. When do you plan to bring that to this chamber?

Jaclyn SYMES: I reckon 'the start of next year' and 'early next year' are interchangeable. This is a suite of reforms that are well progressed. Much of it falls in my ministerial colleague Minister Erdogan's remit of youth justice. But it is the vessel for raising the age, and we have committed to introducing that early next year. We are just shifting this into that piece of legislation. I think most people would have heard me say it, but it will give us a good opportunity to have a real conversation isolated to young offenders, their particular vulnerabilities and the particular needs of that cohort. We think that that is a sensible decision.

I do reiterate that custom and practice and the reality of what is happening is that the unacceptable risk is what is applying to children right now. I have spoken to stakeholders who I was worried would be

concerned about this pause, and they were saying, 'We don't actually have any instances of where we think that this is causing any harm, and we haven't for some time.' That is because of the applications of the courts and how they are applying the tests now in recognising that children meet the reverse onus test pretty much automatically, and they go straight to the unacceptable risk test. So the pause will not cause any harm to children, in our mind, based on the feedback that we are getting from the people that work in the system, but we know and you can hear from the comments of Mr Mulholland that there are perceptions of a concern.

I do not want to create an unnecessary debate that will not actually bring about any material benefit right now because there is nothing that we need to fix in that regard. When we can bring it to the Parliament and have a broader discussion about what we are doing to tackle youth crime, how we are supporting those children, how we are supporting their families – diversion, court conferencing and a range of measures – that will be a really good bill and a good opportunity not only for a community conversation and a greater understanding of youth crime and how you deal with that but also for the Parliament to have a really, hopefully, respectful and mature conversation about it at that time.

David LIMBRICK: The Libertarian Party will be supporting the government's amendments here. I would like to say I see it as a positive sign that the government can say that maybe they have not got it quite right and they want to take a bit more time to get it right. I have said many times that I would rather see this done right than rushed through, and if the government feels that they have not got it quite right and want to take a bit more time to introduce this next year, I am supportive of it. In fact I would like to see the government do that more often maybe rather than just push things through. So I will be supporting this.

Katherine COPSEY: Attorney, thank you for your answer previously. Can I have your assurance that these provisions relating to children will not be further weakened when the youth justice bill is introduced – that they will return as they have been drafted?

Jaclyn SYMES: Ms Copsey, it is my intention to have the existing reforms just moved to another bill. In all honesty, they were actually originally going in the youth justice bill. I brought them forward and now I am moving them back. They sit better right now in a conversation that can be holistic.

Katherine COPSEY: The Victorian Greens will not be supporting this house amendment. It is another missed opportunity on top of the missed opportunities that we have already seen in this partial reform to our bail laws. We hold concerns that children will continue to be unnecessarily exposed to the criminal justice system by way of further delaying these. I hope that the Attorney-General is correct; we share the hope that we will not see children having further contact with the criminal justice system as a result of this deferral. I must say though, if there is no practical consequence that you are concerned about, then I do not see why we could not have proceeded with this today. It is a really weak decision not to proceed with these laws. The Greens hope that we can see this expedited as part of the youth justice bill early next year.

Council divided on amendment:

Ayes (30): Matthew Bach, Ryan Batchelor, John Berger, Jeff Bourman, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nicholas McGowan, Tom McIntosh, Evan Mulholland, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

Noes (6): Katherine Copsey, Sarah Mansfield, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam

Amendment agreed to.

The DEPUTY PRESIDENT: We are still on clause 1 and still dealing with amendments to clause 1. Mr Mulholland, I invite you to move your amendment 1 on your sheet EM01C, which tests all the remaining amendments on that sheet.

Evan MULHOLLAND: I move:

1. Clause 1, page 2, lines 13 and 14, omit all words and expressions on these lines.

As discussed earlier on, we do have some concerns. Accused offenders who abuse bail by committing further offences should face a higher test to get bail. This is what the current laws do. In the case of an adult, it means that the bail test is automatically increased, usually to show a compelling reason test plus then the unacceptable risk test. Our amendment aims to retain this feature of the existing bail laws as discussed earlier. Clause 36 does allow a bail decision maker to take into account whether an offence is likely to receive a prison sentence, so it is a sensible amendment and I urge the house to retain this feature of our existing bail laws.

David LIMBRICK: The Libertarian Party will not be supporting this amendment. I do not believe that this double uplift will help reduce the number of people on remand. Also, I note that removing this particular thing was a recommendation of the coroner in the Veronica Nelson case. Therefore I will be opposing it.

Katherine COPSEY: I confirm the Victorian Greens will not be supporting this amendment. This takes an act that is having negative and deleterious consequences for vulnerable Victorians and makes it worse.

Jaclyn SYMES: The government will not be supporting this amendment. Repealing of this offence is vital to ensuring that the bill can effectively address the issues that have been identified in the bail system. The proposed amendment would undermine a core purpose of the bill, which is to address the harsh and disproportionate impact that existing bail laws are having on vulnerable people and those charged with lower level offences. If we retain the offence of committing an indictable offence on bail and continue to uplift it to a tougher bail test, then we will continue to see people charged with several small thefts on bail being uplifted to the same bail tests as alleged rapists or murderers. This will continue to particularly impact on women, children, Aboriginal people and the most vulnerable of Victorians.

Council divided on amendment:

Ayes (15): Matthew Bach, Jeff Bourman, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Renee Heath, Ann-Marie Hermans, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nicholas McGowan, Evan Mulholland, Rikkie-Lee Tyrrell

Noes (21): Ryan Batchelor, John Berger, Katherine Copsey, Enver Erdogan, Jacinta Ermacora, Michael Galea, Shaun Leane, David Limbrick, Sarah Mansfield, Tom McIntosh, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Amendment negatived.

Jaclyn SYMES: I move:

2. Clause 1, page 2, line 26, omit "bail." and insert "bail; and".
3. Clause 1, page 2, after line 26 insert –

"(e) to require a review of the operation of the amendments made by this Act.".

This is about the statutory review, which we have discussed and so moved.

Evan MULHOLLAND: This is a good amendment, and the opposition will be supporting it. It was a great suggestion, I think, quite early on by the Shadow Attorney-General Michael O'Brien, and I am very pleased the government has taken that on board.

David LIMBRICK: The Libertarian Party will also be supporting this amendment.

Katherine COPSEY: The Victorian Greens will be supporting this amendment. Another amendment under my name today would have also proposed a 12-month review with four-yearly reviews thereafter.

Just to make a few comments on the need for review, which the Attorney has touched on today, when the 2018 bail reforms were passed there was no statutory mechanism for legislative review, contrary to the consistent calls of stakeholders. The consequence of that was that we had immediately clear evidence of the disproportionate impacts and the skyrocketing remand rates from 2018 that have continued until now. However, the government did not acknowledge those publicly and refused to act until the inquest into Veronica Nelson's death revealed Veronica's horrific experience with the bail system. So the Greens' amendment would have been for a required review within 12 months, because we think it is sensible to have the review and for that to be happening quite immediately so that we do not run into that situation again. We do welcome the house amendments today that put a two-year review in place. It is not what we would have preferred.

Specifically, in addition to the points that the government has raised, the Greens' amendment would have put in place a review that considered specifically whether vulnerable persons such as women, children, people with disabilities, Aboriginal persons and Torres Strait Islanders were being adversely affected as a consequence of the amendments made by this bill today, given those other categories that have already been most adversely affected. The review would have also considered the impact of the reforms on key elements such as (1) recidivism, (2) the rate at which offences are committed, (3) the safety of the community and (4) sentencing. There is a lot of talking and opinions in the house across the chamber about bail and these elements, so why would we not have an expert panel review and report on the factual situation once these laws are operating? That would have been the effect of the Greens' amendment.

I will just say that this is an example of this house, this chamber, at its best, where we have had several parties in the chamber today express that without a review clause this law would not have passed, and I commend the government for listening to that feedback and taking it on. It is an example of us coming to a conclusion that improves the law, and that is entirely our function.

Amendments agreed to; amended clause agreed to; clauses 2 to 5 agreed to.

Clause 6 (17:25)

Jaclyn SYMES: I move:

4. Clause 6, lines 21 and 22, omit "4AA or 4AAB," and insert "4AA,".

This is effectively a consequential amendment.

Amendment agreed to; amended clause agreed to; clause 7 agreed to.

Clause 8(17:26)

Jaclyn SYMES: I move:

5. Clause 8, lines 6 to 14, omit all words and expressions on these lines.
6. Clause 8, line 15, omit "(2)".

Amendments agreed to; amended clause agreed to; clauses 9 to 12 agreed to.

Clause 13 (17:27)

Jaclyn SYMES: I move:

7. Clause 13, lines 20 and 21, omit "whichever of section 4AA or 4AAB applies," and insert "section 4AA,".

This is a further consequential amendment.

Amendment agreed to; amended clause agreed to.

Clause 14 (17:27)

Rachel PAYNE: My question goes to the application of the revised unacceptable risk test. Historically our courts on many occasions have required an accused person to have a fixed residential address in order to obtain a grant of bail – seemingly a prerequisite. With the narrowing of the unacceptable risk test, my question is: if the risk of endangering the safety or welfare of any person can be ameliorated by other means, should the absence of a fixed address be a barrier to bail being granted?

Jaclyn SYMES: It is a really important question that you raise and something that we have given some thought to, and we have certainly had consultation with the courts in relation to how this is operating. It is not the practice of bail decision makers to remand someone on the sole basis that they do not have a fixed address, and we believe that that is right – nor should it be. I have raised this issue several times with the courts to see how it works in practice, and what they have said is that from a practical perspective they will explore further options that can ameliorate the risk this might carry – for example, a bail decision maker might consider how bail conditions such as reporting could work, such as making it so that they report to a specific police station to confirm that they are still in the area every week or so as a bit of a workaround. They can also impose a condition referring the person to community supports and programs to address immediate or ongoing housing needs, and the court integrated services program, known as CISP, can provide assistance with linking accommodation services as well. I do want to flag that in relation to a determination of bail in relation to a child, the Bail Act states that bail must not be refused to a child on the sole ground that the child does not have any or any adequate accommodation. This is a more complicated factor in relation to adult applicants, and there is a balancing exercise with making sure people are not unnecessarily remanded and making sure that we can ensure that they front up to court when their matter is heard and they can be contacted in relation to those matters et cetera. But I do want to make the record clear that it is not my expectation that someone would be denied bail solely on the grounds that they do not have a fixed address.

Clause agreed to; clause 15 agreed to.

Heading to division 4 of part 2 (17:30)

Jaclyn SYMES: I move:

8. Division heading preceding clause 16, omit "**Bail tests that apply to children**" and insert "**Notes to heading to Schedule 1**".

Amendment agreed to.

Clauses 16 to 23 (17:30)

The DEPUTY PRESIDENT: The Attorney-General's amendments 9 to 16 seek to omit clauses 16 to 23 from the bill. Unless members have questions on any of these clauses, I propose to put them to the committee as a group. We will ask that these clauses stand part of the bill. If you are voting in favour of what the Attorney wants, which is to omit them from the bill, you vote no.

Clauses negatived.

Clause 24 (17:32)

Jaclyn SYMES: I move:

17. Clause 24, line 24, omit "an adult" and insert "a person".
18. Clause 24, lines 27 to 29, omit all words and expressions on these lines.
19. Clause 24, line 30, omit "3" and insert "2".
20. Clause 24, line 31, omit "See –" and insert 'See section 4AA(2).".'.
21. Clause 24, lines 32 and 33, omit all words and expressions on these lines.

These are a continuation of the consequential amendments in relation to child bail.

Amendments agreed to; amended clause agreed to.

Clause 25 (17:32)

Jaclyn SYMES: I move:

22. Clause 25, line 6, omit "adult" and insert "accused".
23. Clause 25, line 9, omit "adult" and insert "accused".

Amendments agreed to; amended clause agreed to.

Clause 26 (17:33)

Jaclyn SYMES: I move:

24. Clause 26, line 25, omit "adult" and insert "accused".
25. Clause 26, line 28, omit "person" and insert "accused".
26. Clause 26, page 16, line 3, omit "adult" and insert "accused".
27. Clause 26, page 16, line 6, omit "person" and insert "accused".

Amendments agreed to; amended clause agreed to; clauses 27 to 29 agreed to.

Clause 30 (17:33)

Jaclyn SYMES: I move:

28. Clause 30, page 18, Flow Chart 1, omit "Flow Chart 4" and insert "Flow Chart 3".
29. Clause 30, page 18, Flow Chart 1, omit "Flow Chart 5" and insert "Flow Chart 4".
30. Clause 30, page 19, line 3, omit "an adult" and insert "a person".
31. Clause 30, page 19, heading to Flow Chart 2, omit "to adults".
32. Clause 30, page 19, Flow Chart 2, omit "Flow Chart 4" (wherever occurring) and insert "Flow Chart 3".
33. Clause 30, page 19, Flow Chart 2, omit "Flow Chart 5" and insert "Flow Chart 4".
34. Clause 30, page 19, Flow Chart 2, omit "Flow Chart 6" (wherever occurring) and insert "Flow Chart 5".
35. Clause 30, page 20, lines 1 to 4, omit all words and expressions on these lines.
36. Clause 30, page 20, Flow Chart 3, omit this flow chart.
37. Clause 30, page 21, line 1, omit "(5)" and insert "(4)".
38. Clause 30, page 21, line 1, omit "4" and insert "3".
39. Clause 30, page 21, heading to Flow Chart 4, omit "4" and insert "3".
40. Clause 30, page 22, line 1, omit "(6)" and insert "(5)".
41. Clause 30, page 22, line 1, omit "5" and insert "4".
42. Clause 30, page 22, heading to Flow Chart 5, omit "5" and insert "4".
43. Clause 30, page 23, line 1, omit "(7)" and insert "(6)".
44. Clause 30, page 23, line 1, omit "6" and insert "5".

45. Clause 30, page 23, heading to Flow Chart 6, omit "6" and insert "5".

Amendments agreed to; amended clause agreed to; clauses 31 to 107 agreed to.

New clause (17:34)

Katherine COPSEY: I move:

1. Insert the following New Division after Division 3 of Part 5 –

'**Division 3A – Annual reports**

107A New Part 4A inserted

After Part 4 of the Principal Act **insert** –

"**Part 4A – Annual reports**

18B Annual report of Chief Commissioner to contain information on bail decisions

(1) The Chief Commissioner, in the Chief Commissioner's report of operations under Part 7 of the **Financial Management Act 1994**, must include the information set out in subsection (2) in respect of –

(a) the financial year to which the report relates; and

(b) each of the following categories of accused person –

(i) children;

(ii) adults;

(iii) men;

(iv) women;

(v) persons identified as vulnerable adults;

(vi) persons identified as Aboriginal persons.

(2) For the purposes of subsection (1) the information is –

(a) for each category of accused person, the total number of decisions by police officers about granting bail to the accused persons in that category; and

(b) the total number of those bail decisions where bail has been granted; and

(c) the total number of those bail decisions where bail has been refused; and

(d) for each of those bail decisions, the police station where the decision was made.

18C Annual report of Court Services Victoria to contain information on bail decisions

(1) Court Services Victoria (within the meaning of the **Court Services Victoria Act 2014**), in its report of operations under Part 7 of the **Financial Management Act 1994**, must include the information set out in subsection (2) in respect of –

(a) the financial year to which the report relates; and

(b) each of the following categories of accused persons –

(i) children;

(ii) adults;

(iii) men;

(iv) women;

(v) persons identified as vulnerable adults;

(vi) persons identified as Aboriginal persons.

(2) For the purposes of subsection (1) the information is –

(a) for each category of accused person, the total number of decisions about granting bail to the accused persons in that category made by each court that is a court to which the definition of jurisdiction in the **Court Services Victoria Act 2014** applies; and

(b) the total number of those bail decisions where bail has been granted; and

(c) the total number of those bail decisions where bail has been refused; and

(d) for each of those bail decisions, the court, including the location of the court, in which the decision was made.

18D Annual report of Department of Justice and Community Safety to contain information on bail decisions

(1) The Minister responsible for the preparation of the report of operations of the Department of Justice and Community Safety under Part 7 of the **Financial Management Act 1994**, must include in that report the information set out in subsection (2) in respect of –

(a) the financial year to which the report relates; and

(b) each of the following categories of accused persons –

(i) children;

(ii) adults;

(iii) men;

(iv) women;

(v) persons identified as vulnerable adults;

(vi) persons identified as Aboriginal persons.

(2) For the purposes of subsection (1) the information is –

(a) for each category of accused person, the total number of decisions by bail justices about granting bail to the accused persons in that category; and

(b) the total number of those bail decisions where bail has been granted; and

(c) the total number of those bail decisions where bail has been refused; and

(d) for each of those bail decisions, the place where the decision was made.".'.

The purpose of this amendment is to provide for detailed and disaggregated annual reporting. This was a recommendation in the coroner's report into the death of Veronica Nelson. It is under section 4.13, and the recommendation is that all bail decision makers – courts, police and bail justices – be required to regularly collect and regularly publish data on bail applications, bail outcomes and bail offences. Surely we all in this place want to ensure that policy and legislation are informed by the best data available. Once the legislation is in place we want to have access, as we have discussed during the committee stage, to reliable data to track the implementation of the changes.

An additional reason that we are seeking this amendment is that I do note that under goal 2.1 of the Victorian Aboriginal Justice Agreement the Andrews, now Allan, government committed to ensuring that Aboriginal people are not disproportionately worse off under its policies and legislation by researching the impact of the 2017 to 2018 bail reforms on Aboriginal accused.

What I have heard today is that there was no comprehensive piece of research undertaken by the government during that five-year period and that this bill has been developed in the absence of particular informed research on that topic. I really believe that strengthening the dataset could only improve decision-making by this Parliament into the future. I do recognise that improving reporting does require additional investment so as not to put additional burden on an already overstretched court and justice system, so should this amendment not be successful today, I do urge the government to still invest in systems to assist the courts, police and bail justices to record and report accurately on their bail decisions.

Jaclyn SYMES: We are not in a position to support Ms Copsey's amendment today, not because we disagree with the intent but because of the unworkability of the amendment given the current systems. It would be unwise because it would not be able to meet the legislation if it was passed in that way. However, I have given a commitment to Ms Copsey that I share her view that data is an important component of ensuring the operation of these laws, and that will also be fed into the statutory review. I have given a commitment to ensure that as much public information as I can obtain will be made available.

Evan MULHOLLAND: The opposition will not be supporting this amendment.

Council divided on new clause:

Ayes (5): Katherine Copsey, Sarah Mansfield, Aiv Puglielli, Georgie Purcell, Samantha Ratnam

Noes (31): Matthew Bach, Ryan Batchelor, John Berger, Jeff Bourman, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nicholas McGowan, Tom McIntosh, Evan Mulholland, Rachel Payne, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

New clause negatived.

Clauses 108 and 109 agreed to.

New clause (17:44)

Katherine COPSEY: I move:

2. Insert the following New Clause to follow the Division heading before clause 110 –

'**109A Guiding principles**

After section 1B(1)(c) of the Principal Act **insert** –

"(ca) taking into account the established understanding of the negative effects of imprisonment on former prisoners, including an association with poorer social, economic and cultural outcomes and higher rates of subsequent offending; and

(cb) promoting bail decision making that is not discriminatory, particularly by regard being had to –

(i) the surrounding circumstances of vulnerable persons such as women, children, people with disabilities and Aboriginal persons; and

(ii) the disproportionate rates of imprisonment and deaths in custody of Aboriginal persons; and".'.

This amendment from the Victorian Greens will create an amendment to the guiding principles of the act which will add to and complement what is already in those principles. The two core principles will be, firstly, that bail decision makers should take into account the established understanding of the negative effects of imprisonment and, secondly, to promote bail decision making that is not discriminatory, particularly with regard to Aboriginal and Torres Strait Islander people.

We note that the guiding principles section was an addition to this act in 2018, but given the recent finding that the act is resulting in discriminatory outcomes and the Attorney's acknowledgement of this in her contribution recently to Yoorrook, the principles do surely need to be further amended to acknowledge and respond to these truths. We do need to call out the fact that these laws have the potential to directly discriminate against the most marginalised and disadvantaged. We must also call out that claiming community safety through the temporary incapacitation of a person on remand is false where such temporary incapacitation often leads to more frequent and more serious offending in the future – exactly the type of thing we are trying to avoid through a functional criminal justice system. Yoorrook is not only there to tell truth but for those truths to then inform and shape our decision-making going forward. This amendment seeks to incorporate that response into our updated Bail Act, and I hope that this amendment updating these guiding principles to acknowledge and respond to these truths will be supported.

Jaclyn SYMES: It is our view that our reforms acquit the substance of this amendment put by Ms Copsey. The reforms in the Bail Amendment Bill include particular provisions to assist bail decision makers to have regard to these issues. Bail decision makers are required to consider the surrounding circumstances of an accused person when making a determination, including any special

vulnerability of the accused at section 3AAA(1)(h).We also have new section 3A and in particular section 3A(1)(a), which requires bail decision makers to consider the historical and ongoing discriminatory systemic factors that have resulted in Aboriginal people being over-represented in the criminal justice system, including in the remand population. In developing new section 3A we listened deeply to the feedback provided by Aboriginal communities, and as result of that engagement this is the wording that we landed on. We are of the view that it better reflects the experiences and circumstances of Aboriginal people, because this is what they told us. I am certainly not inclined to tinker with words that have been signed off by Aboriginal stakeholders in the spirit of self-determination.

Evan MULHOLLAND: The opposition will not be supporting this amendment.

Council divided on new clause:

Ayes (6): Katherine Copsey, Sarah Mansfield, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam

Noes (30): Matthew Bach, Ryan Batchelor, John Berger, Jeff Bourman, Gaelle Broad, Georgie Crozier, David Davis, Moira Deeming, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, David Limbrick, Wendy Lovell, Trung Luu, Bev McArthur, Joe McCracken, Nicholas McGowan, Tom McIntosh, Evan Mulholland, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Rikkie-Lee Tyrrell, Sheena Watt

New clause negatived.

Clauses 110 to 116 agreed to.

New clause (17:51)

Jaclyn SYMES: I move:

46. Insert the following New Clause to follow clause 116 –

'**116A New section 32C inserted**

After section 32B of the Principal Act **insert** –

"**32C Review of amendments made by Bail Amendment Act 2023**

(1) The Attorney-General must cause a review to be conducted of the operation of the amendments made to this Act by the **Bail Amendment Act 2023**.

(2) The review must be commenced no later than 2 years after the commencement of the **Bail Amendment Act 2023**.

(3) The review must be completed no later than 6 months after it commences.

(4) The Attorney-General must cause a copy of the review to be laid before each House of the Parliament no later than 14 sitting days after receiving it.".'.

This, for me, is consequential in relation to reviews.

New clause agreed to.

Clause 117 (17:51)

Jaclyn SYMES: I move:

47. Clause 117, line 11, omit all words and expressions on this line.

This is the final consequential amendment in relation to child bail.

Amendment agreed to; amended clause agreed to; clauses 118 to 120 agreed to.

Reported to house with amendments.

Jaclyn SYMES (Northern Victoria – Attorney-General, Minister for Emergency Services) (17:52): 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) (17:53): I move:

That the bill be now read a third time.

Again, my utmost appreciation to everyone that has worked in relation to bail reform. For me this has been a journey that started on day one of becoming Attorney-General, and I have worked closely with a lot of people that have had very passionate views in relation to this. It was a very respectful debate today. I thank all colleagues in relation to that. We have made a big difference today to a lot of lives, a lot of vulnerable lives, in Victoria. I thank everyone for their cooperation.

The PRESIDENT: The question is:

That the bill be now read a third time and do pass.

Council divided on question:

Ayes (33): Matthew Bach, Ryan Batchelor, John Berger, Gaelle Broad, Katherine Copsey, Georgie Crozier, David Davis, Enver Erdogan, Jacinta Ermacora, Michael Galea, Renee Heath, Ann-Marie Hermans, Shaun Leane, David Limbrick, Wendy Lovell, Trung Luu, Sarah Mansfield, Bev McArthur, Joe McCracken, Nicholas McGowan, Tom McIntosh, Evan Mulholland, Rachel Payne, Aiv Puglielli, Georgie Purcell, Samantha Ratnam, Harriet Shing, Ingrid Stitt, Jaclyn Symes, Lee Tarlamis, Sonja Terpstra, Gayle Tierney, Sheena Watt

Noes (3): Jeff Bourman, Moira Deeming, Rikkie-Lee Tyrrell

Question agreed to.

Read third time.

The PRESIDENT: Pursuant to standing order 14.28, a message will be sent to the Assembly that the Council have agreed to the bill with amendments.

Education and Training Reform Amendment (Land Powers) Bill 2023

Introduction and first reading

The PRESIDENT (18:00): I have a message from the Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Education and Training Reform Act 2006** to make further provision for the acquisition, use and development of land for the purpose of early childhood education and care and for the purpose of services associated with early childhood education and care and for other purposes'.

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:01): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ingrid STITT: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:01): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

Opening paragraphs

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 Education and Training Reform Amendment (Land Powers) Bill 2023 (the **Bill**).

In my opinion, the Bill, as introduced to the Legislative Council, is compatible with the human rights protected by the Charter. I have this opinion for the reasons outlined in this statement.

Overview

The purpose of the Bill is to amend the *Education and Training Reform Act 2006* (the **ETRA**) to make further provision for the acquisition, use and development of land for the purpose of early childhood education and care and for the purpose of services associated with early childhood education and care.

The Bill also makes minor and related amendments to the ETRA.

Human Rights Issues

Human rights protected by the Charter that are relevant to the Bill

The human rights protected by the Charter that are relevant to the Bill are:

- property rights (section 20 of the Charter);
- right not to have home unlawfully or arbitrarily interfered with (section 13(a)); and
- protection of children (section 17(2)).

Rights to property and privacy of home

Section 20 of the Charter provides that a person must not be deprived of their property other than in accordance with law. The right is understood to protect real and personal property, including land, as well as other economic interests, and protects against expropriations of that property, as well as deprivations of the use or benefit of such property. For deprivation of a person's property to be 'in accordance with law', as required by section 20, the legal authorisation for the deprivation must be clear and certain, publicly accessible and it must not operate arbitrarily. Section 20 does not provide a right to compensation.

Related to the right to property is section 13(a) of the Charter, which prohibits unlawful or arbitrary interferences with a person's home. 'Home' in the context of section 13(a) has been interpreted broadly and beyond notions of legal and equitable rights. Arbitrary interferences are those that are capricious, unpredictable or unjust, as well as unreasonable because they are not proportionate to a legitimate aim sought. An interference with privacy can still be arbitrary even though it is lawful.

The Bill engages the rights in sections 13(a) and 20 of the Charter. Section 5.2.3(1) of the ETRA provides that the Minister's powers to acquire land include purchasing by agreement or compulsorily acquiring any land required for the purposes of the Act. Clause 4 of the Bill expands the purposes of the ETRA so that the Minister can acquire, use and develop land required for the purposes of the Act, as amended – that is, for the purposes of the provision of early childhood education and care, and services associated with early childhood education and care.

By operation of clauses 4 and 19, the Minister's powers in the ETRA are expanded to include acquiring land, either by agreement or compulsorily, for the purposes of the provision of early childhood education and care, including if the purposes include the provision of a service associated with early childhood education and care. Clause 19 confines the power by not allowing the Minister to compulsorily acquire land if it is only for the purposes of the provision of associated services.

Clause 20 empowers the Minister to take on lease (or under any other arrangement), or to grant or enter into any lease of (or enter into any other arrangement for), any land or premises required for a relevant purpose. Relevant purpose is defined to include providing early childhood education and care, or a direct or indirect benefit to it, or providing services associated with early childhood education and care.

The operation of the three clauses outlined above may result in deprivation of, or an interference with, a person's land or home, either by way of acquisition (in the case especially of clauses 4 and 19) or by way of restricting a person's use or enjoyment of their property (in the case especially of clause 20 with respect to leases). In my view, the ETRA, as amended by the above clauses, will provide a lawful basis that is clear and accessible to the public. Further, I do not consider that the Act, as amended, will operate arbitrarily or enable arbitrary interferences with a person's home. That is because the Bill is, in my view, reasonable and proportionate to a legitimate aim. That aim is to increase the scale of the government's infrastructure investment program to support the 'Best Start, Best Life' reforms, including provision of free kindergarten, a new universal year of Pre-Prep and 50 government-owned early learning centres. These powers are necessary to implement this program, as well as the provision of early childhood education and care beyond the life of the program. Although every effort will be made to situate facilities on government schools, other government land and partner land, new infrastructure capacity is still likely to require land acquisition. Wherever possible, land will be purchased through negotiation with the landowner. However, compulsory acquisition may be necessary (for example, if the landowner is unwilling to sell).

Section 5.2.3(2) provides that the *Land Acquisition and Compensation Act 1986* applies to the ETRA. *The Land Acquisition and Compensation Act 1986* provides a procedure for the acquisition of land for public purposes and provides a right to compensation in respect of land compulsorily acquired. Accordingly, compensation may be available under the *Land Acquisition and Compensation Act 1986* (although, as noted above, this is not a requirement of section 20 of the Charter). Further, the lawfulness of a Minister's decision to compulsorily acquire land is subject to judicial review. This assists in ensuring that the powers are subject to appropriate procedural protections.

Finally, I note that the Minister, in exercising powers to acquire land, will be a public authority under the Charter and will be required to give proper consideration to human rights in the Charter when making decisions, and to act compatibly with human rights in the Charter. This will include giving proper consideration to property and privacy of home rights, including the proportionality of any proposed acquisition.

For the above reasons, any deprivation of property or interference with a person's home provided for by the Bill would occur in accordance with law and in circumstances that were not arbitrary. Accordingly, I do not consider that the Bill limits the rights in sections 13(a) and 20.

Protection of children

Section 17(2) of the Charter provides that every child has the right, without discrimination, to such protection as is in the child's best interests and as is needed by the child. Section 17 imposes a positive requirement on the State to provide protection. The interpretation of section 17(2) has been informed by international materials. They recognise that the need to promote a child's development and education is in a child's best interests.

I consider that the Bill promotes the right in section 17(2). This is recognised by these three principles inserted in the ETRA by clauses 6 and 7 of the Bill:

- access to education during early childhood is important for the wellbeing of children and their families;
- all Victorians, irrespective of where they live or their social and economic status, should have access to education during early childhood; and
- the State will support the provision of early childhood education in areas where there is or will be insufficient provision of early childhood education.

The Hon Lizzie Blandthorn MP
Minister for Children
Minister for Disability

Second reading

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:01): I move:

That the bill be now read a second time.

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

Introduction

Today, I introduce a Bill to amend the *Education and Training Reform Act 2006* (Act) to expand the state's powers to acquire and develop land, or to take on or grant other interests in land, for the purposes of providing

early childhood education and care and other associated services as part of the government's Best Start, Best Life reforms.

The Victorian Government has committed $14 billion over a decade to deliver the Best Start, Best Life reforms, including continuing the roll-out of funded three-year-old kindergarten.

This investment means that, from this year, free kinder has rolled-out for all three- and four-year-old children at participating services. This is a meaningful change that signals the importance of access to early childhood education programs for all children.

Over the next decade, four-year-old kindergarten, being kindergarten in the year before school, will transition to 'Pre-Prep.' Pre-Prep will become a universal 30-hour-a-week program of play-based learning available to four-year-old children across the state.

This will amount to a doubling of the educational opportunities available for children in their year before school. It will mean children have twice the amount of teacher-led play-based learning time to develop critical social, emotional, and cognitive skills that will set them up for life, and for the following years of their education. This will be delivered through kindergartens and long day care services.

The Victorian Government has also committed to opening 50 new government-owned early learning centres in the communities that need them most. The first of these will be co-located on school sites at Sunshine Primary School, Murtoa College, Moomba Park Primary School, and Eaglehawk North Primary School and will be open for 2025, with remaining centres delivered by 2028.

The Education and Training Reform Amendment (Land Powers) Bill 2023 will play a critical role in facilitating the delivery of these commitments, by providing already existing land powers that are currently in place for the Education portfolio to the Early Childhood and Pre-Prep portfolio, and creating a clear legislative power for other land arrangements such as leasing.

Specifically, this Bill will amend the Act to:

a) expand the minister's powers to acquire land, either by agreement or compulsorily, or to take on or grant other interests in land, for the purposes of providing childhood education and care and certain other services associated with ECEC, such as maternal and child health services and community spaces, and

b) expand the purposes of the ETR Act as they relate to:

    a. the acquisition, use and development of land by the Minister, and

    b. the provision of ECEC and associated services,

c) expand the principles of the ETR Act to recognise the importance of access to education during early childhood and state support of early childhood education where there is insufficient provision.

Summary of Bill

The Bill expands the current Education-focused powers in the Act to acquire and develop land to include purposes related to the provision of ECEC.

The purposes of the Act are currently limited to the provision of education and training to adults and children of school age. That is, references to education and training in the Act are limited to school-based education, vocational education and training (VET) and higher education. The Act does not currently make specific provision for ECEC. This Bill will amend the purposes of the Act to include ECEC, which will have the effect of expanding the purposes for which the minister's existing powers to acquire and develop land to include ECEC.

Similarly, the principles underlying the Act apply to education and training with no reference to ECEC. The Bill amends those principles to make clear the importance of ECEC and that the government will support it where there is otherwise insufficient provision.

Specifically, the Bill expands the power to compulsorily acquire land for ECEC by removing the existing limitation that land for a preschool program can only be acquired by agreement. Land will now be able to be compulsorily acquired so long as it is required for any of the purposes of the Act, which on the commencement of the Bill will include the provision of ECEC.

Finally, the Bill also provides a clear legislative power for the minister under the Act to grant or take on a lease or any other arrangement over land for the purposes of providing ECEC or an associated service.

The $14 billion Best Start, Best Life program is a true generational reform and will fundamentally shape the future of early childhood education for decades to come. Evidence shows that investment in early childhood education has significant social and economic benefits, and that for every $1 invested in early childhood education, Australia receives $2 back over a child's life - through higher productivity and earning capacity, and reduced government spending on health, welfare and crime.

Research shows that a child who has attended two years of a quality kindergarten program will, on average:

- have better cognitive, social and emotional skills when they start school (including better development in language, pre-reading, early number concepts, non-verbal reasoning, independence, concentration and social skills)
- have higher exam scores at 16, including better grades in English and maths
- have more developed social and emotional outcomes at age 16
- be more likely to take more final year exams and to go on to higher academic study.

These children are the future of Victoria, and this Bill enables this change to happen.

I commend the Bill to the house.

Georgie CROZIER (Southern Metropolitan) (18:02): I move:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

Summary Offences Amendment (Nazi Salute Prohibition) Bill 2023

Introduction and first reading

The PRESIDENT (18:02): I have a further message from the Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to amend the **Summary Offences Act 1966** to make the public display or performance of Nazi gestures an offence, to extend the application of the offence of public display of Nazi symbols and for other purposes'.

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:02): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ingrid STITT: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:03): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

Opening paragraphs

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 Summary Offences Amendment (Nazi Salute Prohibition) Bill 2023.

In my opinion, the Summary Offences Amendment (Nazi Salute Prohibition) Bill 2023 (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 *Summary Offences Act 1966* (the Principal Act) by making it an offence to publicly perform a Nazi salute or other gesture used by the Nazi Party including its paramilitary arms and to extend the current offence for publicly displaying a Hakenkreuz or other symbol that is likely to be confused or mistaken for that symbol under section 41K, to include any symbol or gesture used by the Nazi Party including its paramilitary arms.

The Bill's purpose is to prevent the harm caused by the Nazi salute and other Nazi gestures or symbols to reduce racism and vilification in the community, maintain public order, and to send a clear message that Nazi ideology and the hatred it represents is not tolerated in Victoria. This Bill follows the creation of a criminal offence prohibiting the public display of the Nazi symbol (the Hakenkreuz) in June 2022, and the government's commitment to monitor the display of other hateful symbols, as recommended by the Parliamentary Inquiry into Victoria's Anti-Vilification Protections (AV Inquiry).

The Bill will:

- prohibit the intentional public performance of a Nazi gesture, including the Nazi salute or any other gesture that is used by the Nazi Party (including its paramilitary arms) or a gesture that is likely to be confused with or mistaken for that gesture;
- expand the application of the offence of publicly displaying a Hakenkreuz or other symbol that is likely to be confused or mistake for that symbol to include a Nazi salute and any other symbol or gesture used by the Nazi party (including its paramilitary arms);
- clarify the application of existing exceptions under section 41K to the new offence of publicly performing or displaying a Nazi gesture; and
- expand the application of enforcement powers available under section 41K to the display of a Nazi gesture, including the Nazi salute.

Human Rights Issues

The Bill promotes the following rights under the Charter:

- right to recognition and equality before the law (section 8);
- right to freedom of thought, conscience, religion and belief (section 14); and
- right to culture (section 19).

The Bill limits the following rights under the Charter:

- right to privacy and reputation (section 13);
- right to freedom of thought, conscience, religion and belief (section 14)
- right to freedom of expression (section 15);
- right to peaceful assembly and freedom of association (section 16);
- right to take part in public life (section 18);
- right to property (section 20); and
- rights in criminal proceedings (section 25).

Under the Charter, rights can be subject to limits that are reasonable and justifiable in a free and democratic society based on human dignity, equality and freedom. Rights may be limited in order to protect other rights.

As discussed below, these limitations are reasonable and justified in accordance with section 7(2) of the Charter.

Right to recognition and equality before the law (section 8)

Section 8(3) of the Charter provides that every person has the right to enjoy their human rights without discrimination and has the right to equal and effective protection against discrimination. Justice Bell in *Lifestyle Communities Ltd (No 3) (Anti-Discrimination)* [2009] VCAT 1869, 277 noted the equality rights in section 8 are 'the keystone in the protective arch of the Charter', and the fundamental value underlying the right to equality is the 'equal dignity of every person'. To treat somebody differently because of an attribute rather than on the basis of individual worth and merit can undermine personal autonomy and self-realisation.

The public display or performance of Nazi gestures, particularly the Nazi salute, and other Nazi symbols impinges this right by undermining the dignity and self-worth of groups that have been historically persecuted by the Nazi Party and targeted by neo-Nazi groups, including the Jewish Community, LGBTIQ+ people, people with disability, Aboriginal and Torres Strait Islander people, and other racial and religious groups. For these communities, the public expression of Nazi symbols and Nazi gestures are an assault against human dignity and represent a form of hatred and prejudice that has no place in Victoria.

Expanding the offence under section 41K to prohibit the public display or performance of a Nazi gesture and other Nazi symbols therefore promotes the right to recognition and equality before the law by further protecting these communities, and the wider Victorian public against the harm and distress caused by these gestures and symbols.

Right to privacy and reputation (section 13)

Nature of the right

Section 13(a) of the Charter provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

According to Justice Bell in *Kracke v Mental Health Review Board (General)* (2009) 29 VAR 1, the right to privacy 'protects people from unjustified interference with their personal and social individuality and identity.' This includes protection from interference with a person's individual identity and physical integrity.

An interference will be lawful if it is permitted by a law which is precise and appropriately circumscribed. It will be arbitrary only if it is capricious, unpredictable, unjust or unreasonable, in the sense of being disproportionate to the legitimate aim sought.

The Bill limits the right to privacy by broadening current restrictions on a person's ability to privately display Nazi symbols and extending these restrictions to Nazi gestures, if the symbol or gesture can be seen by people in a public place, or on their person (such as on clothing) in public.

The importance and purpose of the limitation

The limitation supports the Bill's purpose to reduce racism and vilification in the community, and to maintain public order, by minimising the harm caused by the display of any Nazi symbol or Nazi gesture and by allowing such symbols or gestures to be removed from public display.

Nature and extent of the limitation

Clause 7 of the Bill limits the right to privacy by prohibiting a broader range of symbols and gestures that can be displayed under section 41K of the Principal Act. This expansion is intended to prevent the harm caused by the public display of Nazi gestures and other Nazi symbols, regardless of whether they are physically located on public or private property. The expanded offence will still be confined to acts that occur in public, or occurs in sight of a person in a public place, and will not prevent a person from owning or displaying a Nazi gesture or Nazi symbol in private where it cannot be viewed from a public place (for example, inside a private home).

Additionally, the expanded offence will continue to ensure that tattoos and other like processes (such as branding) that display a Nazi symbol or gesture will not be prohibited. This ensures the Bill is not more restrictive than necessary to fulfill its purpose and preserves rights to bodily integrity. Since the expanded offence does not apply to hate symbols generally and given the harm the amended offence seeks to prevent, this limitation is lawful and does not arbitrarily or unreasonably limit the right to privacy.

Clause 8 of the Bill limits the right to privacy by expanding a police officer's power under section 41L of the Principal Act to be exercised in relation to the public display of symbols and gestures of the Nazi Party including its paramilitary arms. This amendment is necessary to support practical enforcement of the expanded offence and to prevent any further harm from being caused by the continued display of Nazi gestures or other Nazi symbols. The Bill makes no further changes to section 41L. Accordingly, a person who does not comply with a direction to remove the Nazi gesture or other Nazi symbol from display will be liable for a fine of 10 penalty units, unless the defence of reasonable excuse applies. A direction can only be exercised in relation to the display of a Nazi gesture or Nazi symbol, which can still be displayed in private, and cannot be used for expressions of hate generally. Interference with the right is therefore lawful and does not arbitrarily or unreasonably limit the right to privacy.

Clause 9 of the Bill limits the right to privacy by expanding a police officer's power under section 41M of the Principal Act to be exercised in relation to the public display of Nazi gestures and any other Nazi symbols.

The Bill makes no other amendments to section 41M or the operation of s 465 of the *Crimes Act 1958* (Crimes Act), which sets out the conditions for such powers being exercised. Accordingly, a police officer will still be required to apply to the Magistrates' Court for a warrant to search premises and seize property that displays a Nazi gesture or other Nazi symbol and is in connection to, or as evidence of commissioning of the offence. Before a warrant can be granted, the magistrate must be satisfied by evidence that there are reasonable grounds to believe that there is, or will be within the next 72 hours, in a building, place or in a vehicle something that is connected with the offence that has been committed or might be committed in the next 72 hours, or anything that will afford evidence for the offence. The power can only be exercised in relation to symbols or gestures that were used by the Nazi Party and not expressions of hate generally. Given the fact that the obtaining of a warrant by police will also continue to be subject to court oversight, any interference with the right to privacy as a result of a warrant would be lawful and not arbitrary or unreasonable.

The relationship between the limitation and purpose

These limitations are necessary to support the effectiveness and practical enforcement of the expanded offence and to prevent or minimise any harm caused by the public display of any Nazi gesture or other Nazi symbol.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

Any further limitations on the power to direct a person to remove a Nazi gesture or any other Nazi symbol from display would undermine the objectives of the Bill since it would fail to adequately prevent a person who has committed an offence from continuing to display the gesture or symbol. It would also fail to address circumstances where a Nazi gesture or other Nazi symbol has been displayed on property by a third party (for example, by means of graffiti), since it may be necessary to direct the owner or occupier to remove the symbol or gesture, even though they have not been involved in the commission of the offence.

The current general search and seizure powers are necessary to ensure sufficient evidence can be obtained to prosecute persons that publicly display Nazi gestures or other Nazi symbols. It is also possible for secondary evidence of a Nazi gesture or other Nazi symbol (e.g. a photograph of the display) to be used instead of the property item. Under the Victorian Police Manual, police officers are required to apply the test of essentiality before seizing any property. This includes an assessment of whether the property is lawful, whether it is necessary to seize it and whether secondary evidence can be used in its place.

Right to freedom of thought, conscience, religion and belief (section 14) and the right to culture (section 19)

Nature of the right

Section 14 of the Charter provides that every person has the right to freedom of thought, conscience, religion and belief, including to adopt the religion or belief of their choice and to demonstrate their religious belief in public or private. A person must not be coerced or restrained in a way that limits their freedom of religion or belief in worship, observance, practice or teaching.

The right to culture in section 19 is based on Article 27 of the International Convention on Civil and Political Rights (ICCPR). This right ensures individuals, in community with others that share their background, can enjoy their culture, declare and practise their religion and use their language. It protects all people with a particular cultural, religious, racial or linguistic background.

The public display of Nazi gestures and other Nazi symbols undermines this right by promoting harmful ideologies that are aimed at suppressing the objectives of multiculturalism (to ensure that all Victorians can participate fully in society and remain connected to their culture and religion) by making groups targeted by these gestures and symbols feel intimidated or apprehensive about demonstrating their beliefs in public.

This was demonstrated on 26 January 2023, when a far-right group linked to neo-Nazi ideology disrupted a local Aboriginal community's mourning ceremony in Merri-bek City Council and performed the Nazi salute.

The expanded offence therefore promotes both rights by allowing multicultural and religious communities to practice religion, hold beliefs and engage in cultural celebrations, without fear of harm or vilification.

The Bill could also limit these rights by placing an evidential burden on people displaying a symbol or gesture for a religious or cultural purpose that may be mistaken for a symbol or gesture used by the Nazi Party.

The importance of the purpose of the limitation

The purpose of the limitation is to protect the public from the harm caused by the display of a symbol or gesture used by the Nazi Party by restricting display to a list of prescribed circumstances.

A report by the Jewish Community Council of Victoria (JCCV) and the Community Security Group Victoria (CSG) into Antisemitism in Victoria found there has been a steady increase in antisemitic incidents between 2019–2022, especially with the use of symbols and paraphernalia. Prohibiting the public display of symbols and gestures used by the Nazi Party minimises the harm caused to the Jewish community and other impacted groups and sends a clear message to Victorians that the display of such symbols is extremely harmful and unacceptable in our multicultural society.

Nature and extent of the limitation

Clause 7 of the Bill relies on existing reasonable and good faith exceptions under section 41K of the Principal Act and provides that a person does not commit the offence if display was engaged in reasonably and in good faith for a religious or cultural purpose. This imposes an evidentiary burden on the accused to raise evidence that the display of a Nazi symbol or gesture was done for a genuine religious or cultural purpose. However, consistent with the offence under section 41K, the expanded offence does not transfer the legal burden of proof. Once the accused has pointed to evidence of an exception, the burden shifts back to the prosecution to prove the essential elements of the offence beyond reasonable doubt.

The relationship between the limitation and its purpose

The limitation is consistent with the Bill's purpose to reduce racism and vilification in the community, and to maintain public order by denouncing and prohibiting the public display of a Nazi gesture or other Nazi symbols, while also ensuring that appropriate uses of these gestures and symbols are permitted.

Less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

The Bill could place the burden for demonstrating that the public display of a symbol or gesture was done for a religious or cultural purpose on the prosecution as an element of the offence. However, this would require the prosecution to prove beyond reasonable doubt that a symbol or gesture was not displayed for a good faith and reasonable religious or cultural purpose in every case, even where there is no evidence suggesting such a use. This would reduce enforceability of the offence and undermine the objectives of the Bill since the evidence to be adduced would often be within the specific knowledge of an accused person. Accordingly, the burden should remain with the accused person since they are best placed to provide evidence as to whether the display was done for a religious or cultural purpose.

Shifting the burden approach would also create inconsistencies with the approach to all other exceptions, such as artistic use or opposition to Nazism and neo-Nazism.

For these reasons, any limitation on these rights is reasonable and justified in the circumstances.

Right to freedom of expression (section 15)

Nature of the right

Under section 15(2) of the Charter, the right to freedom of expression includes the freedom 'to seek, receive and impart information and ideas of all kinds'. The forms of expression protected are broad, and include sign language, print, art or any other medium. The right protects criticism and protest as well as offensive, disturbing or shocking information or ideas, rather than merely favourable or popular expressions *(Sunday Times v United Kingdom (No 2)* [1992] 14 EHRR 123). However, the European Court of Human Rights has held that limitations on free expression under article 10 of the *European Convention of Human Rights*, which protects this right in a similar manner to section 15(2), can be justified in situations concerning the expression of Nazism on the basis that such expression 'is a totalitarian doctrine incompatible with democracy and human rights' (*Schimanek v Austria,* Application no. 32307/96 (1 February 2000)).

Accordingly, the right is not absolute and may be lawfully subject to permissible limitations. This is reflected in section 15(3), which contains an internal limitation that allows freedom of expression to be limited where it is reasonably necessary to respect the rights and reputation of others, or for the protection of national security, public order, public health or public morality.

The Bill limits the right by restricting a person's ability to impart certain information and ideas through the public display or performance of Nazi gestures or other Nazi symbols.

The importance of the purpose of the limitation

The purpose of the limitation is to protect members of the community from the mental and physical harm caused by the messages of hate and intimidation conveyed by the display or performance of symbols and gestures used by the Nazi Party. The Nazi regime evokes imagines of horror including the enforcement of policies on racial purification, the establishment of concentration camps and the genocide of Jewish people in the Holocaust.

The Nazi salute's historical association with Nazism and the harm it causes to the community underpins the importance of prohibiting this gesture and any other Nazi gestures and Nazi symbols that may be co-opted in its place. This equally applies to other symbols used by the regime's paramilitary arms such as the SS bolts and *Totenkopf* (Nazi death head) which were displayed on uniforms of the Gestapo and guards at concentration camps.

Despite the harm caused by these Nazi gestures and symbols, there are insufficient means to address it. The current Nazi symbol ban does not capture the Nazi salute or symbols beyond the Hakenkreuz. The AV Inquiry also found that the existing anti-vilification provisions do not adequately protect against this behaviour.

There has been a recent rise in public expressions of Nazi gestures, such as the Nazi salute, which was evidenced on 18 March 2023 where a far-right group linked to neo-Nazi ideology repeatedly performed the Nazi salute at an anti-transgender protest outside of Parliament. On 14 May 2023, the same group rallied at an anti-immigration protest where the Nazi salute was performed again in public and again in Geelong in July 2023.

The Bill is therefore intended to protect against the individual harm and wider community distress caused by these gestures and symbols, including injury to a person's dignity that results from overt expressions of hatred. The Bill sends a clear message to the community that such gestures and symbols are not acceptable and have wide-ranging, negative societal impacts. The connection between these symbols and gestures and the mass atrocities committed in Europe in the 20th century mean that the display of these symbols sits outside the boundary of what might be expected from reasonable political debate and discourse. Importantly, the limitation does not target the civility of public discourse as people are still able to hold opinions in support of Nazi ideology, and express them, but are prevented from doing so through hateful symbols and gestures.

Nature and extent of the limitation

Clause 7 of the Bill limits the right to freedom of expression by restricting the ability of any person from freely expressing information or ideas through any medium that involves the display or performance of a Nazi gesture or other Nazi symbol in public. However, the Bill does not ban other methods of communicating Nazi ideology but rather the expression of particularly offensive and harmful symbols and gestures associated with the historical application of that ideology.

There is strong evidence from stakeholders indicating how deeply upsetting and harmful the display of Nazi gestures and other Nazi symbols can be to people that view these gestures and symbols, and that their use can undermine social cohesion across Victorian communities, especially for groups that are often targeted through their use, such as the Jewish community. This limitation is therefore considered lawful and reasonably necessary to protect people's rights not to be intimidated, vilified or harassed, to feel safe, and to maintain public order.

In line with the purpose of the Bill, the exceptions which currently exempt situations where a Hakenkreuz is publicly displayed for an appropriate purpose will apply to the display of other Nazi symbols used by the Nazi Party. A person that displays or performs a Nazi gesture however will not have the same access to these exceptions to illustrate:

- If a person performs a Nazi gesture, then all exceptions under section 41K, other than the exceptions for a genuine cultural or religious purpose and the exception for in opposition to fascism, Nazim, neo-Nazim or other related ideologies, may apply
- If a person displays a Nazi gesture, then all exceptions under section 41K, other than the exceptions for a genuine cultural or religious purpose, may apply.

The relationship between the limitation and its purpose

The limitation is consistent with the Bill's purpose to reduce racism and vilification in the community, and to maintain public order by denouncing and prohibiting the public performance or display of a Nazi gesture or other Nazi symbols, while also ensuring that appropriate uses of these gestures and symbols are permitted.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

The Bill could include a requirement that the expanded offence only be committed if a public display or performance of a Nazi gesture or other Nazi symbol occurs in circumstances where a member of the public who sees the display is reasonably likely to feel threatened or intimidated or subjected to hatred, or to perceive the symbol as a symbol of intimidation or hatred towards any person or group. This type of element however has been deliberately omitted on the basis that any display of a Nazi gesture or other Nazi symbol, given their historical significance and recognised messaging of hate and genocide, would invariably cause a member of the public to feel intimidated or threatened, especially for community members that have been historically impacted by the Nazi regime. Additionally, the AV Inquiry found that existing anti-vilification offences (which contain a requirement to cause harm) are difficult to prosecute and there are evidential issues which impact the effectiveness of their protections. These offences are subject to future reform.

The Bill is also limited in scope to gestures and symbols that were used by the Nazi Party including its paramilitary arms and will not apply to expressions of hate more generally. This scope recognises the abhorrent and universally understood meanings attached to such symbols and gestures, and acknowledges their use in Victoria to intimidate, cause offence and promote hateful ideologies.

Additionally, the new offence for the display or performance of a Nazi gesture or other Nazi symbol will be subject to the exception under section 41K for tattoos or other like processes (such as branding), even where the tattoo is visible on a person's body while in public. This ensures the Bill does not provide further restrictions than what is necessary to fulfill its purpose.

The approach taken by the Bill is therefore the most appropriate option to achieve the purpose of the Bill, and the limitation of the right to freedom of expression is justified.

Right to peaceful assembly and freedom of association (section 16) and right to public life (section 18)

Nature of the right

Section 16(1) of the Charter protects every person's right to peaceful assembly. Under the ICCPR, the right to peaceful assembly entitles persons to gather intentionally and temporarily for a specific purpose.

Section 18(1) of the Charter provides that every person in Victoria has the right to participate in the conduct of public affairs. The UN Human Rights Committee, when commenting on article 25(a) of the ICCPR, considered the right to participate in public life to lie at the core of democratic government.

Clause 7 of the Bill both limits and promotes the right to freedom of association and right to public life. Critically the Bill does not prevent people from meeting in public or associating together. However, it prevents

people who wish to perform or display a Nazi gesture or other Nazi symbol to demonstrate their political ideology while in public, such as in gatherings or while attending a council meeting. The offence also limits the right to freedom of association by disincentivising membership to groups with Nazi or neo-Nazi ideologies, for fear of criminal sanctions if this association is conveyed through the performance or display of a Nazi gesture or other Nazi symbol.

Conversely the Bill also promotes the right to public life for those who are targeted by the display and performance of Nazi gestures and symbols. This is because people are more likely to take part in public life, including attending protests, if they do not fear being intimated or threatened by the display and performance of overt messages of hatred.

The importance of the purpose of the limitation

Expanding the offence under section 41K to capture Nazi gestures and other Nazi symbols is intended to improve protections against the harmful messaging these gestures and other symbols express and to acknowledge the rise of other forms of expression relating to Nazism that have been, and may become, co-opted by neo-Nazi groups.

Nature and extent of the limitation

The application of the expanded offence will still be limited to display or performance that occurs in public. This means that groups who hold beliefs associated with Nazi ideology may still assemble in public or participate in the conduct of public affairs without any Nazi gesture or other Nazi symbol being displayed or performed in public. Persons who support such ideology will therefore remain free to express their opinions in gatherings or at council meetings, subject to existing laws, and may continue to own, display, or perform such symbols and gestures in private. They will also be able to publicly demonstrate their association with or support for such ideologies or groups through other means, including the use of slogans or other gestures or symbols to which this offence does not apply.

The limitations on both rights are reasonable and justified given the significant harm caused by the public display or performance of these symbols and gestures and the impact on the right to equality and non-discrimination of groups targeted by these symbols, outweighs the limitations placed on people that wish to use these gestures and symbols to display their ideology.

Relationship between the limitation and its purpose

Ensuring that the expanded offence applies to conduct that occurs in a public place is essential to the purpose of the Bill. The significant harm caused can only be addressed by prohibiting Nazi gestures and other Nazi symbols in public since this is where the harm is caused. This has been evidenced on several occasions, including on 17 July 2023 when a far-right group linked to neo-Nazi ideology performed the Nazi salute outside Geelong City Hall.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

The Bill could include a requirement that the expanded offence only be committed if a public display or performance of a Nazi symbol or Nazi gesture occurs in circumstances where a member of the public who sees the display is reasonably likely to feel threatened or intimidated or subjected to hatred, or to perceive the symbol as a symbol of intimidation or hatred towards any person or group. This element however has been deliberately omitted on the basis that any display of a Nazi gesture or other Nazi symbol, given their historical significance and recognised messaging of hate and genocide, would invariably cause a member of the public to feel intimidated or threatened, especially for community members that have been historically impacted by the Nazi regime.

The Bill is also limited in scope to gestures and symbols that were used by the Nazi Party including its paramilitary arms, and will not apply to expressions of hate more generally. This scope recognises the abhorrent and universally understood meanings attached to such symbols and gestures, and acknowledges their use in Victoria to intimidate, cause offence and promote hateful ideologies.

Right to property (section 20)

Nature of the Right

Section 20 of the Charter provides that a person must not be deprived of their property other than in accordance with law. The right contains an internal limitation which provides that the right is not limited where property deprived is in 'accordance with the law'. For deprivation of property to be in accordance with law, the law (whether legislation or the common law) authorising the deprivation of property must be clear and precise, accessible to the public, and not operate arbitrarily.

The right to property is limited by expanding a police officer's power under section 41M of the Principal Act to apply for a warrant to search and seize property containing a Hakenkreuz, to be exercised in relation to the public display of Nazi gestures and any other Nazi symbols.

Importance and the purpose of the limitation

The limitation supports the Bill's purpose to reduce racism and vilification in the community, and to maintain public order, by allowing police to prevent the imminent public display of a Nazi symbol and enabling Nazi gestures and other Nazi symbols to be removed from public display.

Nature and extent of the limitation

The Bill makes no amendments to the procedure for obtaining a warrant. Accordingly, a police officer can only seize property if a warrant is obtained from the Magistrate's Court and the magistrate is satisfied that the conditions for obtaining a warrant have been met under section 465 of the Crimes Act. Given the narrow scope of the power and the requirement for police to seek a warrant from a court, any interference with property as a result of a warrant would be lawful and not arbitrary.

Relationship between the limitation and its purpose

The purpose of this limitation is to support the practical enforcement of the offence and to prevent any further harm caused by the continued display of a Nazi gesture or other Nazi symbol.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

The general search and seizure powers are necessary to ensure sufficient evidence can be obtained to prosecute persons under the offence. It is also possible for secondary evidence of a Nazi symbol (e.g. a photograph of the display) to be used instead of the property item. Under the Victorian Police Manual, police officers are required to apply the test of essentiality before seizing any property. This includes an assessment of whether the property is lawful, whether it is necessary to seize it and whether secondary evidence can be used in its place.

Rights in criminal proceedings (section 25)

Nature of the Right

Section 25(1) of the Charter provides that a person has the right to be presumed innocent until proven guilty in accordance with the law. The right in section 25(1) 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.

The Bill imposes an evidential burden on the accused by relying on the existing exceptions set out in section 41K of the Principal Act. These exceptions may appear to limit the right to be presumed innocent until proven guilty according to law.

Importance of the purpose of the limitation

The purpose of the limitation is to protect the public from the harm caused by the display or performance of a symbol or gesture used by the Nazi Party by restricting their use to a list of prescribed circumstances.

Nature and extent of the limitation

Clause 7 of the Bill relies on existing reasonable and good faith exceptions under section 41K of the Principal Act, and provides that a person does not commit the offence if display or performance was engaged in reasonably and in good faith for a number of prescribed purposes. This imposes an evidentiary burden on the accused to show the display or performance of a Nazi symbol or gesture was for one of the prescribed purposes.

However, consistent with the offence under section 41K, the expanded offence does not transfer the legal burden of proof. Once the accused has pointed to evidence of an exception, the burden shifts back to the prosecution to prove the essential elements of the offence beyond reasonable doubt.

The imposition of this evidential burden is necessary to support practical enforcement of the offence, acknowledging that Victoria Police will not always have clear evidence to demonstrate the accused's intention for displaying or performing a Nazi gesture or symbol. By contrast, the manner and purpose for which a Nazi symbol or gesture is publicly performed or displayed will often be knowledge that is uniquely held by the accused since it concerns their own actions and intentions. The burden is also necessary to prevent a person from displaying or performing a Nazi gesture or symbol under an exception dishonestly for some inappropriate purpose. The limitation reflects the significant harm that display or performance of a Nazi symbol or gesture causes to the community and is proportionate with the maximum penalty imposed (maximum one year imprisonment or a fine of 120 penalty units or both).

Relationship between the limitation and its purpose

The limitation is consistent with the Bill's purpose to reduce racism and vilification in the community, and to maintain public order by denouncing and prohibiting the public display or performance of a Nazi gesture or other Nazi symbols, while also ensuring that appropriate uses of these gestures and symbols are permitted.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

The Bill could place the burden for demonstrating that the display or performance of a Nazi symbol or gesture was done for a prescribed purpose on the prosecution as an element of the offence. However, this would require the prosecution to prove beyond reasonable doubt that a symbol or gesture was not displayed for any prescribed purpose in every case, even where there is no evidence suggesting such a use. This would reduce enforceability of the offence and undermine the objectives of the Bill since the evidence to be adduced would often be within the peculiar knowledge of an accused person. Accordingly, the burden should remain with the accused person since they are best placed to provide evidence as to whether the display was for a prescribed purpose.

For these reasons, any limitation on these rights is reasonable and justified in the circumstances.

As discussed in this Statement of Compatibility, all of the limitations in the Bill are reasonable and justified.

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

Second reading

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:03): I move:

That the bill be now read a second time.

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

I am proud to deliver this Bill which fulfils a Victorian Government commitment to legislate a ban of the Nazi salute by prohibiting the public display or performance of any symbol or gesture used by the Nazi Party and its paramilitary arms.

The Government acknowledges that Nazi symbols and gestures, such as the Nazi salute, are being used to intimidate and cause harm to a wide range of groups, including the Jewish community, Aboriginal and Torres Strait Islander people, LGBTIQ+ people, people with disability and other racial and religious groups.

The intent of this Bill is to send a clear message denouncing Nazi ideology and the use of its gestures and symbols to intimidate and incite hate. All Victorians deserve to feel accepted, safe and included. These displays are intended to cause fear in our community and that is why this Bill is focused on the harm caused by such hateful conduct, which can be profound.

Government is deeply concerned and distressed by the use of the Nazi salute occurring in Victoria following last year's ban of the display of the Nazi symbol, the Hakenkreuz. When that legislation was passed, the government committed to working with Victoria Police and relevant agencies to monitor the public display of other hateful symbols to determine whether further symbols should be prohibited. There have been several abhorrent incidents that have occurred since that law commenced on 29 December 2022 including:

- In mid-January 2023, a group of 25 males gathered at Elwood's Ormond Point lookout and performed the Nazi salute.
- On 26 January 2023, a group of people performed the Nazi salute at a Merri-bek First Nations mourning ceremony.
- On 18 March 2023, a group of about 30 people marched along Spring Street, repeatedly performing the Nazi salute after an event held by a controversial UK gender and anti-trans activist.
- On 10 April 2023, a group of six men performed the salute outside the Melbourne Knights soccer club.
- On 20 April 2023, a group of people performed the Nazi salute and posed for photographs at a Bavarian restaurant in the Knox City Shopping Centre to commemorate Adolf Hitler's birthday.
- On 13 May 2023, a group of about 25 people gathered outside parliament to stage an anti-immigration rally, repeatedly performing the Nazi salute.
- On 4 June 2023, two people performed the Nazi salute in front of police outside the State Library during a protest.
- On 15 July 2023, eight men stood at the steps of Geelong's City Hall holding up a white supremist banner and performed the Nazi salute; and

- On 29 July 2023, a group of people held a ''white powerlifting competition'' at a boxing gym in Sunshine West and performed the Nazi salute in response to anti-fascist protestors.

Unfortunately, these events have highlighted the limitations of current laws in combatting this hateful conduct and the need for action. The use of the Nazi salute is unacceptable and has no place in Victoria. It is clear that Nazi symbols and gestures, particularly the Nazi salute, are being used to convey messages of antisemitism, hatred and intimidation.

I would like to read from the Jewish Community Council of Victoria's submission, to highlight the harm caused by such hate conduct:

> *The recent rise in public expressions of Nazism in Victoria has had a significant impact on the local Jewish community. The highly visible nature of these expressions, including significant and sustained media attention, has left Jewish Victorians feeling vilified, vulnerable and anxious about their safety. These emotions are heightened for Holocaust survivors and their descendants.*

In developing this Bill, we spoke with a number of Holocaust survivors who told us that the rise of neo-Nazism impacts the whole community, and that antisemitism is often a microcosm of broader hatred toward other targeted groups. This Bill is one measure to help promote tolerance and inclusion across the community and prevent the dissemination of these hateful symbols and gestures.

Purpose of the offence

The Bill amends the *Summary Offences Act 1966* and extends the existing prohibition on the public display of the Nazi symbol, known as the Hakenkreuz. The expanded offence will prohibit the public display or performance of any symbol or gesture used by the Nazi Party and its paramilitary arms. The purpose of expanding the offence is to ensure that the expression of harmful symbols and gestures associated with an atrocious ideology that resulted in genocide is prohibited.

The offence is accompanied by powers for Victoria Police to direct a person to remove a Nazi symbol or gesture from public display, and to apply to the Magistrates' Court for a warrant to enter a premises to search and seize a Nazi symbol.

Opening statement

The Bill will not alter the parts of the preamble or opening statement which were co-designed with leaders from the Jewish, Hindu, Buddhist and Jain communities to ensure it appropriately reflects their views. In particular, the current opening statement which recognises the historic and ongoing use of the swastika in the Buddhist, Hindu and Jain communities as an ancient and auspicious symbol of purity, love, peace and good fortune remains unchanged.

The preamble has been expanded to provide additional essential context on how gestures and other symbols have adopted, including the Nazi salute, to incite antisemitism and hatred.

Prohibited symbols and gestures

The Government previously only prohibited the Hakenkreuz as the most widely recognised symbol historically associated with Nazi ideology and the Nazi party. Its display, in any form, causes immense harm and offence. At that time, the Hakenkreuz was sadly adopted in many high-profile displays, such as the Nazi flag which was flown on private property in Beulah. Given the recent rise in the performance of the Nazi salute, at protests and in very public places, the Government has expanded the prohibited symbols and gestures to include the public performance and display of the Nazi salute and any other symbol or gesture used by the Nazi Party and its paramilitary arms. This will ensure that, in Victoria, people can no longer use these symbols and gestures to cause harm or incite hatred in the community.

Definition of Nazi symbol

The Bill expands on the previous definition of Nazi symbol, which still explicitly includes the Hakenkreuz, and now also includes any symbol used by the Nazi Party. The term "Nazi Party" is intended to capture symbols used by the National Socialist German Workers' Party and its paramilitary groups from 1920 to its dissolution in 1945. These symbols, which include the SS Bolts (Schutzstaffel), the SS Death's Head (Totenkopf), flags, insignia or medals used by the Nazi Party and its paramilitary organisations, represent a particularly atrocious expression of hate and debasement of human dignity. The expansion of prohibited symbols is necessary to ensure all Victorians are protected from harm to human dignity and against discord and threats to tolerance and multiculturalism.

Definition of Nazi gesture

The Bill also prohibits the display and performance of Nazi gestures. Nazi gesture is defined as the Nazi salute and any other gesture used by the Nazi Party, including any other gesture that is likely to be mistaken or

confused with those gestures. The offence captures symbols or gestures that closely resemble those that are prohibited to ensure a person cannot avoid prosecution by making minor changes to the design or performance.

The expansion of prohibited symbols and gestures offers a clear response to the recent rise in the performance of the Nazi salute by addressing existing gaps in the law. The expansion will mitigate the risk of the use of alternative symbols or gestures used by the Nazi Party to incite hatred. The Nazi salute is a gesture inextricably linked with the genocide of the Holocaust and atrocious crimes against humanity. This Bill sends a clear and strong message that these symbols and gestures are not acceptable in Victoria.

Definition of 'public place'

The expanded offence will prohibit the intentional public display or performance of any Nazi symbol or gesture in a public place. The term 'public place' still relies on the existing definition within the *Summary Offences Act 1966* and includes the expanded definition beyond only government schools to also include non-government schools and other post-secondary education institutions. This will include a TAFE institute or university. It is appropriate that the offence applies to some places that would otherwise be private under the *Summary Offences Act 1966* due to the possibility of a Nazi symbol or gesture being displayed or performed at these places.

The offence also applies where a display or performance is in public view (i.e. occurs in sight of people who are in a public place). This encompasses displays of a Nazi symbol or gesture on a private premises if it is visible to the public.

Fault elements of the offence

Like the Nazi symbol offence, the expanded offence has two fault elements. First, the offence has an intention element which requires that the person intentionally displayed or performed a Nazi symbol or gesture in a public place or in public view. Second, the offence has a knowledge element, requiring the person knows, or ought to know, that the symbol or gesture is a Nazi symbol or gesture.

The knowledge element requires either that:

1. the person knows the symbol or gesture is a Nazi symbol or gesture (subjective knowledge), or
2. a reasonable person in the position of the person who displayed the symbol or gesture would have known that is a Nazi symbol or gesture (objective knowledge).

The knowledge element safeguards against an offence being committed innocently or unintentionally. For example, by a child who does not understand the connotations of the Nazi salute, and where a reasonable person (of the same age) in the child's position ought not to have known the Nazi salute is a Nazi gesture, taking into account any other relevant circumstances. Similarly, it will safeguard against a person with cognitive impairment, who does not understand the implications of the Nazi salute and the harm it can cause, from committing an offence.

The intention and knowledge elements ensure the offence clearly targets the conduct intended to be prohibited and is not unfair in its application.

Penalty

The offence for the intentional public display or performance of a Nazi symbol or gesture has a maximum penalty of one year imprisonment or a fine of 120 penalty units or both. This penalty remains unchanged from the previous Nazi symbol offence and is consistent with vilification offences under the *Racial and Religious Tolerance Act 2001* and across Australia. It reflects the breadth of the offence, and that no injury or harm needs to be proved as a result of the display or performance.

Exceptions

Narrower exceptions for display or performance of the Nazi gestures

While important exceptions that apply to the display of the Hakenkreuz and Nazi symbols remain, the exceptions have been amended in relation to the display or performance of Nazi gestures.

Display or performance of Nazi gestures exceptions

Exceptions will also apply where the display or performance of a Nazi gesture was engaged reasonably and in good faith for genuine academic, artistic, educational, or scientific purpose, or in making or publishing a fair and accurate report of any event or matter that is in the public interest. These exceptions are intended to apply broadly to protect freedom of expression and to ensure that Nazi gestures can continue to be used and displayed for appropriate purposes.

The Bill does not provide for an exception for the *performance* of the Nazi salute in opposition to fascism, Nazism, neo-Nazism or other related ideologies. However, a person may display Nazi gestures or Nazi

symbols in opposition to fascism, Nazism, neo-Nazism or other related ideologies (e.g. displaying a picture with a cross through someone performing the Nazi salute).

The religious and cultural exceptions will also not apply to the performance of Nazi gestures. This is because there is no evidence of any genuine religious or cultural purpose to perform Nazi gestures, like the Nazi salute. Likewise, performing the Nazi salute at a protest does not demonstrate a person's opposition to Nazism or fascism and it is important that neo-Nazi groups cannot attempt to use exceptions to circumvent the ban.

Tattoos and other like processes

The expanded offence does not apply where the display of a Nazi symbol or gesture is done by means of tattooing or other like process (e.g. scarification, branding). The exclusion of tattoos or like processes takes account of human rights considerations and the practical enforcement issues of capturing such displays.

Law enforcement or intelligence officer exception

There will be a specific exception for a law enforcement officer and member of an intelligence agency, where the public display or performance of a Nazi symbol or gesture occurs in the performance of their duties and is done in good faith. This might apply where such an officer has an assumed identity and is displaying or performing Nazi symbols or gestures as part of their role.

Connected with the administration of the justice system

The expanded offence also includes an exception for a person that displays or performs a Nazi symbol or gesture in the course of official duties connected with the administration of the justice system, including the investigation or prosecution of offences, if the display or performance is done in good faith. This exception is intended to ensure that the proper administration of justice is not impeded by the offence, such as where a Nazi symbol or gesture is produced as evidence when considering an offence in court. It is modelled on section 51J of the *Crimes Act 1958*, which provides a similar exception to the child abuse offences under the Act.

Consent of the Director of Public Prosecutions before the prosecution of a child

The expanded offence requires the written consent of the Director of Public Prosecutions before the commencement of a prosecution of a child for the new offences. This will act as a safeguard (along with the knowledge element of the offence) to limit the circumstances in which children could be prosecuted. In many cases, a more appropriate response for children would be educating the child about the harm caused by the display or performance Nazi symbols or gestures.

Trade and sale of historical Nazi memorabilia – Commonwealth Bill

On 14 June 2023, the Commonwealth government introduced and moved to second reading, the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 ('Commonwealth Bill'). This legislation which will prohibit the public display (including online) of two Nazi symbols, the Hakenkreuz and the SS Bolts. It will also prohibit the sale of memorabilia featuring the Hakenkreuz and the SS Bolts.

The Commonwealth Bill will not prohibit the public performance or display of the Nazi salute, as the Commonwealth Attorney-General has stated that such a ban is a matter for state and territory laws.

Secondary material for the Commonwealth Bill provides that their new offences are not intended to exclude or limit the operation of any law of a state or territory. Instead, the Commonwealth Bill (if passed) will supplement Victoria's existing legislation which bans the public display of the Hakenkreuz, and now other symbols and gestures used by the Nazi Party, by prohibiting online displays of the Hakenkreuz and SS Bolts, as well as the sale of memorabilia displaying these two symbols.

Police powers

The expanded offence will replicate the same police powers as the Nazi symbol offence. A police officer will have the power to direct a person to remove from display a Nazi symbol or gesture (whether on public or private property) if the police officer reasonably believes an offence is being committed. For example, where a Nazi salute is displayed on a flag, a police officer can direct a person to remove the display.

A person who, without reasonable excuse, does not comply with a direction to remove material is liable for a penalty of 10 penalty units.

As with the previous Nazi symbol offence, the Bill also provides the warrant power under the *Crimes Act 1958* applies to this offence, to ensure police can enforce the offence appropriately. This enables police to apply to the Magistrates' Court for a warrant to search premises and seize property that displays a Nazi symbol and is in connection to, or as evidence of commissioning the offence. Police can also use existing powers of arrest under section 458 of the *Crimes Act 1958* to arrest a person performing a Nazi salute.

Commencement

The Bill will commence the day after it receives Royal Assent. This will ensure that the expanded offence comes into force quickly to put an end to the steady increase in Nazi salutes that have been occurring since the beginning of the year.

I wish to thank all the stakeholders who engaged with the development of this Bill. I wish to extend a sincere thank you to the Jewish community and Holocaust survivors, who took the time to share their lived experiences and provide vital input on the Bill. Your contributions are greatly valued and have shaped and strengthened this legislation.

I commend the Bill to the house.

Georgie CROZIER (Southern Metropolitan) (18:03): I move, on behalf of my colleague Mr Mulholland:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

Triple Zero Victoria Bill 2023

Introduction and first reading

The PRESIDENT (18:03): I have a further message from the Assembly:

The Legislative Assembly presents for the agreement of the Legislative Council 'A Bill for an Act to establish Triple Zero Victoria, to repeal the **Emergency Services Telecommunications Authority Act 2004** and for other purposes'.

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:03): I move:

That the bill be now read a first time.

Motion agreed to.

Read first time.

Ingrid STITT: I move, by leave:

That the second reading be taken forthwith.

Motion agreed to.

Statement of compatibility

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:04): I lay on the table a statement of compatibility with the Charter of Human Rights and Responsibilities Act 2006:

Opening paragraphs

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 Triple Zero Victoria Bill 2023 (the Bill).

In my opinion, the Bill, as introduced to the Legislative Assembly, 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 repeals the *Emergency Services Telecommunications Authority Act 2004* (ESTA Act) to modernise Victoria's triple zero emergency communications service, through the establishment of Triple Zero Victoria.

Human Rights Issues

The following rights are relevant to the Bill:

- the right to equality and protection against discrimination under section 8;
- the right to privacy as protected by section 13;

- the right to freedom of expression under section 15(2);
- the right to take part in public life under section 18;
- the right to property under section 20;
- the right against self-incrimination under section 25(2)(k);
- the right not to be tried or punished more than once under section 26.

For the reasons outlined below, I am of the view that the Bill is compatible with the Charter because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Right to equality

Section 8(3) of the Charter provides that 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.

Section 8(2) of the Charter also provides that every person has the right to enjoy his or her human rights without discrimination. The term 'discrimination' referred to in section 8(3) of the Charter is defined as:

> discrimination (within the meaning of the *Equal Opportunity Act 2010*) on the basis of an attribute set out in section 6 of that Act.

'Profession, trade or occupation' is a protected attribute in section 6 of the Equal Opportunity Act, which may be relevant to the Bill. The Equal Opportunity Act does not define 'profession, trade or occupation', however a fair reading would suggest that this section protects Victorians who face discrimination and stigma because of their employment.

Section 18(1) of the Charter provides that every person has the right and opportunity, without discrimination, to participate in the conduct of public affairs. Section 18(2)(b) of the Charter provides that every eligible person has the right and opportunity, without discrimination, to have access on general terms of equality, to the Victorian public service and public office.

Eligibility for membership of the Triple Zero Victoria Board and Operational Committee

Clause 19 of the Bill governs the membership of the Triple Zero Victoria Board. This provision specifies the eligibility for appointment to the Board, including the appropriate knowledge and experience. Clause 19(6) of the Bill provides that a person is not eligible to be appointed to the Board if the person is an employee of an emergency services organisation, an employee of Triple Zero Victoria, an employee of a related services organisation, or a member of a board of an emergency services organisation or a related services organisation.

Clause 42 of the Bill establishes an Operational Committee to advise the Triple Zero Victoria Board on range of matters relevant Triple Zero Victoria's functions. Clause 52 of specifies the membership of the Operational Committee, including up to three persons appointed by the Triple Zero Victoria Board. Clause 52(3) provides that a person appointed to the Operational Committee must not be a member of the Board, an employee of Triple Zero Victoria or an employee of an emergency services organisation.

These provisions may limit the rights to equality and public life by excluding people by reference to their employment with specified agencies, being Triple Zero Victoria and emergency services organisations. However, to the extent that these rights are limited, I consider that these limitations are minor, and are reasonable and demonstrably justified.

These provisions are necessary to promote the intent of the reforms and ensure the independence of the Triple Zero Victoria Board and Operational Committee. The provisions do this by removing any real, potential, or received conflicts of interest of members eligible for appointment. The provisions also ensure that key governance roles within Triple Zero Victoria are held by people with a diverse range of relevant skills and experience external to the organisation. I also note that the Bill does not prevent the Minister from appointing former officers or employees of the relevant organisations.

Right to privacy

Section 13 of the Charter provides that a person has the right not to have their privacy unlawfully and arbitrarily interfered with and the right not to have their reputation unlawfully attacked.

Collection and sharing of information

Clause 62 of the Bill provides that Triple Zero Victoria may collect information for the purposes of performing its functions and exercising its powers. The information includes health information, personal information, an identifier, or a unique identifier, obtained from a relevant person or organisation.

'Health information' is defined in section 3(1) of the Health Records Act 2001 to include, in general terms, information or an opinion about a person's physical, mental, or psychological health, disability, health services provided or to be provided, or other personal information obtained during the course of providing a health service.

An 'unique identifier' is defined in section 3(1) of the Victorian Data Sharing Act 2017 to include an identifier (usually a number and other than the person's name) used by organisations to identify individuals for the purposes of operations of the organisation beyond the scope of the 'identifier' defined in the Health Records Act.

'Personal information' is defined in section 3(1) of the Privacy and Data Protection Act 2014 to mean any information or opinion, whether true or not, that is recorded in any form, about an individual whose identity is apparent or can readily be ascertained, from the information.

Clauses 60 and 61 of the Bill impose obligations on Triple Zero Victoria to share that information. Specifically, Triple Zero Victoria will be required to be provide to relevant persons or organisations within 45 days or within another period agreed to by Triple Zero Victoria and the relevant person or organisation, where that person or organisation requests information that:

- relates to call taking and dispatch services or operational communications services provided by TZV, and
- is relevant to the performance of the functions of the person or organisation.

Triple Zero Victoria must also voluntarily disclose information to a relevant person or organisation that relates to the performance of the functions of the person or organisation.

The collection and sharing of information under the Bill may give risk to a prima facie interference with the privacy of individuals including, but not limited to, triple zero callers and responding emergency services personnel.

However, I consider that any such interference with the privacy of an affected individual is not an 'unlawful and arbitrary' interference. The Bill clearly specifies the circumstances in which collecting and sharing information is lawful, including by explicitly providing that the provisions do not affect existing key information privacy legislation.

The provisions under the Bill are also not arbitrary as collection and sharing of information serves the legitimate aim of supporting effective emergency response and assistance. For these reasons, in my view any interference with privacy is therefore neither unlawful nor arbitrary, such that the right to privacy is not limited by the provision.

Reporting to the Operational Committee, Justice Secretary and Minister for Emergency Services

Part 7 of the Bill also sets out a range of mandatory reporting requirements in relation to a broad range of information. The mandatory reporting requirements include that:

- that Triple Zero Victoria must report to the Operational Committee on matters impacting the performance of emergency services organisations
- that the Board must report to the Minister and the Justice Secretary in relation to the performance of Triple Zero Victoria
- that the Chief Executive Officer must report to the Minister and the Justice Secretary on a range of matters impacting the performance of Triple Zero Victoria
- that the Chief Executive Officer must report to the Board on a range of matters impacting the performance of Triple Zero Victoria.

The scope of the matters required to be reported under Part 7 of the Bill are broad, including specific risks that might impact the operations or performance of services delivered by Triple Zero Victoria. However, this is unlikely to capture the communication of information that could reasonably impact the privacy of a particular individual.

In any event, as the Bill will authorise mandatory reporting within clearly defined legislative parameters, any indirect interference with privacy is not unlawful. In addition, the interference would not be arbitrary, as the reporting framework supports the intent of the reforms that is necessary for ensuring the effective and efficient delivery of services provided by Triple Zero Victoria.

Disclosing pecuniary interests

Clause 30 of the Bill requires that a member of the Triple Zero Victoria Board or delegate disclose the nature of any direct or indirect pecuniary interest in a matter being considered, or to be considered, by the Board. The disclosure must be recorded in the minutes of the meeting.

The Bill creates an offence for failing to disclose the interest as soon as practicable after the member or delegate becomes aware of the matter.

These provisions may have the practical effect of compelling members and delegates to disclose pecuniary interests, most likely including information about the person's personal or financial affairs. This may interfere with the Board member or delegate's right to privacy.

However, any such interference with the right to privacy would not be unlawful nor arbitrary. The requirement to disclose pecuniary interests is clearly and narrowly confined to only when a potential conflict of interest might arise. This provision is also necessary to ensure the integrity of Triple Zero Victoria Board decisions, by removing any real, potential, or perceived conflicts of interest held by members and delegates.

Freedom of expression

Section 15(2) of the Charter provides that every person has the right to freedom of expression. This includes the freedom to seek, receive and impart information and ideas of all kinds – whether orally, in writing, in print or by way of art or other medium. This right is considered to embrace a right of access to information, particularly in relation to information held by public bodies.

Clause 63 of the Bill places limits on recording, using, and disclosing any information acquired in the performance of the person's functions or the exercise of the person's powers under the Bill. This provision makes it an offence to impart any information acquired during the course of Triple Zero Victoria's operations, except as otherwise provided for by the Bill.

The constraints on information disclosure are imposed for the purposes of protecting the privacy and confidentiality of information that relates to people interacting with Triple Zero Victoria, and to ensure the free exchange of information to support the delivery of emergency services. The Bill provides exceptions to enable disclosure of that information, including when subject to any legal requirement or with the consent of the person to whom the information relates.

To the extent that this provision limits the right to freedom of expression, it is a lawful restriction within the meaning of section 15(3) as it is reasonably necessary to respect the rights and reputations of other persons. Any limitation is also reasonable and demonstrably justified to appropriately managing confidentiality and promoting public confidence in the delivery of emergency services.

Property rights

Section 20 of the Charter provides that a person must not be deprived of his or her property other than in accordance with law.

The Bill will transfer rights, assets, liabilities, and obligations from the Emergency Services Telecommunications Authority (ESTA) to Triple Zero Victoria. This may affect the property rights of individuals to the extent that they have an existing property or financial relationship with ESTA (e.g. if they are owed a debt).

However, the Bill will transfer all rights, assets, liabilities, and obligations to Triple Zero Victoria without amending, limiting or depriving any person of their existing property interests. On this basis, I consider that section 20 of the Charter is not engaged by provisions contained within this Bill.

Privilege 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. Courts have interpreted this right as extending to the right not to be compelled to answer questions, or produce documents, or things, if to do so might tend to incriminate that person. The right will prevent a person against the admission of incriminatory material obtained in subsequent criminal proceedings.

Part 7 of the Bill sets out a range of mandatory reporting requirements in relation to a broad range of information, including specific risks that might impact the operations or performance of services delivered by Triple Zero Victoria.

Clause 60 and 61 of the Bill also includes mandatory information disclosure provisions that require Triple Zero Victoria to provide information when requested by relevant persons and organisations, including Victoria Police, the Inspector-General of Emergency Management and Safer Care Victoria.

These provisions may engage the privilege against self-incrimination, in the unlikely event that any information is subsequently used against a person in criminal proceedings.

However, I consider that there is no such limitation of this right. Predominantly the disclosure and reporting provisions apply to Triple Zero Victoria or the Triple Zero Victoria Board more broadly, rather than natural persons to which this right protects. While there are two provisions that impose disclosure obligations specifically on the Chief Executive Officer of Triple Zero Victoria, the Bill does not create any coercive mechanisms that work to compel disclosure of information, such as associated criminal offences for a failure

to disclose or report information. The Bill also does not require the Chief Executive Officer to provide testimonial evidence, information on any subject matter or to answer any questions asked of them. Rather, the Chief Executive Officer is required only to report on matters specified in the Bill, including any inquiry into the performance of Triple Zero Victoria, how Triple Zero Victoria is meeting agreed performance standards, and any issues of public concern or risks affecting Triple Zero Victoria.

For these reasons, I do not consider that the relevant provisions under this Bill limit the privilege against self-incrimination.

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 convicted or acquitted in accordance with law.

The Bill imposes additional consequences flowing from the commission or possible commission of an indictable offence for members of the Triple Zero Victoria Board. Clause 23 provides that the Minister must recommend removal of a Board member from office, if the Board member has been convicted of an indictable offence in Victoria, or an indictable-equivalent offence if it was committed in Victoria. Clause 22 similarly provides that the Minister may recommend the suspension of a Board member from office if the Board member is under investigation for an indictable or indictable-equivalent offence.

While these provisions might appear relevant to this right, section 26 does not operate to prevent other non-penal consequences from flowing from the same conduct that gave rise to a criminal conviction and punishment.

Removal or suspension of a Board member from office in these circumstances does not constitute a penal measure. Removal from office is not a consequence that is ordinarily available to courts in response to a conviction for a criminal offence. Further, these provisions are intended maintain the proper governance and administration of Triple Zero Victoria, by ensuring that Board members are fit to hold office and make decisions impacting the delivery of critical public services.

On this basis, I consider that section 26 of the Charter is not engaged by provisions contained within this Bill.

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

Second reading

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:04): I move:

That the bill be now read a second time.

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

The Triple Zero Victoria Bill 2023 is a major component of the reform of Victoria's triple zero service. The reform commenced in response to independent reviews into the capacity, capability, service delivery and financial sustainability of the Emergency Services Telecommunications Authority also known as ESTA. The *Emergency Services Telecommunications Authority Capability and Service Review*, also referred to as the Capability and Service Review and the *Inspector-General for Emergency Management (IGEM)'s Ambulance Call Answer Review* referred to as the IGEM Review, both noted the sustained increase in demand on ETSA's call-taking and dispatch capabilities, while finding that the governance arrangements and partnerships with the emergency services sector were not operating as intended.

The Capability and Service Review made 20 recommendations to transform ESTA's governance, call-taking and dispatch (CTD) service, technology and managed services, intelligence services and performance standards, to address systemic issues within the organisation.

IGEM made eight recommendations, 42 findings and nine observations that speak to opportunities to ensure the sustainability of ESTA's operations into the future, improve patient outcomes, and restore confidence in ESTA's services. These recommendations align with those from the Ashton Review, specifically regarding governance, collaboration, performance standards, enhanced service delivery and training.

The Triple Zero Victoria Bill strengthens the governance, accountability and oversight of Victoria's triple zero service, formalising a genuine partnership across the emergency services sector and brings the new entity closer to government.

The Bill will repeal the current *Emergency Services Telecommunications Authority Act 2004* and ESTA, its Board and Advisory Committee will cease to exist upon the commencement of the Triple Zero Victoria Act. In its place will be a new entity, Triple Zero Victoria, a statutory authority with a sustainable and enduring

organisational framework, that has clearly defined roles and accountabilities to support strong internal governance and with strengthened government oversight.

The focus of Triple Zero Victoria will be on delivering high quality and timely call taking and dispatch services and operational communications services. The new legislation is explicit in this focus, which will enable Triple Zero Victoria to support emergency services organisations to respond to community need and manage call taking and dispatch in times of peak demand.

The Bill enables the Minister for Emergency Services to confer additional functions related to the emergency management sector on Triple Zero Victoria, where it would be sensible do so, and for the time specified in the Ministerial Order. An example of this is non-emergency patient transport booking and dispatch services, which ESTA currently manage on behalf of Ambulance Victoria. Orders will be made to ensure that existing functions carried out by ESTA will be undertaken by Triple Zero Victoria from the first day of operation, to allow for a seamless transition.

Governance

The Triple Zero Victoria Bill has achieved the intent of the key recommendations in the Capability and Service Review and the IGEM Review to implement organisational change to bring the new Triple Zero Victoria entity closer to government. The Bill provides stronger governance with explicit responsibilities for the Triple Zero Victoria Board and CEO. The Bill also provides for strengthened oversight of the Board and the CEO by the Minister and the Justice Secretary.

The Triple Zero Victoria Board has a clear legislated focus on setting the strategic direction for Triple Zero Victoria, management of risks, setting the organisational framework and culture and ensuring the delivery of agreed performance standards.

In the event of underperformance by the Board, the Minister has the power to appoint up to two delegates to the Board in order to improve and strengthen the performance of Triple Zero Victoria.

Victoria is unique in Australian jurisdictions in that the triple zero call taking and dispatch service is managed by a central organisation, and not by individual emergency services organisations. Therefore the cooperation, coordination and partnerships between Triple Zero Victoria, emergency service organisations and government are paramount to ensure appropriate responsiveness to community health and public safety needs.

The Bill strengthens the cooperation and partnerships between Victoria's triple zero service and the emergency services sector. The Bill provides for the establishment of the Operational Committee which ensures that emergency services organisations and key government departments are engaged in the setting and delivery of strategic priorities of Triple Zero Victoria.

The Operational Committee will set inter-agency strategic priorities which will provide a strong foundation to explore and address critical aspects of the services delivered by Triple Zero Victoria to ensure they remain fit for purpose. The identification of known risks that may impact emergency services organisations, Triple Zero Victoria or the community will be an important role for the Committee who will have the opportunity to provide the Board with advice on how these can be mitigated.

Government Oversight

Recognising that Triple Zero Victoria must be more integrated with government, the Board must report to the Minister for Emergency Service and the Justice Secretary, at intervals set by the Minister or Justice Secretary about the performance of Triple Zero Victoria. The issues that the Board must report on include any concerns about Triple Zero Victoria's performance, particularly in relation to the impact this could have on community safety, the ability of emergency services organisations to deliver their services or the services delivered by Triple Zero Victoria. Identification, management and mitigation of risks to services are also matters that the Board must report on.

A key part of the reform package is to ensure that there is a clear relationship between the Minister for Emergency Services and the CEO which does not conflict with the Board's relationship with the Minister for Emergency Services. While it is not intended that there be formal reporting lines to the Minister for Emergency Services, it is contemplated that the CEO will engage directly with the Minister for Emergency Services where necessary. The Bill also allows the CEO to engage with the Justice Secretary in these circumstances. This will enable the Minister, the department and the CEO to engage with one another when necessary, without having to await formal Board approval for each interaction. This is expected to be particularly beneficial at times of crisis.

In order to remove any ambiguity about how the interface between Triple Zero Victoria and government should operate, the Bill sets out role and powers of the Minister for Emergency Services. Some of these powers, such as the approval of an organisational strategic plan or the selection of Board members, must be

exercised in consultation with the Minister for Ambulance Services and the Minister for Police. This will ensure that the needs of all emergency services organisations are considered.

In order to strengthen the relationship between Triple Zero Victoria and government, the Justice Secretary has legislated accountabilities. This includes directions powers limited to administrative functions such as strategic planning and policies, workforce management and financial management. The Justice Secretary will also be required to endorse Triple Zero Victoria's budget prior to approval by the Board. This is an important step in strengthening the financial sustainability of Triple Zero Victoria.

Both Reviews recommended that Victoria's triple zero service becomes more accountable by considering the performance of triple zero services in the context of an 'end-to-end' process of incident management. This will drive behaviours which encourage efficiencies while reducing the focus on targets which do not directly measure the quality or outcome of a service to emergency services organisations or the community. The Capability and Service Review also recommended that the responsibility for approving performance standards is shifted from the IGEM.

The Bill includes provisions that empower the Emergency Management Commissioner to set performance standards that are endorsed by the Minister for Emergency Services. These outcome-based standards will be developed in consultation with Triple Zero Victoria, emergency services organisations, government departments and any other related organisation. These performance standards will be reviewed at least every five years in order to ensure that the standards remain fit for purpose as the Triple Zero Victoria entity matures, the needs of the Victorian community alter and technology changes.

Independent monitoring and assurance of the performance standards will continue to be the responsibility of the Inspector-General for Emergency Management. Where performance standards relate to Ambulance Victoria or the health services sector, the IGEM will be required to consult with Safer Care Victoria.

Triple Zero Victoria will be required to publish data relating to these performance standards on its website, to further strengthen transparency and oversight.

Fees

Under the new legislation Triple Zero Victoria will no longer receive annual revenue through a fee for service model and there is no provision for Triple Zero Victoria to charge fees for their services in the future. The Bill does not prevent Triple Zero Victoria from entering into a contractual arrangement or agreement that includes charges. Moving towards a direct appropriation model will also create financial certainty for the emergency services organisations.

I commend the Bill to the house.

Georgie CROZIER (Southern Metropolitan) (18:04): I move:

That debate on this bill be adjourned for one week.

Motion agreed to and debate adjourned for one week.

Adjournment

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:04): I move:

That the house do now adjourn.

Southern Metropolitan Region housing

John BERGER (Southern Metropolitan) (18:04): (485) My adjournment is for the Minister for Housing, Minister Shing. I request the minister join me on a visit to social and affordable housing in my community of Southern Metro and hear firsthand from the residents who call them home and the workers from the Department of Housing who support them. I want to begin by congratulating my colleague on her new role. It is a big deal, and I know the minister will do a fantastic job making it her own. I also want to thank the former minister in the other place, Minister Brooks, on his hard work and commitment to advocating for my community and the big housing projects we need in the 21st century. As the Premier said on Monday, the new ministerial team will put our bold housing agenda at the core of its work, and that means our commitment to deliver 800,000 new homes over the next decade, Australia's biggest urban renewal project. I am excited to get behind it.

I was there on the morning that the reforms were announced, speaking to residents at the Horace Petty estate, a few hundred metres from my office, about what the reforms mean for them. The reality is that 44 ageing high-rise public housing estates are not fit for purpose in a modern-day Victoria. They do not provide the needed facilities that Victorians deserve. Our older public housing high-rise buildings are coming to the end of their operational life and no longer meet current building and living standards for renters. In recent years building faults and breakdowns have become more common, causing frequent disruption to household comfort and enjoyment.

Our population also continues to grow, and many more Victorians require access to quality housing. Our public housing tenants deserve modern, accessible homes which meet modern living safety and energy standards. Although I have been to the towers on many occasions over my life, and in this term as a member of Parliament, I had never been inside them until two weeks ago. It demonstrated to me why this needs to get fixed. We need to do the work now. It will save us money in the long run – in fact an estimated $2.3 billion over the next 20 years in capital critical repairs and maintenance to the 44 towers. As the new minister knows, the $5.3 billion Big Housing Build is already delivering more than 12,000 social and affordable homes right across Victoria, with 7600 homes already underway and 3000 households that have either been moved into or are getting ready to be moved into. So there is a lot of work to be done, and I am excited to work with the new minister to deliver for my community. This housing plan is what Labor governments are about – doing what matters.

Firewood collection

Wendy LOVELL (Northern Victoria) (18:07): (486) My adjournment matter is directed to the Minister for Environment, and it concerns the Labor government's recently announced firewood collection rules. The action that I seek is for the minister to immediately change the designated firewood collection points that were published on the Forest Fire Management Victoria website on 1 September 2023 to include firewood collection points within the Moira shire local government area to allow residents of this local government area to collect firewood from regional parks within the shire.

In 2021 the Andrews Labor government placed a ban on the collection of firewood in the Barmah area, ending a tradition for generations of local residents who accessed firewood from a forest located right on their doorstep. With no natural gas supplied to the area, many residents throughout the Barmah region historically rely on wood as an energy source to heat their homes and, in some instances, cook their meals. The ban meant that Moira residents had to travel to their closest firewood collection point, known as Alf's Dam, south-west of Rushworth, just to get their wood, a round trip of just under 3 hours from the Barmah township.

Not content with forcing this appalling impost on Moira residents, the new rules that came into force on 1 March 2022 excluded residents of the shire from being able to access wood at the Alf's Dam point. This ridiculous decision meant that Moira residents – many elderly – were forced to drive even further to obtain firewood at Wilkinson Track, located west of Warrenbayne. Can you imagine how galling it would be for a Barmah resident living on the edge of the Barmah forest to be told to drive 3½ hours to get wood to heat their home?

The situation is so ridiculous you would think the minister would intervene and ensure residents of Moira shire could access firewood closer to home, but alas that is not the case. In 2023 the spring firewood collection season commenced on 1 September, and the designated firewood collection points were again published on the forest fire management website. Inexplicably the collection rules are even worse, with some Moira shire residents now being forced to drive even further than before to a collection point on the eastern side of Warrenbayne, a near 4-hour round trip. There are copious amounts of fallen wood lying in regional parks within the Moira shire local government area that would be suitable for collection by nearby residents. Once again, I call on the minister to exercise some common sense and allow residents of Moira shire to collect firewood from regional parks closer to home.

Electric vehicle tax

Katherine COPSEY (Southern Metropolitan) (18:10): (487) My adjournment this evening is to the Treasurer. We know it was a busy week last week, and it has actually been a busy week this week as well, but I certainly had time to read the Ombudsman's report into the effects of the electric vehicle tax that the Treasurer introduced 2½ years ago through the Zero and Low Emission Vehicle Distance-based Charge Bill 2021. The Ombudsman investigated implementation of the EV tax, finding that:

> … thousands of people have been affected by the charge since it came into effect in 2021, many of them unfairly.

She also wrote that:

> … while this report focuses on the actions of the Department of Transport and Planning, there are broader lessons for the public sector about the dangers of making policy on the run (or not making it at all) …

The report shows in excruciating detail that the rollout of the unfair EV tax has been a mess. Victorians have been getting unfairly penalised and even double-charged while coming up against a heavy-handed and unhelpful department. Let me share some direct evidence from the report:

> Imagine buying an electric vehicle, and then being charged for more kilometres than you have driven, because 'this average calculation is bound by legislation'.
>
> …
>
> … As the Robodebt inquiry showed us, there are dangers in making assumptions and using average calculations to charge people. Assumptions have been made about how people will use their electric vehicles, which plainly disadvantage people with older vehicles or those who have less access to charging stations.

Another quote:

> Imagine …
>
> … travelling thousands of kilometres on fuel in your plug-in hybrid vehicle in remote parts of Australia with no charging stations and being charged hundreds of dollars for road use, despite having already paid the Commonwealth fuel excise on all those kilometres.

Transport is Victoria's second-highest source of emissions, and growing, and they currently do continue go up, not down. To meet its own net zero targets, it is time this government starts to take emissions from transport seriously and develop a proper whole-of-government transition plan. This should include policies that would actually encourage EV uptake and drive down greenhouse gas emissions as well as rethinking our tax revenue. Transitioning to a carbon-neutral future demands sophisticated and integrated thinking as well as calling for this cack-handed, unfair tax to be scrapped. My adjournment is to ask the Treasurer to engage in long-term tax discussions with his Commonwealth and state colleagues. Revenue from fuel excise will only continue to decline, so substantive rethinking about our tax base at state and federal levels is needed, and we suggest that in those conversations revisiting the regressive stage 3 tax cuts would be a good place to start.

Pakenham line level crossing removals

Michael GALEA (South-Eastern Metropolitan) (18:13): (488) My adjournment matter this evening is for the Minister for Transport Infrastructure Minister Pearson. By the end of this decade the Allan Labor government will have removed every level crossing on the Pakenham and Cranbourne lines. On the outer section of the Pakenham line alone, we have already seen projects completed at the South Gippsland Highway in Dandenong South, Hallam South Road in Hallam, Clyde Road in Berwick and Cardinia Road in Officer. A number of projects are already underway, including at Progress Street in Dandenong South, Webb Street in Narre Warren, Station Street in Beaconsfield, Brunt Road in Beaconsfield, McGregor Road in Pakenham, Main Street in Pakenham and Racecourse Road in Pakenham.

Earlier today Dr Heath raised a constituency question about the Pakenham level crossing removals and the Premier's visit to the south-east last week, and it was fantastic to have the Premier come down

to the south-east, along with the hardworking local member for Pakenham, Emma Vulin, to check out progress on not one but three level crossing removals currently underway through the heart of Pakenham, as well as a full rebuild of Pakenham station and an extension of the line to East Pakenham. However, during Dr Heath's constituency question a number of members opposite on the opposition benches interjected that these level crossings should not be removed at all.

A member: Extraordinary.

Michael GALEA: Extraordinary – extraordinary and shameful. Though I do note that Dr Heath herself had the good sense not to suggest such a ridiculous thing. It was not Dr Heath herself; it was other members interjecting. But we do know that the Liberals have opposed countless level crossing removals time and time again. So the action that I am seeking is that the minister update the house on why the level crossing removal projects on the Pakenham line are so important to the growing outer south-east and that he update the house on what the consequences would be if the opposition members' reckless demands for these dangerous and congested level crossings to remain were to be heeded.

Duck hunting

Gaelle BROAD (Northern Victoria) (18:15): (489) My adjournment is to the Minister for Outdoor Recreation. The action I seek is for the government to reject the committee inquiry report recommendation for Victoria's duck-hunting season to cease. Native game hunting in Victoria is a sustainable activity based on science and conducted in a safe and responsible way, and it has significant social, environmental and economic benefits. Victoria's recreational native bird hunting is highly regulated under the *Sustainable Hunting Action Plan*. Loss of wetland habitat is the key issue affecting waterbird populations, and hunting has a very small effect, being overridden by loss of habitat. During the inquiry the committee heard from Dr Brian Hiller, a professor of wildlife ecology, who said:

> Habitat is key. If you have habitat, you have birds.

I received over 500 individual letters from constituents who want the season to continue, including Graeme from Rushworth Field and Game, who shared about the work that they have been doing at their club. Many field and game clubs participate in conservation activities, including making nesting boxes to help give waterfowl and other birdlife places to nest. Brolgas now nest in an area where Rushworth Field and Game members planted trees and shrubs. Let us continue to rely on science, conservation efforts and responsible regulation to ensure that native duck hunting in Victoria remains a sustainable practice and not follow a flawed report that recommends the activity come to an end. The Nationals support the continuation of bird harvesting in Victoria in a safe, responsible and sustainable way.

Plasma donation

Rachel PAYNE (South-Eastern Metropolitan) (18:16): (490) My adjournment matter is for the Minister for Health, Minister Thomas. Blood plasma is life saving and incredibly can be used in 18 different ways, helping combat brain disorders, fighting measles, stopping complications from liver disease and helping treat severe burns, to name a few. Unfortunately, Australia's plasma supply is often prone to shortages due to a lack of supply. There are many people who would be more than happy to roll up their sleeve and donate but they cannot because they continue to be discriminated against based on their sexuality and sexual history. When donating plasma, you must disclose whether you have engaged in at-risk sexual activity in the past three months. At-risk activities are said to include a man who has had sex with another man, a person who has had sex with a man who may have had sex with another man, a sex worker, someone who has had sex with a sex worker and a person currently on PrEP for protection against HIV infection. These now archaic rules mean that there are men who have been in monogamous same-sex relationships for decades who cannot give plasma.

Lifeblood's submission to remove sexual activity rules for plasma donation to the Therapeutic Goods Administration was approved in May this year. Conservative estimates by Lifeblood's chief medical

officer Jo Pink suggest that this may lead to an increase of 14,000 plasma donations from newly eligible donors. This decision was made based on scientific, epidemiological and clinical assessment. It recognises the excellent safety standards of Australia's blood supply and donation practices. Now it is Victoria's turn to get on board, as we as a state have legal responsibility for changing the donor questionnaire in our jurisdiction. So the action I seek is that the minister commits to this change and provides a time line for the relevant adjustment of the donor questionnaire in Victoria, acknowledging the importance of access to plasma in our healthcare system and the ability to donate free from discrimination.

Child protection

Matthew BACH (North-Eastern Metropolitan) (18:19): (491) Thirty-six score and nine days ago in this place the government introduced a very good bill. It was down in the other place, and Mr Pearson actually introduced it. He introduced this bill to seek to make sure that children leaving the care system could have support up until the age of 21. He did so on 6 October back in 2021, a mere 729 days ago. Now, if anybody has seen that bill, I would like to know where it is and to bring it back, because, at the time, I was very clear that on the opposition benches we wholeheartedly supported this bill. Mr Pearson actually made a very good contribution when he introduced the bill 729 days ago. He said this:

> We know that many young people leaving care experience a difficult transition and achieve much poorer life outcomes than their peers.

Well, that is putting it mildly.

> It is incumbent on us as a society to take action to address disparities in life outcomes for young people for whom the state has had parental responsibility.

Absolutely – and I would go further than that to say that we have a moral obligation as a state to care for young people whom the state has brutalised and traumatised. We have had many discussions over the last few days about the hideous things, the awful things, that happen to young people in the care of the state here in Victoria. Well, if the state is in loco parentis and if the state is going to brutalise and traumatise young people, then the state should provide support at least up to the age of 21 through the provision of housing and other like supports.

The minister said the government was going to legislate this change 729 days ago. Members who were here before the last election will remember that we debated that bill, but before the committee stage it mysteriously disappeared, and it has never come back. Minister Pearson actually went on to say this:

> Evidence shows that supporting care leavers is not only the morally right thing to do –

ordinarily I would not take lectures on ethics from Mr Pearson, but I will on this occasion –

> it makes good economic sense, with downstream savings across other areas of support including homelessness, mental health, and the criminal justice system.

Mr Pearson is actually right this time. So the action that I seek from the Minister for Children is not just to bring back the bill that we saw 729 days ago but to understand her mind and the mind of the government when it comes to the provision of support to care leavers up to the age of 25. To use Mr Pearson's logic, that would not cost the government money, it would actually save the government money. It is economically the right thing to do. It would lead to significant downstream cost savings. I think Mr Pearson was actually right when he said that 729 days ago, and I think we should go further than the government has ever proposed to up the age of support to 25.

Land tax

Bev McARTHUR (Western Victoria) (18:22): (492) My adjournment matter is for the Treasurer, and it relates to his shock expansion this week of the vacant residential land tax. Property Council of Australia CEO Mike Zorbas called the move a 'trust burner', and it is not just industry he has burnt.

Assistant Treasurer Danny Pearson had no idea what was going on, despite the Premier's hasty follow-up claim yesterday that she knew about it all along after discussion in cabinet. Either the Assistant Treasurer tunes out his boss or someone has not been telling the truth in this place. There are so many problematic aspects to the announcement it is hard to know where to start, so I will do it geographically.

Firstly, in metro Melbourne the tax is extended beyond empty properties to unimproved land. That might make sense in the built-up part of the city, but what about Melton in my electorate? This is a new growth area. There will obviously be undeveloped plots, yet now if greenfield sites are undeveloped for five years, they will immediately be hit. That is ridiculous, and it yet again shows Labor makes policy which might fly inside the tram tracks but is deeply damaging to Melbourne's outer suburbs and growth areas.

In regional Victoria holiday home owners will be socked yet again. The May budget brought the COVID levy, then last week we heard about the Airbnb tax – now this. The Treasurer claims these changes will cause more development by incentivising building. Taken in combination, though, this never-ending tax ratchet will instead just make investors sell up and get out. Real Estate Institute of Victoria CEO Quentin Kilian called it:

> … just another regrettable demonstration of poor property policy development, and shortsightedness from the Victorian Government.

The exodus of rental providers has increased over the past year, and with yet another round of taxation aimed at the property market there is no doubt that investors will continue to leave Victoria, exacerbating the rental shortage. This week rent prices in Melbourne reached their highest ever recorded levels. The median paid has increased by $95 a week to $520 a week, nearly a 25 per cent increase in one single year. For Labor politicians to say this has nothing to do with them when Victoria has the highest property taxes per capita in all of Australia at $2120 is clearly deluded or dishonest. Sadly, we understand the impact of this attack on growth suburbs and new triple-taxing of holiday home owners. But the action I seek is clarification of a less discussed matter: will this tax apply to land zoned for agriculture? Is he really expecting farmers now to have to pay a brand new tax for property on their land put aside for seasonal workers?

Ballarat Specialist School

Joe McCRACKEN (Western Victoria) (18:25): (493) I rise to speak on an issue that will probably make everyone utterly horrified. It is for the Minister for Education, and it concerns the Ballarat Specialist School. As reported by Susie O'Brien in the *Herald Sun*, there was an article titled 'Damning dossier of complaints from parents and staff at Ballarat Specialist School', which reveals a number of concerns put forward by parents and staff. Ballarat Specialist School, which is in my electorate, works with young people who have a disability. The action I seek is this: I want the minister to open a full independent investigation and produce a report that is publicly available whilst respecting the rights of individuals and potential victims and families.

I note that the concerns of many that have been raised in public only relate to some staff, not all, so I do not wish to put anything on the record that tries to paint all staff as being problematic. But the list of complaints that have been raised publicly includes: children being left alone at school pick-up; restraints used on four students; students being pushed, kicked and verbally abused; students being locked in separate rooms on a daily basis; inappropriate behaviour and handling of young people, including one teacher having snuggle time with a student; and age-inappropriate discussions as well. One parent said her son, who has Down syndrome, was repeatedly excluded after being incorrectly tested. This young person was placed in a non-verbal classroom and started making meowing sounds and stopped speaking. Her son is now 17. He cannot read and he cannot write and has had a mental breakdown. Another student ended up in ICU after eating a yoga mat after being left unattended. There are other claims that school students were excluded from camps because they were too difficult to deal with. One staff member said they had been reprimanded for trying to advance the life skills of students

and was distressed by other staff calling students names and humiliating them. One member of the school council said that staff who spoke up were called troublemakers and were harassed until they left.

I would hope that the government would respond to this in a timely manner. This is obviously a very sensitive matter. Children and vulnerable young people need to know that they can feel safe and supported in a learning environment, parents need to have the confidence that their young person is not going to come home harmed and the community needs to know that the most vulnerable young people, those that need that extra support, get the care that they deserve in a kind and supported way. I hope the minister does something about this, because it has impacted me, it has impacted many locals and I dare say it is such a poor reflection on the education system. I take the point that it is not all teachers that the discussion is about here, it is just some, but the fact that this just happens even once is an absolute shame. So, Minister, please, please, please, I implore you, look into this for the children's sake.

Armenia–Azerbaijan war

Ann-Marie HERMANS (South-Eastern Metropolitan) (18:28): (494) My adjournment is for the Minister for Multicultural Affairs, and the action I seek is for the minister to join me in supporting the Armenians, including organising funding aid and provisions for the innocent people of Artsakh, which will encourage the Armenians living in the South-Eastern Metropolitan Region of Melbourne. It is an honour to represent the South-Eastern Metropolitan Region because it is made up of a vibrant multicultural community with people from all walks of life. The Armenian–Australian community in Victoria predominantly live in my electorate and have contributed greatly to our state and have become increasingly important to me this year. My Armenian community is so big it is home to all three Armenian clubs, including the Armenian Community Centre in Mulgrave, the Sahagian football club, the Armenian General Benevolent Union in Rowville and the Armenian Community Centre in Springvale. Clubrooms are used by numerous Armenian groups who play an important role in continuing the language, culture and traditions of the ancient Armenian people. I have become very fond of this community, especially after visiting the community centre, attending events like the Armenian Film Festival and, most recently, participating in a cross-party parliamentary delegation to the Republic of Armenia just last week.

I want to speak about the delegation because I witnessed challenges for the Armenians, and I express my sincere support for the Armenian–Australian community. Firstly, I want to thank the Armenian National Committee of Australia and my six parliamentary colleagues from New South Wales and Victoria for participating in this historic delegation. It was my first delegation, and it was an incredible experience. We had the opportunity to meet with many government representatives and discuss foreign ministry concerns, with insights from the chairperson of the parliamentary friends of Australia and ministers from the renewable energy sector, all with the hope of expanding ties between our great nations. We enjoyed the amazing culinary tastes of Armenia. We enjoyed seeing the historic and ancient places that are part of Armenian history, because Armenia is in fact the oldest Christian nation in the world, with Christianity as its national religion.

While we were admiring all these wonderful things, we also had our hearts broken as we came across the people of Artsakh, who are being ethnically cleansed from their homes. We were there as they were allowed to leave after a 10-month siege on their entire region. We were there as they came across the borders with their children, seven crammed into the back of a car, many coming without clothing or any essentials. Some did not even have sanitary essentials – in fact many. I could tell you so many heartbreaking stories of the people that I met. But I do thank all those who are working with the people in Armenia and with the people of Artsakh, and I ask the minister to look into helping the Armenian community.

Essendon Fields Airport

Trung LUU (Western Metropolitan) (18:32): (495) My question is in relation to Ambulance Victoria. I direct this to the Minister for Health Infrastructure. The action I seek is for the minister to provide a business case and a reason for continuing with the planned work at Essendon Fields airbase, used by Air Ambulance Victoria. At Essendon airport there are two locations that Ambulance Victoria use: Air Ambulance use the airbase, and Adult Retrieval Victoria, stroke telemedicine and other medical services are located 1 kilometre away from the brand new Essendon Fields operations centre.

The original plan under the aeromedical services improvement program was to co-locate medical services across the airbase and the operations centre. To accommodate these services at the airbase, funding was allocated to upgrade the facility for this expansion. One feature of the upgrade was a plan to build a large carport for service vehicles. To make room for this they got rid of the staff and business car parks onsite and leased 23 car parks nearby. But now the plan has changed. The medical services will all be located at the operations centre, so the upgrade at the airbase is no longer necessary. However, since the funding has been allocated, originally planned work continues, with $250,000 for a carport that my constituents have told me is not needed or required. So can the minister please provide an explanation for the planned work at the Essendon airbase, used by Air Ambulance Victoria, when this money could be better spent in other ways?

Australian Electoral Commission

Nicholas McGOWAN (North-Eastern Metropolitan) (18:34): (496) Has the world gone mad? It appears it has. We trust in our institutions that they will guide us, particularly in a democracy and particularly when we need an adjudicator, and yet the AEC appear to have done quite the opposite. I was aghast to see very recently online that the AEC gave some advice in respect to the referendum we will have in nine days from now. Nine days from now, Australians will be asked a critical question about whether we want to have a race-based society or not. My answer to that is a categorical no. The AEC, the Australian Electoral Commission, is the institution we trust to run that election. It is an important election; I think there would be no dissent about that. I will read out their response on social media when asked whether people can in fact vote once or twice or more:

> If someone votes at two different polling places within their electorate, and places their formal vote in the ballot box at each polling place, their vote is counted.

This is real. This is not a prank. This is not fake news. This is absolutely stunning and alarming. Furthermore – every Australian should understand this, this tweet by the AEC – nowhere do they actually point out the illegality of doing such. So reckless is their behaviour that nowhere do they point this out. This has been retweeted 700,000 times, so close to a million Australians –

Ingrid Stitt: On a point of order, President, I am sorry to cut you off mid-flow there, Mr McGowan, but can you just clarify for me which minister you are directing this to?

Nicholas McGOWAN: The Premier.

Bev McArthur: The top of the tree.

Nicholas McGOWAN: The top of the tree; that is right. Not once, not twice, but 700,000 times this tweet has been retweeted. It is absolutely stunning. It is alarming, encouraging criminal behaviour in one of the most important referenda this country has faced – in my lifetime, at least. Furthermore, and this should alarm Australians and Victorians even more, Meryl Swanson, an MP – yes, a Labor MP – in a tweet she has now been forced to edit by the AEC, the same people who made the first tweet, actually had a hashtag – wait for it – #VoteOften. Vote often! I mean, this is strategic. This is rorting the referendum. It is a disgrace.

The action I seek – and I know the President is eagerly awaiting this – is for the Premier to assure the Victorian people that there are no members of caucus that are likewise encouraging Victorians to vote often, number one. Further, will the Premier join with me in condemning the federal member Meryl

Swanson for her tweet intimating, much less encouraging online, that people should vote more than once? They should vote only once.

The PRESIDENT: I can live with the action about the Premier encouraging the caucus not to encourage people to vote fraudulently, whether it is yes or no.

Illicit tobacco

Georgie CROZIER (Southern Metropolitan) (18:37): (497) My adjournment matter is for the attention of the Minister for Health, and it relates to the Victorian government's illicit tobacco review. The action I am requesting is for the minister to release this report that has been sitting on a desk. Danny Pearson, the former Minister for Regulatory Reform, wrote to the commissioner for better regulation –

Matthew Bach interjected.

Georgie CROZIER: 731 days ago, Dr Bach – so he was busy 730-odd days ago – and he asked the commissioner for advice on Victoria's approach to illicit tobacco regulation. In this letter to the commissioner, he said:

> Please provide a report to me and the Minister for Health within six months of receipt of this letter. Publication of the report will be at the discretion of myself and the Minister for Health.

I think that report needs to be released – the government has it – and the reason I say that is because this is becoming a very serious issue. At the moment we have got organised crime networks avoiding detection at international borders and flooding the market with illegal products from overseas, which then becomes an issue of detection and enforcement for the state government, so I cannot understand why the government is not releasing this report and getting on with this issue.

Victoria is the only jurisdiction in Australia without a regulatory licensing scheme for the sale of tobacco and e-cigarettes. In the absence of such a regulatory framework, the black market in illegal tobacco and vaping products has thrived in this unregulated environment. And what we are seeing is that these chop-chop shops are going up in smoke every 5 seconds, it seems. I was reading that there was a factory on fire again today and it was questioned whether it was also linked to illegal activity. It is my understanding that there have been 20 arson attacks on tobacco outlets in the last six months, and the recent murder of a gangland figure, which has also been linked to illicit tobacco gang warfare, which occurred in my electorate of Southern Metropolitan Region, is completely unacceptable. It is putting the community at risk, and this sort of ongoing arson and shooting of one another is just beyond the pale. This is a huge concern.

This report is there. The government is sitting on its hands doing nothing about this illegal trade and we have got these crimes being undertaken unabated. It appears the government, one, is just not interested in community safety and cracking down on these illegal tobacco and illicit trades that are going on and is not taking this issue seriously. Again, I ask that the minister immediately release this review and we get on with protecting the community and cutting out this illicit trade that is actually affecting young people – too many young people. I say in my final few seconds: the instances of smoking are skewed because of this illegal market that is rife in Victoria.

Responses

Ingrid STITT (Western Metropolitan – Minister for Mental Health, Minister for Ageing, Minister for Multicultural Affairs) (18:40): There were 13 adjournment items this evening to nine separate ministers and one to the Premier. I will forward those in accordance with the standing orders.

In relation to Mrs Hermans's matter directed to me in my capacity as Minister for Multicultural Affairs in relation to the Armenian community in Mrs Hermans's electorate, I understand that there are deeply held views in those communities about events that have happened over the years. The government respects those views, and it has a longstanding and consistent position of encouraging dialogue

amongst communities concerning these painful events. I am very committed to meeting with multicultural communities right across Victoria in my new portfolio. I would invite Mrs Hermans to provide some further details to my office, and I can consider her request for a visit.

The PRESIDENT: The house stands adjourned.

House adjourned 6:42 pm.